

LIBERTY AND AUTHORITY: THE POLITICAL IDEAS
OF PRESBYTERIANS IN ENGLAND AND SCOTLAND
DURING THE SEVENTEENTH CENTURY

by

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A summary of the contents of this thesis is included in the
Preface

COPY OF THESIS ABSTRACT FORM

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Politics

'Liberty and Authority: The Political ideas of presbyterians in England and Scotland during the seventeenth century'

This thesis opens with a survey of state policy and puritan political opinion from the 1620's to the 1640's, emphasising the puritan notions of a world conflict of protestantism against the counter-reformation, the alleged symbiosis of catholicism with absolutism, and the association of political liberty with economic prosperity. Chapter two examines the theories of Charles I's Scottish opponents from 1638 to 1641. The political thought of Charles Herle and other English parliamentarians of the first civil war (1642-46) forms the subject of the third chapter, while the fourth is devoted to Samuel Rutherford's Lex Rex, a major work of presbyterian political theory.

Chapters five and six analyse the position of the English presbyterian party in the controversies of 1647 to 1651, including the toleration issue, Pride's Purge, the king's execution, and the Engagement controversy. The seventh chapter explains the political thought of Edward Gee, a notable presbyterian of the interregnum. Chapter eight deals with two aspects of presbyterian relations with the exiled Charles II: his Scottish "restoration" of 1650-51 and the English presbyterians' contribution towards his eventual restoration in 1660.

Chapter nine examines the political theories of the Scottish covenanters from the 1660's to the 1680's. The final chapter studies the English presbyterians' contribution to political thought from 1660 to 1689, including the exclusion crisis of 1679-81.

Throughout the thesis the firm constitutionalism of the presbyterians is shown, and emphasis is placed upon elucidating the presbyterian concepts of the nature of liberty and authority, and the characteristic presbyterian justification of their theories by scripture and reason.

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Abbreviations

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PREFACE

This analysis opens with a survey of state policy and puritan political opinion from the 1620's to the 1640's, emphasising the notions of a world conflict of protestantism against the counter reformation, the alleged symbiosis of catholicism with absolutism, and the association of civil liberty with economic prosperity. Subsequent chapters contain more detailed studies of particular periods, beginning with the justifications of Charles I's Scottish opponents from 1638 to 1641. Chapter three examines the political thought of Charles Herle and other English parliamentarians of the first civil war (1642-46). A separate chapter is reserved for the consideration of Samuel Rutherford's Lex Rex (1644), a major work of presbyterian political theory.

I have put forward a detailed presentation of the arguments of the English presbyterian party in the controversies of 1647 to 1651, particularly the toleration issue, Pride's Purge, the king's execution, the advent of the Commonwealth and the Engagement controversy. I have followed the two chapters devoted to these subjects with a separate examination of the works of Edward Gee, the most notable presbyterian political theorist of the Interregnum. Chapter eight deals with two aspects of presbyterian relations with the exiled Charles II: his brief Scottish restoration of 1650-51 and the English presbyterians' contribution towards his eventual restoration in 1660. The last two chapters again survey a broader period, the restoration age from the 1660's to the 1680's, examining the political theories of the Scottish covenanters and the English presbyterians' contribution to political thought from 1660 to 1689.

I have emphasised throughout the firm constitutionalism of the presbyterians, their concepts of the nature of liberty and authority, and the characteristic justification of their theories by Scripture and reason, rather than antiquarianism and precedent.

To the Calvinist earthly rulers were necessarily limited by the absolute sovereignty of God and God's Word interpreted in the light of reason. They were also limited by natural law, since God was the author of nature as well as of Scripture (and this limitation applies to all polities whether or not principles of natural law were expressly attested in a written statement of fundamental law), and by their coronation oath. Calvin also provided for the restraint or resistance of a ruler who overstepped these limits. In the famous thirty-first section of the twentieth chapter of book four of the Institutes he asserted that the representatives of the people (the Estates or parliament) in any country had a right and duty to keep the sovereign within his bounds.

John Knox was, however, disclaimed by Calvin when he applied resistance theory in Scotland, and Christopher Goodman's thesis, How Superior Powers ought to be Obeyed of Their Subjects (1558), boldly emphasising the need to obey God rather than an ungodly ruler who failed to secure the great reformer's approval. Yet Calvin's caution over the assertion and application of this right of constitutional resistance did not prevent it from being trumpeted by sixteenth century Calvinist writers of several nationalities. It was emphasised in the struggle for independence of the Netherlands Calvinists, as the texts of Kossman and Mellink illustrate (Texts Concerning the Revolt of the Netherlands, Cambridge 1974). The Calvinist view of a subject's duty of obedience to a ruler according to law, justice, customs and old privileges was contrasted with the Spanish and catholic notion of a duty to obey everything a tyrant commanded without resisting or uttering a word of dissent.

The Dutch Declaration of Independence in 1581 rested on the Calvinist concept of constitutional resistance. It considered the ruler to be constituted by God for the people, to protect them from oppression, and rejected any notion of the people being virtual slaves to princes, obliged to obey commands, whether right or wrong. When a ruler deliberately

oppressed his people and infringed their traditional liberties in opposition to their representatives, his authority could be nullified and his commands resisted, the estates having a legal and natural right to select another prince for the people's defence. The deposition of the Spanish King by the Dutch was a legal annulment of the contract he had broken. The distinctive identity of Calvinist political theory was consolidated by being constantly contrasted with its catholic opposite.

George Buchanan's De Jure Regni apud Scotos (1579) emphasised the mutual obligations of rulers and subjects and the duty of representatives to resist tyranny, but the Vindiciae contra Tyrannos, published in the same year, was even more influential. Its supposed author, Philip de Mornay, was an advisor to Henry of Navarre and a valued correspondent with counsellors of William the Silent and Queen Elizabeth of England. This book emphasised the existence of a mutual contract, whether express or implicit, between king and people which could not be abolished or infringed with impunity. Kings were only to be obeyed provided they commanded nothing against God's law. A king who broke his oath and obligations could be resisted by the "people", but the "people" was to mean the representative magistrates with authority to act on behalf of the wider people. If the representatives did not restrict within his limits a king who broke God's law, they grievously offended God.

De Mornay rejected the organic concept of the state as a polity with the king as its controlling head and all other components as subordinate members unable to act properly on their own initiative. He found the traditional French limitation of monarchy, which emphasised the king's role as usufructary rather than proprietor of the realm, to be inadequate and outdated. This old theoretical limitation legally prohibited the king from alienating any parts of the royal domaine, for any reduction in the extent of crown lands would cause a diminution in the capacity of the king to live

of his own, and a corresponding augmentation of taxes and impositions on subjects. In fact, the French monarchy during the sixteenth century had gone on successfully increasing its fiscal endeavours so that it raised ever greater sums. De Mornay depicted kingship as an office and a trusteeship, denying any patriarchal or organic analogy which allowed the king to act as a superior being over his subjects and to be entitled to automatic obedience. Kingship was an office which existed for the good of the subjects, and the king could be resisted or removed if his actions contradicted the purpose of his office.

By using this theory and presenting historical precedents for resistance, estates' rights, and conditions sworn to in kings' coronation oaths, de Mornay made it clear that there existed a contract between king and people based on customary and natural law. Hotman's Franco-Gallia (1573) is, however, usually considered the more influential Huguenot assertion of estates' rights from historical precedent. De Mornay emphasised that over and above the contract between ruler and people, there existed a covenant between God and people, arising from God having called individuals to a vocation in life which they must fulfil to the glory of God. This calling was particularly important in the case of subordinate magistrates in a state who had thus been brought to their station through the divine will to act in their office according to the ends for which God had instituted magistracy. Here was an overriding obligation to God which was far more important than personal loyalty to a monarch on earth.

The Genevan Lambert Daneau's Politices Christianae Libri Septem (1596) emphasised that God's means of giving rulers their authority was through the people's choice and that since a people created its rulers it retained the power of changing the constitution and of taking action through representatives against process breaking their agreements. The domestic government of families and households was thus different in kind to the political government of civil society.

Daneau, De Mornay, Hotman, Goodman and other Calvinists all believed that while ultimate sovereignty belonged to God, he channeled it to rulers through the medium of the people's consent. In this sense the people were superior to the ruler. The powers of government, within the limits set by God's word and natural law, and also the person or dynasty to be invested with these powers, were decided by the consent of the governed. Indeed, since Calvinists believed God no longer intervened miraculously in human affairs it seemed obvious that he must ordain governments and governors indirectly by the people's consent. I will refer frequently to this theory in the ten chapters below.

The Calvinists' rejection of patriarchalism has been justifiably affirmed by Michael Walzer in The Revolution of the Saints, London 1966, but I do not think that this rejection necessarily implied any substantial diminution in the importance of kinship ties in political life. Walzer stated his main argument to be that Calvinist politics was an unintentional aspect of a broad historical process called "modernization". This statement is general and unobjectionable. Calvinists believed that the age of miracles and direct divine intervention to appoint rulers was long past so that governments originated from human choice and consent, with the consequence that change made by human choice and consent was also legitimate. There was no unalterable divine order in politics to prohibit development. By contrast with patriarchalism, this Calvinist view was certainly liable to discourage fatalism and passivity. The Cromwellian independents, however, who would no doubt be considered prime examples of Walzer's saints, deviated from this doctrine in their reliance on justification by Providence and their fatalistic advocacy (at the time of the Engagement controversy) of passivity in the face of political changes.

Walzer asked the question why various groups of Englishmen, Scots, Frenchmen and Dutch became Calvinists and concluded that they did so because they felt some need for self-control

and godly government. According to his theory, a model of radical politics may be based on the history of English puritans and appropriately used to compare them with Jacobins and Bolsheviks. This model is characterized by the appearance of a revolutionary spearhead or vanguard of well disciplined dissidents whose organised activity and ideological zeal produces a new kind of intense, competitive politics. The personnel of the revolutionary band consists of individuals from outside the ruling echelon of the old order whose conversion to the new ideology has given them the confidence and desire to participate actively in politics. Walzer did not mention that Roman catholicism, surely part of the old order, could provide an inspiration and a model of radical activity of a very similar style, as H.G. Koenigsberger's explanation of the history of the French Catholic League from 1585 has shown. Fanatical bourgeois catholic professional men, priests and artisans without any previous tradition of political activity formed a revolutionary force which throughout France deposed officials of the royalist party which had failed to suppress Calvinism. Revolutionary Leaguer governments were set up in most of the towns held by the king's side. Contrary to the view of Laurence Stone in The Causes of the English Revolution, London 1972, it was the Leaguers, in Paris in 1591, who set up the first Committee of Public Safety known to history, not the London puritans in 1642. It seems that catholicism as well as Calvinism could inspire ordinary, unpolitical people to become revolutionaries.

On the other hand zealous Calvinists could also, as I will show, be very conservative, which they had every reason to be if they lived in an officially Calvinist country. Moreover the most notable cases of really ordinary people inspired to intervene in politics are specifically excluded by Walzer from his thesis. He refuses to deal with the radical programmes of the Levellers, Diggers or Fifth Monarchy Men, yet these sects usually drew their following from far more ordinary people in lower ranks of society than the presbyterians and independents. The presbyterians whose ideas

I describe were in the majority of cases gentlemen, clergymen, or schoolmasters who naturally did have an interest in public issues, without our requiring some special psychological explanation. Can Walzer really claim to analyse the decline of deference without discussing the Ranters and Quakers? It should also be noted that Calvinism did not hold that God only worked through the saints, but that the reprobate too served his will although only by ordinary providence and without special grace.

Walzer claimed in his conclusion that puritanism helped in the historical preparation for the liberal world but made no theoretical contribution. At the end of my last chapter I have pointed out that presbyterian political thought has been shown, according to my evidence, to have made a theoretical contribution.

Walzer concluded that the two paramount motives for the saints' struggle were antagonism to the traditional world and anxiety about human wickedness and social disorder. He thought puritans were frightened by the freedoms of mobility, extravagance, individuality and wit and must be contrasted with those who admired the Renaissance cities and courts where these freedoms were cultivated. This opinion is an unacceptable generalisation resting on the kind of stereotype puritan dismissed by Christopher Hill in the first chapter of Society and Puritanism. Hill showed that the stereotype won't suffice. Also, there were "puritanical" royalists, so I have explained in my article on Francis Quarles in The Durham University Journal June 1978. Puritans admired, and later mourned, the spectacular and expensive Renaissance court culture of Calvinist Heidelberg. They disliked the Roman catholic influences and the immorality of the Stuart court. Anyone who thinks the puritan saints could not relish extravagance should refer to Roy Sherwood's The Court of Oliver Cromwell, London 1978, or even to Lucy Hutchinson's description of Major-general Harrison's attire at the Rump's reception of the Spanish ambassador. Nathaniel Ward, a notable presbyterian did not

lack wit, as I will show. The spiritual melancholy and compulsive self-examination which Calvinism encouraged in many puritans does not suggest that it was necessarily the most obvious or appropriate refuge for those who found the freedom of individuality hard to cope with.

Reading Walzer's book, one might hardly realise that an episcopalian could be a saint (one of God's Elect) and that most anglicans were Calvinists who considered the Thirty-Nine Articles to uphold predestination. One might never suspect that presbyterians often had more in common with moderate episcopalians than with independents. There was no inevitable reason for strict Calvinists to be revolutionaries in the established protestant realms of the Stuarts. The conflict arose with the attempted insinuation of a revolution from above by Arminians, fiscalists intent on undermining the role of parliaments, and supporters of rapprochement with the catholic Habsburg and Bourbon counter reformation states.

Much of my analysis of the works of Edward Gee has already appeared in my article, "Edward Gee and the Matter of Authority" in The Journal of Ecclesiastical History, XXVII, April 1976, published by the Cambridge University Press.

Most dates are retained in Old Style, except that I treat the year as beginning on 1st January.

It should be noted that the word "magistracy" as used by Calvinists could refer to any kind or level of government. Civil magistracy can usually be taken to mean simply civil authority.

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INTRODUCTION

The use of the word 'presbyterian' in writing about events of the mid-seventeenth century presents several difficulties. Professor Trevor-Roper has referred to the confusion caused by the use of this word to describe an English political party, when in fact there were very few Englishmen absolutely committed to a presbyterian ecclesiastical polity.¹ Richard Baxter expressed a very similar opinion some three hundred years ago.² Most of those who were called presbyterians in England in the 1640's would have accepted a moderate episcopal system had it been practicable. They were, however, utterly opposed to an exalted, domineering prelacy, arminian doctrines, and the ecclesiastical innovations of the 1630's.³ Seventeenth-century writers testify that the name presbyterian was used to describe those who formerly, i.e. before about 1640, had been called puritans. Richard Baxter, John Evelyn, John Gere, and the anonymous author of Anti-Machiavell (1647) (attributed to Marchamont Nedham) all concurred in regarding the presbyterian as the "old English Puritane", to use the words of Gere's title.⁴ The aim of the puritans before the civil war might be summed up in another title, Zachary Crofton's Reformation Not Separation: they desired the reform of the Church of England to reassert calvinist doctrine and worship and to reverse the Laudian innovations, but unlike anabaptists, brownists and other independents, they did not wish to separate themselves from the established church or to allow others to do so.

The end of the first civil war in 1646 allowed presbyterians and independents to concentrate on their own struggle, since they no longer needed to suppress their differences for the sake of unity against the royalists. The parliamentary cause in the civil war of 1642-46 had not been directed against the monarchy, but against the extent of power which Charles I and his followers claimed for the monarchy. Presbyterians had always been monarchists, and they remained monarchists after the civil war, but even in 1647 it was obvious to an informed observer of public affairs that,

the Independents ... have been most bitter, not only against the present King, as farre as deposing or execution itselfe; but against Monarchy, eyeing the States Government of the Netherlands, with their toleration, as an imitable form for themselves to 6
aime at

It was not particularly surprising that independents should think in these terms, for after all quite a few of their number had spent some time in Holland as a refuge from persecution, while others looked to it as the best example of a state allowing a measure of religious toleration. Nor was their reported attitude to the king any wonder. If there was to be an agreed settlement with the defeated Charles, it seemed possible at the time that he might agree to an established presbyterian church with a monopoly status which precluded the toleration of independent sects. Such a settlement would at least have appealed to Charles as a solution which continued the state's control over the people's worship, with all the consolidation of public order associated with a state religion's monopoly of the pulpit. On the other hand, it could hardly be supposed that the king, even in defeat, would agree to any measure of religious toleration desired by the independents, or even that he would be able to envisage such a toleration as compatible with monarchical government. After all the only example which could be held up was that of the Netherlands, which was not a monarchy. Was Charles to be stadtholder of England?

Any parliamentarian who desired a settlement with Charles I based on parliamentary, limited monarchy and an established state church with its traditional monopoly, could be called a presbyterian, or a supporter of the presbyterian party, in the middle and late 1640's. As will be explained at the beginning of Chapter five, a great many Englishmen, who in political terms might be independents or former royalists, were officially, after 1646, members of the presbyterian church, because in quite a few counties and boroughs the state church, which they had been in the habit of attending, became officially presbyterian in accordance with the

legislation of the Long Parliament. An English presbyterian in politics, for the purposes of this present study, was one who had been a parliamentarian supporter in the first civil war, and possibly before the war a puritan, or puritan sympathizer. He desired an established state church and opposed religious toleration, although not necessarily for religious reasons. He was a monarchist and wished to see King Charles on his throne as a limited monarch, restrained by parliament. Later, in 1648, the presbyterian was opposed to Pride's Purge, which removed the presbyterian party's parliamentary majority and prevented a settlement with the king. The presbyterian, still using the term in this political sense, was opposed to the trial and execution of Charles I, and to the establishment of the republic. He either refused the new regime's Engagement oath of 1649-50, or signed it very reluctantly. In the 1650's, although powerless to oppose Cromwell's protectorate, the presbyterian continued to regard limited monarchy as the legal, and best, form of government. The presbyterians supported the restoration of 1660.

The presbyterian and independent parties in politics were very loose and unorganised factions. There were, of course, no formal parties or party organisations in the 1640's but individuals who expressed political opinions could usually be classified with one of the labels of the period, royalist, presbyterian, independent, or leveller, etc. Obviously, it must be remembered that the bulk of the population had little knowledge of, or interest in, politics, and others who possessed the education, status, and leisure to hold political opinions nevertheless preferred to remain as far as possible neutral or non-aligned. Both contemporary sources and modern historians differ amongst themselves over the proportion of politically active parliamentarians of the later 1640's who regarded themselves, or were regarded, as supporters of either the presbyterian party or the independent party. This subject is discussed in Chapter five. Members of parliament, at least, must have found it hard to remain completely non-aligned, unless, of course, they simply stayed away from the

houses altogether. It seems likely that George Wither was right when he wrote in his history of the parliament:

I am certain there was not one then in the House
[of Commons], but professed himself either a
Presbyterian, or Independent, though some in a
more rigid, others in a more moderate way. 7

The presbyterians considered themselves the strict constitution-
alists and upholders of the traditional mixed government of
England. They contrasted themselves with the royalists, who
deviated towards arbitrary government and absolutism, and the
independents, who went to the other pole by establishing a
republic. They believed that parliament's armed resistance
of the king in the civil war could be justified by Calvinist
doctrine, but they rejected the notion of a right of resistance
by the ordinary people as strongly as they denied the royalists'
assertion that at least passive obedience must always be given
to rulers. They claimed to be the only party which had
maintained its integrity by holding fast to its original
principles. It will be shown in the chapters which follow
that their political philosophy was based on the two pillars
of scripture and reason, two fundamentals which must necessarily
harmonize because it was firmly believed that they were both
the creation of the same divine author. The political
thought of presbyterians did not depend upon any purely
antiquarian, legalistic approach or on the accumulation of
historical precedents. Their case was based on a concept of
the origin, nature and purpose of government among rational
beings in a divinely ordered universe.

In Scotland, the style of presbyterianism was different
from that of England, although the differences were less than
is often supposed. Technically at least, the vast majority
of Scots in 1625 were moderate episcopalian, the vast
majority in 1645 were presbyterians, and the vast majority in
1665 were moderate episcopalian again, except that, as in
England, the restoration settlement still left a substantial
dissenting minority outside the established church, a situa-
tion which had not existed before the civil wars. Any Scot
who was a presbyterian in the mid-1640's had almost certainly

been an episcopalian ten years earlier. Most people in Scotland or England were members of whatever was the official state church at any given time, and so were most clergymen. Most Scots, laymen or clergy, were officially presbyterians in the 1640's and 1650's, but many probably had no very strong views about the relative merits of presbyterianism and a limited episcopacy, although there were undoubtedly strong prejudices against prelacy, Arminianism, anglican worship, and anything which smacked of Roman catholicism. The Westminster confession of faith, the Directory of Public Worship and the Solemn League and Covenant did not deny the primitive episcopacy of the early church, nor did they specifically condemn the concept of a superintending or presiding bishop, regulated by canons and balanced by assisting presbyters. Bishops, although non-essential, were not necessarily contrary to the faith, particularly if they were desired by the supreme civil authority, whose power of establishing the external polity of the church was upheld in these documents (by contrast with the subsequent theocratic remonstrant, protester and Cameronian position). It was, however, essential to accept that ministers did not exercise their ministry by virtue of being ordained by prelates, but by a calling which was a spiritual gift and grace from Christ, and directed by God's word. The point is that a limited form of episcopacy was not absolutely abjured by presbyterians, and many could submit to the post-restoration episcopal system without any crisis of conscience.

An important difference in the case of Scotland was the growth and persistence of a small minority of extreme presbyterian clericalists to whom nothing less than a rigidly presbyterian theocratic state was acceptable. Between autumn 1648 and autumn 1650 this party, soon to be called the remonstrants or protesters (see Chapter eight), was actually in power in Scotland. Subsequently, their policy was upheld by the Cameronians of the 1680's, who continued a fanatical armed resistance to civil authority long after peaceful presbyterians in Scotland had been granted a measure of toleration (from 1669) beyond anything which could be vouchsafed to their English counterparts. One of the reasons why

a party of presbyterian zealots campaigning for extreme clericalism arose in Scotland was that they could draw upon the precedents of the early Scottish reformers, who, in the minority of James VI, had been able to proceed further in the direction of Genevan theocracy than the protestants of Elizabethan England. Even so, there was no true continuity of extreme presbyterianism from this period to the mid-seventeenth century in Scotland. By James VI's death in 1625, there was little opposition in the church to the ecclesiastical status quo of moderate episcopacy.⁸ Charles I's policy in the 1630's changed that situation.

In the chapters describing the political ideas of Scottish presbyterians, the views of both moderate and extreme presbyterians will be shown. This dichotomy is only really important politically from 1647 (the Scottish 'Engagement') or 1648 (the second civil war) onwards. Before that the division of Scots which really mattered was between those who opposed Charles I, and on the other side his royalist supporters. It should be noted that many Scottish royalists were, like Montrose, 'covenanters', because they had signed the National Covenant of 1638, a document which did not actually condemn episcopalianism as such.

It is hoped that the foregoing paragraphs may help to limit any confusion caused by the term presbyterian. It is also important to consider some aspects of what may be called the tenor of thought among those who became dissatisfied with the policy of the Stuart monarchy in the 1620's and 1630's. With an insight into this broad background of distrust our understanding of political ideas in the mid-seventeenth century is enhanced. Chapter one consists, therefore, of a more general and wide-ranging discussion than the chapters which follow it, in the belief that this approach may be helpful and illuminating.

CHAPTER I

STATE POLICY AND PURITAN POLITICAL OPINION

When the English civil war began, in 1642, continental Europe had already been at war for almost a quarter of a century. The conflict which we call the Thirty Years' War was a matter of immense importance to many Englishmen who saw in it nothing less than a Habsburg bid for a world supremacy of their own dynasty and its oppressive religion and polity. This chapter will demonstrate that the perception of the war as a military assault of the international counter reformation against protestantism also necessarily meant, to many English and Scottish minds, a great attack upon political liberty by forces dedicated to the idea of absolute monarchy. The failure of the Stuart monarchs to aid the protestant cause represented, in the minds of many of their subjects, a sinister indictment of their rule and cast doubt on their future intentions regarding their own realms. In an age in which governments were far less active in internal affairs than their modern counterparts, foreign policy was, after all, the main sphere of action for rulers, the broadest arena for the exercise of statecraft. If a monarch failed to defend the vital interests of his realm in this theatre of politics, his motives inevitably became open to the greatest suspicion. Obviously most persons in the British Isles had a very oversimplified impression of the character of the continental war and of royal diplomacy in relation to it, but this chapter assesses the nature and influence of that impression rather than its accuracy as an interpretation of the war.

Professor Trevor-Roper, in one of his best known works,¹ emphasised the background of those civil war parliamentarians who had been "the generation of the 1620's", a decade which saw the near destruction of the protestant cause in Europe while England stood idly by, and even flirted for a time with the arch-enemy Spain. This concept is supported by the work of D. Brunton and D.H. Pennington and their conclusion

that parliamentary M.P.'s of the Long Parliament were on average ten years older than royalists, old enough to belong to the generation of the 1620's, and Professor Aylmer showed a similar 'generation gap' in the allegiances of civil servants.² The notion that the last age of the world was dawning influenced many persons who were not, in the usual sense, millenarians and who had no belief in the imminent conclusion of history. It was rather more often a vague but haunting sense that a great storm was raging in the world and that an immense struggle, beyond any ordinary warfare, was in progress. This struggle involved the forces of good and evil, of Christ and Antichrist, the false god whom Calvinists identified as the pope of Rome. A greater awareness and celebration of the achievements of antiquity had produced a sense that the world had declined and decayed into a corrupt condition which made it ripe for this decisive cataclysm. Events of cosmic significance could, of course, be placed on a vast time-scale. The last age of the world might be protracted for centuries. Thomas Gataker (1574-1654), a notable English puritan who believed that the protestant cause was endangered by James I's foreign policy, wrote in 1621:

This Age of ours is the worlds Old-age. That which we call Antiquitie, was indeed the worlds Youth. Time is growne gray with us, that was greene with them that then lived. ... as the manner of old men is, wee bee full of tongue but weak and feeble of hand, having much speech and dispute, but little performance or practise ... a great coldnesse, and strange numnesse ... when nothing affecteth men, but what they personally feelee, or feare may befall themselves. 3

In the 1630's the Glasgow minister Zachary Boyd called the age "the dregges of dayes", and in 1642, Henry Parker, an important parliamentary pamphleteer, referred to his generation as "those dregges of humane race upon whom the unhappy ends of the world are fallen"⁴. Sir William Waller, the parliamentary civil war general, who had served the protestant Queen of Bohemia at the outbreak of the Thirty Years' War wrote that men of his times lived "in faeci Romuli, in the lees and dregs

of time, upon whom the ends of the world are come".⁵ In December 1644, preaching before the House of Commons, Thomas Thorowgood, rector of Grimston, Norfolk, declaimed: "The unnatural divisions that are up in the world, are undeniable presages that the Lord is at hand ... the props of the world decay; prodigious fights portend as much".⁶ Dr. John Whincop, a Hertfordshire rector, stated in 1645 that it had pleased God "in this latter age of the World, to cast us into weeping and mornefull times".⁷ Had not God come closer over the years, holding himself for a long time beyond the seas when "England all that while was fast asleep", and then caused the conflict to extend to Ireland and Britain?⁸ Another minister William Reyner, in 1644, considered that the "storme upon the Nations of Europe" was for "the ruining especially of Antichrist's Kingdome".⁹ "These are the times of the Gospel," preached Edmund Calamy in 1645, " ... now God thunders from Heaven ...".¹⁰

England was thought to have been singularly favoured by God, but she appeared to be unwilling to measure up to her special relationship with the deity. This idea was expressed in the 1620's and reiterated at the time of the civil war. Thomas Gataker, in 1626, depicted England as God's citadel, treasured like an enclosed garden,¹¹ for its geographical situation alone suggested the divine design to insulate and preserve it for special blessings. God had protected England to protect his church and gospel and the country had enjoyed its most prosperous times since the success of the reformation, and all Roman Catholic endeavours against it had been defeated. Gataker warned, however, that this special favour might be withdrawn if England ceased to uphold the cause of true religion. God could find another standard-bearer if necessary (Gataker may have been thinking of New England).¹² In 1643, Charles Herle, a notable parliamentary writer to whom much of the third chapter is devoted, warned, in a sermon preached before the House of Lords, that if England, God's Israel, did not rescue protestantism, God might take the matter out of

her hands and intervene to transplant his cause to America.¹³ On March 30th 1642 Cornelius Burges, a leading London minister, told the Commons that although England "was the first entire Kingdom that imbraced the Gospel, in the last Reformation", it had since then fallen behind in its zeal.¹⁴ Puritan writers often pointed out that England had in the past been a place of destruction to all who threatened the gospel: the Spanish armada of 1588, the plotters against Queen Elizabeth's life, the Gunpowder plot of 1605, and the Spanish fleet of 1639 dispersed in the Channel by the Dutch.¹⁵

James I's failure to help the protestant cause in Germany had seemed all the more extraordinary and indefensible because the leader of the German protestant princes had been his own son-in-law Frederick V, the Elector Palatine, appointed King of Bohemia in 1619 in defiance of the catholic Habsburg candidate Ferdinand of Styria. Frederick's wife Elizabeth had been particularly popular among English puritans who deplored the failure of her father James I to aid her cause. Habsburg forces expelled Frederick, his wife, and his Calvinist court from Prague in 1620, and soon conquered the Palatinate itself, sacking the capital Heidelberg, the spectacular centre of alvinist learning and the protestant cause in Germany. The Spaniards devastated and plundered the Palatinate, yet James not only stood aside from the conflict, but actively sought a marriage alliance with Spain. Negotiations for this Spanish match, between Charles, Prince of Wales, and a daughter of the Spanish king, extended between 1617 and 1623, the year Charles visited Spain. The impression given to James's subjects, who saw Spain as the old enemy of 1588 and the champion of militant counter-reformation catholicism, was highly unfavourable. Many puritan ministers spoke against the match and several were imprisoned.¹⁶ The protests of these preachers have been described as the first clear example of an effort to marshal public opinion in England in opposition to a government's foreign policy, with the whole affair underlining the power of the pulpit.¹⁷ The most notable of these dissident clergymen was Thomas Scott, said to have been

chaplain to William Herbert, Earl of Pembroke. Numerous anti-Spanish pamphlets by Scott were published in the 1620's - some twenty-five publications in total. Spain was portrayed as a state intent upon world domination (called "Universall Monarchy" in seventeenth-century terminology) which considered England, formerly a major obstacle, to be corrupted by love of comfort, and therefore ripe for subversion and conquest.¹⁸ As a beginning, James was allegedly being persuaded by the Spaniards and subservient courtiers to rule as an absolute monarch and avoid the need for parliamentary subsidies.¹⁹ Thomas Gataker was among those who preached against England's failure to help the continental protestants who were suffering at the hands of catholics while the English sat comfortably at home.²⁰ The king's behaviour over the Palatinate and the Spanish match could easily be interpreted as a retreat from protestantism in favour of Spanish religion, and Spanish-style absolute monarchy.

The plausibility of the assertion that Spain aimed at world domination was enhanced by the Spanish claims to the new world of America. The treaty of Tordesillas in 1494 had given papal sanction to a division of the newly discovered Americas between Spain and Portugal, but since Spain had annexed Portugal in 1580 she could theoretically claim a monopoly. Already the Spanish were dominant in south and central America, the West Indies, and Florida, which was adjacent to the first English colony, Virginia, greatly resented by Philip III who hoped to remove it.²¹ The puritan clergy in England preached in favour of colonisation and overseas expansion to prevent Spanish hegemony.²² Near the end of James's reign Sir Benjamin Rudyerd told a Commons committee that it was the mines of the West Indies, belonging to the Spanish king,

which minister fuell to feed his vast ambitious desire of universall Monarchy: It is the money he hath from thence, which makes him able to levy, and pay souldiers in all places; and to keepe an army continually on foot, ready to invade and endanger

his Neighbours. So that we have no other way, but to endeavour to cut him up at root, and seek to impeach and supplant him in the West Indies. 23

Thomas Scott also referred to the American mines as a fountain of wealth for Spain,²⁴ but he did not want to give the impression that England stood no chance against Spanish power. The Spanish king's native realm was a poor one, "And indeed but for his Indies, hee were the poorest Prince in Christendome", and Scott claimed that London could produce more beef and mutton in a month than all Spain consumed in seven years.²⁵ The underlying economic superiority of England was attributed to its freedom from the oppressive arbitrary government which obtained in catholic states. Sir Dudley Digges (1583-1639), a leading proposer of the Petition of Right, told a committee of both houses of parliament in 1628 that it was the liberty of the subject from arbitrary rule enshrined in English common law which gave encouragement to economic enterprise:

it is an undoubted and fundamentall point of this so antient common law of England, that the Subject hath a true property in his goods and possessions, which doth preserve as sacred that Meum et tuum, that is the nurse of Industry, and mother of Courage. 26

Later in the chapter this theme of the conjunction of continental-style absolute monarchy with economic backwardness will be resumed.

On 14th April 1622 a highly controversial sermon was preached at Oxford by William Knight. Knight was an unimportant individual, but the subject of his sermon was very important: "Knight proceeded to state this question, viz. 'Whether Subjects se defendendo in case of Religion, might take up arms against their Sovereign?' which he resolved in the affirmative ... he broacht this dangerous doctrine, viz. 'That the inferior Magistrat had a lawfull power to order and correct the King if he did amiss.'"²⁷ Knight justified his doctrine as following that of Pareus, professor of divinity at (significantly) Heidelberg, in that author's Commentary, on the thirteenth chapter of St. Paul's Epistle to the Romans.

Knight was imprisoned and, with the king's approval, the books of Pareus were publicly burned in Oxford and London, and the university declared against the subject's right of resistance, whatever the circumstances might be.²⁸ These actions implied a rejection of an important Calvinist doctrine and, indirectly, of the protestant culture and learning which had flourished in Heidelberg and the Palatinate, where James I had abandoned his son-in-law's realm to the Spaniards. It implied a rejection of the Elector's accession to the Bohemian crown, which had after all been achieved by a Bohemian revolt against the Habsburgs. It was a rejection of the cause of the French Huguenots, whose resistance had been mentioned by Knight.²⁹ Most importantly, the Knight affair could be taken as an indication that the crown's political philosophy aimed at an unrestrained monarchy as the proper and ideal form of government. This tendency harmonised with the crown's foreign policy and the attempted rapprochement with absolutist and catholic Spain. As the anonymous tract Tom Tell-Troath, which attacked the failure to help the Palatinate and the friendliness towards Spain, asserted: "there is no religion like theirs, for a Sovereigne that desires to make himselfe absolute and dissolute".³⁰

In the next reign, the absolutist inclinations of Charles I and the policy which Professor Kenyon has described as one of détente with Spain,³¹ renewed the fears expressed by puritans in the early 1620's. In the 1630's the absence of parliament removed the main forum for the articulation of these fears and clergymen were cowed by the domineering ascendancy of William Laud, Archbishop of Canterbury. Charles had even made a treaty with Spain, in 1630, to mint their American silver and then move it in English ships to the continent for the payment of Spanish troops fighting the Protestant Dutch.³² When Parliament returned in 1640, first "an Embryo of a Parliament, an Ephemeran of 20 dayes",³³ the abortive Short Parliament, followed by what came to be called the Long Parliament, the same great issues of state policy from the 1620 s recurred in speeches, publications and remonstrances.

The supposed world-conflict of Calvinism and liberty on the one side against the counter reformation and absolutism was unresolved either in Europe or America, and the British crown appeared to be supporting the opposite side to that which held the sympathy of the bulk of its subjects. Sir Benjamin Rudyerd returned with reminders that the Palatinate was yet unliberated and that Spain had enjoyed too much English assistance.³⁴ He warned that the rising power of France was no reason for complacency for she would become like another Spain, but nearer to England, and a Franco-Spanish peace settlement, leaving both countries free to harm English interests, seemed possible.³⁵ In Scotland Robert Baillie pointed out that any difficulties encountered by Spain represented an opportunity for protestant countries, which the king was failing to take up.³⁶ Parliament's Grand Remonstrance of December 1641 complained that Charles had deserted the Palatinate, made peace with Spain without parliamentary consent, failed to help French protestants, and allowed the roman catholic party in England to revive its hopes after the failure of the Spanish match.³⁷ In Parliament's Nineteen Propositions of June 1642, the king was told to ally with protestant states and to bring about the restoration of the Palatinate to his sister and her sons.³⁸ The Scottish covenanting poet Sir William Mure said the same in verse.³⁹ Numerous parliamentarian pamphleteers of the civil war emphasised the Palatinate question, as a symbol of the shameful Stuart foreign policy and its politico-religious alignment: The Honest Informer (1643) reproduced the Jacobean tract Tom Tell-Troath; In his publication, The Mysterie of Iniquity (1643), the York presbyterian Edward Bowles denounced Charles' peace with Spain and failure to help the Palatinate; the pamphlet by An Honest Broker of 1642 complained that the king had made war on Scotland "while the most necessary war of all other, that from regaining the Palatinate, is neglected"; in A Discourse Upon Questions in Debate of 1643 he was urged to unite his realms and lead a British army for the Palatinate's liberation, instead of fighting against his own subjects.⁴⁰

The threat of Roman catholic insurrection was brought nearer home by the Irish rebellion of 1641 in which many protestants died. The Commons produced a declaration about this insurrection which was ordered to be read out in all the churches and chapels in England. It said that the destructive power of the counter-reformation, which had caused so much suffering and oppression on the continent, was now poised to strike against Britain: this monstrous rebellion was incited and assisted by councils now prevalent at the royal court; the catholics of all three kingdoms, having rooted out the protestant religion in Ireland, were ready to do the same in England; it was inconceivable, therefore, that any honest English protestant would now be so blind as to be deceived into joining with the agents of international catholic subversion and so give up the religion, parliament, and liberties of England into the hands of papists and foreigners.⁴¹ In this matter the parliamentarians can surely be said to have had their finger upon the pulse of the nation, which scarcely needed any stimulus to reawaken its terror of popish insurrection. As Robin Clifton's fine essay on the subject has shown, the fear of catholicism, catholic plots, and catholic risings was endemic in Stuart England, and was particularly acute and widespread in the period 1640-42.⁴² Parliament stated that it was the "Jesuitical Faction", the ideological spearhead of the counter-reformation's offensive, which had corrupted the king's counsels and plotted Parliament's destruction.⁴³ Catholics refused the oath of allegiance and owed loyalty to a foreign authority.⁴⁴ The Jesuits were said to have plotted to incense the various religious factions in England by building up the Laudian and Arminian party and bringing in innovations to the churches of England and Scotland, and "by admitting into Church livings, none but such as can conforme themselves to all such Tenants as shake hands with the Romish Tradition and Doctrines; and to thrust out of their Benefices all such as stand stiffe for the Reformed Religion".⁴⁵ These troubles were designed to lead eventually to war, and the bloodshed seen in Germany and Ireland threatened to spread to England: "... the Jesuits and Papists ... now plot and contrive the forwarding of those

warres, as the onely means to promote and advance the Catholic cause."⁴⁶ The Jesuits had exploited diversities of opinion in Germany and used the same method in England, advancing Arminianism. According to an unidentified minister, "the same wheel of mischief, that wrought all the woes of Germany, since the year 1618, hath, for some years last past, been set also at work in England, Scotland and Ireland."⁴⁷ The barbarity and atrocities of the Irish rebellion were widely publicised as evidence of what could be expected if the catholic subversion of England succeeded. The main publication, much quoted in other pamphlets, for this purpose was the Remonstrance of divers remarkable Passages concerning the Church and Kingdom of Ireland (1641).⁴⁸

One of the most powerful and best known publications on this theme of subversion was a sermon, The Craft and Cruelty of the Churches Adversaries, preached by the minister of Dedham, Essex, Matthew Newcomen (c.1610-1669) before the Commons on 5th November 1642, anniversary of the catholic gunpowder plot of 1605. Jesuits, he said, made it their policy to insinuate themselves into the favour of princes and kings, and then to build up the royal power to be exploited for their own aims.⁴⁹ The country's enemies had not been sleeping since the gunpowder plot. They were responsible for the long intermissions between parliaments: "our adversaries knowing our strength to lye in our Parliaments have bin ever plotting to cut off them".⁵⁰ He mentioned the writings of the Jesuit Adam Contzen of Mainz who had produced a blueprint for the subversion of protestant states. (Contzen had also been a critic of Pareus of Heidelberg⁵¹). Contzen's first recommendation, said Newcomen, was to inhibit preaching, especially by lecturers. Secondly, the old church ceremonies were to be encouraged, including the railing-in of altars and kneeling at the altar to receive the sacrament. The purpose, said Newcomen, was the insinuation of ceremonial to facilitate the alteration of doctrine: "First, bring in Arminian doctrines, then the popish will easily follow".⁵² The next step was to eject all ministers who would not conform

to the revived old ceremonies, and to appoint arminians and catholics to important offices while also fomenting quarrels among protestants.⁵³ The wars in Germany and the "butcheries of Ireland" were "Goodly sights in the eyes of Antichrist".⁵⁴ The only way to save the country was "to root out, not only Popery but all that is Popish."⁵⁵ Newcomen told the M.P.'s that a decisive stage in history had arrived. "The things that you have now to do, are not only for the present but future ages. Your actions will live in the memory of men, as long as men shall live upon earth".⁵⁶

The conflict in the British Isles was considered part of a world-conflict. The author of the anonymous New Plea for the Parliament (1642) wrote:

this quarrell is generall, as the last and greatest quarrell must be; for the good Party now through the Christian World, waits with prayers and teares for a good successe here in England; and the Popish partie also with all their endeavours, in Spaine, France, Ireland, Denmark etc seeke the furtherance of successe on their sides.
57

The London clergyman Walter Bridges, preaching before the Commons in 1642, also referred to the international character of the struggle:

They enquire in Flanders, they aske at sea, are not all the round-heads kild yet? Cloister, and the whole rabble of the Romanists, all contribute heads, hearts hands, purses, and all to this warre; yea, Antichrist, tua res agitur? is thy work a doing?
58

The Stuart realms should be united in alliance with protestant states, instead of ignoring the protestant cause and appeasing Spain. John Dury (1596-1680) was an energetic advocate of protestant unity who gained access to the most important protestant courts of Europe. Several of his pamphlets on this subject were published in England in 1641. A protestant league was, he said, necessary for the preservation of civil and religious liberties from Habsburg power: "lest the house of Austria lay for it self a foundation of an universall Monarchy in their ruines".⁵⁹ Without unity Germany would fall victim

to "the Austrian absolute government",⁶⁰ but even that was only a stage on the road towards universal monarchy: the Habsburgs required

a forme of government in the Empire conformable to the Spanish Maximes of State, which will introduce a most absolute and unlimited power of the Emperour over all the free States and Princes in Germanie; that when hee shall be able to command the strength of that vast body at his owne will, hee may be able by it to conquer the rest of the Europian States, and so erect his intended Monarchie. 61

Dury's view of the Habsburgs' supposed drive towards world domination seems to have been shared by another notable Scottish writer, Robert Baillie, who opined that the Canterburians (his term for the Laudian or Arminian party) shared with the Jesuits the desire to set up a monarchical tyranny in Britain. Although the ultimate aim was a universal monarchy for the Habsburgs supported by a spiritual monopoly for the Roman catholic church, in the meantime it was hoped to create an absolute monarchy for the ruler of any state in which these subversive forces could gain a footing.⁶² Baillie wrote that the Canterburians had tried to persuade Charles I that the power of all true kings was absolute, unlimited, and above the law. They taught non-resistance not only by individuals but by the whole state even when the true religion and political liberties of the country were threatened so that, if the doctrine was believed, this subjection would be owed to any foreign usurper who conquered the land, even the king of Spain.⁶³ The prelates, he alleged, hoped that the civil strife in Britain would keep the realm at war with itself and so make "a bridge for the Spaniard or French to come over sea and sit downe masters of the Whole Ile", with the help of native catholics.⁶⁴ The Dutch ambassadors who visited the English parliament in July 1644 could be sure of a warm response when they spoke of "the Enemys of Europe's Peace, who have form'd a Design of Universal Monarchy" and, having failed in the past to ruin England by naval and military means, now sought to do so by sowing the seeds of sedition in political as well as church matters.⁶⁵

An anonymous pamphleteer of 1645 explained that "Spaine and Rome had long since projected to erect a joynt Tyranny over all Christendome" and England had been foremost in obstructing them, but eventually peace had lulled England into a false sense of security and caused a neglect of military preparedness and of "the strict wayes of godlinesse". At the same time priests and Jesuits had stirred up trouble between the king and his people, so that the nation would be pre-occupied with internal disputes and would,

exhale its owne brave spirit, which otherwise might presse too vigorously upon the interests of Spaine; this is actuated by insinuating an emulation of the Spanish greatnesse; that the Neighbour Princes have attained absolutenesse by adhering to the Papacie; that it is inglorious for a free Prince to be restrained by other Law than Will; that now was the opportunity to gain an absolute command, when the people like the men of Laish, livd secure wallowing in the luxury of peace, when the Romish party were ... most ready, and want not power to secure successe; when multitudes of the English gentry who had consumed their fortunes in Court-wantonnesse were prepard for a recruit of wants, to become instruments of any Innovation. 66

Many preachers echoed the complaint that England had been too complacent. Thomas Case, one of the best-known London ministers, stated in a published sermon of 1642 that God's wrath had been fuelled by the sins of his own people, to cause "this great combustion in Christendome": "methinks I hear the Churches in Germany, Bohemia, the Palatinat with our afflicted slaughtered Brethren in Ireland cry out to us, Is it nothing to you all that passe by? doth it nothing concern you? Ye that like the Priest and Levite look on my wounds and passe on carelesse, pittieless".⁶⁷ England must recognise that it too was threatened by the same international forces of oppression:

while we sit downe in an idle and prophane security; the enemies ... dig our graves for us, and over our tombe to be inscribed this Epitaph: Here lies England that dyed to save the charges of defending themselves. 68

It was not too late, however, and Case shared the opinion expressed by another minister, John Brinsly, at Great Yarmouth

in the same year: "Some grounds of Hope yet there are, that God hath a blessing in store for this Nation."⁶⁹ God had not abandoned his people. It had been feared they would "never see a Parliament again in England", but God had done it, just as he had brought about the reconciliation of England and Scotland which had previously seemed impossible.⁷⁰ A nation which professed God, explained John Benbrigge, minister of Ashburnham, Sussex, entered into a contract with him, analogous to a marriage contract. All sin by God's people was like adultery, and God's fury was like that of a husband against an unfaithful wife. Reformation, said Benbrigge "must beginne at home; at a mans selfe first; It must begin, where the abuses, and things to bee Reformed began."⁷¹ It is important to remember this belief that the individual's reformation of himself was the prerequisite for any regeneration of a nation.

The notion of Europe divided into, to quote the title of one pamphlet of 1642, "the Camp of Christ, and the Campe of Antichrist", was, of course, a very oversimplified picture of the international situation. It is more important for the present purpose to consider the strength and influence of such an idea rather than to attempt to correct its inaccuracy. (For a factual explanation of international affairs in this period, reference may be made to David Ogg, Europe In the Seventeenth Century,⁷²). Perhaps it is sufficient to bear in mind that one glaring discrepancy in the picture of a united catholic world single-mindedly attempting the destruction of protestantism, viz. the fact that France and Spain, the two most important catholic States, had been at war with each other since 1635. The idea of catholic subversion and conspiracy was, however, deeply engrained in most English and Scottish minds, and the Irish rebellion was a near and recent reminder of the probable consequences. Sermons and pamphlets had to take account of the fact that for most people the only item of mental furniture which had any clear connection with foreign

policy was their profound fear of Roman catholicism. The international dimension sometimes led parliamentarians to speak of their struggle as part of a kind of world crusade against catholicism, or at least as the first stage of a war of liberation to regain for protestantism the territories lost since 1618. Charles Herle, preaching before the Commons on 5th November, 1644, managed in one phrase to connect this theme of liberating oppressed protestants with another presbyterian preoccupation, Anglo-Scottish unity. The providential course of events seemed, he said, "to whisper to a Protestant English spirit, that Scotland shall helpe England, so as both may not only be able to recover Ireland, but relieve Germany".⁷³

The parliamentary pamphlet The Protestant Informer (1643) by "Gregory Thims, Gentleman" concisely expressed several of the main aspects of puritan opinion in regard to the subjects of this chapter. Thims began the pamphlet in a rather predictable and unsurprising way, with an account of the machinations of catholics in the reigns of Elizabeth and James, and their alleged promotion of arminianism.⁷⁴ The Irish rebellion of 1640 was inevitably mentioned,⁷⁵ but rather briefly because its horrors were no doubt sufficiently familiar to his readers through earlier publications. The catholics had persuaded King Charles to make war on his own kingdom, and Parliament was trying to rescue him from the hands of these Jesuits and popish traitors.⁷⁶ The familiar points of parliamentary propaganda were stated unreservedly by Thims, who portrayed the 'delinquents' (i.e. royalists) as predominantly men of decayed fortunes who aimed at pillage and reconstructing their estates from the ruin of the kingdom, taking everything by force. There was nothing to compel the king to keep his promise of triennial parliaments, conceded in 1641, and he was surrounded by malignant counsellors guiding him for their own evil ends.⁷⁷ Parliament had taken up arms to rescue the king from these wicked advisors, as well as to defend religion, so it was scandalous to report that Parliament had taken arms against the king as such. Thims called his opponents "cursed Dam-my, Ram-my Cavaliers", but

professed righteous indignation at their use of "this name Round-head, ... new sprung from hell" to describe all godly men and good protestants.⁷⁸ Yet in the midst of this pugnacious, partisan prose there is still a chilling warning to those who refused to take up God's cause: this war was the war of Antichrist against Christ from which none could stand aside, and even neutrals might well lose their souls for ever.⁷⁹

It is not difficult to understand why the accusation of being secret catholics, or popishly-affected, was so commonly and continually levelled against the king's followers. First, it was not merely a propaganda exercise to take advantage of the religious bigotry and terror of catholic conspiracies, which gripped most of the population. The rise of Arminianism and the Laudian ceremonial innovations was genuinely believed to have been a significant retreat from Geneva and towards Rome. The Queen, Henrietta Maria, was indisputably a staunch Roman catholic, with a small court circle sharing her beliefs, and the influence of a consort was always liable to be exaggerated. Even if Charles could not be accused of being a catholic, it might be supposed that his willingness to visit Madrid as Prince of Wales in pursuit of a Spanish bride, and his subsequent bias in foreign policy and church ceremonies, all indicated that his capacity to resist Romanist influences was not very great. Moreover, Charles still included men like John Digby, first Earl of Bristol (1580-1653) among his advisors during the civil war, and it was Digby who, as ambassador to Madrid, had been responsible for the controversial Spanish match negotiations and was supposed to have imbibed Spanish-style political principles. He was accused in 1643 of having brought Jesuitical practices and equivocations to the court from Spain.⁸⁰ The history of the reign seemed to corroborate the suspicion that the king was influenced by the Jesuitical notion of mental reservation in promises and oaths which supposedly nullified their obligation. Was not this "exquisite Machivilian hypocrisie" evident in the royal assent to the Petition of Right having been followed by the arbitrary

government of the 1630's, and in the attempted arrest of the five members of Parliament in January 1642 directly contrary to the royal concessions of 1641, the promises of consultation and the professed willingness to respect parliamentary rights and privileges?⁸¹ The king allegedly received advice from the Earl of Bristol in the following terms:

In Spain, where he had been long Embassadour, no mention is made in any of their Records, of Civil Wars till now, when all the World labours with Dissension; the reason is, because they are truly Subjects, and their Sovereign truly Sovereign: but since the State here will not suffer this, reason tells him they shou'd be compel'd to it. 82

A short, but very interesting and undeservedly little known parliamentarian pamphlet published in 1644 under the title A Paradox. That Designe Upon Religion, Was not the cause of State Misgovernment: But an effect of it, opined that the introduction of catholicism was not the first intended and principal end of the rulers of Caroline England, but rather it was subservience to absolute monarchy which they had sought to impose. "Nor can I thinke," continued the anonymous author, "that the Jesuits taught our Statesmen to be unjust but the injustice of these Statesmen taught the Jesuits to hope for their ends; and that the waters would be at last enough troubled for them to fish in".⁸³ The former rulers hoped to rob the people of their laws and liberties rather than to bring in catholicism, although their actions might have opened the door to it. This writer acknowledged that it was the Laudians, rather than the catholics, who had advanced royal tyranny in the 1630's, and presumably the Laudians themselves wished to benefit from this exaltation of royal power, and not simply to enable its manipulation by Jesuits. In doctrine the Laudians differed more from the catholics than they did from the puritans, but they hated the latter because "the Puritans did goe more crosse to their temporall ends, pompe and revenue, than the Papists would have done".⁸⁴ The king had been portrayed as proprietor of the realm and of his subjects' property, whole nations being made for the pleasure of kings, so that if the monarch set up a golden idol, and

the people refused to worship it, then they must suffer death passively without resistance.⁸⁵ The Laudians had encouraged arbitrary government for their own material benefit, and it was the royal misgovernment which raised the hopes of those who really were intent upon the complete overthrow of protestantism.

These observations were not intended to undermine the usual puritan views about the supposed influence upon, and likely benefit from, England's troubles as far as international Roman Catholicism was concerned. It has already been pointed out that the encouragement of divisions and disputes within protestant states was held to be a Jesuit tactic. Dissension would also promote in the ruler a desire to augment his own power rather than give in to opponents. Absolute monarchy was far more easily manipulated by a small court faction than was a more broadly-based form of government. If a foreign invader gained control of the country, a populace indoctrinated with non-resistance to absolute monarchy would more readily submit to a conquest. Absolute monarchy in a protestant country would eliminate economic advantages which it would otherwise have enjoyed relative to a catholic absolutist state. The international counter-reformation would thereby benefit. The poorer Britain became, the better her foreign enemies would be placed by comparison. Economic decline was associated with arbitrary government in the minds of most Calvinists in this period, while political liberty, since it gave subjects inviolable property rights which the ruler could not invade at will, was an incentive to industrious endeavours by subjects. Thus a parliamentarian pamphlet of 1642, justifying the taxes which parliament had to raise for the war explained that these were a worthwhile expense:

if wee contribute part of our particular wealth to
free the Common-wealth from slavery and superstition
(the parents of repining sloath and dejected Cowardice)
wee shall incourage industry, and renew our stock;
but if wee stoope under an Arbitrary government, who
will worke that others may devoure the fruits of his
labours? Libertie is the fountaine of industry, &
industry of wealth. 86

The king's evil counsellors aimed at

an arbitrary power, which (for their owne benefit more than his Majesties) the prerogative parasites pretended to be in the King of taking the Subjects & charging their estates at pleasure, without limitation, and without consent in Parliament. 87

Another pamphleteer wrote that among exponents of arbitrary power "to make the Court rich, and keep the countrey poor as in France, is held the most subtile art of establishing a Prince".⁸⁸

In the Root and Branch Petition of December 1640 the notions that "the subjects have no propriety in their estates but that the King may take what he pleaseth" and "that all is the King's, and that he is bound by no law" were described as popish and Arminian tenets.⁸⁹ Charles Herle stated that it had been evident for twenty years that the absolutist doctrines of the corrupt court faction were a preparation for both tyranny and Roman catholicism. He explained that it might

be wondered at by some, how Popery, so evidently destructive as it is to Temporall Monarchy, comes to be thus a stickler for its absoluteness of command? but the wonder will soon be over, if we well consider that that Religion is therefore contented to make Subjects slaves to Kings, that thereby Kings may be so much the greater slaves to the Pope ... 90

The safety of religion and the freedom to profess it depended on the subject's liberty, and the refusal to accept the legitimacy of an arbitrary, absolute power in government, for

if men once quit a liberty of professing themselves Gods servants, and become herein the servants of men, they are in the high way to become the Devils slaves. 91

Roman catholics were, therefore, according to Edward Bowles, intent upon "subverting the Protestant Religion, together with the Subjects Liberty (the Elme of that Vine)..."⁹² They had therefore encouraged Charles I in his personal rule without parliaments:

They cherish him in it, and set France with its broken Parliaments and full power, as an Object of Emulation before him, as finding the Interests of Popery and Tyranny very well to agree. 93

For protestants liberty and religion were two inseparable parts of the same cause. God was held to be the only absolute sovereign to be obeyed in all things and the commands of a king were to be obeyed no further than they agreed with those of God.⁹⁴

King Charles was not a Roman catholic, but it was easy to believe that he had been seduced by the 'court rich, country poor' formula, the supposed epitome of that arbitrary government which popishly-affected courtiers and power-hungry prelates allegedly wished to establish. The king and his catholic consort Henrietta Maria presided over a lavish court, the expensive elegance and baroque splendour of which emphasised the continental tastes of the monarch. The events of his reign gave every reason for thinking that his political principles were as alien to Calvinist Britain as his exotic and extravagant court. Were his subjects to be made as poor, unenterprising and over-burdened with taxes as their foreign counterparts, to "weare wooden shooes, as the Pesants do in France" ⁹⁵ The reduction of the people to this down-trodden state would be facilitated, it was claimed, by the destruction and plunder to be carried out by the cavaliers, if they won, in imitation of the catholic armies in Germany.⁹⁶ Puritans, like the whigs in the later years of the seventeenth century, were keen to associate "popery and wooden shoes", i.e. that poverty, oppression, and economic backwardness was the fate of a people ruled by the twin evils of Roman catholicism and arbitrary government. To a puritan, absolute arbitrary monarchy and militant counter-reformation catholicism were simply two sides of the same coin. The symbiosis of catholicism and absolutism, and the corresponding harmony of protestantism with civil liberty were, as this chapter has indicated, constantly alleged and apparently genuinely believed. The royalist side did not, of course, officially advocate

absolute monarchy, and claimed that, on the contrary, they were constitutionalists in a more genuine sense than were the parliamentarians. The parliamentary case, as Chapter three will explain, was that in practical terms the powers which royalists claimed for the king would give him a degree of control liable to override any possible obstruction of a drive towards absolutism. The combination of a king in possession of forts, arsenals and raising of militia, and an impoverished populace indoctrinated with non-resistance from every pulpit, could only lead in one direction.

The state policy, ecclesiastical innovations, and court culture of Charles I's reign, all gave the impression that interests of king and people were sharply divided. This loss of unity could not be redressed by an imposition of the king's will and the oppression of his subjects. That would only strengthen the court at the expense of the nation, with a great resulting loss of vitality and prosperity. True harmony could arise only from a consensus of opinion regarding certain fundamental questions. It was more glorious to rule

over a rich, free, couragious spirited people, then
a scumme of dumpish, dejected Boores or Pesants;
for hee is truly honourable that enlarges his
Dominions, not enslaves them, nor shall he be feared
abroad, that is not belovd at home; there is spirit
in that enterprise which is carried on by a concurrent
sence of the people; he that is enforc'd marches
without his soule. 97

This emphasis on the rightness and advantage of a conscientious obedience to authority, rather than an enforced subjection was a central feature of the political philosophy of the presbyterians who are discussed in the remaining nine chapters. It was rooted in religious doctrine, as will be shown, yet it also corresponded to some practical, down-to-earth facts concerning the circumstances of seventeenth-century England and its government. The extensive bureaucracy of the French monarchy was not paralleled in the British realms. In England local government and judicial administration enjoyed a considerable measure of independence from the control of central crown authority. Usually the interests of the crown and those of

local notables might be expected to coincide, at least in general. Both usually desired to uphold property, order and stability according to law. If it happened, however, that a great disharmony arose between the crown and the locally ruling gentry, then troubles might be expected. Consensus really was necessary.

No greater or more disturbing divergence of opinion could arise than the profound suspicion, reinforced over a long period of years, that the crown and the majority of its subjects supported different sides in what was perceived as a great religious and political world conflict. In retrospect it may seem difficult to accept the over-simplification of this view of the period's warfare and diplomacy, but the impressions of the time were influential to contemporaries. It is also hard to recapture the sense of a life and death struggle of protestantism against the counter-reformation, because we recognise that neither ideology was a uniform, undivided monolith, and that neither one succeeded in extinguishing the other. Three hundred years ago people were aware that it was little more than a century since the time when there were no protestant churches and Roman catholicism was indeed universal in Christendom. It was not so difficult to imagine that such a situation might be restored by the newly militant counter-reformation. "The quarrel betwixt Rome and us", preached the Manchester presbyterian Richard Heyricke, "is not like Caesar and Pompey, which should be chief, but like that betwixt Rome and Carthage, which should not be. If Rome prevail we shall not stand, and if we prevail they should not stay long."⁹⁸ Puritans were apt to agree with John Pym's opinion, expressed in a speech of November 1642:

The religion of the papist is a religion incompatible to any other religion, destructive to all others, and doth not indure any thing that doth oppose it: whosoever doth withstand their religion, if they have power they bring them to ruine. There are other religions, but not so destructive as popery is: for the principles of popery are destructive to all states and persons that oppose it.

In a speech of 1641 Francis Rous declared

either Popery must overthrow our Lawes, or our Lawes must overthrow Popery: but to overthrow our Lawes the must first overthrow Parliaments, and to overthrow Parliaments they must overthrow property, they must bring the Subjects goods to bee arbitrarily disposed so there may bee no need of Parliaments. 100

Puritan political opinions and reactions to government policy are more easily understood if these strong attitudes are kept in mind. Understanding of the distrust of Charles I and his court is enhanced by an awareness of this background, so that it is possible to proceed confidently to a more detailed examination of the political theories under consideration.

CHAPTER II

SCOTLAND'S RESISTANCE, 1638-41

Edmund Burghall, the puritan pastor of Acton during the 1640's, wrote in his memoirs the following summary of the significance of the year 1638 and its immediate consequences:

This year great dissensions grew betwixt the King and his subjects of Scotland; the occasion was his sending to them the book of Common-prayer, and administration of Sacraments, wherein they disliked many things, and at last utterly denied to receive and use it: upon which refusal the king being exasperated, sent stricter commands to them, whereupon they took a resolution to fortify themselves, and after invaded England. Here was the first rise of that late unhappy war that continued so long among us; and the bishops of England, especially archbishop Laud, were, and not without cause, thought to have a chief hand in it. 1.

Several years before the English civil war, with the great quantity of political literature issued by the warring parties, from 1642 onwards, Scots had taken up arms against the forces of Charles I, and a number of Scottish declarations were issued in the period 1638 to 1640 to justify actions which would normally be considered to constitute a rebellion against the ruler. During a period of little more than two years the gravity of the measures taken by the Scots, and therefore the need for justificatory publications, escalated rapidly. First, the National Covenant of 1638, a banding together of the nation in an attempt to resist the government's innovations, was itself an extreme act of defiance bordering on sedition. In the spring of 1639 the covenanters went a stage further by raising an army to resist the king's impending arrival with troops to subdue his opponents. A year later the short "Bishops' War" involved a Scottish invasion and occupation of northern England, which they were most anxious to justify to the members of the English Parliament, who were potential allies against the policies of the royal government. Constitutional changes made in 1640 in Scotland also had to be explained and justified.

The National Covenant pledged loyalty to the King's person and authority while at the same time condemning the innovations made by his government. There was no condemnation of the episcopalian ecclesiastical system as such, but only of the Arminian-style innovations and the political power to which prelates had been advanced. A few months later, however, when the first general assembly of the Kirk for twenty years met at Glasgow, the bishops were deposed. The Covenant, listing many statutes allegedly violated by the king was, in the words of Professor Gordon Donaldson

something more than anti-popery, for this was an appeal to the rule of law, against the royal prerogative and the king's arbitrary courses, an appeal to history and to precedent. Here, too, was an assertion of parliamentary authority, for the list of statutes implied that parliament made the laws and that only parliament could change the laws. 2.

A book issued on behalf of Charles I in 1639 declared that "the first dung which ... was throwne upon the face of Authoritie and Government was that lewd Covenant, and seditious Band annexed unto it".³ The band referred to was the part of the Covenant which associated the signatories by pledging them to mutual defence against any person, and the king was not excluded, so that it could be considered a conspiracy of the worst kind to resist the royal power, although bonds for defensive purposes among groups of individuals had traditionally been a part of Scottish life. The royal Large Declaration of 1639 also ascribed extreme and rebellious political ideas to the covenanters, who were said to have preached in the following terms, "Let us never give over until we have the king in our power, and then He shall see how good subjects we are"⁴ and "What subjects doe of their own heads is much better then what they doe in obedience to Authoritie".⁵ Rising to a pitch of indignation the Declaration's author continued,

Nor are they ashamed to averre, that all Sovereigne authoritie was originally in the collective bodie of the people, by them conferred with their owne consent upon the Prince; and therefore if the Prince shall omit to doe his dutie ... the Sovereigne right and authoritie doth returne to, and remaine with the people, from whom it was at the first derived upon the prince. 6

This idea was, he said, a notion borrowed from the Jesuits, and he further ascribed to the covenanters the belief that "A number of men, being the greater part of the kingdome, because they are the greater, ... may doe anything which they themselves to conceive to be conduceable to the glory of God ... notwithstanding of any lawes standing in force to the contrarie."⁷ If this analysis were to be believed, covenanters would emerge as opponents of the rule of law and believers in a kind of democracy, a word with chiefly unfavourable connotations for contemporaries. The Large Declaration also quoted a denunciation of alleged covenanter political ideas issued by the Scottish bishops in 1638:

by their seditious and railing Sermons and Pamphlets, they have wounded the Kings honour and Sovereigne authoritie, and animated his liedges to rebellion, averring that all authoritie Sovereigne is originally in the collective bodie derived from thence to the Prince; and that not onely in case of negligence, it is Suppletive in the collective bodie; so that Rex excidit jure su, and that they may refuse obedience. 8

Certainly some sermons which thundered from Scottish pulpits in 1638 contained what were virtually incitements to rebellion. Andrew Cant's sermon on "the evil and danger of prelacy", preached at Greyfriars' Church, Edinburgh on 13th June, 1638, provides a notable example. God, he declared, had set bounds to the great kings of the world, which they nevertheless violated when they "set themselves against the Lord's People ... Ye are afraid of the King, that he came against you: Fear not, the Lord by his restraining Power is able to keep him back, that he shall not shoot so much as a Bullet against the City."⁹ God had made his people instruments to pull down prelacy,¹⁰ and there could be no denying that this objective necessitated a definance of secular as well as ecclesiastical, authority, because secular authority was one of the principal supports of prelacy:

... The secular Arm is the Authority of Princes, which have ever upholden that Mountain (of Prelacy): Ye know secular Princes uphold Antichrist, and Prelacy in this Land is upholden by the secular Power.

Alexander Henderson, (c.1583-1646), minister at Leuchars, Fife (the Large Declaration called him "the prime and most rigid Covenanter in the Kingdome"¹²), was initially very cautious. In a sermon preached at St. Andrews in the spring of 1638, he steered clear of the issue of political resistance:

It is not disputed here, ye see, whether it be lawful for subjects to take up arms against their prince or not, whether in offence or defence; but that we will maintain the true religion ..."

and at Glasgow Cant preached that the Covenant contained sufficient emphasis on the maintenance of the king's authority.¹³

A year later, however, at the beginning of 1639, the policy which preachers and pamphleteers had to justify, the question at issue, was that of taking up arms for defensive purposes. Since the government of King Charles was itself gathering forces to enter Scotland and subdue the country, the covenanters spent the winter of 1638-39 in raising an army of their own to resist it. The most significant explanation and justification of this policy was contained in the "Instructions for Defensive Arms", drawn up by Alexander Henderson to set forth the main tenets of political theory of the leading covenanters. In addition to the "Instructions for Defensive Arms", Henderson apparently also wrote A Remonstrance concerning the present troubles, From the meeting of the Estates of the Kingdome of Scotland, Aprill 16, unto the Parliament of England (1640), The Intentions of the Army of the Kingdome of Scotland (1640), and The Lawfulness of our Expedition into England Manifested (1640). Henderson, with Archibald Johnston of Wariston (1611-63), drafted the National Covenant of 1638.

At first Henderson's "Instructions for Defensive Arms" was not printed but circulated in manuscript and was ordered to be read out from the pulpits, which would actually have spread it to a wider audience, including the illiterate, than most published pamphlets. The text of the "Instructions" was, however, also fully quoted in a pamphlet which was

printed as a refutation. This publication was The Ungirding of the Scottish Armour (Dublin, 1639), written by John Corbet (1603-1641), minister of Bonhill, Dunbarton. It was published in Ireland because its author, being an episcopalian and a strong opponent of armed resistance to the king, had fled to that country. Unlike the lengthy official Large Declaration of the same year, Corbet's tract had the merit of attempting to refute points of political theory which the leading covenanters had actually put forward themselves, instead of attacking views which had merely been attributed to them and were designed to place the king's opponents in the worst possible light. The publication of Henderson's tract in its own right did not come about until 1642, when Some Speciall Arguments Which warranted the Scottish subjects lawfully to take up Armes in defence of their Religion and Liberty was published in London.

In the "Instructions for Defensive Arms" Henderson wrote that there existed a hierarchy, or line of subordination, of forms of authority with God "the great Superiour", then under him civil magistrates or rulers, with the ordinary people placed under both God and magistrates. For the people, the civil magistrate was the lesser superior, and God the greater, and ultimate, authority. When a magistrate commanded something contrary to God, he was stepping out of the line of subordination, and the subjects should not obey him in things contrary to the ultimate authority of God, and they could defend themselves from the renegade ruler, because in such a situation God became, temporarily, the direct or immediate superior of the people. An analogy offered by Henderson to emphasise this concept was that of an

inferior officer in the army, who must keep to his own station and duty even if his captain stepped out of line and took the enemy's side. In this case the inferior officer's duty would be to remain obedient to his colonel or general and to fight for the safety of the whole army even against his own captain:

"It were against sence and reason, to say that he must give his neck to the sword of his Captaine without regard to the Generall, the whole Army and his owne life."¹⁵ The use of analogies was very popular with mid-seventeenth century pamphleteers, even though these may not always seem very apt or convincing to a modern reader. This particular one, of a military chain of command, seems to have been distinctive to Henderson.

He also argued from

the Covenant betwixt the people and God; for the people and Magistrate are joyntly bound in Covenant with God for observing and preserving the Commandments of the first and second Table, as may be seen in the books of Samuel, Kings, and Chronicles: And as the fault of the people would not excuse the Magistrates negligence, so the fault of the king would not excuse the people if they resist not his violence pressing them against the Covenant of God. This argument is strongly pressed by sound and religious Politicians. 16

Here again, the idea of a direct relationship between the people and God is expressed. It was apparently an idea deeply embedded in the Scottish presbyterian mind and was to be considerably reinforced by the explicit covenants of 1638 and 1643, the National Covenant and the Solemn League and Covenant. The many Englishmen who saw the Solemn League and Covenant mainly as a political alliance soon found themselves unable to understand or sympathize with the Scottish covenanters of the 1640's.

In spite of references to 'the people', it is important to emphasise that Charles I's covenanting opponents did not believe in a general right of the ordinary people of the country to resist authority. They believed that 'inferior magistrates', those holding authority in the state under the sovereign had a right and duty to resist and prevent tyranny. (Significantly Henderson's army analogy had described an "inferior officer", rather than a private or ordinary uncommissioned soldier, defying his captain.) This view was

apparently that of Calvin himself on these few occasions when he countenanced resistance of any kind. Henderson drew a distinction here:

difference must be put betwixt some private persons taking Armes forresistance, and inferiour Magistrates, Counsellors, Judges, Nobles, Peeres of the Land, Parliament-men, Barons, Burgesses, and the whole body of a kingdome, except some few States-men, Courtiers, Papists or popishly affected ... Betwixt a people, labouring to introduce novations (sic) in Religion by arms contrary to the lawes, and a people seeking nothing so much as against all novations to have the same Religion ratified which hath beene profest since the reformation, and hath ... beene solemnly sworne unto long a goe by the Kings Majestie and whole Kingdom both of old and of late ...

17

It is interesting to read Corbet's objections to this argument, as an indication of the philosophical difference between the two sides. According to Corbet, even if Charles I, "who is the most religious king in Christendome", were indeed intent upon subverting religion by armed force, that was no reason why his people ought not to remain subject to him, because "Obedience is not to be given, but subjection must never be denied".¹⁸ These words mean simply that Corbet, like the main royalist writers of the first civil war (1642-46) in England, believed in passive obedience. The proper course for a subject to take when a king commanded something contrary to God's word was not to rebel, or engage in active resistance, but to disobey while still submitting to whatever punishment or consequences resulted from that disobedience. In this way subjection was still given, although obedience was denied. Passive obedience was really, therefore, a kind of civil disobedience.

Inevitably, Corbet quoted the biblical text of St. Paul's Epistle to the Romans xiii, verses 1-2, which prohibited resistance to authority, and declared resisters to be damned.¹⁹ There was to be much argument about this text in the 1640's and 1650's in many books and pamphlets. If a king acted

wrongly he would have to answer to God, but it was not the role of his subjects to deal with him by force.²⁰ Towards bad kings "we ought obedience in all things lawfull: and subjection, when obedience is not lawfull, and never disclaime their authority.... we must not obey him in evill, but yet be subject unto him for Conscience sake."²¹

This interpretation was not accepted by Charles I's Scottish opponents in 1639. They could point to the third and fourth verses of Romans xiii, which seemed to define the power to which resistance was prohibited: "For rulers are not a terror to good works, but to the evil. ... For he is the minister of God to thee for good." Surely these words meant tyranny was excluded from the injunction against resistance, as the covenanters' "Instructions for Defensive Arms" argued:

We must either acknowledge Tyranny to be the ordinance of God, and for our good, or else exclude it from the Apostles argument, admitting resistance thereof to be lawfull, at least by the shield for defence, if not by the sword for invasion. ... From the end of Magistracie, the Lord hath ordained Magistrates to be his ministers for the good of his people, whence have proceeded these common principles of Policie, Princes principally are for the people and (their) defence, and not the people principally for them; the safety and good of the people is the supreme Law ... the people maketh the magistrate, but the Magistrate maketh not the people

22

By this interpretation of Romans xiii, the reason resistance was forbidden was because authority and government had been ordained by God to be established in all nations for the good of the people, and so consequently when any government became destructive of those ends for which it had been divinely ordained, it was no longer the kind of power which was not to be resisted. This argument, based on the ends of government, was rational and universal, in contrast to historical or antiquarian arguments both for and against absolute monarchy. (Corbet, for example, contended that the world had never been without a king, or kings, since the creation, when Adam "his Empire was paternall, and therefore Monarchicall".²³ It seems from this remark that Corbet believed in the same notions of

patriarchalism as Bishop John Maxwell and Sir Robert Filmer.²⁴)

For the covenanters, the ruler's entitlement to obedience depended on his rule corresponding to the "ordinance of God", and avoiding tyranny, and in addition to this universal limitation, rulers were bound by the fundamental laws of the country they governed. There was, thus, a "mutuall contract betwixt the king and the people, as may be seen in the Acts of Parliament, and Order of Coronation".²⁵ (See also The Answeres of some Brethren of the Ministrie to the Replies of the Ministers and Professours of Divinitie in Aberdeene (1638), in which resistance is justified and the assertion made that christian rulers were not so absolute that they could ignore the promise or "paction" made at their coronation, or any laws made for the establishing of religion and liberties.) In justifying resistance they also brought out analogies which were to be constantly repeated by the parliamentarian pamphleteers of the English civil war: the lawfulness of children restraining parents, and servants restraining masters, in cases of extreme or unjust violence, or of the mariners or passengers using force against a helmsman who tried to run their ship on to rocks.²⁶ Also, there was the example of the resistance of foreign protestants, in France and the Netherlands, being aided and supported by successive British monarchs; also, of course, the examples of the Scottish reformation and the biblical example of David's resistance to Saul.²⁷

In addition to his pamphlet which printed and replied to the "Information for defensive Arms", Corbet also wrote the propaganda tract called The Epistle Congratulatorie of Lysimachus Nicanor (1640), in which the views of Charles I's opponents about resistance were portrayed as being similar to the ideas of the hated Jesuits. He asked a question, which was often to be reiterated by English royalists from 1642 onwards: "Can you think it unlawfull to kill a King, and yet set your muskets, pikes and Canons before the face of a King, and shoot at randome?"²⁸ Was fighting the king in battle

really very much different from attempting to assassinate him? The Covenanters replied that their armed defence did not import any danger to the king's person or crown, and would benefit the king himself in the long term by liberating him from an evil faction: "we thinke .. that in some cases resistance to Princes is much better service, and one day will bee so acknowledged, than present obedience".²⁹ They said it was the Laudian and Arminian party which desired to erect a monarchical tyranny in Britain, and had learned the aims and techniques of the Jesuits, using Machiavellian cunning to spread everywhere "their lectures of tyranny, for the re-erection of a spirituall monarchie in the whole Church for Pope ... (and) in things temporall, a catholike monarchie for the Spaniard; And while these furthest ends may bee gotten compassed, an absolute Monarchie for the Prince in every Countrey where they can get footing".³⁰ Once again, Charles I's opponents chose to emphasize the alleged symbiosis of popery and tyranny, with Arminianism but a half-way house to Rome. There could be no security for the political and legal system of the state if there were alterations and innovations in religion, because the kirk and kingdom were "one body, consisting of the same members" so consequently there could be "no firme peace nor stabilitie of order, unlesse the Ministers of the Kirk in their way presse the obedience of the civill Lawes and Magistrat, and the civill power adde their sanction and authoritie to the constitutions of the Kirk."³¹

The covenanters were able to find justifications and precedents for the taking up of "defensive arms" by protestants, but in 1640 they had to explain, not least to the English, the Scottish army's crossing the border of the blockaded northern kingdom to invade England. In military terms, the invasion might simply be described as a pre-emptive strike, because Charles was gathering an army in England to subdue the Scots, but it was important that such action should not alienate the English Parliament and people, who had many of the same grievances as the Scots against the government of

Charles I. "Dutie," declared a Scottish broadside, "obligeth us to love England as ourselves; your grievances are ours; the preservation or ruine of religion and liberties, is common to both nations; we must now stand or fall together." The covenanters praised the English Parliament for its "rich and recent favour" in refusing to grant Charles I a subsidy for war against Scotland, and because the members of the Parliament of England "by their speeches, complaints and grievances paralell to ours, did justifie the Cause which we defend".³³ It was promised that the Scottish invaders would not plunder or engage in unnecessary bloodshed, unless it were to be forced upon them by the faction of "Papists and Prelats".³⁴ If the blockade of Scotland were to force her to give in to the civil and ecclesiastical policies which Charles' government was attempting to impose upon her, it would "be a precedent for the like miserie in England ..."³⁵ The covenanters claimed that the expense of maintaining an army for defence and the detrimental effect on commerce caused by the lack of maritime trade were intolerable burdens which forced them to seek a resolution of their affairs by invading England.³⁶ It was, they claimed, a matter of self-preservation:

To sit in senselesnes and stupiditie, wayting for our owne destruction at the discretion of our mercillesse enemies ... Is not onely against Religion, but nature; teaching and commanding us to study our own preservation. 37

The invaders used the following analogy:

If a private man when his house is blocked up, so that he can have no liberty of commerce and traffique to supply himselfe and his family, being also in continuall hazard of his life, not knowing when he shall be assaulted by his enemies who lye in wait against him, may in this case most lawfully step forth with the Forces which he can make and fight himself free: Of how much more worth is the whole Nation: and how shall one and the same way of defence and liberation to be allowed to a privat man and disallowed to a Nation? 38

The covenanters declared that their enemy was not the kingdom and parliament of England, but the faction at court and in the church which has "mislead" the king, viz. the

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Laudian, or Arminian, party. The authors of all the troubles were "that prevalent faction of Papists and Prelates".⁴⁰ These enemies of the two realms allegedly wished to turn England against the Scots so that the English would be induced to "lay a present foundation with their owne hands for building of Rome, in the midst of them, and bee made the authors both of their owne and our slavery, to continue for ever."⁴¹ The covenanters relied upon the age-old device, which was also adopted by the parliamentarians in England, of claiming that the king had been duped by his evil counsellors into arbitrary rule and religious innovations.⁴² The Laudian faction, it was said, desired unlimited arbitrary government, and propounded the doctrine that

all the rights and liberties of the Subject, and the maintenance of them, are doales of grace, and gifts of meere favour proceeding from the Prince and not the true birthright of the subject ... (and) are to be continued or changed as their Princes shall think fit ...⁴³

Churchmen had neglected their calling to become politicians instead, trying to make the church, and their interpretation of its tenets, "an instrument of bondage to the Subject, of liberty to themselves, and of unjust usurpation to the Prince ..."⁴⁴

Within Scotland, the year 1640 saw a number of constitutional reforms. When the Parliament of 1639 was prorogued by Charles, he did so, according to one of his Declarations, in the belief that "nothing would give them content but the alteration of the whole frame of the Government of that Kingdome, and with all, the totall overthrow of Royall Authority ..."⁴⁵ The Parliament declared on 18th December 1639 that it could not be prorogued except with its own consent,⁴⁶ and it reassembled in June 1640 to abolish the Committee of Articles, the hated instrument for government control of Parliament, and to end clerical representation in the legislature. The Triennial Act of 1640 ordained that Parliament must meet at least once every three years, automatically, on a date prearranged by the last parliament, if the king did not summon it earlier. Later, in 1641, an

"Act anent the appointment of officers of state, councillors and lords of session" declared that the king had to choose office-holders with the advice and consent of parliament, or of the privy council when parliament was not sitting, and that office-holders were to be liable to the censure of parliament. Another of the original reforms of 1640 prohibited voting in parliament by proxy, or by foreigners who did not hold land in Scotland worth at least ten thousand merks yearly. A contemporary observer and historian, Sir James Balfour described the constitutional revolution of 1640 in Scotland as "the reall grattest change at one blow that euer hapned to this churche and staite thesse 600 zeires baypast; for in effect it overturned not onlie the ancient state government but fettered monarchie with chynes."⁴⁷

The covenanters claimed, however, that they were not removing the traditional form of government, but rather returning to the former balanced constitution which had existed before the innovations of the quarter century preceding 1640. In their opinion, the "Fundamentall Laws of the Kingdome" had been violated, most recently by the king's prorogation of parliament without its consent, "which is directly against the laws and practises of this Kingdome".⁴⁸ The Lords of the Articles dated only, according to the parliament, from the reign of David Bruce (1329-1371). They were not essential for parliaments, many parliaments having formerly been held without them, and even when they were chosen their nomination and election was always "with the common consent and advise of the whole parliament". This procedure had only been abandoned when in the 1617 Parliament (1621, in fact, according to Professor Donaldson⁴⁹) the Bishops had secured a more arbitrary method of selection, whereby they selected eight nobles, who in turn selected eight bishops, and this body of sixteen chose the barons and burgesses, and since the original selection rested with the prelates, subservient to the crown, nobles as well as bishops on the Articles would be individuals well-affected to the king. In spite of these corruptions of the constitution, the method of appointing

the Articles should, properly, be "from the whole Parliament: or that every Estate of Parliament, make choise of such of their owne number, as are to bee on articles". In terms of political theory, the covenanters justified their reform of the Articles with the 'received maxim' that those who were chosen to represent the whole kingdom, and were appointed to convene in their name for establishing such laws as would be necessary for the good of the commonwealth, ought to discharge that trust themselves and not entrust a full power to act on their behalf to a few delegated persons, except in cases of extreme necessity. Accordingly, it was very reasonable that the power of the Articles, being "but a committee delegate from the Parliament to prepare matters for their consideration", was not

a boundlesse and illimited power, but bee comptable to them; and the power of articles is onely preparative, and no wayes determinative, and is but curatio by vertue of a delegation, which ends at the remand of the granter, and ought no wayes to be privative of the Parliaments power

Consequently, the whole Parliament should hear the articles' resolutions and have a full time to debate and consider them, and then to decide with full information, "and not to vote blindly", on such things as the committee had chosen.⁵⁰

The Triennial Act of 1640 was not so easily portrayed as a return to a disturbed former status quo. It appeared to be more of an innovation, particularly since it provided for a new parliament to be called after three years without a royal summons, if the king failed to issue one, but on a date pre-arranged by the last meeting of the previous parliament. The 1640 Parliament could not pretend that there was no constitutional change here, but it was however asserted that the change was justified and necessary because of the new circumstances existing since the union of the crowns of Scotland and England in 1603. The personal absence of the king from Scotland made frequent parliaments necessary, it was claimed, in order to ensure that subjects' grievances were heard properly. Parliaments should, therefore, be held at

least once every three years.⁵¹ Parliament denied that it had any wish to diminish the king's royal authority, but it seemed quite obvious that the Triennial Act, if effective, would certainly do so. Parliament also demanded control of the Scottish castles through the appointment of their commanders and captains and the garrisoning of Englishmen in Scottish castles was described as being contrary to the fundamental laws and liberties of Scotland.⁵²

The belief in the monarchy expressed by the covenanters was not just a formal profession of loyalty hypocritically made by rebels. Pride in, and loyalty to, the Stuart dynasty was naturally far more deeply rooted in Scotland than in England, where it had only recently become the ruling house. In Scotland, Stuarts had been on the throne since 1371, and, significantly, they had first come to wear the crown because of a parliamentary act, the Act of Succession of 1318. The monarchy itself was not something of Stuart invention, but a long procession of over one hundred kings of Scots, dating back into remote antiquity, whose earlier representatives were known by little more than their names (if it can be assumed that even these were not mythical). No monarchy in the world, it was apparently believed, could parallel that of the Scots for a continuous existence of almost two thousand years. Charles I was the latest representative of a "reigne of 107 kings"⁵³ and "our own native king",⁵⁴ born in Scotland, of the Scottish royal house. The Scots had far more reason than the English to feel loyalty and affection for Charles, in spite of his misdeeds. Very few Scots were likely to favour deposing Charles, although there was a discussion at the meeting of the Scottish Parliament in June 1640 in general terms about circumstances under which a king could be deposed. Mentioning this incident, Dr. David Stevenson emphasises that there was no talk in more specific terms about deposing Charles,⁵⁵ although they could hardly have had anyone else in mind for deposition. Even so, it is obvious that a discussion of this kind reflected uncertainty rather than any real movement to disown the king altogether. This uncertainty is also

evident in the ambiguous constitutional position of the king after the reforms of 1640:

The covenanters did not ask for the king's formal consent to the acts, as this might seem to imply that they accepted that he had power to veto them by refusing his consent: neither did they explicitly claim that acts of parliament were binding even if they had not received royal consent, but simply assumed that this was so. 56

The year 1640 saw the first serious split in the covenanting movement, when in August eighteen nobles led by Montrose denounced the allegedly self-interested behaviour of the Earl of Argyll in his direction of the cause. Their paper, the "Cumbernauld Bond" may be interpreted as the first real signs that Charles I could find a royalist party among his Scottish subjects. In the spring of 1641, when the king formally accepted the Scottish constitutional changes, Montrose became an advisor to him. The chief apology, in terms of political theory, for the faction of Montrose and his supporters in this period is known as the "Letter on sovereign power". It was probably written by Archibald, 1st Lord Napier of Merchiston,⁵⁷ advisor to Montrose, and eventually to Charles I too. Although undated, it is likely to have been written in the winter of 1640-41. In this tract, taken along with another undated Napier manuscript of the same period which was the draft of a letter to Charles I, the Montrose group are clearly shown to have been as much opposed to absolutism as were the main body of the covenanters. The difference of opinion was about the best way to avoid it, or, more specifically, how to avoid absolutism while at the same time steering clear of any remedy for it which would really be an even worse evil. They recognized disorder and anarchy as being in themselves a kind of oppression because an enfeebled government could not enforce law and prevent the strong in the community from oppressing the weak. They also saw the possibility that the anarchy would eventually end with the takeover of power by the strongest aristocratic faction which would have a free hand to rule dictatorially in its own interests. Anarchy was, of course, an outcome greatly to be feared. Scotland in 1640

was obviously not in a condition of anarchy. On the contrary, it was impressively united, superficially at least. The Montrose group discussed their ideas at a series of Edinburgh supper parties during this period, almost reminiscent of the civilised, philosophical, conservative style of the Great Tew circle of royalists in England.⁵⁸

"Aim not at absoluteness", Napier advised the king: "It endangers your estate, and stirs up troubles: The people of the western parts of the world could never endure it any long time, and they of Scotland less than any."⁵⁹ Charles need not fear for his authority if he ruled lawfully, because the Scots were strongly attached to their monarchy:

You are not like a tree lately planted which oweth the fall to the first wind. Your ancestors have governed there, without interruption of race, two thousand years, or thereabout, and taken such root as it can never be plucked up by any but yourselves. 60

According to Napier, sovereign power was limited by the laws of God, the law of nature and by the fundamental laws of the country. The essential points of sovereignty were to make laws, to create principal officers, to make peace and war to give grace to men condemned by law, and to be the last to whom appeal can be made. These sovereign rights were inalienable and indivisible. They could not be shared between several bodies because that would mean a paralysis of sovereignty.⁶¹

Sovereign power was also weakened when it was strained and extended beyond the laws by which it was limited. The danger often came from bad counsellors around the monarch. These selfish, greedy advisors, unable to tolerate the slow progress of preferments under a temperate government, could try to persuade the ruler to become an arbitrary monarch, in the hope of gaining their own ends and profits. The effect of an over-extended royal power was tyranny: but if, on the other hand, the crown was too much weakened, then,

The effect of the royal power restrained is the oppression and tyranny of subjects - the most fierce, insatiable, and insupportable tyranny in the world - where every man of power oppreseth his neighbour, without any hope of redress from a prince despoiled of his power to punish oppressors. The people under an extended power are miserable, but most miserable under the restrained power.

Subjects must tolerate the misdeeds of their ruler as they did storms, tempests and other natural evils.⁶² "Patience in the subject," asserted the "Letter on sovereign power",

is the best remedy against the effects of a prince's power too far extended, but when it is too far restrained, patience, in the prince, is so far from being a remedy that it formeth and increaseth the disease, for patience, tract of time, and possession, makes that which was at first robbery, by a body that never dies, at last a good title, and so the government comes at last to be changed. It is not the people's part, towards that end, to take upon them to limit and circumscribe royal power - it is Jupiter's thunder which never subject handled well yet ... 63

The people ought not to meddle with the sovereign power. This quotation also implies, perhaps, that the king ought not to accept the constitutional changes made by the Scottish Parliament in 1640. The author wanted the king to be a constitutional monarch, and not an unlimited, arbitrary power, but he did not want the king to be so severely limited and restrained as he would have been by the Scottish constitutional acts passed by parliament in that momentous year.

Frequent and rightly constituted parliaments (perhaps a reference to the doubtful legality of the June 1640 convention of parliament) should be held, stated the "Letter", to protect laws and liberties from the encroachments of corrupt politicians. Parliaments had always been "the bulwarks of the subjects' liberties in monarchies".⁶⁴ Five "false arguments" of the "seditious preachers" are then denounced in the "Letter". To the idea that the king was ordained for the people and that the end must be more noble than the means, it is demanded whether sheep should be superior to the shepherd, or a pupil to his tutor. The concept that the constituter (i.e. the

people) is superior to that which is constituted (i.e. monarchy, or sovereign power) was supposedly refuted by the following argument: if the people's donation and constitution was absolute and unconditional, "devolving" all power to the person constituted, and his successors, what before was voluntary became essential, in the same way that a woman was free to choose any particular man for her husband, but could not afterwards withdraw herself from obedience and subjection to her husband, so the people, at first free to choose their king, are subsequently bound to subjection. (There were similar arguments enunciated by such English royalist writers as Ferne and Bramhall during the English civil war.⁶⁵) The king and the people were not like two scales of a balance, one of which must go down when the other went up, but on the contrary both were part of one body politic and whatever was good for one was good for the other. The king's prerogative and the subjects' privileges mutually supported each other. The stronger the sovereign's lawful power, the better he could protect the people's privileges, and a people enjoying their privileges would want to uphold the ruler's honour.⁶⁶ Finally, Napier's "Letter" delivered a warning to every "seditious preacher" seeking to place sovereignty in the people's hands so that they could be directed to his own ends by pulpit eloquence and hypocrisy:

Thou art abused like a pedant by the nimble-witted noblemen, - go, go along with them to shake the present government, - not for thy ends to possess the people with it, - but like (as) a cunning tennis-player lets the ball go to the wall, where it cannot stay, that he may take it at the bound with more ease. 67

On the basis of the "Letter on sovereign power", and the Cumbernauld Bond, the Montrose party cannot be classified into any facile stereotype of conservatism. For it is very clear that their main fear was not of any consequences of an abuse of power by the populace, but rather of a destructive state of disorder in which corrupt politicians and powerful nobles vied for control of Scotland, oppressing all who stood in their way, until one triumphant aristocratic faction would

be able to set up a dictatorship far worse than the personal rule of a legitimate monarch.

In conclusion there are some general observations which can be made about the theoretical justifications of Scottish resistance to the royal government in the years 1638-1641. First, these justifications were based not only on law and historical precedents, but on religion and reason. Although the Bible was the supreme authority for all Calvinists, the logic of the scriptural texts was just as important as the actual words. This question of the rational interpretation of the Bible was very important for presbyterians wishing to justify resistance. There was no express statement to be found which gave divine approval of armed resistance to the supreme power in the state. Indeed, the most important text on this question, Romans xiii, 1-4, was a prohibition of resistance, even although the reasons given by St. Paul for his injunction seemed to deny that it was intended to be a licence for tyrants. A logical interpretation of such a text was, however, something more than a mere statement of opinion about it. There was a doctrine of "necessary consequence", the value of which may be shown by reference to the explanation given by George Gillespie, a distinguished Edinburgh minister. "God being infinitely wise," wrote Gillespie,

it were a blasphemous opinion to hold that anything can be drawn by a certain and necessary consequence from his holy word which is not his will. This were to make the only wise God as foolish as man, who cannot foresee all things which will follow from his words.

Gillespie went on to state that whatever logically followed from the word of God was therefore the will of God, and that such "necessary consequence" was as valid as "express scripture". By way of example, he pointed out that when Thomas Wentworth, Earl of Strafford was impeached of high treason, one of his defences was that no law of the land held any of those particulars which were proved against him to be high treason. This defence could not be confuted in the literal sense by any law, but only by his parliamentary opponents,

comparing together of several laws, and several matters of fact, and by drawing of necessary consequences from one thing to another, which made up against him a constructive treason. If there be a constructive or consequential jus humanum there must be more ... a constructive or consequential jus divinum.

Gillespie wrote that the defensive war against what he called the popish and prelatical party was not to be proved lawful by express scripture but by necessary consequence from scripture.⁶⁸ What was logically deduced from the statements of St. Paul in Romans, xiii, 1-4, was, therefore, just as binding as the text itself.

The second important observation concerning the general character of the Scottish justifications relates to the limitation of the right of resistance. This limitation was created by defining who had the right to resist and in what circumstances the right could justifiably be exercised. As this chapter has shown, there was no desire to claim a general right of resistance in the ordinary people of a country. That would have been seen as a recipe for anarchy, which the covenanters feared almost as much as did the king's supporters. It was the middle, or inferior, magistrates, in other words the Estates or parliament, of a nation who had not only the right, but the duty, to resist tyranny. As explained during this chapter, such a view was a well-established Calvinist doctrine. Obviously the actual physical resistance involved in bearing arms would necessarily bring the ordinary people into participation (unless mercenary forces were employed), but resistance was to be initiated and led only by the middle magistracy. It has been shown that in Henderson's military analogy the decision to defy a treacherous captain, and to choose instead loyalty to the general and the army as a whole, was made by an inferior or subordinate officer, not by private soldiers. The general was, like God, the ultimate superior, and a loyal lieutenant, the middle magistrate, had to obey him rather than a wayward captain, whose behaviour was held to be similar to that of a ruler defying God's will. As for the circumstances in which resistance could justifiably

take place, there had to be not only a clear case of religion endangered and the divine will contradicted by a ruler's actions, but also an exhaustion of all possible means for the redress of grievances. The covenanters repeatedly emphasised in their declarations that they had done everything possible to win their case by peaceful means. There had been a great deal of petitioning, remonstrating and negotiating with Charles I, before they had resorted to armed resistance. There was no question of resistance being justified by some minor injustice on the part of the ruler, for it was only in a great cause that arms were to be taken up against him, and only after all other remedies had been attempted without success. Finally, it may be said that the Scottish justifications of 1638 to 1641 are not only a subject of interest for Scottish historians, because these tracts of the early covenanters, and their opponents, were, in their arguments and theories, the precursors of the torrent of political pamphlets which poured from English presses during the civil war beginning in 1642.

CHAPTER III

CHARLES HERLE AND PARLIAMENT'S RESISTANCE

Charles Herle¹ (1598-1659), rector of Winwick in Lancashire, was one of the most notable parliamentary writers of the civil war period. By his theory of the "co-ordinate" status of the Parliament and his doctrine of "supply", he helped to justify the governing authority exercised by the Parliament without the king during the first civil war. He originated the posse regni theory to assert the legality of Parliament's armed resistance to Charles I and his cavaliers, and this theory was adopted by most other parliamentary pamphleteers, including Henry Parker and William Bridge who did not share Herle's presbyterianism. In addition to explaining his dispute with the royalist writers, this chapter will show the ways in which Herle influenced, and differed from other parliamentarians.

According to Anthony à Wood, parliamentarians esteemed Herle as "the prime man of note and power among the clergy". He was appointed prolocutor of the Westminster Assembly of Divines, set up in 1643, and, visiting Edinburgh with the English parliamentary commissioners in 1647 and 1648, he was there "looked upon as an Angel", according to one pamphleteer. Herle had been moderator of an early puritan consulative classis at Warrington in 1640, and with the establishment of a strong presbyterian system in Lancashire in the mid 1640's, he stood out as the most distinguished minister in the county's fourth classis and was among those to whom Parliament gave the authority to ordain new clergymen. Although his living at Winwick was apparently one of the richest in England, he never enjoyed its full revenues since these were the subject of a protracted dispute between a local gentleman, Sir John Fortescue and Herle's patrons the Stanleys. When the civil war began Fortescue's men seized and fortified the parsonage, which they held until parliamentary troops forced them out in May 1643. After Charles I's execution in 1649, Herle

withdrew to Lancashire and, alienated from the republican regime, lost his political influence at the very time when he again faced a renewal of litigation by Fortescue. Along with other presbyterian ministers, he was imprisoned for a time in 1651, having supported Charles II's unsuccessful invasion of that year. (Herle and his eldest son Edward, armed with swords, had attended the gathering of Lord Derby's forces.) In the Cromwellian period he was not involved in any further political activity. Herle's civil war publications included A Fuller Answer to a Treatise Written by Doctor Ferne, Entituled the Resolving of Conscience ... (1642), An Answer to Doctor Fernes Reply Entituled Conscience Satisfied (1643), Dauids Song of Three Parts (1643) and Ahab's Fall (1644). An Answer to mis-led Doctor Ferne (1642) has usually been attributed to Herle, but his authorship of it has been questioned.

In his Resolving of Conscience, Henry Ferne considered the question of whether a king who would not discharge his trust and was being seduced to subvert religion, laws and liberties might be resisted by his subjects' lawfully taking up arms. He answered it in the negative, basing his case chiefly upon the opening verses of the thirteenth chapter of St. Paul's Epistle to the Romans:

Let every soul be subject unto the higher powers.
For there is no power but of God: the powers that
be are ordained of God. Whosoever therefore
resisteth the power, resisteth the ordinance of
God: and they that resist shall receive to them-
selves damnation.

According to Ferne, the king being supreme, as the Oath of Supremacy acknowledged, was therefore the "higher power" and all subjects were therefore expressly forbidden to resist him.² If a king did abuse his power, only passive obedience could be used by subjects as a sanction. (Passive obedience was explained briefly in Chapter two.)

Ferne was not, however, making any concession to the view that King Charles was a ruler abusing his power. His argument

was rather that since even abused powers could not be resisted, it was even more indisputably wicked to resist a king such as Charles, who was a protestant and promised in his declarations the maintaining of religion and liberties, and was opposed merely upon the supposition that he would not keep his word.³ Ferne said that royalist divines were as much opposed to arbitrary government by the king as to resistance by subjects.⁴ The king and his royalist followers claimed to be fighting for the traditional constitution of England, regenerated by the royal concessions of 1641 (the Triennial Act, abolition of Ship Money, the abolition of the prerogative courts, Acts against the compositions for knighthood, against monopolies and the misuse of the forest laws), and not the king's personal rule of the 1630's. The weakness of the Parliamentary cause was that they could be charged with fighting the king simply because of something he might do:

shall subjects rise in Arms against their Prince
upon such remote fears and jealousies as these
appear to be? When can such be wanting in
turbulent minds?

5

Charles Herle's justification of parliament's armed resistance to Charles I was based on his interpretations of the English constitution, of Romans xiii, and of the nature of government in general. England's constitution was that of "a co-ordinative, and mixt Monarchy".⁶ The making of a law depended as much on the consent of the two Houses of Parliament as upon the consent of the king, and they were thus 'co-ordinate' with the king in the legislative power.⁷ The co-ordinate status of parliament, sharing in the supreme power, was designed for the security of the realm, and its constitution:

Now the end or purpose of this mixture of the three Estates in this government, 'tis the safety of its safety, as all government aymes at safety, so this temper in it at the making this safety more safe or sure: The common interest of the whole body of the Kingdome in Parliament, thus twisted with the Kings, makes the Cable of its Anker of safety stronger: So then the government by Law its rule, unto safety it's end, is ordinarily betrusted to the King, wherein if he fail and refuse, either to follow the

rule Law, or to it's end safety, so his coordinates
in this mixture of the supream power must
according to their trusts supply. 8

Parliament could thus "supply" the deficiency by stepping in to exercise executive functions normally carried out by the king.

Herle's doctrine of "co-ordinates" in government was quoted and approved by William Prynne, whose legal expertise and historical knowledge produced the elaborate justifications of parliament's cause set down in that lengthy and detailed book, The Sovereigne Power of Parliaments and Kingdomes (1643).⁹ The author (thought to be Herbert Palmer) of Scripture and Reason Pleaded for Defensive Armes (1643), a particularly well-known and cogently argued pro-parliament pamphlet, quoted and endorsed the co-ordinate powers theory of Herle's Fuller Answer. Since king and parliament had a co-ordinate power, if any one of them should fail, or attempt subversion, the other must endeavour to preserve the common safety. Indeed, added Palmer, this notion was the very thing now claimed by the king to justify his raising arms against the parliament. As the king had shown himself to be untrustworthy, it was ridiculous to allow him the power to subvert everything.¹⁰ Prynne referred to the king's

Dissimulation, of a consent to Acts, yet not free,
but fained onely to accomplish his owne ends, ...
the ignorant vulgar will be deceived with these
specious fruitlesse Protestations, and the bare
grant only of some good Laws (already highly
violated) without any apparent intention to
observe them ... 11

Charles' actions during the first half of 1642 had, in the view of parliamentarians, provided ample evidence of his hostile intentions and the insincerity of his concessions of 1641. The most dramatic incident had been the attempted arrest of the five members of parliament by the king in January 1642, but the more direct and practical threat had been presented by the king's drive to secure control of forts, magazines and county militias. Prynne said that the monarch's revenues, forts, ammunition, and so on, were not his own

property, but the kingdom's right, for its defence and benefit. His view was that of Parliament.¹²

Insincere though Charles I may have been in 1641, Herle had no apparent misgivings about advancing the argument that the Parliament did not owe its existence to the king, Charles' assent to the Triennial Act proving that a parliament could exist without the king since it provided for a parliament to be called if necessary without the actual concurrence of the monarch. Since Charles had assented to this Act, he must, wrote Herle, have accepted this implication of it, or else he would not have assented to something which would diminish the just rights of his posterity.¹³ This argument seems rather weak when it is remembered that parliamentarians were unanimous in agreeing that King Charles could not be trusted to genuinely uphold the 1641 "constitutional revolution". If his acceptance of the Triennial Act was insincere, how could it be argued that his assent meant he accepted any supposed implications of the Act?

More confidently, perhaps, Herle stated that the English Parliament, with its 'co-ordinate' status, might with good conscience take up arms in defence of "King, Lawes and Government establisht", when imminently endangered, without or against the king's personal commands. The final judgement about whether laws were endangered, and the means of safeguarding them, rested with the two Houses of Parliament. On the basis of the parliament's judgement the people could with good conscience bear and use arms in defence of the realm and its constitution.¹⁴

Herle warned that there was not, however, any general right of resistance which could be exercised by the people of England:

I doe not goe about to prove by this argument, that private men may resist: no, the magistrates and established Courts of the kingdom, are to inforce & command resistance upon occasion, as wel as obedience, else the inconvenience wil be great, if the dignity of Princes should be obnoxious to every man's private opinion

He followed strict Calvinist doctrine in allowing only that it was "lawfull for an inferior Magistrate to resist a superiour Magistrate that abuses his power ...".¹⁶ Ordinary subjects were not entitled to resist lawful authority.

It had to be admitted that members of parliament, as individuals, were subjects too, but parliament as a corporate body was not a subject, nor was it subordinate to the king, but co-ordinate.¹⁷ William Prynne sought to prove by historical evidence that the principal purpose of setting up parliaments in England had been to defend the subjects' liberties, persons, estates, religion, laws, lives and rights, from the encroachments and violence of their kings, and to keep kings within their proper bounds of law and justice, by open force of arms when absolutely necessary, as it was now.¹⁸

Herle argued that parliament's role as the highest court of the kingdom gave it a right to use force against contumacious offenders. Any court had the right to use force of arms against a delinquent, particularly if the delinquent himself were armed, in order to bring him to trial and thus permit the course of justice to go on uninterrupted. This undoubted right was necessary, because without it all courts and writs would be powerless, since they could be defied by armed delinquents. Parliament too, no less than inferior courts, had this right:

Every Court in its capacity, has power to apprehend and bring Delinquents to the justice of it, and that by force, and if need be, by arming the posse comitatus to enforce it: and why not the Parliamēt the Regall Court, the posse Regni? 19

The use of this concept of the character of parliament's armed resistance, the highest court of the land sending out the posse of the realm to apprehend delinquents, is a quite striking example of the legalistic and conservative emphasis of the presbyterians' theoretical justifications of parliament's cause. The notion proved to be popular, and the royalists were consequently often referred to as "delinquents" by their opponents. The important pamphlets Scripture and Reason Pleaded for Defensive Armes (1643) and A Political Catechism

(1643) followed Herle in asserting parliament's legal power to punish delinquents.²⁰ The anonymous pamphleteer who styled himself as "an honest broker" was a particularly enthusiastic advocate of the posse theory. He wrote that the two Houses of Parliament,

may apprehend and imprison unto tryall Delinquents,
and His Majesty cannot ... because he is personally
no legal Court of Justice

and the two Houses possess the legal power of a court to
have raised an Army in pursuance of their attachment.
Every ordinary Court hath such a power by Writ of
assistance to the Sheriffe, commanding him by force
of Armes to apprehend such as are contumacious to
its authority, whether His Majesty consent or no. 21

A curious variation of the posse theory was invented by Norfolk Independent minister William Bridge (1600-1670), who wrote The Wounded Conscience Cured (1642), issued as an attack on the opinions of Henry Ferne. Bridge referred to the duties of the Sergeant-at-arms, who could be sent to apprehend an offender against parliament, and asked why parliament should not be fully entitled to send out thousands of sergeants-at-arms, i.e. the parliamentarian soldiers, to apprehend the thousands of delinquents who had taken up arms against parliament. In a subsequent pamphlet, The Truth of the Times Vindicated (1643), Bridge again emphasised parliament's right to bring an accused person by force to appear before them and, following Herle, specified the analogy with the posse comitatus which could be called upon by inferior courts.²² Eventually a royalist, Dudley Digges made the claim that the king's forces were the posse regni, lawfully armed by Charles I to end the rebellion.²³

The right of resistance was to be exercised only at the command of parliament. Royalists were quick to point out that the people might well follow parliament's example and claim for themselves a general right of resistance. If parliament could recruit them to resist the king, would they not eventually take it upon themselves to resist parliament too?

then may the multitude by this rule and principle
now taught them take the Power to themselves, ...
and ... as Cade and Tylar, boast themselves Reformers
of the Commonwealth, otherthrow King and Parliament,
fill all with rapine and confusion ... 24

The maxim enunciated by Francis Quarles (1592-1644) a
royalist poet and political pamphleteer, in 1642 was a generally
accepted truth:

The lower sort of people are desirous of Novelties,
and apt for Change ... They are too sensible of
evills in present, to feare worse in future. 25

Parliamentarians were aware of this danger too. A typical
cautionary note had been sounded in late 1641 by an M.P. who,
while emphasising the need "to uphold the Subjects Liberty
from being minc't into Servitude", added that,

On the other side, we must take care, that the Common-
people may not carve themselves out Justice, by their
Multitudes. Of this we have too frequent experience,
by their breaking downe Inclosures, and by raising
other tumults, to as ill purposes. 26

If, however, the royalist claim that no resistance by
anyone, even the parliament, could be lawful were accepted,
there would appear to be no way of effectively resisting a
tyrannical or misguided ruler (passive disobedience would be
unlikely to deter such a ruler). What, asked Herle, was to
stop the king enforcing the subversion of religion, laws and
liberties on the kingdom, if no resistance by force could
lawfully be made against such a subversion?²⁷ The king's oath
and the established laws could not, without power to enforce
them, suffice to restrain him from tyranny, for

what cares Tyranny for tyes of established Lawes,
and bonds of sacred Oathes ...

When the Doctor (Ferne) can teach us the trick
how to restrain a French Chevaliers plundering, by
solemnly reading him a Proclamation against it, or the
landing of Irish Cut-throats here in England, by telling
them they are Rebells by an Act of Parliament, 18. Caroli,
we shall then be the easier perswaded, that ties of
established Lawes and bonds of sacred Oaths (without
power, by Armes, to put them in execution upon such as
are in Armes against them) are more then sufficient to
restraine Tyrants, such whose very interests ... as well

as ambitions, ingage them to make their wills their Lawes, and to admit no other. 28

Royalists claimed to be constitutionalists, not defenders of arbitrary government, but Herle said this was contradicted by their denial of any right of active resistance. He enquires whether Ferne

would but tell us wherein the difference lies, between an arbitrary government, and a government whose will may not be resisted? a government that inforces upon its Subjects that will by Armes, the which Arms in any case whatever, though of subversion of Lawes, Liberties &c. by Armes to resist, 'tis (as he contends for) no less than flat rebellion.

.... Parliament ... being the highest Court ... must needs have the finall judgement of what is Law ... and ... that finall judgement must be able to act upon such as are delinquents to it, that those Delinquents, making a forcible resistance, must be reduced by force. 29

In Henry Parker's pamphlet Jus Populi it was asserted that the logical meaning of forbidding all resistance to subversion of religion and the state ("the remedillesse servitude of non-resistance") was either that general subversion would lead to beneficial results, or else that government had been set up on earth for subversive ends, rather than for the good of mankind.³⁰ William Prynne opined that if subjects were not free to protect themselves from violence and tyranny, then any wilful ruler could enslave the people, overthrow all established forms of civil government, and extirpate the Christian religion. On the other hand, the knowledge of a lawful power in subjects to resist tyrants would discourage rulers from tyrannical actions for fear of strong resistance; and Prynne cited Hugo Grotius, Jean Bodin, Zwingli, Luther, Melancthon, Buchanan, Knox, John Ponet, and Christopher Goodman as all allowing resistance in some cases. Like other presbyterian writers, Prynne was anxious to remind his readers that in the recent past protestants in Germany, Bohemia, France, the Netherlands, and Scotland had fought defensive wars against their rulers, and had been assisted by Elizabeth I, James I and Charles I.³¹ Surely these three monarchs,

including the reigning monarch (who had attempted to aid the French Huguenots in 1627, albeit half-heartedly and ineffectively) were not damned? As Stephen Marshall (c1594-1655), a colleague of Herle in the Westminster Assembly of Divines (Marshall accompanied Herle as a commissioner to Scotland in 1648, and both were chaplains to the commissioners sent by parliament to treat with the king, in the same year), expressed it, among the reformed churches "Religion bindes them not to give their throats to be cut".³² Herle wrote that if resistance were not lawful in any circumstances

the tyranny of Kings would grow infinite, by which all civill societie would be destroyed ..: without doubt God never established tyranny so that humane societie should be destroyed; therefore God doth not forbid us to resist. 33

For the presbyterians the safety of religion depended on the liberty of the subject. We may justifiably choose to emphasise the conservatism of their political theory, and their opposition to freedom of worship, but they were very far from despising liberty. "The Liberty of the Subject," wrote Herle,

is not so meerly proprietous, or popular ... as some would have it thought: Religion it self ... in the safety and freedome of its profession, depends upon it. ... let us stand fast in and to this liberty whereby we are made free ... the Lawes of the Land are, when all is done, religions best out-works, the which you know, when once they are taken, the enemy quickly falls to mines and firings 34

Thomas Case, a leading London presbyterian clergyman, made a similar remark in a sermon of 1643 on the meaning of the Solemn League and Covenant.³⁵

Henry Parker correctly pointed out that "the main shelf-anchor of our Adversaries is that of the Apostle in his 13. Chap. to the Romans, there all resistance to the higher power is forbidden, and pronounced all damnable".³⁶ Herle interpreted Romans xiii to mean that

it's God's ordinance that men should live under some government, and submit without resistance to that kind of government they have by consent established. 37

In England the kind of government men had consented to was a mixed monarchy in which Parliament enjoyed co-ordinate status with the king. Parliamentarians claimed that in England the "higher powers" referred to by St. Paul must include parliament as well as the king, and that, in any case, the Apostle's statement that "rulers are not a terror to good works but to the evil. ... he is the minister of God to thee for good." (Romans xiii, 3 & 4) constituted a qualification to the prohibition of resistance, which denied the possibility that the text could be used to protect tyrants.³⁸ Biblical examples were often quoted to demonstrate God's approval of resistance to tyranny: the people's rescue of Jonathan from being executed by Saul, and David's resistance of Saul (1st Samuel); or the Hebrew midwives' disobedience of Herod's command to kill all the Israelite male infants, and God's rewarding them.³⁹ God did not condone tyranny, and it was not included among the higher powers ordained of God. To meet the specifications of the text, the higher powers had to be lawfully constituted authority, not power in the sense of mere force, strength or tyrannical rule. This lawfully constituted authority stemmed, as Herle stated in the section quoted above, from the establishment of the form of government by the people's consent. Parliamentarians were unanimous in denying that tyranny was protected by Romans xiii, but their concept of what actually was the lawful power, to which obedience must be given, required very careful explanation.

The particular theory of the origin of civil authority usually favoured by presbyterians attempted the avoidance of two extremes - divine right absolutism and popular sovereignty. Herle stated that God had ordained that there should be government on earth, and that all men should live under some government. God had established the institution of government. In biblical times God gave kings directly to the Jewish Nation, but the age of miracles had, in the opinion of Calvinists

ended long ago, and God no longer directly intervened to appoint kings by divine fiat. Instead, he operated through men, who by their consent constituted a form of government in each nation, and designated their governors. The power exercised by rulers was "ordained of God", but the person, persons, or royal house which would become lawful rulers, was designated by the people. A ruler who, like Charles I, or Louis XIV, came to the throne by hereditary succession was nevertheless a ruler by consent of the people, because it had to be presumed that originally the people had constituted a hereditary monarchy and appointed a particular family to wear the crown. The Word of God, in the Bible, was, for Calvinists, necessarily the final authority. Political power was, in Romans xiii, described as being "ordained of God", but God had directly or "immediately" appointed rulers only to the Jewish people. If the rulers of other nations had not been appointed "immediately" by God, the appointment must have been made through the medium of the people's consent. The Answer to mis-led Doctor Ferne (1642) stated

it is denied that that power which is from God ...
be in the people, but the faculty or power ... of
presenting a King unto that power is in the people,
for I doe not thinke that you remember that God gave
Kings unto any Nation, but to the Jewes ...
... God when he appointed Kings it was but
conditionall. ... So now the people presenting such
a family, or such persons to be Kings for such an
end, and if that end they will not seeke or tend
to, they cannot truly be said to be the medii or
meanes to that end, and so no King. 40

These remarks fitted the text of Romans xiii, 1-4, including the statement that the ruler was "the minister of God to thee for good." If a ruler ceased to promote the good and to repress evil, the power he exercised was unlawful. It was not the power ordained of God, to which he had been appointed by the people's consent.

On hereditary succession, Herle asserted that

... Title of succession ... no way excludes consent, for it begins first in the election and consent of the people, and virtually continues so still in the mutuall bonds of oaths between King and People, to governe and be governed by Lawes by them joyntly to be made ... 41

Herle further stated that

the first constitution of the Government from the very same consent of the people that first made the King, and by succession him that King, in whom the first King still lives as in a Corporation (as the Law calls him) which dyes not ... tis consent onely that can transact or give a right ...

He added that conquest could not create, although it could restore, a right.⁴²

The theory of the source of lawful political authority enunciated by Herle was endorsed in a number of other pamphlets by leading presbyterians, most notably in Scripture and Reason Pleaded for Defensive Arms, Stephen Marshall's Plea for Defensive Arms, and Samuel Rutherford's Lex Rex.⁴³ Philip Hunton, in his Treatise of Monarchie (1643) gave somewhat hesitant approval to the theory, believing that rulers

attaine this determination of Authority to their Persons by the tacite and virtuall, or else expresse and formall consent of that Society of men they governe, either in their owne persons or the root of their succession ... When ... a Right is conveyed to a person or family, by the means of a publique Fundamentall Oath, Contract and Agreement of State, it is equivalent then to a Divine Word; and within the bounds of that publique Agreement the conveyed power is as Obligatory as if an immediate word had designed it. Thus it appears that they which say there is divinum quiddam in Soveraignes, and that they have their power from God, speake in some sense truth; As also they which say that originally Power is in the people, may in a sound sense be understood. 44

Herle made it clear that the origin of government by the people's consent was a logical necessity rather than a specifically identifiable historical event. In this respect his approach was different from the antiquarianism of many authors. For example, Hunton, by contrast, writing in 1643, stated that

... the original of the subject's liberty was by these our fore fathers brought out of Germany: where (as Tacitus reports) ... their Kings had no absolute but limited power; and all weighty matters were dispatched by general meetings of all the estates. Who sets not here the antiquity of our liberties and frame of government? ... they changed their soil, not their manners and government. 45

Henry Parker, who, like Hunton, eventually proved to be only a temporary ally of the presbyterians, looked back in his most famous pamphlet to the origins of

this admirably composed Court which is now called Parliament ... when it was called the mickle Synod, or Witanagenot, or when this reall body of the people did throng together at it... 46

Hunton, Parker, and other adherents to the concept of a "Gothic" ancient constitution expressed a belief in a literal coming together of their Germanic ancestors to consent to and limit the actions of their rulers. This Gothic constitution had been brought to England by the Anglo-Saxons, and eventually the representation of the people by parliaments had developed. Even William the Conqueror, it was supposed, had accepted rather than interrupted this form of government. The "Government of the Saxons....," Pym told the House of Commons in 1628, was "of that vigour and force to outlive the Conquest; nay, to give bounds and limits to the Conqueror..."⁴⁷

Charles Herle also believed in a traditional English constitution, which was threatened by the royalists and the king's evil counsellors, but his case against arbitrary government and non-resistance did not depend upon proving that the constitution had a continuous history from Saxon, and indeed early Germanic, times. He thought it unnecessary to prove such a pedigree:

nor needes he goe so farre backe as to make them a Colony from France or Germany, though probable enough; it suffices that the government could not be what it is, without a beginning or constitution and what hath beene so time out of mind our law supposes to have beene, so (at least in equivolence) from the beginning: hence Prescription, or Custome

is said to be one foot of the Tripod of our Law,
the other two being Statute and Common-law. 48

Obviously Herle did believe in an "ancient constitution", but there is nevertheless a clear distinction between, on the one hand, his view that "it suffices that the government could not be what it is, without a beginning or constitution", and, on the other, the harking back to an unchanged form of government dating from the Dark Age Germanic forests or to an original literal thronging together of the whole people. Herle's argument, as we have seen, was that God, whose will was revealed in the Bible, had ordained that there should be some kind of government among men, and He had also made clear the necessary character of that government, as for example in Romans, xiii, 3-4, in that it must promote and protect good and repress evil. The acceptance of tyranny without resistance, therefore, could not be God's will, since the Scriptures condemned tyranny, so that acceptance of absolutism without any possible resistance was precluded. As for the origin of government, Romans xiii, 1-2, clearly stated that political authority in the abstract stemmed from God. In Biblical times, God had sometimes directly, or "immediately", appointed rulers for the Jews, but he had not done so for any other nation. Direct divine appointment of rulers belonged to the age of miracles, which Calvinists believed was long past. Since then God's will had been carried out through mankind. God used the people's consent to constitute each nation's form of government. If there was no possibility of miraculous divine intervention to appoint the ruler, it followed as a matter of reason and logic that the people must have appointed him, giving him some form of political authority, which God had ordained as being necessary for man. The only other possible sources of political power, conquest or usurpation, could not give the lawful moral authority which God intended in Romans xiii 1-4, pursuing good not evil, because a conqueror, by definition, carried all before him and could therefore rule as he wished, for good or evil. Conquest, opined Herle, could not create a right to rule, although it could restore a pre-existing right derived from consent.⁴⁹

Given the definition of the power to be obeyed in Romans xiii, 3-4,

For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: ... For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil.

God's use of the people's consent as the medium for setting up a form of government and appointing rulers under it was the only certain method of obtaining the character of government which was ordained, because men, created as rational beings by God, would seek to establish a form of government which would not lead to a tyranny more burdensome than the anarchy of living without government.

Herle had begun to recognise the logic of the doctrine of "mediate" institution of civil authority. His case, resting ultimately on reason and scripture, was superior to the straightforward advocacy of a "Gothic" constitution, which was vulnerable to assaults by royalists able to produce evidence that the origins of Parliament, and a constitution involving it, rested firmly in the post-Conquest reigns of the early Norman kings.⁵⁰ Moreover, such an approach had the advantage of looking at the ends of government among rational beings (these ends being defined in the Bible), as well as its origins, and therefore highlighted the need for a harmony of political authority with these ends. Slavish subjection, without any possibility of resistance, to a government destructive of these ends would be ungodly and irrational. J.G.A. Pocock has contrasted the preoccupation with a Gothic constitution and John Locke's eventual view that the ultimate guarantee against the abuse of sovereign power was located in principles of nature and reason lying outside history and the interpretation of historical change.⁵² There is sufficient evidence to allow the statement that some presbyterians during the English civil wars had, in their theories, set out on the road which led to Locke's position.

Royalist writers often accepted the idea of mediate institution of political authority by the people's consent, but only as one of several methods by which the power ordained of God was transmitted to rulers. God, according to Ferne, appointed

his Vicegerents on earth mediately as by election of the people, by succession or inheritance, by conquest etc. To conclude, The power itself of government is of God, however the person be designated ... 52

John Maxwell, who was Bishop of Ross in Scotland, titular Archbishop of Tuam, and a close advisor of the king, wrote that

although some Signum creatum, some humane and created act, as election, succession, conquest ... interveneth, to the designation of the person, yet the reall constitution, the collation of Sovereignty and Royalty is immediately from God.... 53

These two writers both rejected as a matter of course the presbyterian claim for mediate institution by the people's consent as the sole exclusive theoretical origin of lawful authority. Once this exclusivity was denied, and consent gave no better title than, for example, conquest, its value to parliamentarians arguing for a right of resistance and the subjects liberty against arbitrary government was removed.

One of the most interesting royalist interpretations of the consent theory was that of Dudley Digges (1613-1643). Digges stated that political power was conveyed to the ruler by God,

mediante populi consensu, the consent of the people intervening; and this two ways, either by a free election ... or by conquest, attended with a voluntary submission upon fears from his extraordinary power. 54

The power of life and death, the jus gladii, which was the distinctive power of the supreme magistrate, could, however, come to the ruler from God only, and not from the people, since no man could give another greater power over his life

than he himself had, and so, since suicide was not lawful, the people could not authorize the magistrate to take away their lives. That right could come from God alone. The magistrate's jus gladii meant that neither the people, nor their representative body, could have equal power with the king.⁵⁵

Digges thought that even the consent extracted under duress by a conqueror conferred a right to rule. In some cases conquest was "a lawfull way of acquisition", but whatever the circumstances, consent was, for the ruler only

a necessary qualification to make him capable of receiving a larger commission from God. The Sword of Justice is blunt, the peoples agreement could not put an edge upon it to cut off offenders, this is done by the Magistrate, as Gods delegate. 56

Digges conceded a "consent of the people intervening"^m but detracted substantially and significantly from the instrumentality of that consent by characterising it as a mere precondition for the ruler to receive his "larger commission from God", the power of life and death. The precondition was deemed fulfilled even by a consent extracted under duress. No attempt was made by Digges to point out the probable difference in the quality of subjection accorded a regime with only this nominal legitimacy and, by contrast, the subjection given to a system of government considered to be based upon an unconstrained consent.

In a sermon preached before the House of Lords on 15th June, 1643, Charles Herle declared that authority carried with it obligation and duty, as well as power. It was not, he said

as if God had made great men the Leviathans of the earth ... where there is most of power, there should be least of will (at least) of wilfulnesse or licence; greatnesse makes no mans sins more lawfull but more great ... 57

He tended, in his writings, to resist the 'patriarchal' analogy, which likened the position of a king to that of the

head of a family, and the subject's situation to that of a child, servant or wife:

...Alegoryes are no good arguments, they onely illustrate as farre as the likenesse holds. Because a King may in some respects be call'd the Father, the Head, the Husband of his Kingdome (as the Doctor [Ferne] insists) doth it therefore follow that because he should governe with the providence of a Father, he may therefore governe with the Arbitrarinesse of a Father without the consent of his people, to the laws or rules of his government, as a Father doth without that of his children ... or because with the love of a husband, therefore with an absolute power of disposall of whatever the Subject hath, as the husband hath towards the wife?

58

In one pamphlet, he even went so far as to invert the analogy by likening rulers to children, because they had been brought into existence by the law of the community, which was therefore composed of their "parents".⁵⁹

He drew the commonplace distinction between the king's "politick" and "naturall" capacities,⁶⁰ through which parliamentarians endeavoured to show that they were in fact fighting for the true interests of the king, at least in the sense of the office of king with its legal attributes. Referring to the provision for the preservation and defence of the king's person and authority in the Solemn League and Covenant of 1643, Thomas Case explained that

It maintains him as far as he is a king: he may be a man, but sure no king, without the lists and verge of religion and laws, it being religion and laws that make him a king.

61

In The Convinc'd Petitioner (1643), a pamphlet which was once attributed to Herle, it was stated that to fight those (i.e. the cavaliers) that had attempted to destroy the laws of the land, the liberty of the subject, parliament, religion, and kingdom, was to defend the king's royal person and honour according to duty and allegiance.⁶² The puritan Dr. Robert Austin, in his pamphlet Allegiance Not Impeached (1644), gave an admirably clear and concise explanation of the notion that

parliament, by fighting against the royalist forces, was not fighting against the king, but for him. The king's supporters and advisors, in this civil war, were in fact the enemies of the king in his "politick capacity", because they had withdrawn him from his parliament and, by evil counsel, seduced him into making a wicked war against his people. It was justifiable for the king to be rescued out of the hands of his evil counsellors by the representative body of the realm, even by force of arms. Allegiance was not tied to the king's personal commands, if these were against the law of nature, or of God, or of the realm. In all doubtful cases regarding the law of the realm, parliament, as the supreme court from which there was no appeal, must have the last word. From a strictly legal point of view, therefore, it could be argued that parliament was not fighting the king, but Austin ended his pamphlet with a startling revelation of the apparent frailty of the legalistic 'technicality' which distinguished the parliament's resistance from treason. He declared that the proof of the seduction of the king by evil counsellors was

that the Law supposeth the King to doe nothing amisse ... and therefore if ought destructive to the Common wealth come forth in his name, the Law supposeth the King to be seduced and abused by evill Counsellors.

63

Charles Herle warned that rulers should not depend for counsel upon the advice of an unrepresentative court faction, scornful of, and scorned by, the people:

experience tells us, that such Counsellours as wholly despise the multitude, are never either safe to themselves, or serviceable to their Master, but still in the end prove rather the peoples sacrifices than the Princes servants.

64

Presbyterians made it clear that they were convinced monarchists who wanted the king to be brought under control, but certainly not destroyed, either in person or in his just authority, as they conceived that authority. Lazarus Seaman, a London minister, even declared of monarchy that Christ "himselpe was a King, and hath sanctified that calling and estate", although kings had no arbitrary power over the goods,

estates, persons and lives of their subjects.⁶⁵ Herle stated that the king could not be liable to any legal penalty.⁶⁶ Presbyterian opposition to the trial and execution of the king in 1649 was consistent with their attitude towards him during the first civil war, i.e. that Charles was not personally to be held liable, in any legal sense, for the wrong-doing of his cavalier supporters. As one anonymous parliamentarian stated "to kill the King is no good Mans intention".⁶⁷

Although there could be no legal punishment of the king for violating the law or failing in his duty by his alleged desertion of, and offensive against, parliament, there was, nevertheless, a legal remedy which could be applied in such circumstances. The Houses of Parliament, which Herle, as we have seen, called "co-ordinate" estates sharing supreme power with the king, were entitled by their co-ordinate status to act in an emergency to "supply" the deficiency left by the royal neglect of duty by taking over, for a time, the governing of the realm.⁶⁸ Parliament had itself declared, on 19th May 1642, that sovereign power was placed by the Constitution jointly in the king and parliament together and that parliament could exercise power in cases where the royal trust was not discharged.⁶⁹ This statement appears to resemble, and probably influenced, Herle's theory of "supply".

Herle, in common with a number of parliamentarian pamphleteers, saw a warning for England in the supposed decline of France from a mixed government, of king and estates, into an absolute monarchy. He denied Henry Ferne's description of France as an absolute monarchy, and replied that it was in right a mixed government, which had been diverted towards absolutism only by usurpation (i.e. of the Estates' role). He had read Philippe de Comynes' famous Memoirs, with its emphasis on the constitutional standing of the French Estates and its resounding denial that any king on earth could justly raise money from his subjects without their approval and consent.⁷⁰

A pamphlet which followed Herle's use of the French case, Great Britains Misery; With the Causes and Cure (1643) stated that laws limiting kings

are maintained by a middle magistracy between the King and his people, on the peoples behalfe ... And thus are Parliaments in England ... Thus they were in France, but in France now lost by the same meanes, and in the same manner, as they are losing at this day in Great Britaine; envied by oppressing spirits, and innovators: as the onely barre against unlimited Prerogative. 71

Herle's justifications of parliament were partly legalistic, but his basic concept of the nature of government was reached through reason and religion, not constitutional antiquarianism and purely historical arguments. His theory of parliament's co-ordinate status, the doctrine of 'supply', and the notion of a posse regni became useful and popular justifications of the parliament. Few important parliamentarian apologists omitted to quote his Fuller Answer and to reiterate its arguments.

Presbyterians considered the political ideas they propounded to be based on scripture and reason, and these twin foundations were believed to harmonize. The Bible's precepts and human reason were not ultimately contradictory because they were both created by the same divine author. This opinion was entirely plausible in the mid-seventeenth century. Scripture and reason showed that political authority had a purpose and was set up for particular ends, so that both logic and religion dictated that the persistent subversion of these ends was no true political authority. Finally, presbyterian theory was parliamentarian par excellence, because it exalted parliament as the sole agency entitled to remedy such a subversion, since it was co-ordinate in status with the king, and as the supreme court it could use force to bring to account those who defied it. Parliament's constitutional resistance therefore had no real resemblance to a rebellion by ordinary subjects.

CHAPTER IV

SAMUEL RUTHERFORD'S LEX REX (1644)

Samuel Rutherford's Lex Rex: the Law and the Prince, published in London in October 1644, was the longest and most detailed work of political theory written to justify the actions of the parliamentarian side during the first civil war and the Scottish resistance to Charles I's policies. Although the book was intended mainly as a reply to the royalist tract Sacro-sancta regum majestas (Oxford, 1644), written by the Bishop of Ross, John Maxwell, Lex Rex was also designed, as its title page indicated, to be an intellectual tour de force demolishing the arguments of all the leading English and Scottish royalist writers. The author of a modern article about Lex Rex called it "an incendiary piece of fireworks, teeming with fury ..." ¹ It had, in fact, stimulated the Restoration government in 1661 to engage in some incendiary work of its own - the book was ordered to be publicly burned at Edinburgh and St. Andrews. The restored monarch Charles II had no doubt about the strength of the case put forward in Lex Rex, and is said to have remarked that it was a book which would probably never be answered. ²

Rutherford, who was born in about 1600, had been the parish minister of Anworth, Galloway for nine years until his removal, by the high commission in Edinburgh, in 1636, as a result of his writing against Arminianism. The covenanters' Glasgow Assembly of the church in 1638 made him professor of divinity at St. Mary's College, St. Andrews, where he later became the college principal, and eventually rector of St. Andrews University. In 1643 he was appointed one of the commissioners of the Church of Scotland to the Westminster Assembly of Divines. Although he opposed the regicide and military usurpation of power in 1649, he adhered to the minority 'protester' party in the Scottish ecclesiastical schism of the 1650's. He was a strong opponent of religious toleration

and sectarianism. Rutherford's death in 1661 saved him from persecution and deprived the rigid covenanters in the Restoration era of one who would certainly have occupied a leading place in their ranks.

John Maxwell's Sacro-sancta regum majestas was a book which had quite obviously infuriated Rutherford. Hatred of Maxwell is apparent in Lex Rex. It was not just the bishop's book, or his support for Arminian doctrines

(this Prelate, though he did swear the doctrine of the Church of Scotland, preached expresly ... many ... poynts of Popery in the Pulpits of Edinburgh)

which incurred Rutherford's censure, but also Maxwell's humble origins: he had "kept the Calves of Craile ..." (his possible birthplace in Fife) before his education at St. Andrews had enabled his embarkation upon a spectacular ecclesiastical career, and was therefore described as "a most New Statist sprung out of a poore pursevant of Kraill, from the dunghill to the Court."³ To a modern reader, Rutherford's contempt of Maxwell simply serves as a reminder that the bishop must have been a man of outstanding ability and energy to have thus risen in the church and also to have become a valued advisor to Charles I. Clearly it is appropriate to examine, however briefly, Maxwell's Sacro-sancta and its arguments before turning to Rutherford's book.

Maxwell stated that he was writing against five main "new devised State-principles" which had encouraged or justified the civil war. The first of these was the theory that the royal authority of kings was derived from the consent of the people, and was only 'mediately' from God. Another objectionable principle was "that God is no more Authour of Regall than of Aristocraticall or Democraticall power; of Supreme than of Subordinate", and the idea that sovereign power

is by conveyance from the people, but a trust devolved upon him; and that it is conditionate, fiduciarie, and proportioned according as it pleaseth the Communitie to entrust more or less

was also rejected. The fourth and fifth denounced doctrines

were that the king's power

is not simply Supreme, but in some cases there is a co-ordinate Power or collaterall; nay, that in some cases the King is subordinate to the Communitie ... fifth ... that the King in some cases may be resisted and opposed by violence, force and armes, at least in a defensive way. 4

In Maxwell's opinion monarchy was "by Gods institution ... graced and authorised above others ... the true and most perfect species of government".⁵ The power of a monarch was given to him by God, for although a human action such as election, hereditary succession, or conquest might designate a particular individual to be the ruler

yet the reall constitution, the collation of Sovereignty and Royalty is immediatly from God, for the act or condition presupposed or interposed containeth not in it that power to collate Royall and Sovereigne power: onely by Gods appointment it is inseperably joyned with it, or infallibly followeth after it, so that it referreth to God as the proper donor and immediate author. 6

The sovereign must have his power from God because monarchs have the power of life and death, which belonged only to God and could not flow from any human source because no man could lawfully possess such a power.⁷ This same argument was strongly emphasised by another royalist writer, Dudley Digges, whose opinions were mentioned in Chapter III. Using an analogy beloved of royalists, Maxwell wrote that just as a marriageable woman had it in her own power to make a choice of a man to be her husband, but it was not this choice and consent which gave him his marital authority because any husband's authority stemmed from the character of the institution of marriage ordained by God, so in the same manner did the donation and power of sovereignty come from God although the people might choose the person of the sovereign.⁸ Taking the analogy further, a woman made a free choice of her husband, but she was not therefore entitled subsequently to shake him off at will, so that even if it were granted that a king's royal power was by contract with his people, it would not follow that he

could be overthrown by them at will, for to excuse one party from a contract which had worked out to his disadvantage would bring an end to civil commerce, trust and truth in bargaining of any kind.⁹ If sovereignty and supreme power were inherent in the people, then it would follow that democracy would undoubtedly be the best form of government, but it was observed that

howsoever all Writers of Politicks in many things concerning policie differ as much amongst themselves as Clockes, or our Sectaries, yet all unanimously accord and agree in this, that of all Government Democracie and popular government is the worst

so unless they were all wrong supreme power did not rest inherently in the people.¹⁰

Maxwell belonged to the patriarchalist school of thought,¹¹ whose most famous representative, Sir Robert Filmer is mentioned below in Chapter VII, although the bishop died (in 1647) before the publication of any of Filmer's writings. Monarchy was held to be founded in paternal sovereignty, starting with that of Adam. If Adam were living he would have a just title to the monarchy of the world. In view of the obscured line of descent from Adam, sovereigns had now to be chosen or consented to as being "surrogated in the place of the common father", and so the sovereignty must be of God, because "the Substitute must have it by the same hand, by the same meanes he had it, in whose place he was substituted".¹² If Adam's authority came from God, so did the authority of every monarch. Maxwell declared, finally, that it was the parliamentarians who were exercising an arbitrary power, depriving the king of his rights, and seizing supplies, arms and money at will in the name of their cause.¹³ If the king could be arbitrarily deprived of his rights, what ordinary person could be secured in his life, liberty and goods?¹⁴ Maxwell claimed he was not pleading for a despotism, but to allow the king his rights was in everyone's interest. This type of argument was apparently in the mind of the king at his trial, when, prevented from making a closing speech (on 27th

January, 1649), he declared, "I am not suffered for to speak: expect what justice other people will have".

Maxwell's opinions were obviously infuriating to Rutherford, but in Lex Rex there are only occasional lapses into personal invective, like those already mentioned. On the whole, Rutherford managed to produce an impressive body of arguments to answer the royalist case and to justify his own side. All men were, he wrote, born free from all civil subjection. Freedom was natural to all people and could not be totally surrendered to a ruler. Since none were born into subjection, none could be born into dominion: "No man bringeth out of the womb with him a Scepter, and a Crown on his head".¹⁵ Political authority, in the abstract sense, came from God but in any particular cases it was only

mediately from God, proceeding from God by the mediation of the consent of a Communitie, which resigneth their power to one or more Rulers. 16

This mediation was evident because

God in creation is the immediat Author of all things ... But it followeth not ... (that) the government of Kingdomes are done immediately by God, for in the workes of providence ... God worketh by meanes ... The making of a King is an act of reason, and God hath given a man reason to rule himselfe; and therefore hath given to a society an instinct of reason, to appoint a governour over themselves, but no act of reason goeth before a man be created ... 17

Royal power, therefore,

is not in the people as in the principall cause ...
but it is in the people as in the instrument ...
[the King] hath his power and Royall authoritie ...
from the people under God, as Gods instruments

and, consequently this power could be limited and conditional:

if the King have Royaltie mediately by the peoples free consent from God, there is no reason, but people give as much power even by ounce weights ... as they know a weak mans head will bear, and no more; power is not an immediate inheritance from heaven But a birth-right of the people borrowed from them, they may let it out for their good, and resume it when a man is drunk with it. 18

Like Charles Herle, Rutherford believed that God had on certain occasions in biblical times appointed directly the rulers of Israel, but such events could not happen any more, because, according to Calvinist doctrine, the age of miracles was long past:

we cannot conceive how God in our daies, when there are no extraordinary revelations, doth immediately create this man a King, and immediatly tie the crown to this family rather than (another) ...; this he doth by the people now, without any Propheticall Unction; and by this medium, to wit, by the free choice of the people. 19

The people's consent was an essential requirement for the setting up of a system of government and particular rulers to exercise power. The origins of any particular country's system of government were usually obscured by the passage of time. There might not be evidence of any specific and explicit definition of the powers of government, but this difficulty could not, for Rutherford, be made an excuse or justification for absolute monarchy. Whatever the circumstances, there was always an implicit covenant between ruler and people:

the generall covenant of nature is presupposed in making a King, where there is no vocall or written covenant, if there be no conditions betwixt a Christian King and his people, then those things which are just and right according to the law of God, and the rule of God in moulding the first King, are understood to regulate both King and People, as if they had been written ... And ... though there were no written covenant, the standing law and practice of many hundreth acts of Parliament, is equivalent to a written covenant.

If a King was said to be invested with an absolute power, it would be contrary to the word of God and the nature of his office, for it would give him power to be a tyrant, murderer and destroyer of his people, if he chose, instead of their protector. If the king had no covenant obligation to his subjects, then he could not be sued for recovery of debts, but, stated Rutherford, the civil laws of Scotland obliged the king to pay his debts like anyone else, and a king without

covenant obligation could not buy anything from a subject, or marry a subject, for these actions involved covenanting with subjects.²⁰

Since sovereign power was always limited and conditional (whether the covenant between ruler and people was explicit or implicit), it was always held as

a sort of power by trust, pawn'd or loane(d) ..
The King is a life-renter, not a Lord, or a
proprietor of his Kingdome.

21

Rutherford's rejection of absolute power was rooted in his understanding of the true end and purpose of political authority and government determined by God and revealed to humanity in the Bible, which was God's word and the supreme authority for a calvinist, and also through the laws of nature, and human reason, of which God was the architect. Following the words of St. Paul (1st Timothy, ii, 2), Rutherford asserted that God's purpose in instituting civil laws and government was to ensure the external peace, honesty, quiet life and godliness of his church and people. From this statement it was argued that God, being omniscient and omnipotent, must have appointed sufficient means for this divine objective, but no sufficient means could exist if one man were to have an absolute and unlimited power to subordinate justice to his own will and pleasure, leaving others in a state of insecurity and confusion.²² A further major consideration relating to the purpose of government was that the "mediate" ordination of rulers by the people's consent was a proof of the validity of the maxim salus populi, suprema lex. Since the people were, under God, the first author of both the fundamental laws of the country and of the king, their safety was the end which must be primarily sought. The king would encompass this end better with a limited power (and aided by subordinate magistrates) than with an absolute power put into his hands. Since every man was sinful, the possession of an exorbitant power was an intoxicating influence liable to end badly. None of these ideas truly represented disloyalty to the king:

We endeavour nothing more than the safetie and happinesse of the King, as King: but his happinesse is not to suffer him to destroy his Subjects, subvert Religion, arme Papists, who have slaughtered above two hundred thousand innocent Protestants, only for the profession of that true Religion which the King hath sworne to maintaine. Not to rise in armes to helpe the King against these, were to gratifie him as a Man, but to be accessarie to his soules destruction as a King. 23

Here was the familiar notion that parliamentarians could justly claim to be fighting for the king's true interests against his evil advisors. The safety of the people, therefore, could be said to stand in the capacity of a meta-legal doctrine which limited all ordinary laws, in both content (i.e. the precise terms of a law) and in execution. This status also belonged to "fundamental laws" and the "law of nature", but "especially ... the safety of the publick". Kings had no power to interpret and apply the laws of a country as they pleased without regard to these supreme restraints. The king was king according to law, but he was not king of the law. A biblical case was to be found in King Saul's

exponing the Law after a Tyranicall way, against the intent of the Law, which is the Diamond and Pearle of all Lawes, the safety of the innocent people, was justly resisted by the people, who violently hindered innocent Jonathan to be killed. 24

In matters of religion, the ruler was restrained by his duty to defend true religion for the salvation of the people. If he did not defend religion,

it is presumed that the people of God, who by the law of nature are to care for their own soule, are to defend in their way, true Religion, which so nearly concerneth them and their eternal happinesse. 25

The acceptability of absolute power was precluded because it was against nature for the people to have, and give away, a power to destroy themselves, either physically or spiritually: "an absolute power above a Law is a power to doe ill, and to destroy the people".²⁶ If political power was not intended to be used for evil ends, which the people by nature

would be disposed to resist, then that power did not need to claim to be absolute.

Rutherford accused Maxwell of asserting right of conquest to be a just title to a crown, although it was but "a title of blood and rapine", and, mentioning Stephen Marshall's dictum that a conquered kingdom was but a continued robbery, he added "we cannot thinke that a tyrannous and unjust domineering can be Gods lawfull meane of translating Kingdomes".²⁷ Mere conquest by the sword without the consent of the people, was no just entitlement to a crown. If it were so, then the king whose duty was to be a loving father, guide and protector of the people would in fact also be a bloody conqueror whose actions were a denial of all the good qualities which ought to be found in a king.²⁸ The teaching that conquest made a lawful title to rule, expounded by Maxwell, Ferne, and Edward Symmons, contradicted, said Rutherford, their opinion that a king's heir, by his birth, became the lawful king (or king-designate, presumably) by the revealed will of God. These royalists who justified right of conquest taught manifest treason against King Charles and his heirs for they would have had the people believe a violent intruder who expelled the lawful ruling family was appointed by God. It contradicted the royalist assertion that a king could not be "un-kinged", because a king defeated by a conqueror was surely un-kinged.²⁹ This remark does not mean that Rutherford advocated deposition of Charles I, but simply that he wished to highlight the flaw in his opponents' case which seemed to make them justify it and so grossly contradict themselves. In fact Rutherford was to oppose the regicide and abolition of the monarchy in 1649 and supported the attempted restoration of Charles II in 1650-51. Moreover, the royalist arguments concerning conquest did indeed backfire upon them in 1649 and 1650 when similar arguments were employed to justify the military seizure of power which brought about the republican Commonwealth regime.

It was clearly stated in Lex Rex that even if a conqueror forced a conquered people to consent to his rule, he could not thereby become a rightful monarch. Consent given under such extreme duress was not significant,

What compelled people may do to redeem their lives with losse of liberty, is nothing to the point; such a violent Conqueror who will be a father and a husband to his people, against their will, is not their lawfull King; and that they may sell the liberty of their posteritie, not yet born, is utterly denied as unlawfull; yea ... the posteritie may vindicate their own liberty given away unjustly, before they were born. 30

This statement was obviously intended to dispel the royalist notion that the Norman Conquest of England, and its acceptance by the English, was evidence against the idea of the constitution having been set up and voluntarily consented to by the people, even theoretically. The royalist Henry Ferne, for example, had enquired

how shall the Conscience be satisfied that this their argument, grounded upon election and the derivation of power from the people, can have place in this kingdom, when as the Crown not only descends by inheritance, but also has so often been settled by Conquest in the lines of Saxons, Danes and Normans? 31

Parliamentarians, of course, usually argued that William I's rule had only been accepted on condition that he upheld the existing English laws and governmental frame, but Rutherford's additional point was to claim that even had the Normans enforced unconditional submission, as royalists liked to assert, then Englishmen six hundred years later would have no obligation to submit unconditionally to the king. William I had not become king by conquest. A claim pursued to a successful conquest could, said Rutherford, "through the peoples after consent may turned into a just title ..." 32. There is no further explanation in Lex Rex of this concept of "after consent", but it was clearly not intended to be used to excuse or justify an enforced submission. There was, however, an explicit rejection of the idea that the success of a conqueror or usurper was a sign of providence, a divine

approval of his cause. This type of argument was later much exploited to build up a popular apology for the military and Cromwellian usurpations. Rutherford's rejection of it in 1644 exemplifies his consistency in his later denial of the legitimacy of the Commonwealth and Protectorate. God no longer intervened to appoint rulers directly. Evil and unjust causes might appear to triumph for a time, but that was no indication of divine approval:

If we are in ordinary providence now ... to hold the designation of a person to be King, to be a manifestation of Gods Will ... is Treason, for if Scotland and England should designe Maxwell in the place of King Charles our native Sovereigne (an odious comparison) Maxwell should be lawfull King ... 33

The right of a community to resume the power which it gave up to the ruler for its own safety and good was emphasised in Lex Rex. The royalist analogy of the relationship of a wife to her husband matching the relationship of a community to its ruler was rejected on the grounds that, unlike the wife, the community was the stronger partner:

The People because they create the man King, they are so above the King, and have a virtuall power to compell him to doe his duty 34

The people as the cause were worthier than the king, who was the effect of their action. The ability of the people to resume power was evident in the right to appoint regents in the case of a king distracted, captured, absent or too young to rule. If the people gave up all their power, how could they then choose a new king if a royal dynasty were to die out? The people could not give away their power to the king irrevocably and although it was a sin to deprive the king of his just power, yet when he abused his power to the destruction of his subjects he had to be treated like a mad man, whose own sword could justifiably be snatched out of his hand although it was rightfully his property.³⁵ A community in itself, even without rulers, was still a body politic or civil society because it had the ability to constitute or consent to a government.³⁶ It was this view, in essence, which was eventually adopted by John Locke.

Those who made the king, i.e. the people, had the right to resist him if he acted as a tyrant. The people were not tied to subjection without resistance when a king abused his power to the destruction of law, religion and his subjects. The terms of Romans, Chapter thirteen, made it clear that subjects were to obey the higher powers because they were a terror to evil doers, and God's ministers for good. Clearly, abused powers which were a terror to good works were not God's ordinance. God had given no command to suffer because of wicked men, but only to be patient when suffering was inescapable. The law granted that if a father went mad, and tried to kill his sons, they could restrain and disarm him by force. Similarly, a master attempting to kill his servant or a pilot steering his ship on to a rock were to be prevented. Like almost every other parliamentarian political writer, Rutherford was determined to emphasise that if kings, like parents, masters, husbands, lords, teachers or ships' pilots, were to betray their trust, then they could be resisted. The power by which a king commanded unjust things was a sinful and usurped power, not a power ordained of God. King Charles' advancing of prelates to political power, promotion of Arminianism and persecution of puritans was to be regarded as a terror to good works and an encouragement to evil. There was an important distinction to be made between the power of the king personally and the rightful power vested in his crown and royal office. Subjection to the royal power was required under the terms of the fifth commandment and Romans xiii, but this law did not disallow resistance to an individual king who sinfully exceeded or abused his royal authority. Rutherford quoted Knox's History of Scotland on the distinction between the authority, which was God's ordinance, and the person placed in authority who was human, sinful, fallible, and liable to offend. Also, since self-preservation was natural to an individual man, it was surely natural to the country too. The parliaments of England and Scotland were entitled to resist the king's private will as a man. Biblical examples of the lawfulness of defensive arms, including the people's rescue of

Jonathan from Saul, were mentioned as being comparable to the covenant of the parliaments of the two kingdoms to rescue thousands of innocent people from the swords of Irish and English Roman catholics.³⁷

In any country the subordinate office-holders, or inferiour magistrates, were, just as much as the king, powers ordained of God according to the terms of Romans xiii,1-4. To resist the lawful command of an inferior magistrate was a resisting of God's ordinance and a breach of the fifth commandment, just as much as disobedience of parents. Consequently it was as much a sin to resist a lawful order of parliament as it was to resist a lawful command of the king. Answering an argument of Edward Symmons that an inferior magistrate was a magistrate by the grace of the king, Rutherford asserted that even those appointed by the king still derived their power from God. They were ministers of the kingdom, not of the king. Also, many inferior magistrates were constituted by the people, as in the case of provosts, mayors, and such like officials.³⁸ Turning to the Scottish parliament specifically, he stated that it was part of the doctrine of the Church of Scotland authorized by James VI and parliament in 1567 that the repression of tyranny and the defence of the oppressed were good works. The honouring of parents, ordered in the fifth commandment, also meant all inferior magistrates as well as the king, and especially the members and lords of parliament were intended, so that

To resist superiour powers, and so the Estates of Parliament, as the Cavaliers of Scotland doe, is resistance forbidden, Romans 13.1. 39

Duty towards the king was to his royal office, and the lawful exercise of it. It was unreasonable to think that God required people to help a king induced by a wicked council to do tyrannical acts, and he should, on the contrary, be denied help in such cases. The fact that in important acts and foreign treaties the Scottish parliament had appended their seal along with the king's great seal was, according to

Rutherford, an undeniable argument that the king was a limited ruler and that the parliament was obliged to resist the king, even by force of arms, if he broke these treaties, yet they would not by so doing break their allegiance. Parliament had no duty to give the king subsidies as a regular tribute, but only occasionally, in times of special necessity. The Scottish parliaments regulated, limited, and set bounds to the monarch's power.

A historical digression towards the end of Lex Rex aimed to prove by precedents that Scottish parliaments were consortes imperii, having had authority with, and above, the king. To this end, numerous examples of the power of the estates of early Scottish kings (along with some sixteenth century examples) were given. In particular the claim by James VI and I, in his book Basilikon Doron, that Fergus, the first king of Scots (c.A.D.500) was a conqueror, came under attack. Buchanan, Major, Boethius and Hollinshed were cited as having held that Fergus had been freely elected by the estates. When he died the estates convened without any king calling them (particularly mentioned by Rutherford because the covenanters' Scottish parliament of 1640 had reconvened without royal authority), and made it a fundamental law

That when the Kings Children were minores, any
of the Fergusian Race might be chosen to Reigne ...

thus, placing the choice of king, in such cases, with the estates, regardless of hereditary succession.⁴⁰ (This remark alludes to the practice of tanistry, whereby succession to the Scottish throne by collateral relatives of the deceased ruler was accepted, particularly in cases when the late king's son was very young, or otherwise unsuitable). Antiquarian precedents of this type were apparently considered important by both sides in both kingdoms during the civil war. Although Scots in the seventeenth century were (as is emphasised in Chapter II above) generally firm monarchists, it may be speculated that educated men, impressed by historical precedent and aware of tanistry (in that line of over a hundred Scottish kings which was a source of such great pride), need not have

felt themselves obliged to uphold a strict, direct, hereditary succession to the throne.

Rutherford knew of the royalist argument that the king's power of life and death (in the execution of offenders) could not be derived from the people's consent, because if the people gave to their ruler the right to execute them it would have been suicidal and therefore contrary to the laws of God and nature. From a royalist point of view this issue was evidence that the essence of the royal authority was derived not from the people, but from God, whether or not popular consent was also understood to be involved in particular cases. A different approach was to be found in Lex Rex, where it was stated that the power of life and death was given not only to the king, but also to other magistrates, judges, and even to a single private individual in the just defence of his own life. To argue that the right of self-preservation could not be surrendered without touching upon the sin of suicide, was really to admit that any community must have a natural right of resistance to tyrannical rulers:

no King, no Civill power can take away Natures
birthright of self-defence from any man, or a
community of men.

While believing that the people had made over to the king the power of governing, protecting and defending themselves, Rutherford added one qualification:

I except the power of selfe preservation, which
people can no more make away ... than the liberty
of eating, drinking, sleeping; and this the
people cannot resume, except in case of the Kings
Tyranny.....

41

He did not mean to allow, or encourage, resistance on the slightest pretext, or least provocation, but emphasised the opposite, i.e., that one or two acts of transgression or tyranny could not cause a king to lose his royal authority, and that it had to be

such a breach of the Royall Covenant, as maketh the
King no King, that annulleth the Royall Covenant ...

A king was not, however, entitled to obedience to even one unlawful action, albeit such an untypical event that there was no question of it having undermined his authority in general.⁴²

Rutherford would thus have agreed with the opinion given by John Locke in the second of his Two Treatises of Government (1690) that such revolutions happen not upon every little mismanagement of public affairs but only if a long train of abuses, prevarications, and artifices, all tending the same way, reveal to the people a design of tyranny subversive of the ends for which government was first instituted. Did Rutherford believe that Charles I had so contravened his "royall covenant" as to have, by the terms of this theory, deposed himself? He certainly opposed the trial and execution of Charles in 1649, although this opposition presumably owed much to the knowledge that the king's removal meant the destruction of the hope of concluding with him a peace settlement introducing a presbyterian uniformity in religion. In fact, the question is only hypothetical. Rutherford did not have to decide whether the deposition of Charles was justifiable, for no such deposition ever took place. The king was executed while still king (a fact not only acknowledged, but emphasised by the regicides), and then monarchy was abolished.

An important aspect of Lex Rex is the body of arguments which attack the patriarchal type of monarchist theory so evident in Maxwell's Sacro-sancta regum majestas. The ultra-monarchists' misleading metaphors were an obvious initial target. In particular, the king was often described as the head of the body politic, with the added observation that the head of a real, natural body was not made head by the consent of the limbs. Rutherford thought there was no validity in adding this analogy to the metaphor and he concluded that Ferne, Symmons, and Maxwell, the three leading royalists writers, "do but dream" in using it to argue that the limbs may not resist the head in a political body. He also declared that the king was only metaphorically the head of a family, and

did not really have a status analogous to that of a father. Household and family government differed from that of monarchy, and the difference was not only in the numbers of persons ruled. He first pointed out that, inconvenient though it might be for patriarchalist theory, the mother had a parental authority as well as the father, as the fifth commandment proved in ordering that both father and mother be obeyed. Secondly, it was obvious that although the government of the family was natural, necessary and universal, monarchical government was none of these things, for human life could exist without it. Families arose from natural instincts, but monarchy came from choice or selection because it was only one of several forms of government which could equally well be chosen (aristocracy, democracy, or a mixture of forms).⁴³ It was, of course, this type of criticism which made it essential to the patriarchal case that monarchy be proved the best, most natural, and divinely approved form of government. If the analogy of political authority with paternal authority was to be convincing, then monarchy had to be the natural, proper kind of government, not just one of several forms.

To Rutherford,

a fatherly power of parents over their families,
and a politick power of a magistrate over many
families, are powers different in nature.

Fatherly power was founded on the law of nature, but royal power stemmed from the positive law of particular states, as did aristocracy or democracy. Fatherly power was not in any case absolute, otherwise it would be permissible for a father to murder his children and yet not be liable to punishment by the magistrates. God had given the power of life and death to kings and judges, not to fathers of families. Far from resembling monarchy, the government of families, being jointly in husband and wife according to the fifth commandment, was more like an aristocracy than a monarchy. In early times multitudes of families dwelling together could be regarded as nearer to aristocracy than to monarchy. Where a king was appointed, he must be constituted and approved by his people,

but no such act was required of children to make a father, and so here again there was a check to the comparison.⁴⁴

If "man had never fallen in sinne", then political government would not exist, since the evils it was designed to restrain would not exist, and "there should have been no Government but these of fathers and children, husband and wife". Political government was not a natural thing because it had only come about because of man's original sin. Although political government was necessary to humanity in its fallen and sinful condition, that government need not take the form of monarchy:

nature doth not ascertain us there must be Kings to the worlds end; because the essence of Governours is kept safe in Aristocracie and Democracie, though there were no Kings. 45

Samuel Rutherford found no warrant for royal prerogative powers in the Bible. A king was entitled to exercise the power of granting mercy, although he did so not because of the prerogative, but because it was allowed according to the need for the true intent of the law sometimes to override the letter of the law. A discretionary power of this kind was necessary and justifiable, but, as two analogies beloved of parliamentarians illustrated,

Surely the power or Sea-Prerogative of a sleeper or mad Pilot to split the ship on a rock, as I conceive, is limited by the Passengers. Suppose a father, in a distemper, would set his own house on fire, and burne himselfe and his ten sonnes; I conceive, his Fatherly prerogative ... should not be looked to in this; but they may binde him. 46

Following the opinion of Henry Parker, in his Observations upon some of his Majesties late Answers and Expresses (1642), Rutherford wrote that the king was not a father to the whole collective body of society, but rather was "son to them, and they his maker".⁴⁷ A king was inferior to his people, for although he commanded, and had an executive power of law over them, they still had the "fountain power" above him, because

they made him king, and in God's intention he was given as king for their good. While giving the king a "politique power for their own safety", they kept a "naturall power" to themselves, and it had to be conserved. Their covenant was not broken when this natural power of self-preservation was activated. Even if the people tried to surrender that power by swearing that even although the king should kill them all, they would neither resist him nor defend their own lives, such an oath would be contrary to the sixth commandment's requirement of natural self-preservation. It would be intrinsically sinful, and would not oblige the conscience because "it's all one to swears to non-self-preservation, as to swears to self-murder."⁴⁸ Non-resistance was here interpreted as, in effect, a form of suicide.

All authority given by the people to the king was given on condition that it should be used for the safety of the people. In acts of injustice so tyrannical as to be inconsistent with the fiduciary trust placed in him, he was accountable to the parliament, which represented the people.⁴⁹ Absolute unlimited monarchy was the worst form of government. One man unlimited could more easily err and commit violent acts of injustice than could a number of rulers restrained by law. Good government was made impossible when the holder of the supreme power was an ungodly man. The claim that absolute monarchy was compatible to nature, as seen in the behaviour of animals, insects and plants, was denied:

Government of sinlesse nature void of reason, as in birds, bees, is weak to conclude politique civil government amongst men in sin, and especially absolute government, a King-Bee is not absolute, nor a King-Eagle, if either destroy its fellowes, by nature all rise and destroy their King. 50

Each form of government, taking the classical division into three forms, had some feature in which it was best: monarchy was

honourable and glorious-like before men. Aristocracie for counsell is surest. Democracie for liberty, and

possibly riches and gaine, best. Monarchy obtaineth its end with more conveniency ... Because the ship is easilier brought to land, when one sitteth at the helme, than when ten move the helme. 51

To Rutherford the best form of government, combining the good of all three, was a limited and mixed monarchy with parliaments, such as existed in Scotland and England.

Near the end of Lex Rex the question of the relationship of church and state is touched on briefly, in a denial of the accusation that presbyterians wished to meddle in civil affairs. It was only "with publike scandals that offendeth in Christ's Kingdome" that the clergy were interested, and, in the past,

The Ministers of Christ in Scotland, had never a contest with King James (VI), but for his sinnes, and his conniving with Papists, and his introducing Bishops, the usher of the Pope.

Rutherford wrote of the clergy that

None ... give any coercive Civill power to the Church, over either Kings, or any other, it is Ecclesiasticall; a power to rebuke and censure was never civill. 52

In a later book he wrote of the civil magistrate's duty to command church-going, because the omission of it "hurts the societie whereof God hath made him a civill and politicke head".⁵³ Rutherford was opposed to religious toleration, and his opinions, and those of other presbyterians, are considered in the next chapter.

Rutherford's belief in a presbyterian religious uniformity and in the rule of law (both human and divine law) stemmed from his assumption that God's word, the Bible, was the ultimate authority for mankind, and, moreover, that its meaning was able to be interpreted rationally by divines to the satisfaction of any reasonable and godly man or woman. A diversity of interpretations could only be the result of error, vanity or wickedness arising chiefly from the sinfulness of human nature. His case against absolutism was a rational one, although his

scriptural evidence was of paramount importance to him. Natural laws were logically God's laws, because God was the author of nature. One such natural law was that of self-preservation, and it was incompatible with the notion of total submission to an absolute monarch. Even royalists felt obliged to agree with this proposition in one sense, viz. if an individual were suddenly, unjustly, and violently attacked by the king in person, or one of his agents, then the use of force in self-defence was allowed. Rutherford argued that a nation, represented by its parliament, had the same right of self-defence if a monarch tried to destroy it by attacking its religion, laws, and liberties. He also emphasised that absolute power, precisely because it was absolute, meant, sooner or later, a power to do evil. If power were to be used for its natural end, the safety of the people, then it did not require to be unlimited and above the law. A legal, limited monarch ruling with this end guiding his actions would not be seriously thwarted by his subjects, since they, or their representative body, were rational beings and would choose to submit to a government directed towards their common good. If arbitrary, absolute power were desired by a ruler it could only be for selfish, destructive ends, manifestly opposed to the common good:

There is no shadow of power, to doe ill, in God:
And absolute power is, essentially, a power to do
without or above Law, and a power to doe ill, to
destroy: and so it cannot come from God, as a Morall
power, by institution 54

Rutherford's Lex Rex was the fullest justification of the parliamentary and covenanter cause in both kingdoms. It provided a more elaborate statement of political philosophy than the many comparatively short pamphlets of the civil war period. Rutherford provided a defence of political liberty, and of the limitation of government power, based on universal, rational principles. To the modern reader it is, however, a long and often repetitive treatise, with a great many biblical allusions and references. It is therefore to be hoped that the foregoing explanation of Lex Rex may, in some small measure, encourage a greater recognition of the book's significance.

CHAPTER V

PRESBYTERIAN POLITICS, 1646-49

(i) Church, State and Army

In the year 1646 the first civil war ended and the English Parliament finally approved the setting up of a presbyterian system of church government. These two events largely determined the principal subjects of political controversy in the following two years. First, the end of the war made the position of the victorious Army uncertain and parliamentary plans to demobilise and disperse most of the forces brought a crisis in 1647. In that year the army seized the king, entered London, and impeached and excluded eleven leading presbyterian members of parliament. Secondly, the establishment of a presbyterian church was, in spite of widespread adoption of presbyterianism, permanently undermined through lack of support from the civil authorities,¹ which were anxious to avoid making their own clergy as powerful as the Scottish clergy. Since at least 1644 the parliamentarian side had been divided between presbyterians and independents, the former desiring a national presbyterian system with enforced religious uniformity while the latter demanded a measure of religious toleration and opposed the presbyterian claim to an ecclesiastical monopoly.

The use of the term "presbyterian" in the period 1646-48 can raise some difficulties. These have been highlighted in a well-known article by Professor J.H. Hexter.² A chief difficulty is that with the adoption of presbyterianism as the official established religion in many towns and counties from 1646, a great many persons now became officially presbyterian church members, even although they might not be partisans of presbyterian doctrine or of a presbyterian monopoly. If the local, or only accessible, churches were presbyterian in a particular district, then people there had little choice but to be automatically presbyterians. Also, the gentry and local notables might often consider it expedient or desirable to be

members of the established church, which was now presbyterian. Clearly, not everyone who was a presbyterian in terms of church membership was necessarily also a presbyterian in the more political sense which is to be considered here. There can be no precise political division into either the presbyterian or independent category in politics. In an era of instability, trimmers naturally abounded. For the purposes of this, and the next three chapters, "presbyterians", in political philosophy, are the old constitutionalists who adhered firmly to the cause of constitutional monarchy and the mixed government of king, lords and commons, and who also opposed the toleration of different religious sects in the state. They may be called presbyterian constitutionalists. They were rigid opponents of the interference of the Army in politics and claimed to adhere strictly to the original principles of the parliamentary cause in the first civil war. Colonel Edward Massie, one of the eleven presbyterian leaders impeached by the army in 1647, later wrote that in all his service, as a soldier and an M.P., he had never intended the least evil towards the king,

but engaged in the Parliaments service with a cleere intention and sincere heart according to the Parliaments Protestations, Declarations, Solemn League and Covenant, for the good of the KING and His Posterity, the Parliament and their Priviledges, the Establishment of the Lawes of the Land, and this poore distressed and oppressed Kingdome, for its peace and welfare.

Another of the eleven members, Sir William Waller, former commander-in-chief of the parliamentary forces in the West of England, wrote:

I have walked in the singleness and integrity of mine heart, according to the principles upon which I first engaged. 3

Denzil Holles, also one of the eleven impeached members, bemoaned the power of the Army:

this broad spreading tree, the Army; a dismal cypress, the shadow and droppings whereof were so pernicious as to darken all the comfortable beams of our sunshine of Peace, and to suffer no good thing to prosper near it. 4

In 1647 two proposals for a new constitution emanated from the

Army, The Heads of the Proposals, agreed by Sir Thomas Fairfax and the army leadership's Council, and the Levellers' first Agreement of the People. Both advocated religious toleration, and the latter proposed a democratically-elected unicameral legislature. The presbyterian party viewed such documents with dismay. The parliamentary cause in the civil war had been for the preservation of the English constitution, not its replacement. Religious toleration was contrary to the Solemn League and Covenant and, moreover, was politically undesirable and allegedly subversive of civil as well as clerical authority. In 1647 William Prynne predicted the Army coup d'état and regicide of eighteen months later. He realised that the Army would not allow the mainly presbyterian parliament to conclude a peace treaty with the king, but would seek to impose a settlement of its own:

... not only the XI accused Members, but all Presbyterians and other Members in both Houses, opposite to the Armies proceedings or designs in any particular, may be cast out ... And when both Houses are thus fully purged, That then King Charls, their Prisoner ... be forthwith articled against, impeached, arraigned, deposed, executed, and his posterity dis-inherited by the Parliament ... then the ... House of Peers perpetually abolished, and a new-model'd Parliament ... constituted 5

In 1645 a pamphlet called The City Alarum referred to the "imbittered zeale one against the other" of presbyterians and independents. George Walker, a London minister, complained about the misrepresentation of the presbyterians by their enemies, who alleged that if ever the ministers gained a full control of ecclesiastical discipline

they will tyrannize, and Lord it over their flocks, and the same spirit of pride, envy, covetousness error and cruelty, will worke in them, which ruled in the Prelates.

Preaching before the Commons in the spring of 1647, Thomas Hodges, minister of Kensington, regretted that it was, a time of Liberty, such a season wherein the reines of Government are laid too loosely upon the Peoples neck

and that England was in danger of becoming "an Amsterdam of Mixtures, an Island of Monsters?".⁶

Parliament, like the clergy, was divided over the presbyterian versus independent controversy. Historians have tended to follow the violently anti-clerical writer Clement Walker in seeing the presbyterian and independent factions as malevolent minorities, with the main body of M.P.s but weakly aligned (if aligned at all) to either party. Walker thought that whichever faction predominated, its members would make themselves perpetual dictators and establish a tyrannical oligarchy. The present writer prefers the view of the poet George Wither who, in retrospect, rejected Walker's opinion and declared:

I am certain there was not one then in the House,
but professed himself either a Presbyterian, or
Independent; though some in a more rigid, others
in a more moderate way.

7

It is very easy to underrate the partisanship of M.P.s and to suppose that because they were not organised into parties, they did not have strong opinions. It is very probable that, for the most part, M.P.s knew quite well whether they were presbyterian or independent, even if historians have felt uncertain about the situation.

Royalists like John Maxwell and John Bramhall were still able, from a distance, to denounce the idea of an established presbyterian church in England. The incompatibility of the subject's liberty with tyrannical presbyterianism was alleged by Maxwell. He declared that presbyterians held sovereignty in a king to be originally and properly derived from the community and held only by way of a trust, so that it remained still in the people because the king had no greater power than the fundamental constitution allowed him. Defensive war was legal against a bad or misled ruler. Bramhall warned that the nobility and gentry would be abused by presbyterians, along with the monarchy "They shall be subjected to the censures of a raw heady novice, and a few ignorant artificers."

Domineering presbyterians would, he wrote, interfere and seek to predominate over civil authority at all levels:

When Sovereigns are made but accessaries and inferiours doe become principals, when stronger obligations are devised, than those of a subject to his Sovereign, it is time for the Magistrate to look to himself, these are prognosticks of ensuing storms, the avant curriers of seditious tumults. When supremacy lights into strange and obscure hands, it can hardly contain itself within any bounds. Before our Disciplinarians be well warmed in their Ecclesiastical Supremacy ... they have already made a good progresse in the invasion of the temporal supremacy also. 8

The tract called The Trojan Horse of the Presbyteriall Government Unbowelled (1646), attributed to the independent Henry Parker, concurred with the royalists in believing presbyterian church government "pernicious to Civill power", and agreed that if ignorant men were appointed lay elders they would act with malice, envy and covetousness, the clergy having the power to incite the multitude against any who opposed them, but he also warned of an opposite danger. If nobles and gentry were to predominate among lay elders, they would use their power to "enthrall their Tenants, Dependents, and Inferiours" and reduce such ranks of men in England to the same slavery they were under in Scotland.⁹

The doctrine of presbyterians made them vulnerable to this accusation that their form of church organisation was a threat to civil authority. In particular the doctrine of two kingdoms, church and state, created an unavoidable duality and implied an inevitable rivalry. The concept was emphasised by George Gillespie in a book published in 1646, Aarons Rod Blossoming:

Jesus Christ is a king and hath a kingdome and government in his Church distinct from the kingdoms of this world and from the civil government

In the same year a tract issued by the London presbyterian clergy denied that the church could be identified with the

civil state, and asserted its distinctive and co-ordinate status (like Gillespie they held it to be "coordinate with the civil", and thus reiterated that same doctrine which, fervently expounded by the Scottish theologian Andrew Melville (1545-1622), had caused James VI and I to judge presbyterianism to be incompatible with monarchy).¹⁰ Such a theory seemed to many people to allow clerical interference in nearly all aspects of politics and government. It would not bring the harmony and stability which would otherwise be a major advantage of a national established church. Englishmen could also point out the power of the clergy in presbyterian Scotland, and take it as a warning for their own country.

Presbyterians were anxious to state that their doctrine was not incompatible with civil authority: In 1644 the commissioners of the General Assembly of the Scottish Church asserted that the powers of civil and church government were set down in the bible and could not therefore be inconsistent; in fact presbyterianism was

the middle way betwixt Popish and prelaticall tyrannie, and Brownisticall and popular Anarchie.

The first meeting of the Lancashire presbyterian Provincial Synod, in November 1646, concurred, calling presbyterianism "a golden mean", agreeable to God's word and also "the most suitable to the civill government of this kingdome". In another vindication, issued in May 1648, the Scottish church denied charges of clerical interference and declared,

The Episcopall disease of meddling with Civill affairs we trust through Gods mercy neither hath nor shall have any place among the Ministry of this Kingdom, who by their Nationall Covenant abjured the Civill places and power of Kirk-men. 11

In Robert Baillie's Historical Vindication of the Government of the Church of Scotland (1646), he claimed that the Church of Scotland did not meddle with the subject's liberty or goods, that the General Assembly exercised no more power than the king and the laws authorized, and that parity among ministers was "farre from any Democracy" for they were under the jurisdiction

of the Assembly, which was given no power to interfere with temporal things. It had been the episcopalians who had wanted to subject England to a tyrannical absolute monarchy, and had advanced clergymen to the high offices of state before the civil war. In a later publication, Baillie claimed that the presbyterianism was not harmful to any rank of society, nobles, gentry and burgesses being represented in the synods, from which there was a final appeal to the General Assembly

which consists of as many Burgesses and more Gentlemen from every shire of the Kingdome: beside the prime Nobility and choisest Ministry of the land

along with the king or his commissioner presiding.¹²

Christopher Hudson, puritan lecturer at Preston, Lancashire in the 1630's and early 1640's, declared that

magistracy and ministry as the elm and the vine,
the garden and the bees, flourish pleasantly
together, or else decay and wither together,

and Christopher Love, in a pamphlet of 1647 opined "Magistrates never flourish more, than where the Presbyteriall government was established", and in particular he emphasised that

Presbyterians doe unanimously acknowledge the censures of the Church are onely spirituall, they reach not the outward man in estate, liberty or life; that belongs onely to the civil Magistrate,

a favourable contrast with episcopalianism:

The Prelates had costly courts to picke the purse, and crush the person of him that came under their clutches; the Presbyterians desire none such.

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(The ecclesiastical courts of the Anglican church were notorious for their exorbitant fines and fees extracted for a wide range of offences considered to fall within the ecclesiastical jurisdiction). Presbyterians were not seeking important state appointments, like those occupied by prelates in England and Scotland before the civil war, but they could be accused of laying hands upon political power by other means, by stretching to a maximum the sphere of ecclesiastical government

and thereby enforcing a corresponding contraction of the jurisdiction of the civil authorities. By their assertion of the duality of society, they were automatically insisting on a great limitation to the extent of (civil) government power in the country. Opponents justifiably claimed that the authority of the church could be as oppressive as that of the ruler in the lives of the people, but in terms of political theory it must be concluded that presbyterianism was fundamentally incompatible with absolutism and with the Hobbesian identification of society with the state.

Presbyterian writers and preachers launched a massive counter-attack against the independents in the mid 1640's. Independents were denounced as heretics whose doctrines were not only subversive of religion, but also of civil authority. The most famous attacker of independency in this period was Thomas Edwards, author of the massive book Gangraena, published in three parts in 1646. He portrayed sectaries as opposing all authority, including civil government, and compared them to usurping German Anabaptists of Munster, during the sixteenth century, whose leaders John of Leyden and Thomas Muntzer allegedly found contemporary successors in John Lilburne and William Dell, two leading advocates of toleration in England.¹⁴ The pamphlet called A Sectary Dissected (1647) repeated the comparison of Lilburne with John of Leyden, king of Munster, and asked whether the licentious liberty required by independents did not constitute as arbitrary a form of government as any tyranny. The mixed government of king, lords and commons was a mean between these extremes, avoiding the abuse of prerogative and of liberty. The independents were too hostile to civil authority:

They are not satisfied that Controversies in Religion can be trusted to the compulsive regulation of any ... Must nothing then be done in a State, 'til every mutineer be pleased to be satisfied, no law passe till every Cobler be first made to comprehend the reasons which urg'd the enacting? 15

Presbyterians were anxious to emphasise that independency, not presbyterianism, was incompatible with order and a stable

civil government. Numerous sermons and pamphlets hammered home this view: Alexander Forbes' Anatomy of Independency (1644) thought autonomous congregations must clash with civil government and were "a Trumpet of defiance, against whatsoever power, spirituall or civill"; Ephraim Pagitt's Heresiography of 1647 stated that some independents were for the abolition of all government, denying any power over the godly, while others denied the lawfulness of government in general; In Light for Smoke (1647), John Ley opined that freedom to refuse church-government was a subjection of supreme authority in the state "to the popular liberty".¹⁶ Distinguished ministers preaching before the House of Commons did not neglect the opportunity to pursue this theme: Obadiah Sedgwick (in January 1647) told them that a common heretical independent position was "That Civill Magistracy is Antichristian; and but an usurpation"; Richard Vines (March 1647) warned that heretics disputing the scriptures "will batter and overthrow all Magistracy, or any government"; Thomas Hodges, minister at Kensington, told the M.P.s (on the same day as Vines) that heresy could now "spread apace and flourish".¹⁷

The idea of religious toleration shocked most of the presbyterian clergy, and was opposed by the presbyterian party in parliament. The London ministers thought it an opening of "the very floodgates to all impiety and prophaneness ...", liable to cause God to withdraw his favour from England, while Thomas Edwards, John Arrowsmith, Sir William Waller, and the Norfolk rector Thomas Thorowgood (before the Commons), all agreed that the toleration of many religions would eventually destroy all religion.¹⁸ John Clarke, pastor of Fiskerton church near Lincoln, saw that many people fell victim to the

overflowing jaundice of unsound opinions ... but they are unstable souls that are gulled and beguiled by mountebank teachers, quacsalving sectaries ...

and John Brinsley, a minister at Great Yarmouth, asked,

if a bare connivance at these divisions have already occasioned such a combustion what do we thinke would a Toleration do?

James Cranford, pastor of Christopher Le Stocks, London, denied that an imposed uniformity meant persecution:

All cry out, Persecution, persecution. But that suffering which is not for righteousness sake is not persecution.

20

Presbyterians did not consider that the interpretation of God's word was liable to be a legitimate subject for differences of opinion. Theology was a science and divines did not consider that lay consciences had any business to dispute their learned knowledge. After all, it was a basic tenet of calvinism that the word of God was the supreme guide for human conduct, and the individual conscience could not claim supremacy too. Samuel Rutherford wrote: "the word of God, not every mans conscience is the obliging rule of his actions". Thomas Watson, a leading London presbyterian preached:

If Conscience goes against the Word, ... Get Conscience better informed. The Conscience of a sinner is defiled, 1.Tit.15. Conscience being defiled, may erre; Conscience erring, may suggest that which is sinfull. There is nothing can bind a man to sin.

The same view had earlier been expressed by the anonymous author of the pamphlet Anti-Toleration (1646).²¹ He also agreed with the opinion of Watson and Rutherford that Roman Catholics, and indeed believers in any religion on earth, could claim toleration on the grounds of conscience, just as plausibly as the independent sectaries.²² Rutherford also asked another important question of the advocates of toleration. If the plea of conscience were to prevent the extirpation of heresies contrary to God's word,

then by what authority or calling did the Parliament cast out old Usurpers, the Prelates, casheire the Service booke, Ceremonies, Alters, and Crucifixes? ... is not here yet the Prelates conscience squeezed to the blood? is not the highest violence done to the consciences of high alter men and adorers of crucifixes? Why to them more than to Familists? 23

The disadvantage of toleration carried to its logical conclusion would be that, on the grounds of freedom of conscience, eventually anything would be permitted. Millions of souls would be eternally damned if toleration were allowed: the

murder of souls was worse than the murder of the body, which the law punished, and the ultimate aim of the magistrate's calling, salus populi, applied to the souls of the people, not merely their lives and property.²⁴

The first civil war had brought the English parliamentarians into alliance with Scotland, where presbyterianism was the established form of church government and dominated many aspects of social and political life. Attitudes to the Scots were affected by attitudes towards their national religion. Many English presbyterians hesitated to claim for their church the domineering role of its triumphant northern counterpart. Englishmen opposed to presbyterianism could point to the Scottish example as a warning. Their hand was strengthened when in 1648 the Scots, in spite of some clerical misgivings, supported a royalist invasion of England, the price of this military alliance having been the king's "Engagement" to enforce presbyterianism in England and give the Scots freedom of trade with their southern neighbour. Scottish denunciations of the English independents could be regarded as an unwarranted interference in English affairs. The Scots' claim that both kingdoms were perpetually bound by the Solemn League and Covenant of 1643, and therefore to a uniformity of religion, ensured their opposition to the religious toleration allowed by the predominantly independent New Model Army. The Scots' declared objectives were: to establish presbyterian religious uniformity in both realms; to rescue the king from his "base imprisonment"; to free the English parliament from the influence of the army and allow them to conclude a treaty with the king; and to disband the "Army of Sectaries", so destroying the power of independents, and also releasing England from the burden of free quarter and taxation needed for the military forces.²⁵ The Scottish clergy thundered out denunciations of the sectaries and emphasised the perpetual nature of the covenant between England and Scotland.²⁶ There was a fear that the religious and political confusion of England might spread to the northern realm, or even that the New Model Army might invade Scotland.²⁷ Even those Scottish presbyterians who regretted their army's

invasion of England in the year 1648 were still totally opposed to the political power of the New Model Army in England, and to the toleration it allowed.²⁸

The leading English presbyterians, notably Sir William Waller, Denzil Holles, and Thomas Edwards, expressed great admiration and praise for the fidelity of the Scots to the principles of the Solemn League and Covenant, and also advocated a strong Anglo-Scottish unity, with Waller even regarding actual unification as an ideal end:

So much am I for it, that in my private thoughts,
I could wish the wood of Judah, and the wood of
Joseph, England and Scotland, both concorporated
and substantiated together, in one tree, that they
might be no more several people, nor distinct
kingdoms.

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English independent writers, by contrast, used English distrust of the Scots to promote opposition to presbyterians in England too.³⁰

The victory of the New Model Army in the short second civil war of 1648, against the Scottish and royalist alliance, was a grave setback to those who had hoped to see a reduction in its political power and capacity to overawe the parliament. It should not, of course, be forgotten that some sections of the army were pro-presbyterian,³¹ but these were in a minority compared with the independents. As mentioned already, presbyterians like Prynne and Holles had perceived the dangers of increasing military influence in politics, and in the search for final peace settlement with the king. Nathaniel Ward (1578-1652), minister at Shenfield, Essex, was another notable critic of the Army in this period. Ward had spent twelve years in Massachusetts, where he helped to write the code of laws known as the "Body of Liberties". His political philosophy eschewed the extremes of "unlimited prerogatives" in a ruler and "unbounded Liberties" of "over-franchized people": a king should rule within, not above, the law, and all moral laws, royal prerogatives and popular liberties were to be measured out by God's word, according to timeless concepts of

justice and equity, reason reigning supreme over all hereditary successions and ancient conquests.³² Scripture and reason harmonised because both had the same divine author. In his two pamphlets particularly directed against the army, A Religious Retreat Sounded to a Religious Army and A Word to Mr. Peters and Two Words for the Parliament and Kingdom (both published in 1647 - Hugh Peters was a leading independent, and an army chaplain), Ward emphatically condemned the refusal to disband: by propounding politics with sword in hand they threatened the total destruction of parliament's freedom; ill-will and expense resulted from the free-quartering of soldiers, and officers' retinues, and food was scarcer because of the army's consumption; trade was in decay; husbandmen in many places had been deprived of the horses and oxen they used to till the earth. Yet Cromwell seemed

so sleek that nothing can stick on him ... but there is one blot ... viz. The falsifying of his promise solemnly made many times and oft that the Army should disband, and lay down their Arms at the Parliament doores when ever they were commanded ... 33

Ward thrust at the independents' vilification of the Scots:

when you speak of Scotland, you fling dirt in their faces, insinuating into peoples minds as if there were cause of fear, that Scotland laboured to be Englands Masters and Commanders; what ever you deem of them, I do imagine this, that had it not been for them, either Spain or Rome had likely been our Masters and Commanders before this time: as you fear the Scots should be our Masters so I fear they should have been worse than slaves and servants might some of you have had your wils. I see evidently that you are an Anti-Scotist;..for you cast dirt upon the face of that faithful Nation. 34

In spite of the presbyterians' energetic use of the press and the pulpit, the strength of the undefeated army could not be restrained. Prynne, and others, had read aright the portends of 1647, but they could not prevent the military coup d'état which took place in the winter of 1648-49.

(ii) The revolution of 1648-49

A revolution took place in England during the winter of 1648-49. When the predominantly presbyterian House of Commons was about to conclude a Treaty with Charles I, now at Newport, the Army intervened. On 6th December, 1648, soldiers commanded by Colonel Pride arrested forty-five M.P.s at Westminster, and excluded ninety-six others from sitting in Parliament.³⁵ The survivors of Pride's Purge, a Commons meeting with the presbyterian majority eliminated, were known as the Rump. The Newport terms of settlement with Charles would have established presbyterianism as the national church for a period of three years, and given parliament control of the militia for ten years and the authority to appoint all the great officers of state. Instead of that, the Rump approved the trial of the king, which took place in January 1649, with Charles's execution taking place on the 30th of the month. Shortly afterwards both the monarchy and the House of Lords were declared to have been abolished.

This revolution, particularly the king's trial and execution, was vehemently opposed by presbyterians. They could take no action to prevent it, for the Army's strength could not be challenged, but in speeches, sermons and pamphlets the presbyterians' outrage and dismay over the military coup d'état was made known. Groups of clergymen, particularly in London, published protests,³⁶ as did the representatives of the Scottish Kirk.³⁷ Prynne's pen was as energetic as ever,³⁸ but the two most notable statements of the presbyterian case at this time were written by individual ministers, John Gere and Christopher Love.

John Gere's Might Overcoming Right (1649), was written shortly before the death of its author, who wrote that he had served the cause of puritanism for thirty-six years. Gere's death was romantically ascribed to his grief at the death of Charles I,³⁹ and although the fact that he was apparently poverty-stricken⁴⁰ seems a more probable precipitant of his demise, his horror at the regicide was undoubtedly profound.

Christopher Love, author of the semi-anonymous A Modest and clear Vindication of the Serious Representation and late Vindication of the Ministers of London ... (1649), was eventually executed for treason by the Commonwealth regime, at Tower Hill on 22nd August, 1651, after alleged correspondence with the Scottish resbyterians in the cause of Charles II.

Opponents of Pride's Purge often compared it with Charles I's attempted arrest of the five members in January 1642, after which parliament had declared on 17th January 1642 that anyone trying to arrest or detain an M.P. was a public enemy of the commonwealth and was acting against the liberties of the subject.⁴¹ John Gere wrote that the Army was therefore a greater transgressor than the king since the arrest of M.P.'s was a breach of the privilege of parliament, which it was pledged to maintain.⁴² The army's commission, he wrote, had been to "remove evil Councillors from the King, and bringe him back to his Parliament",⁴³ not to cause the monarch to be tried and executed. Gere compared the army's challenging of parliament's decisions (i.e. to agree to a Treaty with Charles I) to a sheriff challenging a judge's ruling.⁴⁴ This comparison was quite a telling analogy, in view of the earlier popularity of the posse regni theory of the Army's role (see Chapter III above) during the first civil war. Christopher Love wrote that the Army laying hands on the parliament was no different from a servant violently laying hands on his master.⁴⁵ The Army, he declared "was raised for the defence of the Kings person (i.e. from evil counsellors), and they have destroyed his person".⁴⁶ Moreover, they had prevented a peaceable settlement to the kingdom's troubles. Love explained that the royalists and independents represented the two religious and constitutional extreme factions, while the godly presbyterian ministers (who had "still kept their first stedfastnesse ... as fixt and immoveable in their principles as the Steeples themselves."⁴⁷) opposed "Malignity" as well as "Heresie" and upheld the people's liberties⁴⁸ as well as the king's person and the parliament's privileges.

The Newport Treaty with the king which had been prevented

by the army's revolution, was praised by William Prynne as laying a foundation for the lawfulness of a defensive war by the authority of both Houses, which would be a great security for subjects, and an encouragement to them to adhere to the parliament in future times,⁴⁹ but this opportunity had been lost because of the army's intervention. He added that the Treaty would have been likely to have been kept, because both sides were weary of war and desired peace.⁵⁰ Geree wrote that the Treaty would have justified the parliament and army's part in the civil war and amounted to an admission by the king that his cavalier supporters had been in the wrong.⁵¹ Tyranny would have been prevented and the liberties of the people secured, bringing peace, safety and an end to the present troubles, while putting parliament in a position to preserve peace by acknowledging their right to control the militia. The king would have learned from experience and would not have had the will or the means to go back on his concessions.⁵² Geree believed there were redeeming features of Charles I's character which gave some cause for optimism that he would have kept the Treaty, but made it clear that there would in any case be adequate restraints on the king even if he would have sought to break it:

Which is most moving with me, his invincible patience, and tranquillity of Spirit in his sufferings. Noble natures that can beare adversity without fainting; can enjoy prosperity without revenging; revenging most haunts base and cowardly natures; But if he would he could not breake out, because by these concessions his hands are tyed; and by this recommendation the Parliament would be reinvested in the peoples affections, and any attempt of breach on the Kings part, would cary so much ill in the face of it, that the whole Nation would be ready to rise up, and plucke in pieces, whosoever should be supposed to be either Counsellors or Actors in such a breach of faith; and the Militia being in the Parliament's hands, such incendiaries might be easily crusht. 53.

One Army supporter, who declared himself not unsympathetic to "many honest Presbyterians", later expressed a view of the flaw in such an argument for the Treaty:

what great difference is there between binding a King hand and foot, whom they dare not otherwise trust ... and between his total ejection as a man perilous to sit in so high a place of Trust? Surely to me there doth appear no great difference ... unless it be ... that in the one, the Tyrant is unhorst, and in the other, he is bound legs and arms in the Saddle ... (however) if he get into the Saddle, he may possibly get some to loose him.

54

Although there may have been little difference between severe limitations and deposition, the fact is that Charles was never deposed, and it was not deposition which the Commonwealth's apologists had to justify. On the contrary, Charles was executed while he was still king, and the monarchy subsequently abolished, so that there was a great difference between the presbyterians and commonwealthsmen, because the latter accepted regicide and republicanism while the former emphatically did not.

A common point raised by those opposing Charles's execution was that it would be the first case of protestants killing their king and that protestants had always strongly condemned Jesuit and catholic justifications of assassination as an instrument of policy:

no Religion is more for not onely accepting, but exalting Governours in legall waies, than the religion of Protestants, even in case of difference of Religion, alwaies condemning the Jesuiticall Doctrine of deposing, or destroying Princes 55

Regicide was contrary, not only to the principles of the protestant religion, but also to the terms of the Solemn League and Covenant, the Oath of Allegiance, and Parliament's Protestation of May 5th 1641.⁵⁶ The Covenant had promised to preserve the person of the king, while bringing to justice his "evill instruments", and Christopher Love emphasised the fact that the leading pamphleteers who now sought to justify the regicide, John Goodwin and John Price, had in their earlier pamphlets, during the first civil war, stated that the king's life must be preserved from violence, and told parliamentary soldiers that they were fighting for the king, to remove him

from the hands of Malignants and reinstate him on the throne.⁵⁷
Now, however,

you that once utterd language of Loyalty ... can speak nothing but Levelling language now ... But I would ask you ... Who are the most competent judges to determine what is for the good ... of the people? if you say King and Parliament; why did you not acquiesce in their judgements, in their late transactions of the Treaty, tending to the settlement of the Kingdome? but if you say your Soveraign Lords the people, then why doe you not give them their power, and put it to the suffrages of all the People of this Nation, whether what the Parliament did in Treating with the King were for the hurt of the People; or whether what the Army did both against King and Parliament, bee not for the hurt and ruine of the whole; if you would leave them to bee Judges, there is a hundred to one that would give sentence to clear the Parliament and condemn the Army; 58

The very purpose of the parliament in promising in the Covenant of 1643 to preserve the king's person and authority had been to exhibit their loyalty and to deny that they had any intention to diminish the king's lawful power, even at a time when the king's person was so much at variance with his just authority that he was leading an army against his people. This statement was Love's answer to John Price's claim that the king's person had to be sacrificed to his just authority when the two were in competition. The king's person and authority were, in any case, only prevented from being reunited by the army, which stopped the Treaty between king and parliament:

The truth is, the Kings person, and the Armies designes stood both in competition; and therefore they must destroy the one to carry on the other. 59

The destruction of the king would seem to justify all the royalists' former accusations concerning the evil and disguised motives of the parliamentary side, and would make all the parliament's civil war declarations seem to have been false and hypocritical.

Love wrote that the House of Commons, even if free and full, unlike the Rump, had no power to take away the life of any man, much less the king. Since the Commons lacked the right to administer an oath, how could they take away a man's life, when the oaths of two or three witnesses were required to secure conviction on a capital offence?⁶¹ They had no power to set up a new court to secure the execution of anyone, let alone that of the king.⁶² Even setting aside the question of the illegality of such a court, the charges against Charles were patently nonsensical. There was no evidence that the king personally had ever murdered anyone, and if he was to be killed for those he slew in battle, then all the king's soldiers would have to be executed too.⁶³ There was a great difference between murder and the shedding of blood "in a Military way" in time of war.⁶⁴ The Army should take note that "To spill the blood of any (especially Royal blood), meerly out of a Political designe, is in the account of God murder".⁶⁵ According to Love, the Bible showed that although it was lawful for the servants of God to take up defensive arms to withstand the tyranny of their kings, it was not considered lawful to destroy their kings. David had therefore resisted Saul, even to the extent of taking up arms, but he had refrained from killing him. Similarly, when Saul wanted to kill Jonathan, the people rose up and rescued him, yet they refrained from laying violent hands on Saul himself.⁶⁶

In addition to all these considerations, Love reminded his readers that, whatever Charles I's alleged offences, the monarch was not England's alone to dispose of, because he was also King of Scotland and Ireland, and these realms had not been asked whether they wished their king to be killed.⁶⁷ This understatement was intended to highlight the overwhelming opposition to the king's trial and execution, shown by the Scots and Irish. Not only were they not consulted, they had, particularly the Scots, exhibited vehement hostility and total abhorrence over the proceedings against Charles.⁶⁸ The effect of the king's death, Prynne said, would be to make his son Prince Charles determined to seek revenge, and the Scots

and Irish, obliged by Covenant and Oath of Allegiance to protect the royal person, would help him to defeat Charles I's murderers by force of arms.⁶⁹ Not only would the king's son get help from Scotland and Ireland, but the recent Peace of Westphalia (1648) ending thirty years of international conflict, would release, for possible use by Prince Charles, the armies of mercenaries from the German wars.⁷⁰ (The weakness of this last argument was obviously the fact that young Charles would have had no means of paying such mercenaries, or of transporting them to Britain.)

The Army's justification of their coup d'état with the argument that it was a necessity, for the sake of the public good, was regarded by presbyterian writers as a dangerous political precedent. Prynne stated that the plea of necessity for the public good was a monster:

It layes a foundation for all the Tyranny villany and oppression that can be imagined, which the Levellers begin in some places to pursue, and the Army too This plea of necessity, if admitted, will be a perpetuall president from the Armies practice and rebellion, to justifie and encourage all kinds of factious and discontented people in all future ages, be they Papists, Malignants, Neuters, Jack Cades vulgar Rable, or Royalists and Cavaliers.

71

Christopher Love enquired whether, if the Army might be judges of necessity, though it was most inequitable for them to be judges in their own cause, then why might not any other twenty thousand men in the kingdom plead necessity to oppose the Army, as the Army had opposed Parliament.⁷² John Gere made a similar point when remarking upon the Army's plea of necessity, based on their own judgement of necessity:

But if necessity be a sufficient warrant to disturb Authority . . . and the Parties in whom Power is, be Judges of this necessity: By this any Party of Power may justifie themselves to men in disturbing Governours, whether the Party bee Royalists, Papists or Atheists . . . if necessity may dispence with Lawes, and the Actors be judges; what if the Levelling Part of the Army should have further designs than the

Moderater Part, and the heads of the Moderate Party stand in their way, may not they take up this plea, and without Law ... take them out of their way?

.... May not the present Army degenerate, (no man can say they are stable in their Principles) and then will not this plea of necessity fit their hands for worse changes, if worse can be? 73

Finally, it is important to notice that all educated presbyterians had to reject absolutely the most general and popular (although the least rational) justification of the military seizure of power, namely justification by divine Providence. Providence had given the army victory in battle, and success in overthrowing the presbyterian majority in parliament, so that God seemed to have favoured and approved the actions of the army. The appeal of this notion, in all ranks of society, must have been strong, for persons who were religious or superstitious, or both, undoubtedly composed the overwhelming majority of the population. Among presbyterians, however, no doctrine was more deeply cherished than the supremacy of God's word in the Bible in declaring the divine will to humanity. Providence was no substitute for Scripture. God's 'permissive will' might let the wicked triumph for a time, in order to punish or test Christians. Christopher Love emphatically denied that the success of the Army could be an infallible testimony to the goodness of their cause, and he added that independents and Roman catholics were alike in making prosperity the sign of truth. By such a notion heathens, Turks and the Pope might conclude their cause to be good because they were not defeated. The presbyterian clergy, he wrote, knew that, on the contrary, the wicked might often prosper, and the just perish.⁷⁴

The Provincial Synod of the presbyterian church in Lancashire in February 1649 exhorted its people to hold fast to the Solemn League and Covenant,

that ye walk in the old path, and good way of the infallible Scriptures, and avoyd such courses, as have but the warrant of pretended good intentions, urgent necessity, or mis-interpreted providence coyned for them 75

The London presbyterian clergy in January 1649 condemned the military usurpers' invocation of Providence:

if through Gods permission (for reasons best knowne to himselfe) you have had or may have Successe in an Evil Way, yet is it no justification thereof, nor incouragement to proceed therein.
.... the Providence of God (which is so often pleaded in justification of your wayes) is no safe rule to walke by, especially in such acts as the Word of God condemnes. God doth not approve the practice of whatsoever his Providence doth permit. 76

These ministers, therefore, were pointing out that events encompassed in God's providence often represented only God's permissive will, and not his approval, which could only be properly determined from the scriptural Word. In attacking them, and also Geree, the baptist Samuel Richardson enunciated the opposing view:

The rule of the Word of God, and the rule of his Providence, God is seene in both: the providence of God declares his will as well as his word ... by his providence, we come to see his will. 77

There was a powerful conflict of opinions between the presbyterians and apologists for the 1648-49 revolution and regicide. The specious case for justification by Providence assaulted a fundamental doctrine of presbyterians - the supremacy of God's Scriptual Word over any other authority.

(iii) Against the Agreement of the People

On January 20th 1649 a document of grave concern to presbyterian constitutionalists was laid before the House of Commons by the military Council of Officers. It was, in effect, the plan of a new constitution for England. This document was the Levellers' second Agreement of the People, drawn up in the autumn of 1648 and now substantially amended by Thomas Fairfax and the military leadership, the Council of Officers. Naturally the Council were far more conservative in their approach than were the Levellers. Nevertheless the provisions of this amended second Agreement⁷⁸ were still

sufficiently radical to disturb the presbyterians. It provided for the Long Parliament to be dissolved in April 1649, and a new representative body, based on redistributed constituency seats, to be elected every two years on the first Thursday in May. This representative body was to appoint a Council of State to manage public affairs, and no member of the Council of State, army officer, or public official could be a representative. The legislature and executive were thus clearly distinguished. The principle of religious toleration was asserted, although its extent was not precisely defined, particularly with regard to the probable exclusion of episcopalians and Roman Catholics from this religious liberty. The Council of Officers were, in reality, unenthusiastic about the second Agreement of the People, even after having made their own amendments, and their reluctance was shared by the Rump of the Parliament, which remained a highly conservative body, even now that the Presbyterian party had been excluded. The Council had only put forward the amended Agreement to prevent any hostility by the Levellers in the Army. The Rump was in no hurry to dissolve itself by approving the Agreement, and the Council of Officers was quite willing to allow the draft constitution to, as the Leveller leader John Lilburne was to complain in June 1649, "lie dormant in the pretended Parliament ever since they presented it".⁷⁹ For obvious reasons, however, neither the Officers nor the Rump could, in January 1649, afford to be too blatant about their intention to neglect the Agreement. Consequently Presbyterian constitutionalists may be excused for fearing that it might really be implemented. They wished to preserve the traditional constitution of limited monarchy, lords and commons.

To William Prynne, the Agreement meant,

a New Utopian Representative and supreme Anarchicall Tyranny of the people

and a

mock-Parliament ... constituted neither of King nor Lords.. nor yet of Knights, Citizens and Burgesses duly elected; but of a selected company of politick

Mechanicks, pragmaticall Levellers, and Statesmen
of the General Councel of the Army ... A meer
Whimsicall Utopia and Babel of Confusion. ... 80

Prynne evidently did not believe the section of the Agreement which declared that no representative body would be able to "level men's estates, destroy propriety, or make all things common"⁸¹ for he predicted that the new constitution would encourage Leveller villainy and cause them to expropriate landowners "as some Levellers and Souldiers have lately done in Essex". Landed persons'

very wealth and estates will be sufficient cause
to make them Malignants to a starved Peasantry and
all-conquering unpaid Army 82

It must, of course, be remembered that the Levellers always emphasised that their name was inappropriate because it was not at all part of their aim to cause a levelling of property.

Probably the most important pamphlet against the Agreement was Reasons Against Agreement with a late Printed Paper, intituled Foundations of Freedome Or, the Agreement of the People. Its author, William Ashhurst, was a Lancashire presbyterian gentleman. He believed that to abolish the monarchy and the House of Lords would seem to justify the aspersions cast by the cavaliers, in the first civil war, on the motives of the parliamentarians, and the latter would be made out to have been traitors and hypocrites from the beginning. The Parliament's Vow and Protestation of 5th May, 1641, and the Solemn League and Covenant of 1643 had asserted that the parliamentarian side upheld the just authority of both king and parliament. How could the proposed new constitution be reconciled with these declarations?⁸³ It would not only be cavaliers, but those parliamentarians most faithful to their original principles, the presbyterian constitutionalists, who would refuse to accept the Agreement, and therefore be excluded from electing, or being elected to, the new representative body, yet they would still have laws and taxes imposed upon them by a small minority party to whom they gave no consent or trust. This situation would create

"as perfect slavery, as any tyrant could impose" and was "a desparate Incroachment upon the Liberties of the people of England", because wrote Ashhurst, it was a known maxim in law that no power could lawfully impose upon the liberties or properties of the English people except by their individual consent, or general assent in parliament, where every man was represented. To place the supreme power in such a narrowly-based faction would cause its pretended authority to be disputed and consequently magistracy and government would be brought into disrepute.⁸⁴

The Agreement would bring "a Government without Authority" for

under the colour of laying new Foundations, all the old Foundations of Religion, Parliaments, Laws, Liberties, and Properties are strongly endeavoured to be undermined, pluckt up, and destroyed. 85

It destroyed

the Cause for which we fought, wherein so many Noble and Gallant Gentlemen, and others, have not onely hazarded, but lost their lives. The quarrell first beginning upon the Kings imposing on the Power and Priviledges of Parliament, and interrupting their proceedings ... Therefore to joyne with others to take away this Parliament by a forcible Agreement, is to do the Enemies work, and give them the cause.

Those who fought for the parliamentary side had been told that they were fighting for the preservation of parliament. It was by that authority that their resistance was lawful and that they had their indemnity, pay and security for arrears of pay. Soldiers were therefore among those who had reason to be against the Agreement. Taking all factors into consideration it was, to Ashhurst, clear that too many people would be against the Agreement for it to work properly: the royal family, the peers, soldiers, the conscientious clergymen, and people

of that qualitie capable of government will be against it, because it leaves at the best but the colour of a Magistrate, with no power but such as is alterable, and revokeable at the pleasure of any multitude. 86

The Agreement failed to forbid Roman catholic services in private and left the ruler and all the people free, it was alleged, to profess and practise that religion in their houses.⁸⁷ Any loophole of this type was completely unacceptable to presbyterians. They also disliked the divisions of opinion between England and Scotland which would result from the Agreement

being directly contrary to the declared principles both of that (Scottish) State and Church, and destructive to all the faithfull in that Kingdom, both Ministers and people, that have adhered to us in this Cause. 88

The proposal to abolish tithes was also obnoxious because tithes were a civil right in law held by ministers and were therefore a form of property. Ministers had as legal a freehold in their tithes as any man had to his land. If tithes were to be abolished as a grievance and oppression, the same would very soon happen to all rents, annuities and charges, paid to landlords. This opinion was also held by William Prynne.⁸⁹

The presbyterian clergy strongly objected to the Agreement of the People. The London presbyterians, both clergy and laymen, condemned it in their Apologeticall Declaration Of the Consciencious Presbyterians of the Province of London, describing it as a combination within the Army to utterly subvert and overthrow the fundamental frame of government, which was the very same treachery for which Strafford and Laud had been executed and of which the king was charged as an excuse to destroy him. Its purpose was

to introduce and enforce upon us a most uncouth, strange, and headlesse confused Arbitrary and tyrannicall Government of their own devising. 90

They objected to the proposed toleration of all sects, claiming it was not that kind of liberty of conscience for which the civil war had been fought, but

onely a Liberty of Conscience from sin and error, which wee propounded in our Freedome from our former Egyptian taskmasters the Prelates. 91

The Lancashire Ministers issued a pamphlet, The Paper Called the Agreement of the People taken into Consideration . . ., which concentrated particularly on religious objections, although these were also politically important. The tenor of this tract brings to mind William Prynne's plea a few months earlier: "We have a conscience to please, as well as an Army".⁹² The Lancashire ministers began by declaring their fidelity to the cause of "king and parliament" in both the first, and the second, civil war, and their adherence to the Vow and Protestation of 5th May, 1641, and the Solemn League and Covenant.⁹³ They pointed out that the project of the Agreement was to give the people a power to alter the form of government at will and to set up a new polity:

This Agreement then perswades the people to cast off, or depose the present Government, to turn themselves into an Anarchy, or jumbled multitude . . . as though we were . . . newly landed in this Island, free and ready to elect and set up a frame of a Common-wealth such as we should like best.

This attitude ignored the fact that England was a long-established, settled state with a system of government

deeply rooted in mens affections, both by long habituated exercise, and the well-approved benefices of it.

It had a balanced constitutional frame, achieving "the golden-mean, lying between Monarchical Tyranny, and Popular Anarchy".⁹⁴

The most important consideration of all was that Englishmen were bound to the established form of government by the oaths which they had taken. The Oaths of Allegiance and Supremacy, the Vow and Protestation of 5th May, 1641, and the Solemn League and Covenant were all incompatible with acceptance of the Agreement of the People. Even if the people could be admitted to have the right to change the constitution, the existence of these oaths would prevent any lawful exercise of such a right:

What ever power of taking away and new forming Government is conceived to rest in the People, yet it is all one as to us our Oaths, Vows,

Protestation, and Covenant considered, by which we have fast bound our hands from the exercise of such a Freedom (were there any such originally residing in us).

These oaths meant that anyone who tried to remove or diminish the lawful authority of king, House of Lords, or House of Commons, was guilty of the great wickedness of perjury. The righteous man did not break his oath because adhering to it proved to be harmful or inconvenient to him. Since God was called as judge and witness to the truth and sincerity of the swearer of an oath, divine anger would be manifested when an oath was broken.⁹⁵ Even had there been no binding oaths and obligations, prudence would still forbid a rash change in the form of government:

the experience of all ages may instruct us how perillous a thing it is to go about to innovate or make an alteration in Government: and how much better it is for a people to bear with many inconveniences in a settled State, then to run upon the mischiefs that usually and almost inevitably attend such a change. 96

The ministers described the toleration allowed by the Agreement as

a profession of Religion of a wide latitude, and of a strange party-coloured, and jarring composure, more like to the mixture of the cup in the hand of the great Whore of Babylon ... than to the pure and uniform Religion of the chaste Spouse of Christ. 97

No sect, except Roman catholicism and episcopalianism, was forbidden from public profession. Any other kind of heresy or blasphemy would be allowed free reign, and even the Roman and episcopalian religions were not to be forbidden in private places, where they might persist and flourish. The insistence on the removal of penalties against religious dissenters would undermine sound doctrine, and the power of parents over children, and masters over servants, with regard to the duties of religion. All superstition, idolatry, atheism or devil worship would have unrestrained liberty. The presbyterians asked "what equity there is in a liberty to iniquity?". They were able to quote many biblical injunctions

against toleration of erroneous, irreligious ways, idolatry, blasphemy, and sabbath-breaking. In this pamphlet, toleration is denounced, and made a principal religious reason for rejecting the Agreement.⁹⁸ Only the matter of the oaths represented a more important consideration. Whatever view may be held, in general, of the presbyterian horror of toleration in this period, their complaint of the vagueness and imprecision of the toleration proposed in the Agreement was well made. It is very probable that even most advocates of a measure of toleration would have desired its extent to be far more clearly defined. The Leveller toleration seemed to propose a degree of indifference and latitude in religion which would have been repugnant to most independents, let alone presbyterians.

The Lancashire ministers insisted, at the end of their pamphlet as at the beginning, that they remained loyal to the first principles for which defensive arms were originally taken up on behalf of parliament at the start of the civil war.⁹⁹ It was they, the presbyterians, who were faithful to the old cause of 1642, a cause which the Army leaders, regicides and Rumpers had deserted. Among the Lancashire ministers subscribing the pamphlet were Richard Heyrick, Richard Hollinworth, John Tilsley, James Hyet, John Angier, Isaac Ambrose, and Edward Gee.¹⁰⁰ In February 1649 a group of Essex ministers, including Matthew Newcomen and Nathaniel Ward, issued a pamphlet entitled The Essex Watchmen's Watchword, in which it was complained that the Agreement of the People attacked the sovereignty of parliament

the power of Parliament here in England is without question Supreme, Absolute, Unlimited, extending to things of Religion, as well as to Civil things. But this Agreement takes away more than half of their Power, wholly denying them Power in Matters of Religion, and lays several Restraints upon their Power in Civil things. 101.

The Solemn League and Covenant was an obligation to the extirpation of Roman catholicism, episcopalianism, heresy and schism, but the Agreement exalted toleration and gave a

loophole to catholicism and prelacy.¹⁰² The Agreement had urged that people be won over by sound doctrine, rather than by compulsion, but they would never have the chance to hear sound doctrine if they were not to be compelled to attend the preaching of the ministers of the Word.¹⁰³ The first declared principles of the parliamentary cause, the defence of religion, king and parliament had been betrayed by the army.¹⁰⁴ The Essex ministers, like all the presbyterian constitutionalists, claimed that they had remained loyal to the cause for which the civil war had been fought by parliament. The presbyterian party had rigidly preserved its integrity and consistency of purpose, and so it denied its approval to the new republican Commonwealth of 1649.

CHAPTER VI

THE GRAND CASE OF CONSCIENCE, 1649-52

(i) Religious Demurrers

Opponents of the Army seizure of power and of the newly declared Commonwealth regime were powerless to reverse the revolution of 1648-49 but they did not fall silent. If presbyterian clergymen and gentry were to shun the new government and refuse allegiance to it, the infant republic would be seriously disabled, for these persons were the local leaders of opinion in the counties. The administration of justice would be hampered by the refusal of dissident gentry to act under the new regime on commissions of the peace. Apart from these practical considerations, the new rulers craved legitimacy, or at least a recognition of the necessity of their tenure of power.

Francis Rous (1579-1659) was a presbyterian M.P. who, in 1647, had been a member of the committee of the Lords and Commons appointed for the judging of scandal and approving the presbyterian classes being set up in the counties.¹ For practical purposes he had, by 1649, moved from the presbyterian towards the independent party in politics, although he continued to describe himself as a presbyterian by religion. His pamphlet, The Lawfulness of obeying the Present Government And Acting under it ... By one that Loves all PRESBYTERIAN lovers of Truth and Peace, and is of their Communion, published in the spring of 1649, inaugurated an extensive controversy about allegiance to the Commonwealth. The pamphlet began, not surprisingly, with an appeal to Romans, chapter thirteen, written, as Rous stated, during the reigns of the most corrupt of the Roman emperors, who had attained power by disreputable means.² Even such rulers as these were included in the Pauline prohibition of resistance. Turning to English history, many monarchs had come to the throne by force or conquest: five kings in a row, starting with William the Conqueror had no title at all by lineal descent and proximity

of blood, but took the throne to the exclusion of a more obvious hereditary heir or heiress; Henry IV had brought the Lancastrian house to the throne by force; Henry VII had come to power by military force and founded the Tudor dynasty, through which the Stuarts had derived their own title to the English crown. All of these could justifiably be said to have usurped power, yet there was no doubt that obedience to, and accepting office under them was not considered unlawful.³ Why should the republican commonwealth be viewed differently? What could the ordinary people of the nation do when rulers come to power without a title? The common people could not judge the rights and wrongs of titles, but must come to terms with whoever had the actual possession of power.⁴ To disobey those in power would result in confusion, destruction and civil war through striving against a prevalent power.⁵ Whoever had come to power (even by force) had a duty to give justice to those whose government they had undertaken, but this obligation could only be fulfilled through the assistance of subordinate agents. Consequently, to say that none should act under the supreme power in distributing justice was to say that in such circumstances the people should have no justice at all. To these observations, Rous added:

The Doctrine of not Acting is the very Doctrine of Levelling. For when no man may Act to give justice, may not every man take freely from his Neighbour, what he list, and so levell the Rich with the Poor? unlesse this make it unlike, because worse than Levelling. That those who have most force, will have most; ... and so to avoid Acting under a supposed Tyrannical Government unto justice and order; there shall be Tyrants in every place or parish, who shall Act to disorder and oppression, and no property, justice, nor Government at all left amongst us. 6

Whatever the irregularities by which the government had gained power, it must be given the obedience and co-operation needed to govern effectively, because nature and reason dictated that it was

better to have some justice than none at all, some coercive power and Government, than that all be left to disorder, violence and confusion. 7

Rous mentioned the problem of a subject's oath of allegiance to the late king and his heirs and successors, an oath which would seem to be broken if co-operation and acknowledgement were given to the usurpers and regicides. A successor was not necessarily an heir, he stated, and the word successor in the oath was to be taken to mean whoever actually succeeded in the government. The word could be applied to the present power in possession of the country.⁸

The views of those who disagreed with Rous are to be found in anonymous pamphlets like A Religious Demurrer, written by 'some peaceable and truth seeking gentlemen', A second Part of the Religious Demurrer; By another Hand, The Grand Case of Conscience Stated about submission to the new and present power, and An Enquiry After further satisfaction concerning obeying a change of Government believed to be unlawfull.

In the first of these pamphlets the 'peaceable and truth seeking gentlemen' found two principal grounds for withholding obedience: first because the present government was not the only visible authority which might be had, for there existed

another, more compleat Authority, visible enough to Religious and Loyall eyes, though for the present it be suspended in point of exercise, and clapt under hatches for a while. We hold it scarce lawfull, for a man to marry another woman, while his wife is in a swoond, or in a fit of the falling sicknesse; or, for a woman to marry another man while her husband is in captivity, or in prison, willing to come to her if he might;

their second reason was

the divine bond of our Covenant and Oathes; which chain us by our Consciences, if we mistake not, to preserve that kinde of Government which was then existent.

9

To allow obedience to anyone who got into power would be an encouragement to rebellions. The protection provided for the people by a government did not entitle it to their allegiance in return. There was a large difference between force and authority.¹⁰

The subject was further elaborated in A second Part of the Religious Demurrer. A man held by thieves might, it was said, ask some of them to protect him from the violence of others, but he must not, to obtain such protection, say that their robbery was just or good, or join with them in robbing others. Was it not, asked the author, to be considered

whether it be Jack Cade or John of Leyden, that exercises the power? Is not this (if literally taken) a way, to open a door, as to insurrections and seditions, if men can but get power to suppress the legall Authority: so to dispense with Oaths, etc., when such an usurpation is made? ... may we, or must we obey everyone that hath gotten power, though never so wrongfully? might not some infer from this same ground that, Satan, the prince of this world, having usurped power, over the sons of disobedience, must be obeyed? 11

Charles I had taken up arms against parliament,

" a lawfull, and co-ordinate Authority of the kingdom " but the case of his son was now quite different because he was fighting against "unlawfull Martiall usurpation".¹² The first verse of Romans xiii referred only to legal, not tyrannical powers.¹³

In The Grand Case of Conscience, the idea of obedience to any who could get hold of power by any means was considered to be

the greatest inlet to tyranny in the world, and the speediest means of destroying states that could be invented: for then should none govern in any Kingdome any longer, than their swords and their strength could bear them up. 14

The grand causist took up Rous' examples of the conquests of William I and Henry VII, and stated that in both these cases the conquests were legalised by "after-compact", William having consented to uphold the laws of Edward the Confessor, and Henry having had his title confirmed by parliament.¹⁵ No such subsequent legalisation had been accorded to the republican Commonwealth. The analogy of a wife having no right to remarry because of her husband's

imprisonment was mentioned to emphasise the continuity of obligation to the Stuarts. If the present usurpers were to be justified, there would be a new usurpation when some other party gained more strength, and political instability would result. Moreover, if all powers in possession were to be obeyed, it meant that those who disobeyed the King over Ship Money were in the wrong.¹⁶ The Solemn League and Covenant was an obligation not to alter the fundamental laws of the realm and not to deny allegiance to the king's heirs and successors. If, according to the Covenant, the privileges of parliament had to be preserved against a malignant party which tried to remove five members, why not against a heretical party which took away over two hundred? If one party was guilty for offering violence to the parliament, why should another whose violence was far more palpable be excused as faultless?¹⁷

In An Enquiry After further satisfaction, it was emphasised that those who had altered the country's form of government had no authority to do so, consequently the "new fabrick" itself lacked authority, "which is the soul of government", and should not be obeyed.¹⁸ The enquirer listed four ways in which persons became subject to a particular government or governor: by natural descent or inferiority as children were subject to their parents and a wife to the government of her husband; secondly, the direct appointment of a ruler by God, as in biblical examples, although calvinists regarded the age of such miraculous interventions as past; thirdly, by plantation (i.e. colonisation) of a previously uninhabited, unowned place, and which made any subsequent newcomers subject to the government of the original planter; finally, by the consent of those who were free to dispose of themselves or others under a government, constituting or laying the foundation for a system of government.¹⁹ None of these cases applied to the rulers of 1649. They had not been given the consent of the people, who could not lawfully consent in any event since they were still bound in allegiance to the existing constitution. It was not the

case that the change had been carried out with the consent of the component parts of the old polity: the king, the Lords and most of the Commons had all been removed in order to achieve the usurpation.

The question was, for the enquirer, concerning only obedience, a duty of the fifth commandment which, because positive precepts implied negative duty, forbade obeying that which was not authority as well as commanding obedience to that which was authority.²⁰ The prohibition of resistance in Romans xiii did not apply to power gained and held merely by force, without any consent or agreement. As for cases of conquest in English history, conquest could only settle a former right, the right did not come from the power or act of conquering, but from some agreement, precedent or subsequent.²¹ To the passage by Rous concerning the terms heirs and successors in the oath of allegiance, it was answered that while the office of king might outlive a particular dynasty, yet monarchy itself would continue. For this reason "successors" were also mentioned after "heirs". In the circumstances of 1649, there were still heirs to the throne, and even had there been no heirs, the abolition of the monarchy would still not have been justifiable.²²

(ii) A Pack of old Puritans: the Non-Engagers

In January 1650, an Act for subscribing the Engagement ordered that all adult male Englishmen must sign a declaration:

I do declare and promise, that I will be true and faithful to the Common-wealth of England as it is now established, without a King or House of Lords.

Previously, the Engagement, as this promise was known, had not been imposed upon the whole populace, but, from its inception in the autumn of 1649, it was exacted from clergymen and various categories of important Englishmen. The controversy over the Engagement gave rise to an extensive pamphlet debate.²³ Those whom we have called the presbyterian constitutionalists generally shared the opinion of the ministers

at Chester who "condemned the engagement to the pit of hell".²⁴ John Goodwin, as a notable apologist for the Commonwealth, expressed the view that anyone refusing the Engagement must have "a conscience most ridiculously boggling",²⁵ but the magnitude of the controversy suggests that there were a good many such boggling consciences. In particular it was often found very difficult to remove non-subscribing ministers,²⁶ while many who did subscribe, like Henry Newcome and Adam Martindale in Cheshire, subsequently were persuaded that they had sinned in so doing, and Martindale told his congregation of his remorse.²⁷ The Engagement was, in the words of Robert Halley, a nineteenth-century writer on puritanism

an arbitrary and tyrannical ordinance, and those
who resisted it ... deserve to be honoured as much
as the opponents of ship money. 28

Edward Gee, a Lancashire minister, was the most impressive presbyterian writer against the Engagement, but his pamphlets of 1650 are best examined along with the long book called The Divine Right of the Civill Magistrate (1658) in which Gee expressed fully his political philosophy. Gee's ideas will be discussed in the next chapter.

The title of one powerful anti-Engagement tract published in 1650, A Pack of Old Puritans, emphasised the desire of the presbyterian constitutionalists to distinguish themselves from the "puritans" who supported Cromwell's army and the new republic. The old puritans were those who had resisted the Laudian prelacy, but had desired reformation of the Church of England, not separation from it, and not sectarianism. They had resisted the attempts of Charles I's government to reverse the constitutional reforms of 1641 and to undermine the traditional mixed government of king and parliament. They stood for the old cause of the civil war parliamentarians, not the new republicanism of the army and the independents. Several years earlier, in 1647, a pamphleteer noted that the presbyterians "reckon themselves for the old Puritans of England",²⁹ while John Gere, whose denunciation of the regicide is described in Chapter Five, published in 1646 a

a presbyterian pamphlet entitled The Character of an old English Puritane. The Old Protestant was the style preferred by William Russell (1617-1659) of Gloucestershire³⁰ in his anti-Engagement pamphlet of 1650, The Old Protestant His Consciencious Queries About The New Engagement, a publication which has hitherto been unnoticed by modern historians and bibliographers.³⁰

The authors of A Pack of Old Puritans claimed that it was written out of their "duty as Saints" to preserve the souls of their brethren from perjury and disloyalty.³¹ To engage against monarchical government was contrary to the oath of allegiance, and the Engagement also contradicted the parliamentary Solemn Vow and Protestation of 5th May 1641, and the Solemn League and Covenant. Even if the king had proved unfaithful to his trust, people were not absolved from the oath of allegiance. The bible required a conscientious obedience to authority, not merely a response to good behaviour on the ruler's part. Neglect of duty by the ruler could not dissolve the subject's oath, nor could the king's death take away the obligation because

according to the Law of the Land, the King of England never dies ... Regal Authority, and the Kings Posterity, they are still in being, and it is unto them that we are obliged by our Solemne Covenant, and all those sacred Bonds that are upon us. 32

Those who subscribed the Engagement would lose the tranquillity of a good conscience and risk damnation to their immortal souls.³³ Only the non-subscribers could be confident of having remained loyal to their first principles:

in declining and opposing this Engagement, we do not apostatize in the least from our first Principles of opposition of Tyranny, and contending for the lawfull Rights, and the Liberties of the Kingdom; but our opposing and refusing this Engagement, as a sinfull support unto usurpation is a clear evidence of the uprightness of our aimes and ends, in what we did at first upon the Parliaments Remonstrance. 34

It was pointed out that John Goodwin himself in his Anti-

cavalierisme of 1642 had given arguments against blind obedience to an act like that for subscribing the Engagement, without any examination of its lawfulness. The Engagers' doctrine of blind obedience and non-resistance of the present powers was a denial of the parliamentary justifications for fighting the civil war. If such a doctrine had been preached at the beginning of these troubles by men like Goodwin and Hugh Peters,

Our King had not only been upon his Throne, and our money in our Purses, but our fields had never been dinged with the dead carcasses of so many thousand of our slaughtered Brethren. 35

Russell's Old Protestant also cited the oath of allegiance, the Protestation of May 1641, and the Solemn League and Covenant to prove that Englishmen were already sworn to preserve the king's person and authority, the monarchy, the priviledges and power of parliament, and the liberty of the subject. Those in power were bound in conscience to desist from pressing and enforcing the Engagement, and the people of England were bound in conscience to refuse it.³⁶ The words of the Engagement, "Common-wealth as it is now established" meant

That Government ... which under the force of the Army is set up and managed by a few of the House of Commons (such as Col. Pride thought fit to leave ...) such as is established in the Sovereignty of the Sword, the will of the Souldier, the thraldome of the Houses, the bondage of the Subject, the death of the King, the ruine of his Posterity, the ejection of the Lords, and of as many of the Commons as a prevailing party of the Army did, doth, or shall think fit. 37

Another writer who emphasised the contradiction between the Covenant and the Engagement was Prynne, in his Brief Apologie for all Non-Subscribers (1649).³⁸ The anonymous author of Arguments and Reasons to prove the Inconvenience and Unlawfulness of Taking the New Engagement agreed that it was perjury "to take such a sinful and contrary Engagement" and pointed out that it would not even secure the present government because if men were willing to break their oaths once, they would do so again when an occasion arose.³⁹ Russell wrote that those

who would most readily take the Engagement, contrary to their former oaths, would inevitably tend to be those whose promise was least to be relied upon, while the conscientious refusers, honest and pious men whose goodwill was most worth having, would be persecuted.⁴⁰

Some government supporters, like John Goodwin, whose opinion has been quoted, and Henry Parker refused to believe that the Engagement was an issue of conscience, and attributed presbyterian opposition to mere factiousness. "Tis impossible for us to believe," wrote Parker, "that pure conscience restrains any man at all from subscribing: it must be peevishness, of humor, and opinion, it cannot be conscience."⁴¹ In general, however, pro-engagement pamphleteers wrote in terms which showed they accepted that many non-subscribers acted out of conscience, however mistaken they might be. They tried to persuade the non-subscribers and to answer the objections in reasonable, even conciliatory, terms, and not simply to denounce the presbyterian objectors. This attitude was most evident in the nine pamphlets written by John Dury, the internationally renowned Scottish theologian who was the most prolific writer in support of subscription to the Engagement. Dury, and other pro-Engagers, accepted that the government had come to power by an unlawful usurpation, but claimed that subjects had an obligation to obey any government which held power. The belief could be supported by quoting that most useful of texts, Romans xiii, but a more distinctive argument rested on the notion that any government which gave protection to its subjects was entitled to expect their allegiance in return, and subjects receiving protection were obliged to give that allegiance.⁴² Any government was better than the anarchy of having no government at all, and so subjects incurred an obligation to any rulers who supplied order and protection. This concept shows that the pro-engagers, emphasising the subject's desire for the protection of his life and property, seemed in one respect to have a more secular outlook than their opponents, who were preoccupied with the sin of perjury and the religious significance of former

oaths. Any illusion that the pro-engagers were anticipating a re-orientation of values towards a more secularised society is, however, quickly dispelled when their reliance on justification by Providence is observed.

In the previous chapter it has been mentioned that supporters of Cromwell and the New Model Army resorted to the argument that their success in battle, and in the revolution of 1648-49, was a sign that God favoured their cause. This argument was more powerful than it might at first appear. Clearly partisans of Cromwell and the army were only too willing to accept the idea that God favoured them, but the argument applied as a means of convincing even those who thought the army had acted wrongly in usurping power. If God had allowed the army to succeed in an evil course, was it not to be interpreted as a divine judgement against the nation, and a form of divine punishment? (The answers to this interpretation will be examined later in the chapter.) John Dury stated that God had providentially removed the monarchy, and thus released the people from their former obligation to it.⁴³ Ascham wrote that if it was consonant to God's permissive will that certain persons were to be his rulers, then God's will must be that he should be their subject.⁴⁴ God chastized and changed princes and rulers sometimes, therefore

Seeing then the change of Gods Vice Roys, or of the hands which carry swords, is of his secret disposing, not by meere chance or humane contrivance, it will concern us to submit to them ... lest by continuall disturbance ... wee unnecessarily breed a publique disturbance to our owne and other destructions.

45

Francis Osborne wrote in 1652 that if men would

not render themselves deafe to the voyce of Providence, in no worldly thing so audible as a continued successe, they may conclude what is done by the approbation of God himselfe, he having manifested his power as well in the high and barren hills of Scotland, as in the fat and rich vallies of England and Ireland.

46

Dury believed that the presbyterian ministers had, in any case, been misguided in conceiving that it was their duty to

interfere in what were, after all, essentially political or state matters. They had exceeded their calling. All divines, he stated, understood the fifth commandment to apply to the civil magistrate as well as to natural parents. To judge and censure the proceedings of magistrates in public was to dishonour them. A minister, who desired to be the servant of Christ, must not be entangled in the affairs of this life. Political and state matters concerned only this life, and nothing else, directly and principally. If state matters were spoken about from the pulpit, the aim must be either to commend the rulers, and so please them, or else to express disapproval which would tend to make the people dislike their rulers. In Dury's opinion both of these aims were altogether unworthy of any minister of the Gospel. Also, a minister who meddled in these matters would have to change his tune every time there were political changes, and this changeableness would detract from his standing and reputation. If he was inflexible, and refused to change with the times, he would become involved in controversy over worldly matters, and that too would be detrimental to his calling.⁴⁷ Dury advised moderation:

when worldly circumstances and matters of fact are mentioned ... let the spirit of meekness and compassion govern the whole carriage of the business, towards the restoring of those that are overtaken in a fault, rather than to shame them.... 48

The government did not follow this advice and endeavoured to dispossess non-engagers in places where it had the power to do so. Zachary Crofton, a notable presbyterian minister and writer, was ejected from his living of Wrenbury for refusing the Engagement,⁴⁹ which had been signed by two of his friends Newcome and Martindale, whose subsequent guilt feelings have been mentioned already. (Another minister who took the Engagement, and then violently repented of having done so, was Richard Smith, minister of Stoke Prior in Worcestershire. An Essex minister, having taken the Engagement, was so affected by a guilty conscience, that he returned to erase his signature from the sinful promise.⁵⁰) Robert Yates, minister of Warrington was, according to Calamy, so strongly

opposed to the Engagement that he was put on trial for his life at Lancaster and had prepared a dying speech since he fully expected execution. One presbyterian who did have to deliver a dying speech was Christopher Love, executed in August 1651 for conspiracy with the Scots to bring about the restoration of Charles II. Some of the last words of his speech on the scaffold were to denounce the Engagement.⁵¹ In Oldham, near Manchester, the local schoolmaster collaborated with a justice of the peace in the parish to persecute the minister Robert Constantine for refusing the Engagement. Eventually, in January 1653, the Manchester J.P.s joined in the persecution of Constantine by ruling against him, and in favour of the royalist episcopalian John Lake, in a dispute over Oldham church.⁵² A great deal of bitterness and anger was generated by the Engagement controversy, as these examples indicated. As a result of refusing the Engagement, presbyterians lost their influence in the universities to independents.⁵³ The revolution of 1648-49 had caused such a reversal of roles that the republicans now used many of the old arguments of the royalists against resistance. It was not surprising that few royalists had any serious hesitation over taking the Engagement, and the case of Lake and Constantine over Oldham was one at least in which the authorities felt greater animosity against the presbyterian than against the royalist.

Scottish presbyterian ministers in Ireland resisted the Engagement. Those who refused to sign it were ejected, and some imprisoned, and many fled the country to take refuge in Scotland.⁵⁴ It seems that, as a result of this persecution, there were only about six presbyterian ministers at liberty in the entire counties of Down and Antrim, and even this remnant could not preach openly.⁵⁵ A group of county Down ministers, kept prisoner by the republican authorities at Belfast, stated in defence of their refusal of the Engagement

That though Ireland was subject to the King of England, yet they had a Parliament of their own, by which the subjects of Ireland were governed, and Ireland's Parliament had made no ... acts against King and Lords. It was further urged that now they were a conquered people under England and this party. It was answered, a

conquest might draw from them passive obedience out of necessity, but no acknowledgment of their lawful power. And though they had all these times owned lawful Parliaments of England, (this kingdom not being in a capacity to have one), yet the present (Rump) Parliament was not a lawful one; for, if it were, they could not but obey it, and have always done so ...

56

Returning to England, it should be emphasised that the Engagement helped to create unity among opponents of the Commonwealth. It caused dissent to be focussed upon one target which symbolised the regime's false claim to legitimacy. Had there been no Engagement to concentrate the opposition's energies, the fact that opinions varied on the measure of obedience to be accorded usurpers would have been more apparent. Leaving aside those who regarded the present rulers as usurpers, but would not hinder or deny acknowledgement to them in any way (many of the pro-Engagement writers were in this category), there were several degrees of opposition. The Cheshire minister Adam Martindale discerned four such degrees of dissent:

Mr. Prynne was of opinion that we should not obey so much as passively if we could avoid it; but .. not in the least actively, no not so much as to pay assessments ... Others thought this impoliticke, and a foolish punishing of ourselves, but thought that we must not owne them by making use of their power (e.g. by using their courts). A third sort were of opinion that we might obey actively, but ... onely materially not formally; that is we might in that which is itselife lawfull doe what is commanded, but not because it is commanded ... but by no meanes will they allow to take commissions and to act under them by vertue of such commissions. ... A fourth sort ... though they thought they might not engage to be true and faithfull tousurped powers, they believed that justices of the peace or other officers might take commissions from usurped powers ...

57

Resistance to the Engagement united persons who were not otherwise in full agreement about the extent of practical opposition to usurpers which was desirable. This observation confirms that the introduction of the Engagement was not really to the government's advantage. After all, the chief pro-Engager, Dury, and others, did not conceal the fact that eventhey regarded the present rulers as usurpers, and the fury of the

controversy was very clear proof that the nation was not able to unite under the new republic. Even if most people signed the Engagement, out of fear if not conviction, the fact that it was tendered to all Englishmen must have brought to light many opponents who would otherwise have lived quietly and not hindered the government. This winking out of dissenters did, however, benefit place-seekers who could get into the livings, offices and appointments from which non-subscribers were ejected. According to David Underdown it also benefited some officials who profited by selling certificates of subscription to the Engagement to ignorant people who could be persuaded that they were obliged to purchase them.⁵⁸

The presbyterian response to the claim that the Army's success, in war and usurpation, was a sign of divine favour has been mentioned in Chapter Five. The same issue was very prominent in the Engagement controversy. A lively pamphlet touching this topic came from the pen of Nathaniel Ward, under the title Discolluminium, a defence of the first Religious Demurrer against Anthony Ascham's The Bounds and Bonds of Publique Obedience. "Our late proceedings" stated Ward, who was writing in the early months of 1650, "have march'd very lustily upon 4 wheels: Necessity, Providence, good Intentions, and Successes".⁵⁹ Man could not interpret divine providences accurately, or distinguish between

Providences of Mercy, and Providences of Wrath;
between Forbidding, and inviting Providences ...
men follow Providences of their owne making, mis-
construe Gods Providences to their owne
fancies.

60

It was essential to remember that the events of providence might be either forbidding or inviting. A mere acquiescence in whatever came to pass was ungodly, because many events were allowed by God as a means of testing human beings by forcing them to face adverse circumstances. Conscience, properly informed by the Bible, the supreme authority on earth for human beings, enabled the individual to decide whether particular events were to be welcomed or striven against. To

the calvinist this decision rested with the individual, who should not be influenced by the behaviour of other people in such cases. Thus it was stated in A Pack of Old Puritans:

neither must we set the Watch of our Consciences by the Consciences of others, but by the Sun-diall of the sacred Scriptures. 61

The

successe of an usurping power, though to the present dis-possession of the lawfull Magistrate, is no evidence of God's approbation of it, nor can be a Scripture-ground for obedience or allegiance to it. 62

Ward pointed out that even if it were assumed, for the sake of argument, that the royal authority had been forfeited by Charles I, it would give no justification to the usurpers:

If there were a forfeiture, it was to the whole State, or their compleat Representative. I will not be so rude as to say with others, that it was not forfeited to a few Brewers emptyings [Colonel Pride was a former brewer's drayman], but I may safely say, it was not forfeited to a few of the Armies leavings. 63

Rulers had obligations as well as subjects, and therefore, if promises were sought from the latter, they should be given by the former, the governors, also:

I doe not heare, that either the Members of this Parliament, or the Counsellors of State, have as yet ingaged to us, to be true and faithfull in protecting and governing us by just and prescript Lawes, as our Kings formerly have done: Why should we then first engage to them? 64

Before finally leaving Nathaniel Ward, who has appeared in the preceeding as well as the present chapter, it is appropriate to reproduce one anecdote concerning this resolute champion of constitutionalism in both New and old England. Ward was noted for his wit, and his case refutes any claim that puritans were necessarily sombre and humorless individuals. Over the mantel of his house at Ipswich, Massachussetts, a former inhabitant had carved the words "sobriety, justice, and piety": Ward added the word "laughter". 65

The presbyterian opponents of the republic claimed to

have preserved their integrity by consistent adherence to their original parliamentary principles, but they also put forward practical reasons why it was inadvisable to acknowledge the usurpers' alleged right to rule. We may imagine that the pro-Engagers were more pragmatic than their opponents, and more willing to adapt to, and survive under, the new government, irregular though its rise to power had been. They could be considered to have been facing up to the real circumstances which obtained, in contrast to their presbyterian rivals who expended their energies in deploring events which they were powerless to reverse. This picture is altered when the practical, secular arguments of the presbyterians are examined. William Prynne pointed out that the republic would need a large standing army and constant garrisons in all counties. These forces had to be maintained at the public expense by perpetual arbitrary taxation, for which Charles I's government had been denounced.⁶⁶ The republic would, according to A Pack of Old Puritans

through the maintenance of Armies, by intolerable Taxes and Impositions (transcendently exceeding all former Monopolies and Ship-money) render us the miserablist and slavishest People under Heaven ... 67

Prynne warned that under an arbitrary usurping government the property, lives and liberties of individuals could not be secure from violence and seizure, and the abolition of the monarchy would appear to dissolve all legal rights, grants and privileges which stemmed from the crown.⁶⁸ Treaties made by English kings with foreign states would be voided and foreigners would be free to interfere with English commerce. Also, Scotland and Ireland would be divided from England and would join with the king's foreign friends and allies.⁶⁹ England would be involved in perpetual wars and insurrections so long as there were any heirs of the royal blood, because they would never desist from attempting to recover their lost realm.⁷⁰ The new Engagement would also give the impression of vindicating all the late king's declarations in which he had accused his opponents of a plot to subvert the whole constitution of the kingdom, destroy his authority and take his life. Charles I had alleged that his enemies "designed to make themselves perpetuall Dictators" and subscription to the Engagement would

wrote Prynne,

post factum, make both ourselves, the late Houses, and all their adherents apparently guilty of all these trayterous horrid Designes (to which they were no waies privie nor assenting, but ever abjured in their Protestation, Vow, Solemne League and Covenant ...)

and it would "canonize" the late king and his followers as "Martyres for the Kingdomes and Peoples Safety".⁷¹

In Russell's Old Protestant, it was pointed out that if Englishmen were so easily to make new pledges contradicting former oaths, then any government would receive only an insecure allegiance, and any new prevailing party would have no trouble in justifying their own seizure of power:

Suppose the Army, or any prevailing party thereof, Levellers or else, should eject the men in present power and thrust in others, throw down this Government and erect another ... quite opposite to this, ... art thou ready with the same chearfulnesse to engage against this and for that, be it what it will be? thou maist turn thy coat so often till thou maist be ashamed to wear it any side outward. 72

The threat to outlaw non-Engagers was a worse act of tyranny than anything perpetrated by the prelates and arbitrary courts under James I and Charles I and raised the suspicion that the ejection of non-subscribing ministers was a policy designed to raise money for soldiers' pay by selling the vacated livings.⁷³ The independents and the army had posed as champions of liberty of conscience, condemning the presbyterians for their opposition to religious toleration, but the enforced Engagement was itself a greater burden to tender consciences than any uniformity in religion. It was

a setting up of thrones in mens consciences ...
Liberty of conscience, what's become of thee now?
or else is this it, for some men to doe what they please?

74

If the independents were as harshly threatened as the non-Engagers were now there would be no end of "suing for Toleration, Toleration, Toleration", but their present "ruling with rigour, and lording it over their brethren" hardly corresponded to "their much pretended regard of tender consciences".⁷⁵ In reality, it must be remembered that the

independents, while favouring a broader measure of toleration than most presbyterians desired, did not believe in complete liberty of conscience at all. It was, however, perfectly true that they posed as champions of liberty and contrasted themselves with presbyterian rigidity, and so Russell's point was well made. England's new rulers were for toleration insofar as it suited themselves.

The commonwealth's "liberty of conscience", which did not go far even in religion, was not applicable at all in politics. According to John Dury, it was unlawful for private individuals to judge or interpret political changes.⁷⁶ The private man should discharge the duty of a true and faithful subject, and not trouble himself further with higher, state matters. It belonged to the "Leaders for the publique good" to judge when, and what, change was to be made in the state, and how the public good was to be best advanced, while the private citizen was obliged to trust them with this function, and not to judge them.⁷⁷ It was remarkable that such an argument should be adopted by the republican side, because the whole tenor of this denial of the subject's right to political opinions is reminiscent of traditional monarchist and royalist notions of government as the exercise of an art of statecraft by rulers whose access to arcana imperii raised them, and their political decisions to a plane far above the comprehension of the ordinary subject. The role assigned to the people by Dury does not seem very different from Charles I's remarks about the people at his trial:

Truly I desire their liberty and freedom as much as anybody whomsoever; but I must tell you their freedom and liberty consists in having of government, those laws by which their life and their goods may be most their own. It is not for having a share in government, Sir, that is nothing pertaining to them. A subject and a sovereign are clean different things. 78

This notion that affairs of state and politics were exalted and arcane arts which were necessarily a privileged sphere of rulers and those few elevated advisors who surrounded princes, could, however, hardly be expected to regain its

potency when the exercise of statecraft was divorced from the old mystique of hereditary monarchy and suddenly transferred to military leaders who had themselves been, until a few years before, obscure private individuals.

The extent of opposition to the Engagement seems to have taken the government by surprise, and its supporters had to use any arguments which could be found to favour their cause, including even those whose inappropriateness to their circumstances was, upon closer scrutiny, only too obvious. By contrast, the presbyterian anti-Engagement party continued to adhere to the original declared cause of the civil war parliamentarians. The result of this situation was that the regime was made to seem on the defensive during the Engagement controversy. It was their case which appeared to be full of contradictions and which therefore had to be explained and justified. Perhaps this defensiveness is most evident in the very conciliatory and moderate tone of Dury, the government's chief apologist, who thus gave the impression that the opposition, although mistaken, were not to be condemned totally for their conscientious reservations. By entreating them to submit instead of denouncing them outright for failing to do so, Dury made his respect for the dissenters almost embarrassingly apparent. He had opposed the execution of Charles I and had drawn up arguments in the monarch's defence⁷⁹ and his role in the Engagement controversy was that of a peacemaker rather than a wholehearted Commonwealthsman. The truth seems to have been that Dury was idealistic but rather naive and was persuaded to produce works in support of the government which had a very damaging effect on his own career as an international campaigner for protestant unity. Before 1649 he was respected by protestant rulers and their courts were open to him, but after his support for the Commonwealth these doors were closed and he was snubbed and shunned as a regicide.⁸⁰ Where the Commonwealth was most aggressively defended, in The Case of the Common-wealth Stated (1650), it could not be by a man of Dury's distinction and sincerity but by a notorious turncoat, Marchamont Nedham. In the end most men were induced to sign the Engagement, but those who resisted it undoubtedly had the best of the argument.

CHAPTER VII

EDWARD GEE

Edward Gee, a clergyman's son who was born at Banbury, Oxfordshire, in the autumn of 1612,¹ was the most outstanding presbyterian political theorist of his times. Neither his ability nor his influence have received adequate recognition from modern writers, although one historian, Perez Zagorin, has described him as

one of the ablest political writers of the interregnum, and his criticism of Sir Robert Filmer is as acute as Locke's.

2

Gee, a graduate of Brasenose College, Oxford,³ apparently obtained the position of chaplain to Dr. Parr, bishop of the Isle of Man, who possessed "the rich church of Eccleston",⁴ near Chorley, Lancashire, at which Gee became pastor in the late 1630's. In 1643, the civil war Parliament made him Rector of Eccleston in place of Dr. Parr. The parish register of Eccleston records his marriage in June 1640, and the christenings of his nine children, born during the 1640's and 1650's. His living at Eccleston reportedly comprised the parsonage-house and glebe, with tithes and the income from a water cornmill,⁶ which was opposite the church.⁷ From 1646 until his death in 1660, he held the position of 'scribe', or secretary, to the Lancashire Provincial Synod of the established presbyterian church.⁸

In his political views Gee had supported the parliamentary side in the first civil war, but he opposed the military seizure of power in 1648-49 and abhorred the execution of King Charles. He wrote three tracts against the Commonwealth Engagement of 1650, An Exercitation concerning usurped powers (1650), A Vindication of the Oath of Allegiance (1650), and A Plea for Non-Subscribers (1650). John M. Wallace, bibliographer of the Engagement Controversy, acknowledged the Exercitation to be the most learned, and one of the most powerful, presbyterian attacks on the Engagement.⁹ In August 1651 Gee met with the Earl of Derby

who had raised forces for Charles II's invasion of England.¹⁰ After Cromwell's defeat of the royalists, the rector of Eccleston was one of a group of ministers imprisoned for having approved the young king's cause. During their imprisonment the ministers selected Gee to write for them a discourse concerning prayer and divine Providence,¹¹ published as A Treatise of Prayer and of Divine Providence as relating to it (1653). After the repeal of the act for subscribing the Engagement, in 1654, he became an assistant to the Lancashire commissioners for the ejection of scandalous and ignorant ministers and schoolmasters.¹² In 1658 Gee's main political work was published, viz. The Divine Right and Originall of the Civill Magistrate from God Illustrated and Vindicated (1658). At a time when Lancashire presbyterianism flourished under the guidance of an imposing company of distinguished ministers, Gee was able to play a leading role and to gain the respect and trust of contemporaries. Ashhurst's Life of Nathaniel Heywood (1695) refers to him as "the famous Mr. Gee".¹³ His death in May 1660, hastened according to a colleague, Henry Newcome, by over-working,¹⁴ saved him from having to face the dispossession which his colleagues were to suffer in 1662, yet he lived just long enough to know that Charles II was to be restored to the throne and the usurpation of power by the army ended.¹⁵

Richard Baxter, the most distinguished and best-known non-conformist of the restoration period, praised Gee and reiterated many of his ideas. Gee was cited with approval in Baxter's A Holy Commonwealth (1659)¹⁶, and over thirty years later Baxter wrote "I cannot think that all Princes, Parliaments and Privy Councillors, understand politics so well as Bodin, Grotius and Mr. Gee."¹⁷ The accession of William and Mary in 1689 was justified by Baxter using an explanation about the nature and origin of civil authority very similar to that of Gee,¹⁸ for whose work he had such open admiration.

Gee was the earliest critic of the political theory of Sir Robert Filmer, the revival of whose works later prompted Locke to embark on his Two Treatises of Government (1690). It appears

that Locke had read Gee's Divine Right and Originall,¹⁹ in which the attack on Filmer appeared. Defenders of the moderate majority group in the Scottish Kirk quoted Gee in a major tract issued against the dissident protester party in 1659, and reiterated his arguments as those of a recognized authority on the text of Romans xiii, 1-4.²⁰ It is not usually noticed that one of the books to criticize Filmer was A Hind let loose (1687), by the Scottish covenanter Alexander Shields, who quoted Gee in a very selective way on other matters, but reproduced the Divine Right and Originall's arguments against patriarchalism.²¹ Shields wrote his book while he was in exile in Holland, at the same time as Locke. Locke was to state many of the arguments against Filmer first made by Gee, particularly those emphasising the distinction between the character of paternal and political power and insisting on consent of the people as the sole foundation for government.

For Gee, the power referred to in Romans xiii, 1-4, that crucial text on obedience to civil authority which had preoccupied so many political writers of the 1640's and 1650's and which formed the central theme of The Divine Right and Originall, meant a just and lawful power only, not a usurper. He had no doubt that

The great subject of debate, difference, exagitation and contrivement in the late Commotions, that which the most stir hath been about, is, the matter of Authority. 22

He considered lawful authority to be a will authorised to command, with the moral power of a de jure, as well as the coercive power of a de facto, title to rule. A usurper's power, by contrast, was based on force, or "natural power" only. Moral power consisted not only of the strength to govern, but also of the right to do so. Although the means of enforcement, a sword as well as a sceptre, should be among the attributes of a lawful authority,

The sword that it hath, is not the cause, but the consequent of its superiority: It doth not assume, or hold its authority by vertue of the sword, but it assumes and holds the sword by vertue of its authority. The Scepter goes before the Sword, and is that which legitimates it. 23

In Gee's view the concurrence of the multitude was no less essential to civil authority than the power of coercion:

The right, and durable Basis then, that is left unto Magistracy, is that which is cemented with a composure of the wils of them over whom it is

This foundation was particularly important in England, a nation

so naturally addicted to Lawes, and liberties ... (that) it cannot ... be rationally expected, that any other way of settling than upon clear grounds of conscience should here take. 24

Civil government, according to Gee, was set up first by the constitution of the form of government, and then secondly by the 'individuation' of it in a particular person or lineage. The form of government was antecedent to a ruler (or dynasty), and was not something determined or granted by him. Although in biblical times God had sometimes bestowed authority directly or 'immediately' on rulers, it was now transferred to the civil magistrate 'mediately' through the consent of men.²⁵ God had commissioned the people to have the right of choice or consent to the form of government to be constituted and to the person or line to which it was to be individuated, but the origin of the ruler's moral power lay not in the consent of the people, but was from God, as St. Paul had stated in Romans xiii. God was the author and creator of the civil magistrate's power, while the people, by their vote or consent, were only "the medium or instrument used by God to convey that power to the person ...".²⁶ As he had previously stated in A Vindication of the Oath of Allegiance:

The people are only a channell, or instrument of its conveyance to the Magistrate by their election or consent, which acts of theirs do no more prove supreme power to be in the people, than the Electorship of the seven Princes proves the imperiall power and dignity to be in them; or the choice of a Mayor of a city by the aldermen, or freemen, proves the office or authority of the Mayor to be in them. 27

Gee thought that the people could and did convey the power

to govern, without themselves possessing it. In an analogy which appears in a similar form in three of his tracts, the people's conveyance of the power to the ruler was likened to a wife by her consent to a marriage conveying power over her to her husband, a servant who chooses a particular master to whom he will submit, or a congregation choosing its pastor. They, like the people in regard to government, were merely commissioned by God to have the right of designating who would be placed in authority over them. The estates of marriage, service, ministry and civil magistracy, with the powers appertaining to them, were, however, created and ordained by God. Consequently, the people had no right to innovate in the form of an established government, no entitlement to make or unmake kings. They had no "over-topping" power of this kind.²⁸ It is interesting to note that rather similar qualifications about consent had been used by royalist writers against the parliamentarians during the first civil war (1642-46), although as we have seen (Chapter III above), royalists rarely followed the presbyterians in accepting consent as the only lawful title for rulers. Just as a maid was free to choose her husband, but was no longer free to do so once she had married, so a people, having divested themselves of the power they were entitled to convey to a ruler, could not be free to resume it at will. Many things which are ours to dispose of before we part with them are, according to this viewpoint, not subsequently in our power to recall.²⁹

In The Divine Right and Originall, Gee asserted that

the right, power, or interest to transact this business of the constitution of Magistrates is in the community or people of each Countrey, or State, in relation to their own Magistracy. So that whether we look into the Scriptures, or into the Book of Natures law, the way which God hath chalkt out ... for the deputation of persons under himself, and over the people, in the office of Supreme Civil power, is the vote, elective act, or consent of the Body Politique or people to be ruled. 30

Consent was essential to government, or at least to lawful government. A passage in Gee's Plea of 1650 on behalf of ministers opposed to the Commonwealth's Engagement emphasised

this concisely:

Among the first of the civill Rights and Liberties of the Subject, we think we may reckon the enjoyment of a Supreme Government over them, set up by their own Constitution or Consent, unto which we may adde, that there be no alteration therein made by violence, that their Rulers and Representatives in Parliament be free to possesse and Act in their Charges; that no civill Courts and Laws be imposed upon them but by the Estates in Parliament.

31

Government set up by constitution and individuation, in the way described, was to be regarded as being the kind of power referred to by St. Paul as being "of God" and "ordained of God", and therefore the power to which the subject owed obedience. The lawful power was ordained of God because it was established by the people's election or consent, the medium through which authority was conveyed from God to the ruler. No authority established by other means could be a power ordained of God. No de facto ruler in possession of a usurped power could be considered ordained of God simply because it was supposed or claimed that Providence had justified his cause by allowing him to gain power.

Edward Gee made an important distinction between things which were "of God" in the sense of stemming from God's prescriptive will or command, set down in the Scriptures for the guidance of man, and God's narrative will, or Providence. It was this crucial distinction which made it clear that obedience to the higher powers ordained of God meant obedience to a lawful power only and not to a usurper. Gee stated that the declarations of God were divided into his narrative and regulating, or imperative will.³² It was the regulative or prescriptive will (set down in the Bible), not mankind's attempted interpretation of his Providence, which God intended to be the rule for human behaviour. Some persons had mistakenly supposed Providence to be man's chief guide. Concerning Providence, Gee wrote that there was

a very frequent, studious, and solemn reference to it, as the voice of God, and as a Guide, Judge, and Interpreter of God's will or command, or warrant for

the regulating of our perswasions and actions,
In matters of chiefest difficulty and difference.
We see, how much Providence is pointed at, produced,
alledged, to justifie and condemn wayes, and causes:
and to entitle courses to God's approval, or dis-
approval, and to induce men, upon that account, to
own or disown persons, and proceedings. I have long
desired heartily, that this question might be
religiously, judiciously, and impartially debated. 33

It was common and popular to interpret success or victory
as a sign of divine approval, and the apologists for the
Commonwealth regime, especially during the Engagement
controversy, used Providence as their chief argument.³⁴ In
Gee's view, however, Providence itself was certainly not
declarative of God's approving or disapproving will.³⁵ Providence
did not show the will of God concerning human actions, nor did
it nullify any law of God. Robberies, murders, disasters and
plagues could be said to be of God, in the sense of being
included in his Providence, his secret will or purpose, but
they did not thereby have his approbation. Human sins and
divine castigation stemmed not from God's will directly, but
from the free choice he had given men to do good or evil.³⁶
Providence could not be construed to countermand the word of
God revealed in the Scriptures. The events of providence
might sometimes be trials of human obedience to divine commands.
Providence presented opportunities to be shunned, as well as
those which ought to be embraced. In adversity the godly must

take this condition as a tryal from God of their
fidelity to him ... Turn not out of the ways of God,
I mean the ways of his Word and Commandments; decline
not into any unwarranted path upon occasion of such
Providences of God: keep to the Law and to the
Testimony; and whatever Oracle it be that speaks not
according to this Word, refuse the pretended light
thereof, for in truth there is no light in it. 37

Usurpation of civil authority fell into the category of
events which should not be welcomed or accepted willingly.
Submission to a usurper with the strength and force to hold
on to power might be expedient in many cases where the subject
had no defence against the conqueror, who should therefore be
obeyed in any matter where he commanded something in itself

lawful, although such a command was obeyed only because it was lawful, not because it was commanded. (The command of a usurper had in itself no more legality than that of a private person). This attitude contrasted sharply with the Hobbesian view that what was lawful was by definition whatever was forcefully commanded. Gee thought it was particularly important that a usurper should in no way be admitted to have any lawful title to rule. There could be no swearing of allegiance to him, nor could any civil office under him be accepted. He abhorred the notion that

a persons attainment and occupation (by whatever means) of sway, or command over a people, makes him, or them, the Soveraign or higher power, which is of God, the ordinance of God ... that, whosoever is master, shall be the Magistrate, or he whom the hand of Providence, raiseth up to a domineering prevalency in any place, shall have the authority there ... 38

Unjust possession could not confer a lawful title. The mere domination of a civil state did not in itself denominate one a magistrate. Gee put forward many biblical examples of God having acknowledged as rightful kings men who had been dispossessed of their kingdoms, the most notable case being that of David, who, though ejected from Israel, was regarded by God as being king still.³⁹ "Magistracy," he wrote, "is the antecedent, the cause, ... and actual dominion ... is the consequent, the effect ... Men first are Kings, and then they reign; they rule because they are the higher powers, and they are not the higher powers because they rule."⁴⁰ Resistance to a usurper was just and lawful. Obviously, prudence, though not conscience, might lead the subject to submit to the usurper's will, for the sake of self-preservation. Melancthon was quoted as having stated that if one could not escape from a robber, there was no wrong in submitting. Gee was quite emphatic about the difference in the quality and extent of submission to a predatory power, and that which was owed to a lawful magistrate. The usurper could not receive the willing and active obedience, the support and supply, along with the allegiance and conscientious subjection, which must be given to a lawful power.⁴¹ As it was expressed in the Plea for

Non-Subscribers,

... to Engage to an active fidelity to the said (usurped) power, were to give our hands to withstand, and destroy the right of others; theirs namely, against whom the wrong is committed and continued: in so doing we should combine to despoile and deprive others of their due property and lawful possession ... it would be a justifying of the wicked for reward

42

In basing political authority on popular consent, there was no need to allege or prove a specific occasion in English history when such an act of consent had happened. Gee's case regarding consent, like his colleague Charles Herle's (see Chapter III above), was not historical or antiquarian, but rational and Scriptural. Answering the objection that the origins of most kingdoms, the constitution of their form of government, and its individuation in a particular lineage are shrouded in obscurity, he pointed out that most titles to private property and estates were also obscure, but that was not taken to deny the legality of their ownership: "no man scruples his ancient patrimony, or his late purchase, or grant, upon this score". On the contrary, the long possession of titles held since "time out of mind", or their subsequent legal purchase, necessarily conferred legality to ownership. Where the beginning seemed uncertain, continued possession made a title and where no wrong appeared, it could be taken to be right.⁴³

In 1650 Gee had claimed, on behalf of the Engagement's opponents, that the Commonwealth régime had no right to demand a promise of allegiance to their new system of government, without a monarch or House of Lords, because it lacked a lawful derivation and was not set up by any power sufficient or qualified to found and establish it. Even if the ancient system of government by King, Lords and Commons had been lawfully dissolved (which Gee denied), the community of the nation had not assumed the power of government themselves, nor had they transmitted it to any delegates to create a new supreme power. If there had indeed been a vacuum left by the

alleged dissolution of the old constitutional frame, and the nation destitute of a lawful government, then only the people had the right to choose and setup a new governmental system and to invest it in particular persons to possess and manage it. In fact the people had given no such consent to any new power. If they had done so, why was the Engagement being tendered to them? The Engagement was an admission that the people had not yet given their consent to the Commonwealth. If the new regime had been set up by the people, there would have been no need to make them sign the compulsory Engagement, which was being so strongly opposed.⁴⁴ A failure to denounce and dissent from the usurpation of 1648-49 would be to permit the establishment of a precedent for future revolutionaries to attempt to emulate. Gee thought the stability of the state would be imperilled if it became the practice to accept forcible seizure of civil authority as being a valid title:

To expose the Common-wealth as a common booty, and prize to all aspiring spirits, and to give an invitation ... to every ambitious, discontented or disloyal party, continually to be hatching, and attempting, by power, or policy, to undermine, or beare down the present Government, and to advance a new: by which meanes the civill power shall be alway tottering, as in an Earthquake; the peoples minds incessantly possessed with expectations of change; and the publique State (together with every mans private) stand in perpetual jeopardy of falling under all violence, spoyle and confusion. 45

At the beginning of the Interregnum the Levellers, having support within the army, had seemed potential perpetrators of a new usurpation of power. The shock which essentially conservative presbyterians like Gee had received had been made worse by the growth of apparently democratic political demands by the late 1640's. The Levellers presented the strongest threat of this kind. In the Exercitation concerning usurped powers, it was stated, with regard to the Levellers, that,

Levilling ... is the consequence of their doings, who take away the settled Magistracy ... Levilling in point of goods, you like not, it seems: but

why do you not as well abhor from it in point of government? that's but Levilling the private, this is levelling the publick interest; that Levilling can never come in, till this Levilling go before & lead the way, but who are Levellers this latter, and (as you see) worse way, but they that teach or practise the deserting of the lawfull, establisht Magistrate, and the competency, yea duty, of any that have force to play the Magistrate.

46

In the seventeenth century the distinction between private property rights and the rights of princes and rulers to inherit and retain possession of their thrones was often unclear. If the fundamental constitution of the supreme power in King, Lords and Commons were to be annulled, "what Basis," enquired Gee in the Plea for Non-subscribers, "hath the Property and Security of private men, and the Laws for the conservation thereof?"⁴⁷ There could be no question of Charles I's death having ended the obligation of allegiance to his line, now represented by the Prince of Wales, who was already Charles II in the eyes of the monarchists. The killing of the king could no more clear the way for the usurpers than a robber's murder of his victim could clear him of his crime. The republican régime could not, therefore, be Charles's lawful successor and inherit the right to the obedience owed to the higher powers ordained of God:

If a man by violence ... get into his hands another mans goods, or estate, though the suffering party dye, yet the Injustice, and oppression of that injurious person ... ceaseth not. He is still an oppressor, in reference to that person, and the act committed against him, though he be now dead ... though the wronged person ... be Extinct, yet the law, or rule, which forbade, and condemned that act is still ... in force: Besides, though the party injured ... be dead, yet it is to be supposed, the property, or disposall of them, is passed to some other, by vertue of relation to him, or escheature, and so, the oppressors holding of them, is a continued, or still renewed act of injustice. Thus it is with him that resisteth the power unto the ejection of him (i.e. the rightful ruler), and enthroning of himself: say, the power ousted by him were thereby extinguished, yet ... his resistance of the power ordained of God, is continued ... the intrusive possessor ... still is ... a resister of the ordinance of God.

48

Earlier, in his Exercitation, Gee had emphasised that if the owner's right to private property could not be forfeited merely by the loss of actual possession (because of theft, for example) then neither could the public "property" of a ruler's right to govern be lost by that means. An illegally ejected ruler had no more forfeited his right to what he had lost than a man who had been robbed forfeited the right to his stolen money:

who sees not the incongruitie of this, that that which is the conservatory and protection of a private mans property should be of a so much more slippery tenure than it; but a private property is not lost by dispossession: if it were, for what use serveth the Law, or Magistracy? one main end of which hath been, to vindicate the Subjects right from usurpation, or what call you property? ... If force dissolve Magistracy, then that prohibition of resistance under pain of damnation: Rom. 13.2 is in vain, in that it concerns onely them that cannot resist effectually ... If violent occupation made a right, then it werelawfull for any, that could make a sufficient strength for it, to rise up in Arms ... and seise on any Kingdome or Territory he can prevail over.... 49

Similarly, in A Plea for Non-Subscribers it was asserted that to usurp civil authority and dispossess the rightful ruler was the greatest injustice, because not only a private right, but also a public estate was violated,

yea, Authority and Order themselves are ravished: therein not only one unjust Errour or unjust deed is committed, but a gap opened to all Errours and Illegalites. 50

Considerations of this kind led Gee, and others like him, to draw back from any admission of the legality of outright innovation in constitutional matters. The occasion of the people's consent, that channel by which God conveyed the power to the civil magistrate, occurred only rarely, and once the system of government was settled the people stood in the political relationship of subjects to their governors, and their subjection was a matter of conscience, in obedience to God's prescriptive will and command as revealed in the Bible. Consequently, as the Vindication of the Oath of Allegiance had it,

in things which approach neer the foundation, or do constitute it, changes are very perillous in a State, and in those things it is better to bear an inconveniency, than run the hazard of an innovation ... It is a lesse evill for a people to be bound to a Prince that possibly may prove bad, than to be so loose, as to be at the liberty to cast him off when they shall judge him to rule ill, that is, when they please ... In short, a bad Government is better than none; it is more tolerable for a people that one or a few, than that every man do that which is right in his owne eyes. 51

"To lay this principle," wrote Gee in 1658,

that the prevailler ought to be, or is the civill power, is ... to reduce the world to that supposed original parity, and masterlesnesse, and to introduce, or give opportunity to all those confusions, and harms, which Government was set up to fence out, to curb, and to suppress. 52

It is a remarkable testimony to the confusion surrounding basic questions of political theory during the Interregnum that writers who opposed Gee managed to claim that it was his view, not their own, which were an incitement to disorder and anarchy. One such opponent was the author of the anonymous pamphlet, The Exercitation Answered (1650), which has been plausibly attributed to Francis Rous.⁵³ The Exercitation Answered claimed that Romans xiii asserted the duty of obeying the present powers, because it spoke of powers in facto esse, in possession and acting for the good of mankind. If St. Paul had not meant the powers in possession,

there must necessarily be a breach in that Golden Chaine of Order and Government which God hath ordained to binde up man-kind from inevitably ... falling into Anarchy and confusion upon every concussion of State, and the frequent Revolutions of Governours and Governments. 54

Another critic of Gee was Marchamont Nedham,⁵⁵ who managed to acquire a reputation as a notorious turncoat even in an age when changing sides was necessarily commonplace. He wrote in The Case of the Common-wealth Stated (1650) that, since it was necessary for there to be some government at all times, those who refused to submit because they could not have a ruler to their own liking were in a sense mere anarchists. Private persons, therefore, had no right to question how their rulers

came by their power, for if that right were admitted there⁵⁶ would be no end to disputes concerning titles to govern. Nedham's opinion was shared by John Dury, the most energetic pro-government pamphleteer of the Engagement controversy, who made a similar point in Objections against the taking of of the Engagement answered (1650),⁵⁷ a pamphlet which referred with approval to The Exercitation Answered,⁵⁸ although it was itself written in a far more moderate tone. Dury opined that the oath which had tied him to the monarchy now no longer bound him since Heaven had

providentially ... loosened the tyes by removing the late King and his Heirs from the legal capacity wherein they stood towards me formerly. 59

Nedham openly declared allegiance to be based on purely political considerations, so that the old allegiance was extinct and must be replaced by the new one.⁶⁰

Gee's Plea for Non-Subscribers impressed even those who, like the Cheshire minister and author Adam Martindale, had originally favoured signing the Engagement, and Dury, patient as ever in tone, was hard-pressed to answer it in his A Second Parcel of Objections against the taking of the Engagement Answered (1650). Reproducing the testimony of a correspondent that the Plea "seems to bee of great weight and strength with manie good men", Dury agreed that it had been influential.⁶¹ He had to resort to the unconvincing argument that the word "Common-wealth" in the Engagement promise really only meant the civil society of England, as it was antecedent to the form of government established in it, so that the object of fealty was in fact the commonwealth in this sense, and the government reductively.⁶² He claimed that the Engagement promise was

as if it were said, I shall be true and faithful to the People of this Land in their free state and national relation to each other, for common welfare ... (the Engagement) requires nothing els, but that everie one should be true and faithful to the Freedom, and Common well-fare of the Nation; as those are now attainable by the establishment wherein it stands. 63

All three of the opponents of Gee mentioned above evidently believed in the existence of a kind of mutual obligation between government and subjects based on the provision of protection by the former in exchange for obedience from the latter, who were bound to allegiance in gratitude towards those in power who managed their security.⁶⁴ Anthony Ascham, whose treatise Of the Confusions and Revolutions of Governments expounded this attitude,⁶⁵ was another adversary of Gee. He later attacked the Exercitation, claiming that it had failed to refute his own apparently Hobbesian concept of the possession of irresistible force being the ground for ruling, and the cause of subjection. Any change in the possession of supreme power was held by Ascham to be part of God's Providence, within his secret disposing, to which men should submit without disturbance.⁶⁶

Gee's Divine Right and Originall is partly devoted to an attack upon the views of Sir Robert Filmer, whose theories were later to be so lucidly refuted by John Locke. It is not usually noted, however, that at first it was Filmer who attacked Gee, rather than vice versa. In his Observations upon Aristotle's Politics Touching Forms of Government ... (1652) Filmer criticized the "late exercitator" upon the matter of consent given subsequent to a ruler attaining power and whether such consent could constitute a just title to govern.⁶⁷ The term "exercitator" is used to designate the anonymous author (Gee) of An Exercitation concerning usurped powers in the same way that the term "observator" is used by Filmer to denote the author (Henry Parker) of Observations on His Majesties late Answers and Expresses (1642),⁶⁸ but Filmer's modern editor did not identify either the exercitator or the title of his Exercitation, although he acknowledged Gee as "the only writer of standing known to have dealt with Filmer's tracts on their first appearance", and also as a more profound critic of Filmer than either James Tyrrell or Algernon Sydney.⁶⁹ Gee's critique was, in fact, only surpassed by that of Locke.

Gee rejected the Filmerian concept of the descent of the

civil power in succession from Adam. If the concept were carried to its logical conclusion, it meant that, with strict primogeniture observed in hereditary descent from Adam, there would be a single monarchy on earth of all mankind. Alternatively if it were held that the inheritance had been divided successively, then it would mean a division of the world into innumerable minute principalities.⁷⁰ "Probably," admitted Gee,

in the beginning of mankind, ... there was little difference observed betwixt a Family and Commonwealth, publique power did reside in the father over all that sprung of him ... But, that this was a natural right, or that it was set down as a perpetual law, or rule for every Commonwealth, as the only warrantable rise or title to Supreme Government ... will ... never be proved. 71

He suggested that inevitably when mankind grew too large to be contained under the single rule of Adam or his heirs, they parted into several commonwealths, each of which chose by agreement a civil authority or king, thus introducing the consent of the people. He quoted, among others, Richard Hooker, John Selden, Thomas Hobbes and Philip Hunton (whom Filmer attacked in The Anarchy of a Limited or Mixed Monarchy, published in 1648) in support of his claim that the laws of nature confirmed that supreme power was derived by (he was careful to write "by" rather than "from") consent of the people, and, in a subordinate argument to attack Filmer on his own ground, quoted Calvin, and a number of classical authors, including Aristotle, Cicero, Livy and Plutarch, in support of the view that in the early kingdoms of the world supreme power had been derived by consent.⁷²

For Filmer the only form of government with divine sanction was the patriarchal rule of a monarch exercising the same absolute and arbitrary power over his people that a seventeenth-century father exercised over his family and household. It was the inheritance of that same absolute authority over his family given to Adam by God in the order of creation. Such power belonged to every ruler, even a usurper. Gee opposed Filmer's idea that Providence, in dispossessing the

true heir to a crown and placing it into the hands of a usurper, thereby conferred a 'fatherly' power upon the usurper and so obliged the subjects to obey him. This idea contradicted the right of inheritance and of consent of the people:

And to what purpose then is all his plea for Fatherhood, and primogeniture, or any other mans for any other title ... According to him now, there is no power but Fatherhood, no Fatherhood, but possession.

73

Like his colleague Charles Herle, Gee believed that conquest could not of itself confer a just title, but a conquest undertaken to regain a just title, from which the conqueror had been wrongfully excluded, was lawful because it was a seizing of powers which by right should have belonged to the conqueror in the first place, even before he managed to secure them by prevailing on the battlefield. Since the conquest itself was not the ground of his accession to the seat of authority, it was no contradiction of the consent of the people.⁷⁴ If Charles II's invasion of England in 1651 had been successful and had led to his restoration, it would have been a conquest of this type, undertaken by the conqueror to regain the exercise of an authority which by title already rightfully belonged to him. Cromwell, however, in spite of conquering all his opponents in battle, had no such rightful entitlement to rule. Both Filmer and Ascham attacked Gee's Exercitation for failing to explain whether consent given to a conqueror after his coming to power could be considered a just title to rule, and Ascham mentioned the example of Henry VII.⁷⁵ Gee answered by stating that Richard III, because of his unparalleled misdeeds, had been held to have forfeited the crown and forfeiture

as it is a singular exception that lies in many cases, so, it presupposeth a law, or constitution, that ordains it, and so in a sort involveth their consent of whom it is taken.

76

Henry had not deprived Richard of his crown, but rather Richard had forfeited it by his own actions.

Writing of conquest in more general terms, he expressed

the view that a conquered people could by their consent make the conqueror their lawful ruler only "if they be indeed free, and unengaged to any other",⁷⁷ "if they be free from others and not preoblged".⁷⁸ They had to have "a morall freedome, or, a freedome of conscience (truly so called)" and not to be under any "morall restraint, to wit, By a preobligation, tye, or duty of conscience."⁷⁹ The English people, in Gee's opinion, were heavily preoblged by their Oath of Allegiance and the Solemn League and Covenant of 1643, and so were not free to give their consent to, and thus legitimize, the commonwealth and protectorate regimes. In an age which still believed in the solemn religious significance of such oaths, these impediments were major restraints on the conscientious, godly individual. Gee also rejected Ascham's Hobbesian notion of protection given to the people by a usurper creating an obligation upon them to give their allegiance. The idea of this unilaterally imposed social contract was not only wrong in principle, but also very obviously open to cynical exploitation:

... of voluntary Beneficialness, By protection. There are some who would build a kinde of claim to rule, upon the consideration of the good, or benefit which the Governing may be said to bring to the governed; which they will suppose it equal for him to obtrude upon them, though against their wils, and in recompence of it to exact their obedience to him. But such pretences of Benefit, Besides that they are often without reality, and are made the visour of proceedings of a quite contrary tenor; were they never so real, cannot reach to such an effect. The Intention, promise, or actual collation of a good turn doth not create a right in the promiser over him, or anything of his, to whom the same is done, without his consent, or acceptance of it, with such a condition. 80

An important objection made by Filmer, against the people's consent being the ordinary medium of God's ordination of a person into the sovereign power, was that since suicide was prohibited, how could the people confer on their ruler a power of life and death, which they did not rightfully possess themselves, without, potentially at least, committing the sin of being accessories to their own deaths?⁸¹ Gee's answer was that the power of life and death in certain cases was an

attribute of government in general, ordained by God, and that the people only conveyed this right to the ruler through their consent, without ever themselves possessing it. One could be the vehicle of handing over a power to another which he, the conveyor, did not himself possess. A woman did not possess marital power over herself, yet by her consent in marriage, she conveyed it to her husband. The people of a church congregation did not each have the authority of a minister to preach or administer a sacrament, yet by their choice they conveyed this power to the person they selected as their pastor. A member of a legislature might vote for an act which punished with death a particular crime, and himself be liable to death if he were to break that law, but that did not constitute suicide in any sense. A man's vote did not create a power of life and death in a ruler, because it was God who had established that rulers could have the power of life and death.⁸²

Filmer admitted an escheature of power to heads of families in the case of a throne falling vacant without a known heir. In this case, pronounced Filmer, the kingly power would not escheat to the whole people, but to the fathers of families, who would in choosing a new king, confer 'their distinct, fatherly powers' upon him.⁸³ Gee disagreed and asserted that the power, to convey authority to a new ruler, was latent in the people, suspended by their political relationship of subjection to a lawful authority, and was activated by the need to select a magistrate for a rulerless commonwealth. In his view

the reason why men have that power of Election of a Magistracy to this, or that Commonwealth, is not because they are Fathers, but, because they are Denisons, or freemen of that Common-wealth, and are not comprehended or represented by a Domestical Superior, but immediately concerned to act for themselves in the common interests of the people of that Common-wealth.

84

Thus, any self-supporting bachelor had a vote in the erection of governments.⁸⁵ The power conferred by the people, or the freemen representing them, was not their distinct fatherly power, as alleged by Filmer, but supreme political power, while

the domestic paternal authority of fathers quite obviously was not conferred on anyone:

The power which upon their election passeth into the hands of the Elected King, is more than all their distinct Fatherly powers laid together, that is, a supreme, Political, Civil, or Commonwealth power; which is a power of a higher Sphere, and differs not only in measure, but toto genere, or in kinde, from that of the Fathers, and unto which the paternall, still continuing in the Masters of families, is subordinate.

86

In fact, Filmer, in his muddled explanations had, according to Gee, been unable to avoid an admission of the very thing he had been arguing against, namely the rise of government from the peoples consent. Filmer, wrote Gee, had been unable to avoid quite obvious self-contradictions. For example, the Filmerian view was that, when the lawful heir to a crown was dispossessed by a usurper, the subjects' obedience of the fatherly, patriarchal power must continue and acquiesce in God's Providence, which gave and took away kingdoms, thereby "adopting" subjects to the obedience of another fatherly power. Yet this notion contradicted Filmer's admission of the escheature of power to fathers of families if there was no royal heir. According to Filmer, the supreme power either continued in the royal line if the right heir were known, or else it escheated to the fathers of families. In either case Filmer could not, without contradiction, allow that the power could pass to a usurper. Subjects could not be "adopted" to obedience to a usurper because the supreme power could not be transferred by means of usurpation. In the Filmerian scheme, it could only be transferred by hereditary succession or by fathers of families conferring their fatherly powers on their nominee for a vacant throne. For Gee usurpation was in any case unacceptable, but he had shown that, logically, it should have been unacceptable for a Filmerian also. As he succinctly summarised it, if the people have the right to choose their king, then he that is chosen by them has the right to be their king, and not the usurper.⁸⁷ Later in the century John Locke, Filmer's most distinguished critic, repeated many of the points

first made by Gee, particularly emphasising the distinction between paternal and political power and insisting on consent of the people as the sole foundation for government.

It is perhaps disappointing that Edward Gee has not been adequately recognised as an important political theorist of the seventeenth century. His writings are wordy and learned, with religious arguments always prominent. These features are unattractive to the modern reader who prefers the more secular attitudes of Hobbes and Harrington, who also produced their main political writings during the Interregnum. Many less important and more obscure authors of the era have been given some attention by modern scholars because of their supposedly radical political views. Gee, with his generally conservative outlook does not qualify on this count either. Even so, his Divine Right and Originall of 1658 was the most elaborate and best-argued explanation of the most politically important scriptural text of the mid-seventeenth century, Romans xiii. It would also be fair to describe Gee as the most prominent English presbyterian political writer of his times. Presbyterians are apparently not, however, so interesting to the modern historian as Levellers, Diggers, and Ranters, who were far thinner on the ground.

It must, nevertheless, be accepted that the rector of Eccleston never enjoyed the international reputation of other Interregnum theorists like Hobbes, Milton, and Dury. Probably he would not have envied them. In the 1650's these three had achieved notoriety rather than fame in the modern sense. They were well-known on the continent, but they were less than respectable. Over thirty years after his death, however, Gee could still be described as "famous" in Ashhurst's Life of Nathaniel Heywood (1695), and was still a major authority to Richard Baxter and Alexander Shields. Probably the prominence which Gee attained locally in his own county was as valuable to him as any wider fame would have been, in the county-orientated society of Stuart England.

Gee's claim that the only sound basis of civil authority was a conscientious subjection to it represented an accurate statement of the circumstances of his own time, as well as being a courageous plea for legitimacy and against usurpation. No seventeenth-century regime, especially in England, could possess the powers of enforcement and propaganda available to twentieth-century governments. The effectiveness of central government depended largely on the co-operation of clergymen up and down the country, whose pulpits were the chief source of political guidance for the bulk of the population. The coercive powers of governments were insufficient to allow the totalitarianism practised in some modern states. Submission out of conscience could bring a measure of obedience beyond that which could be effectively enforced. Only then could the stability, security and order, which government was instituted to uphold, be achieved and maintained. In the 1650's England experienced the financial burden of an attempt to rule with military force by a regime lacking the legitimacy that would have evoked the conscientious submission of a sufficient proportion of the educated classes. Events tended, therefore, to show that Gee had identified the vital practical deficiency in rule by a usurper, as well as proving from St. Paul's Epistle to the Romans the unlawfulness of usurpation from the scriptural stipulation. A usurper could not readily achieve the kind of long-term stability which government was expected to provide. The work of Edward Gee deserves recognition as being not only a particularly learned contribution to seventeenth-century political theory, but also a source of insight concerning the history of the Interregnum.

CHAPTER VIII

THE PRESBYTERIANS AND THEIR EXILED KING

(i) King of Scots

On January 1st 1651 Charles II was crowned King of Scots at Scone. The execution of Charles I, opposed in Scotland and brought about by decisions of the English army leaders which completely ignored the northern kingdom, meant that, in the eyes of most Scots, the title of king had descended to his eldest son, then in exile. It was, however, expected by presbyterians that Charles II would accept the Solemn League and Covenant, presbyterianism, and constitutional monarchy, before his authority in Scotland could become a practical reality. The defeat of the Scottish army, led by Hamilton, at Preston in August 1648 had led to a reaction in Scotland against the presbyterian alliance with royalists which had produced this ill-fated invasion of England. Extremist presbyterians, who renounced the Hamiltonian Engagement with Charles I and sought a full clerical domination of Scottish politics and society, were able to achieve power once Cromwell's advancing army had reached Edinburgh in October 1648. The victorious English forces excluded from office all supporters of the Scottish Engagement, and thus cleared the way for the extremists whose Act of Classes, in January 1649, confirmed the exclusion from office of all royalists and presbyterians who had failed to protest against Hamilton's expedition, and of all those considered by the new oligarchy to be immoral or irreligious persons. Those who passed the Act of Classes had no real sympathy with Cromwell because they, like other presbyterians, opposed toleration and sectarianism. Accordingly, negotiations were opened with Charles II in Holland. It was hoped to convert the young king to presbyterianism and the Solemn League and Covenant. Charles signed this document, and the National Covenant of 1638, as his ship approached the north-east coast of Scotland in June 1650. The army gathered to fight Cromwell excluded, under the Act of Classes, all royalists and presbyterians who

had fought for Charles I in the Hamilton campaign. It was completely defeated by Cromwell at the battle of Dunbar in September. The clerical extremists claimed that the army had not been adequately purged, but defeat had discredited their party and allowed more moderate presbyterians to prevail and to repeal the Act of Classes. The extremists protested and defended their ideas in the "western Remonstrance" of October 1650 (they were henceforth called "remonstrants" or "protesters") but this document was rejected by the majority party (called "resolutioners"). Cromwell now controlled southern Scotland, including the capital, but in unoccupied Scotland the path was now clear, politically, for Charles II to come to the throne and for a new army to be recruited.

Against the background of events described in the preceding paragraph, Charles II was crowned. A special coronation sermon, in which the majority presbyterian concept of constitutional monarchy was expounded, was preached by Robert Douglas, moderator of the commission of the general assembly of the Church of Scotland. Douglas explained that

when a king is crowned and received by the people, there is a covenant or mutual contract between him and them, containing conditions mutually to be observed ... It is clear from this covenant that a king hath not absolute power to do what he pleaseth: he is tied to conditions by virtue of a covenant.

1

The king's power was limited. The ultimate limitation was his accountability to God, to reign according to the divine will, but the burden of government was shared by the king with the estates of parliament:

No King should be the sole government: it was never the mind of those who received a king to rule them, to lay all government upon him, to do what he pleaseth, without controlment. There is no man able alone to govern all. ... The estates of the land are bound in this contract to bear the burden with him.

2

The killing of Charles I was "a most unjust and horrid act", but the original resistance to his government was justifiable because a king who abused his power to the endangering of

religion, laws and liberties, "which are the very fundamentals of this contract and covenant", could be controlled and opposed. This resistance could be by force of arms by those who had the authority, the parliament, if the king was himself trying to overthrow these fundamentals by force, because in so doing he would "break the very bonds" and overthrow "all the essentials of this contract and covenant". God did not want kings "in an arbitrary way, to encroach upon the possessions of subjects". A king had his own distinct possessions and revenues from the people. He must not oppress and do as he pleased, acting like a tyrant.³

This resistance by a parliament did not mean that private citizens were to be advised to interfere with the ruler's authority. "Private persons," he warned, "should be very circumspect about that which they do in relation to the authority of kings. It is very dangerous for private men, to meddle with the power of kings, and the suspending them from the exercise thereof."⁴ Douglas was attacking the remonstrants here, for the western Remonstrance had refused to acknowledge the king's cause on the ground that Charles had not genuinely embraced the cause of God, and it had further emphasised that

If it be sin in us to have put in the Kings handes the exercise of power in this nation, befor evidences had of a reall change in him, how much more sinfull must it be to have deseinged, or to have endeavored, the putting more power in his hands in England.

To support such a policy was, they said, to prefer man's cause to God's.⁵ Douglas accepted that obedience to the ruler by his people could not extend to commands expressly contrary to God's word, but he denounced the extreme clericalism of the remonstrants. The fact that there were certain cases in which it was right to disobey a ruler did not mean that there must be either a constant conflict between the civil and religious duties of the subjects, or else political domination by an oligarchy of clergymen. The accusation made against the resolutioner majority was, said Douglas, that they would not have King Jesus, but preferred King Charles to reign. The moderator's reply was unequivocal:

I do not understand these men. For, if they think that a king and Jesus are inconsistent, then they will have no king ... If they think the doing a necessary duty for King Charles is to prefer his interest to Christ's, this is also an error. Honest ministers can very well discern between the interest of Christ, and of the king. I know no minister that setteth up King Charles, with prejudice to Christ's interest.

Then he added a reminder that they were bound expressly by the covenant to the preservation of the king's just powers, his person and authority.⁶

Douglas made it clear that a necessity to obey the ruler was incumbent upon all subjects. Obviously many people would obey simply out of fear of being punished, but the godly obeyed out of conscience, because they knew it was their scriptural duty. The king and his people had obligations to each other. As the king was solemnly sworn to maintain the rights of his subjects, and to risk his life and all that he had for their defence, so the people were also bound to maintain his person and authority, and to hazard life, and all that they had in defending him.⁷ These remarks also contrasted with the remonstrants' judgement regarding the king: "wee cannot owen him and his interest in the stait of the quarrell betwix us and the enimey, against quhom (if the Lord will) we are to hazard our lives".⁸ He derided the remonstrants' notion that the greatest danger was inefficiency in keeping out the cavaliers ('malignants'):

I am sure the sectaries having power in their hands, and a great part of the land in their possession, are far more dangerous than malignants, who have no power for the present: and therefore the resolution should be, the sectaries have invaded this land, and are destroying it, let us go against them. 9

Those who thought presbyterianism did not harmonize with monarchy were mistaken. It was not necessary for there to be a clash of interests, for it was, Douglas reminded those present at the coronation, the ordinance of Christ to render unto God what was God's, and unto Caesar what was Caesar's. Christ had put the magistrate out of suspicion, that His Kingdom was not prejudicial to civil government, affirming 'My kingdom is not of this world'. This government Christ

hath not committed to kings, but to the office-bearers of His house, who, in regard of civil subjection are under the civil power as well as others ...

Erastians were wrong in believing there was no government but civil government, for ecclesiastical government had a distinctive existence.¹⁰ Douglas did not believe that the presbyterian dichotomy of church and state necessarily implied conflict between the two and he rejected the erastian concept of civil power predominating in every respect as well as the extreme clericalism of the remonstrants. He also urged the king to be moderate in exercising his authority and said that the best way to keep power was moderation in the use of it.¹¹

Hugh Binning, a minister at Govan and a former philosophy professor at Glasgow University, produced a strong tract in defence of the remonstrant arguments. He considered that the king's cause was not important in comparison with the safety of Scotland and of religion, which might be ruined by a war for the king. It was better for the Scots to possess their own land in quietness rather than to risk what they had for the uncertain conquest of England and the restitution of the king.¹² He wrote that there was still a malignant party in Scotland seeking to establish an arbitrary monarchy and many of this party were trying to get back into power by pretending to repent, while still intending to establish unlimited monarchy and a prelatical church wholly dependent on civil authority. As for Charles II, his conversion to the cause of God was at best doubtful.¹³ The resolutioners' employment and associating with the malignants, particularly in allowing them into the army, was sinful and unlawful: the rule of modelling armies and 'purging the camp' was clear from Deuteronomy Chapter twenty-three, he claimed, and it was that every wicked and unclean thing was to be removed.¹⁴ If the malignants should be entrusted with military power and should then prevail in battle, would they not employ the victory to establish their own destructive form of government? Power would bring out the evil in them, not convert them from it, and it was in any case a manifest contradiction of former declarations of the Kirk

(i.e. during the extremist ascendancy) that places of trust should now be filled by secluded and debarred persons. The malignants could not be trusted, even when they took an oath of office:

Oaths and Covenants are but like green cords about Samson to bind these men. ... Its as ridiculous as to give a mad man a sword, and then perswade him to hurt none with it..... Can a Leopard change his Spots?

15

Clearly, the remonstrants were justified in refusing to accept the sincerity of Charles II's conversion to the covenants, but their insistence that the old cavalier party was still more of a danger than the English independents seemed extremely unrealistic at a time when Cromwellian forces occupied much of Scotland. As for the restoration of Charles to the English crown, this objective could hardly be dropped by the Scots once they had crowned the king at Scone, for if he were entitled to his Scottish throne, he was no less entitled to his English one. In England, William Prynne pointed out that if the king were not restored by the Scottish presbyterian forces, he might be thrown into the arms of continental catholics, to endeavour the recovery of his throne on the condition that he brought in catholicism. There would be nothing to prevent its introduction by Charles if he regained the throne by conquest, with foreign forces, rather than on terms and conditions.¹⁶ Such an absolutist catholic government would involve, amongst other misfortunes, "a generall decay of Religion, Piety, Learning, Law, and all Arts, Sciences, Trades", but even if Charles failed to recover his throne, his descendants would never give up trying and so there would be constant wars.¹⁷ To have the British kingdoms embroiled in recurrent civil wars would also benefit the French and catholic cause.¹⁸ There were good reasons for restoring Charles as soon as possible, and also good arguments for having the presbyterians restore him on their own terms, rather than risk a possible future restoration with foreign help. The events of 1651 soon put an end to Charles II's immediate prospects of restoration. In the middle of July, Lambert's English army crossed from the Lothians to Fife,

at Queensferry. The Scottish army took this opportunity to bypass the enemy and invade England, only to be defeated by Cromwell at the battle of Worcester on 3rd September, exactly a year after his defeat of the zealously-purged Scots army at Dunbar. With no army left to oppose them, Cromwell's forces completed the conquest of Scotland in a few months. The country had never been conquered before, and Cromwell's achievement was therefore, as Milton pointed out, the fulfilment of an aim which had eluded all the old kings of England in their many wars against the Scots.¹⁹ In 1654 he declared Scotland and England united under his protectorate.

From Cromwell's victory, the division between resolutioners and remonstrants (or protesters) was of far less political importance, although the schism in the church continued. The dissident protesters opined that the defeat of the Scots, and the occupation of the country, was God's retribution for the resolutioners' alliance with old malignants. The most notable publication expressing this view was Causes of the Lords Wrath against Scotland (1653), attributed to James Guthrie (1616-1661), a leading protester. This work stated that the Scottish parliament had been too hasty in proclaiming Charles II king after his father's execution.²⁰ and that they had been

carrying on a Malignant Interest, to wit, the establishing the King in the exercise of his power in Scotland, and the re-investing him with the Government in England, when he had not yet abandoned his former enmity to the Work and people of God; 21

The King and the people were both tied to God, and each of them was bound to the other, the king to his people and the people to the king for the performance of mutual and reciprocal duties. Since the lords and people of Scotland had joined in covenant to resist tyranny and that arbitrary form of government which "was the fountain of most, if not all, the corruptions both of Kirk and State", it would therefore

be the wisdom of every one that dwells in this Land, to take heed to such a temptation and snare, that they be not accessory to any such designs and endeavours

of bringing or admitting the King to the exercise of his power, without satisfaction being given concerning the security of Religion, and Liberty of the Subjects

22

The protesters distrusted the sincerity of Charles II and of the former "malignants". The resolutioners, the majority party in the kirk, chose to trust their king and countrymen. It was hard to do more than was done, in exacting oaths and promises, to be assured of the sincerity of Charles and those who had fought for his father. "I see not," stated a resolutioner writing in 1653,

where men have otherwise a right to govern, what can be required of them for security to Religion, but that they seriously professe their sorrow for former miscarriages (if any have bin) and solemnly engage themselves for the future to perform what is required of approven Magistrates; . . .

23

Resolutioner pamphlets emphasised the absurdity of the protesters' desire to prohibit honest subjects from serving in the army. No christian churches abroad thought that it was wrong for a lawful ruler to recruit the body of his subjects for defence against an unjust invasion.²⁴ It seemed a strange paradox, to the resolutioners, that subjects should be denied the liberty of defending themselves and their nation from a foreign invasion by which not only religion, but the whole country, in which all the subjects had a common interest, was in jeopardy. This idea was inconsistent with the safety of any nation. The law of self-preservation and defence, a law of nature, justified and necessitated the union of subjects to resist the common threat presented by an invasion.²⁵

The last and longest tract of the tedious but persistent protester-resolutioner controversy was A Review and Examination of A Pamphlet lately published Bearing the Title Protesters No Subverters (1659), attributed to James Wood. It attempted to prove, by complicated reasoning, that the protesters were no more entitled to create a schism in the church, than ordinary subjects were entitled to rebel against a legal civil government at any alleged act of injustice. Also, it asserted

that disagreement with some aspects of the running of the kirk was no more cause for rebellion and separation from it than a few occasional acts of injustice by a civil ruler were sufficient cause for resistance to him. On this basis, the protesters could be depicted as at best unnecessarily factious, and at worst subversive of the established presbyterian church in Scotland. Edward Gee's newly published moderate presbyterian treatise of Romans xiii, The Divine Right and Originall of the Civill Magistrate from God, was quoted to show that every wrongful act of a lawful ruler did not negate his authority and justify resistance.²⁶ The same thing, said the resolutioners, applied in church government:

... no learned man ever allowed even the body of a Nation, or their Representatives in Parliament, to rise against a Prince (far lesse a party only, be they persons, or some inferiour Judicatories, against the Supream Magistrate, or a National Church and her Representatives, which is our case) upon the account only of the unjust sufferings of particular persons, while yet the affairs of the Church and State were well ordered, That would soon make more unjust sufferers than would be under lawful Authority not resisted, possibly in many ages. 27

To deny submission and passive obedience to "church-judicatories" was to warrant also children, servants or subjects to resist and counteract all the unjust corrections and sentences of their masters and superiors, instead of submitting and suffering.²⁸ It was a recipe for anarchy in family, society, church and state. Government, stated this very conservative tract, could not stand where there was not submission, at least passive if not active.²⁹ The following extract expresses the main point of this long book:

Magistrates are bounded by the Word of God, that they may not, by their Commission, judge unjustly, nor pronounce an unjust Sentence, more than Church-judicatories: And yet albeit Magistrates do decree an unrighteous Sentence, they may not be resisted, but submitted unto by privat persons, unlesse they would resist the Ordinance of God, though coming short of the Rule in that particular act. Now, if this be granted to the standing Authority of Magistrates, erring in a particular fact (and granted it must be, unlesse men will blow the Trumpet of Rebellion to every privat person, and condemn Saints in former

Ages, in their suffering under the unjust sentences even of wicked Magistrates) it cannot be denied either to the standing Authority of Church-judicatories. 30

Resolutioners and protesters continued their dispute through the 1650's, but the most important political matters were outside their control now, because both wings of the kirk had had their opportunities, and both were defeated by Cromwell, at Dunbar and Worcester. After Cromwell's death, and his son's fall from power, the restoration of Charles II was brought about by Englishmen, and events in England. The influence of Scotland, and the country's ability to interfere in English affairs, had declined dramatically since the 1640's, and this change may also be regarded as a contribution towards the weakening of the presbyterians in England, who could no longer look to politically powerful co-religionists in the neighbouring country.

(ii) From Protectorate to Restoration

With the repeal of the English Engagement Act in 1654, the English presbyterians were no longer threatened with a direct persecution or exclusion, but they had to adapt to being just one of several religious denominations tolerated by Cromwell, instead of achieving their ambition of a dominant presbyterian established church. Although submission to Cromwell was unavoidable, constitutional monarchy was still the ideal of presbyterians and Cromwell was still considered a usurper. This view was emphasised and given a lengthy intellectual justification in Gee's Divine Right and Originall of 1658, but this book was hardly, in either its style or contents, a piece of inflammatory anti-Cromwellian propaganda. The short and, not surprisingly, anonymous pamphlet The Difference Between An Usurper and a Lawfull Prince (1657) was, by contrast, an easily understood denunciation of the protectorate. In the first section, 'The Character of An Usurper That hath no Title at all', the usurper was described as being necessarily a tyrant, obliged to hate the laws which would condemn and punish him, and consequently also hate those people most zealous for the preservation of laws, namely,

all people that have Fortunes to be prey'd upon,
and all who have reputation and interest in their
Countrey to disturb him, and all who conscienciously
adhere to former rules, contracts, protestations,
oathes and agreements, for liberty of their fortunes,
persons, or Consciences. 31

To fortify himself against these people, the usurper had to recruit those of opposite principles and interests, i.e. those with no reputation, fortunes or religious principles. Lacking the security of a legitimate title to rule, he required a large standing army to defend his regime, with a heavy burden to the nation from the cost of this force. Even the army would give rise to as much dissent as it could suppress, seeing that it was ruling arbitrarily:

For there is no Tyrannie like the insolent government of a great Army, which will as much irritate the people against them, as the necessity of a recovering their ancient rights.

Moreover, the legal excluded government, perhaps with foreign aid or encouragement, would never desist from renewing the struggle for its own, and the nation's, rights so that constant wars would recur in the usurper's reign.³²

The usurper's image was contrasted with "The Character of a Lawfull Prince, Tied to Rules by the Peoples consent." A "well-regulated Prince established by the universal consent of the People of one or many ages" was "a felicity best known to those who have felt the Calamity of an Usurper", for such a legitimate ruler had no more need to pursue a constant course of oppression than a person with twenty thousand pounds a year had a need to risk his life and fortune by spending all his time in robberies.³³ Even Machiavelli had taught rulers to be no more wicked than was necessary, and so his rules were more applicable to the usurper than to a lawful prince who, having great reverence and power legally invested in him, had more interest than any other person in the preservation of the mutual laws between him and his people in a regulated and mixed form of government. Part of the excellence of the English constitution was that legally there was "almost an impossibility

of drawing a power together, to enslave the People without their consents" because the arms of each county were in the hands of the trained bands commanded not by courtiers but by the lord lieutenants and deputy lieutenants who were men of too great fortunes and interest in their own county to contribute to its enslavement.³⁴

The mixed constitution invested neither king nor parliaments with an unlimited power and each part of the government could check the other. Even if this excellent form of government did happen to fall into a disequilibrium, its worst times were still, said the author, to be preferred to the introduction of a new form of government which had to be maintained with an oppressing force and against many successive attacks by the displaced rulers. The purpose of government was to protect the lives, liberties and estates of all subjects from any foreign or domestic dangers, but the pretence that the usurper's possession of his ill-gotten power made it lawful was such an encouragement to all sorts of crimes that "no real Christian" could have the impudence to defend a thing so destructive to the property of all good men. Human beings naturally opposed something they were unjustly compelled to and usurpers could only expect constant troubles and dissent. God never intended the scriptural texts against resistance to protect the immediate subverters of that lawful authority which all men of conscience and honour were bound to obey whether it was in or out of possession.³⁵

Richard Baxter's The Holy Commonwealth (1659) was a controversial book for many years, although its political philosophy was, on the whole, unoriginal. Baxter, probably the most famous dissenter of the Restoration period, was already recognised as a distinguished divine in the 1650's. Cromwell had sent for Baxter and given him a long, tedious speech justifying his seizure of power and saying that it had God's approval. It did not get Baxter's approval. Although he recognised Cromwell's good qualities, he was not overawed by the great man and preached against his usurpation, accusing the

protector of treason, rebellion and hypocrisy. Having made his views clear, Baxter did not however continually rave against Cromwell from the pulpit, "because, as he kept up his approbation of the godly life in general" Cromwell seemed to try to "do good in the main, and to promote the gospel and the interests of godliness more than any had done before him ... For my part I thought my duty was clear, to disown the usurper's sin ... and to perform all my engagements to a rightful governor, leaving the issue of all to God; but yet to commend the good which a usurper doth, and ... to approve of no evil which is done by any, whether a usurper or a lawful governor."³⁶

The Holy Commonwealth was intended partly to justify presbyterian support of the parliamentary cause in the civil war and opposition to the Cromwellian usurpation. It was also intended to refute certain political philosophies, particularly "Mr. Harringtons Oceana, and Venetian Ballot" (James Harrington, The Commonwealth of Oceana (1656)), but also "Hobbs his Leviathan, or way of absolute Impious Monarchy" and the divine right monarchy of Michael Hudson's The Divine Right of Government (1647).³⁷ The political writers Baxter most admired throughout his life were Edward Gee, Nathaniel Ward, and George Lawson, author of An Examination of the Political Part of Mr. Hobbes His Leviathan (1657).³⁸ Baxter stated that it had never been any part of the original parliamentary cause to change the constitution, assert any sovereignty in the people, or introduce any extensive religious toleration.³⁹ Dealing with toleration at the beginning of the book, he warned that the ignorant populace was easily led into false beliefs if the preaching of falsehood was allowed: "Satans Liberty to deceive is not the Churches Liberty."⁴⁰ No saint could desire liberty to reproach his Lord, deny the faith, or any essential doctrine, or to speak against the holy worship. Baxter's main reason against toleration seems to have been that it would mean an opening of the floodgates to catholics and Jesuits, who could call upon tremendously zealous priests and friars to promote their cause with a vast amount of wealth and secular support from continental powers: "They have Millions of Gold,

and Navies and Armies ready to promote their work, which other sects have none of."⁴¹ Then in a special section, Baxter showed the designs of Contzen and Campanella for the insinuation of Roman catholicism into protestant states, in support of his claim that to get governments to allow religious freedom was in fact a way of promoting the catholic interest.⁴²

Baxter explained at some length his very conventional views about God having ordained that there should be ordered societies and government on earth. There were great differences between human beings and they did not all have an equal strength and capacity to protect themselves:

... what would it be if ... when men are Wolves to one another, and the weaker can keep nothing that the stronger hath a mind to, and no mans life can be safe from cruelty and revenge; when there is ... so much vice to be restrained, it is now no more question whether Government be naturally necessary, and subjection a duty, than whether Physitians be necessary in a raging plague, or food in a famine. 43

God in his universal laws of nature and of scripture had determined that there should be governors and subjects, obedience and rule, in the world and he had also determined the ends of government, viz. "his Pleasure, and Honor, and the common good". God had not however ordained what should be the particular form of government in any country, or who should be the individuals to rule. These were decided by human beings, but in any polity government must be so exercised that the commonwealth would be preserved, that the well-being and common good of the people be pursued to an extent that made their condition better within the commonwealth than it would be if they had no government, and finally that "justice be more prevalent in the bent of Government than injustice, and the Rulers in the maine be not a terror to good workes but to evill ...". As long as justice was carried on in the main course of government, injustice to a few would not "null the Government". There were, wrote Baxter, many degrees of the common good, and it would not dissolve the government if some aspects of the common good were infringed. Since no ruler was perfect, none could perfectly seek the common good.⁴⁴

Mere possession of the seat of power by whatever means, and conquest of a country were not sound titles to rulership and a people should seek the restitution of a lawful ruler who had been dispossessed (an unmistakable allusion to the case of Charles II): on this subject Baxter touched but briefly and referred the reader to the works of Edward Gee.⁴⁵ The people's consent, explicit or implicit, was necessary for both the constitution of government and for the appointment of persons to rule.⁴⁶ Not all people had this right of electing: infants, idiots, and women could not vote; servants, and the poor, were excluded because they were necessarily dependent on others, and therefore not free in their choice; and some or all malignants and roman catholics might be excluded.⁴⁷ Posterity was obliged to continue their ancestors' consent to an established form of government by succession whether hereditary or elective, for "If Posterity were not obliged by their Progenitors Acts, all Common-wealths would beshort-lived."⁴⁸ Each generation was not entitled to start anew to decide the form of government. Implicit consent was held to be given merely by a submission of a people to the exercise of government, and even a forced consent was binding because man was a free agent with a free will and could not, properly speaking, be compelled, for although threatened with death if he failed to consent, he still had a choice between consent and death, and therefore his consent bound him.⁴⁹ Express consent would be given by the representative body of the nation as it would be impractical to call the whole body of the people to vote, but since all were represented, all were obliged by the consent of their representatives.⁵⁰ No form of government could be declared unchangeable, however, and alterations of the original constitution could be made by the mutual agreement of the ruler and the people, the consent of the latter being given by parliament on their behalf.⁵¹ Rulers were limited by the constitution and could not legislate to destroy or alter it, because the constitution was what gave the ruler his authority, the form of government being held to have been established prior to the appointment of particular individuals to office.⁵²

None of these remarks implied any sovereign power in the

people. They did not give the ruler his power, but designated the individual to receive it from God, just as wives chose husbands, and servants their masters, without giving them their authority, but simply consenting to their rule extending to the particular individual making the choice. The notion that power of government was originally in the people, and was from and by them conveyed to the rulers, was a groundless Leveller and Separatist (or "Church-Leveller") principle.⁵³ Although the people had no sovereignty or governing authority as such, yet they had a right to that common good which was the end of government, and might not be unjustly deprived, by rulers, of life, faculties, children, estate and honour, these rights being secured partly by natural law and partly by the specific fundamental contracts of the commonwealth, commonly called the liberties of the people.⁵⁴ The sovereign - which in England meant the King, Lords, and Commons - could make or repeal any laws, but they were not free, stated Baxter, from the obligations of God's laws and of the fundamental contracts of the commonwealth, which were not laws at all because they were antecedent to the governing power which was the cause of laws.⁵⁵ In England even ordinary laws were above the king because they were made by acts of king and parliament who jointly held the sovereign power, so that the king alone could not abrogate them.⁵⁶ Parliament, but not the people by themselves, should restrain rulers from arbitrary taxation and seizures of property, including such evident invasions of rights as ship money and other illegal impositions of the 1630's, the Laudian persecutions, and the attempt of Charles I to arrest M.P.s in 1642 and to raise forces against parliament.⁵⁷ If princes violating their contracts and unilaterally changing the constitution were not to be resisted, then the power of princes would be absolute and unlimited, which was contrary to God's will and to the ends of government.⁵⁸

"I take it for undeniable," wrote Baxter,

that the Government is constituted by Contract, and that in the Contract, the People have not Absolutely subjected themselves to the Sovereign, without reserving any Rights or Liberties to themselves; but that some Rights are reserved to them, and exempted from the Princes power; and therefore that the Parliament are their Trustees for the securing of those exempted Rights ...

The war on parliament's side, in the 1640's, had not been to change the constitution, but on the contrary to protect it from attempted illegal alterations.⁶⁰ Baxter believed in the posse theory of Charles Herle: parliament was the supreme judicature of the nation and if inferior courts could have the sheriff raise the power of the county to assist the execution of their sentences, the highest court of the land had the right to raise the power of the nation against delinquents.⁶¹

Richard Baxter held that democracy was the worst form of government. He defined democracy as a commonwealth where the sovereign power was in all, or in the majority vote of the people to be exercised for the common good.⁶² Baxter considered the majority vote a bad system of government because the majority lacked the aptitude for governing. The most were seldom the best and a few learned, experienced men might be wiser than a thousand times as many of the vulgar. Another fault which he found in majority rule was that the size and composition of the majority and minority could alter, so that today's majority might be the minority of tomorrow:

And the society will wheel about like the Weather-cock, one party making Laws, and the next Repealing them, as each can get the Major vote. 63

Other difficulties about a democratic government were that it was slow in coming to decisions and it could not maintain the secrecy necessary for national security. Democracy in the state was like a ship being piloted by the majority vote of its passengers, an army commanded by the majority vote of its soldiers, or that scholars should rule their masters by majority vote and a family should be ruled by the servants' and children's votes. The people lacked the education and leisure to take part in government, and in any case since human nature was corrupt, how could sovereignty be put into the hands of the multitude who hated piety and who, if unrestrained, "would presently have the blood of the godly".⁶⁴

Baxter rejected James Harrington's "Oceana, and Venetian Ballot", objecting that "He thinketh Venice, where Popery

Ruleth, and whoredom abounds, is the perfectest Pattern of Government for us ...", and deploring his proposal for extending the franchise:

the multitude are so educated, that beyond the matters of their Ploughs, and Carts, and Trades, they are scarce men, and can scarce speak sense.

65

Why then, asked Baxter, should we

equalize unskilful Rustiks that never studied Politicks a day, but are suddenly chosen from the Plough or Alehouse by the vulgar vote, with men that have studied and been trayned up to the skill of Governing, and been exercised in it?

66

Parliaments should be of the wisest and most pious men, and "chosen only by vertuous men, and not by prophane, debauched persons", but since the "most servile and base are usually through the disadvantage of their education the most impious", what kind of parliaments would there be if they were "fetched from the Dung-cart to make us Laws, and from the Ale-house and the May-pole to dispose of our Religion"?⁶⁷ Only God-fearing persons of known integrity should be allowed to become members of parliament and any one of a whole range of sins, from blasphemy and drunkenness to murder, should exclude a man from voting, although reinstatement could follow repentance.⁶⁸ "A man by disfranchizing is not a penny the poorer ...," remarked Baxter,

and if they be Impious or Infidels, (unless by particular crimes they incur any penalty) I urge not the Magistrate now to deprive them of their Estates or personal Liberties: But let them have nothing to do with Governing us.

69

Baxter's views about democracy were particularly vehement, but by no means untypical of his times. For many writers it was little better than anarchy, and its use as a form of government tended to undermine other social relationships, like those of master and servants or father and children. One anonymous pamphleteer's injunction summed up this attitude:

For popular Government, let him that desires that form set it up first in his own family; there can

be nothing but confusion therein, since the people understand not reason, and for authority and perswasions they despise it.

70

In 1659 Richard Cromwell resigned the office of Protector and the rump of the Long Parliament was reconvened, only to be dissolved again by the army in October 1659 when they had attempted to revoke all the acts of the protectorate and to dismiss General Lambert, the most prominent military figure after Oliver Cromwell's death. Parliamentarians opposed to this new dissolution by the Army issued a Remonstrance and Protestation. They stated that, although the parliamentary cause in the first civil war had been just, Cromwell had used "Tyrannical Power" to exercise arbitrary government and raise taxes without parliamentary consent.⁷¹ They resolved to be subject to no authority but that of the people in parliament:

we do utterly disclaim, for us and our posterities, all Usurpations and Innovations whatsoever in Government, all exercise of Martial Law over our Persons and Estates ... we will pay no Moneys whatsoever that is not duely levied upon us by common consent by Act of Parliament, nor suffer any Souldiers to be quartered on us, or to take or force from us any Maintenance in lieu of Quarter; all such and other Exactions being treasonable and against the Fundamental Rights of the People, and the known Laws of the Land: the free people of England being not to be taxed but by themselves represented in Parliament.

72

In England's Confusion (1659), Arthur Annesley (the future Earl of Anglesey), "then a professed friend to Presbyterians",⁷³ denounced the "high hand of Arbitrary power" with which Cromwell had ruled and "his eldest son Richard his Successor in his usurped dominion".⁷⁴ The Army had betrayed the ends for which it was first raised and had replaced the constitution they should have defended with "a sneaking Oligarchical Tyranny .. as arbitrary as the Army will have it ..".⁷⁵ There had never been quiet or settled times since the king had been murdered and the constitution subverted, therefore the solution, according to this pamphlet, was to restore the king and parliament upon the terms offered by Charles I at the Isle of Wight, with whatever reasonable additions the times required:

return therefore to December 1648 where you forsook settlement when it was offered by the King and accepted by the Parliament in a full and free house.

76

Presbyterians hoped to return to the situation before the Commonwealth when a restoration of the king upon conditions had been negotiated, but the return of the Long Parliament did not bring a straight forward agreement about terms for restoration. Public sentiment in favour of an early restoration was too overwhelming to be ignored, however, and the Long Parliament dissolved itself and allowed the election of a new parliament which accepted that priority without insistence on a formal treaty.

The legal self-dissolution of the Long Parliament could not have taken place without the preliminary of reinstating the presbyterian members secluded by Pride's Purge in 1648, and so ensuring a presbyterian (and therefore monarchist) majority. This reinstatement had been one of the main terms acceptable to Sir George Booth, leader of a small, unsuccessful rising of August 1659 in Lancashire and Cheshire.⁷⁷ Many of the presbyterian clergy of these two counties knew of Booth's intentions and favoured his cause, and just as a presbyterian minister had ensured Booth's admission to Chester, so too did General Monk's easy admission to York a few months later owe much to the most distinguished presbyterian minister of that city, Edward Bowles.⁷⁸ Monk went on to London and his forces ensured the return of the secluded members, and, before long, the restoration of the king. On hearing Monk had declared for the king, Oliver Heywood recorded thoughts which were undoubtedly those of most presbyterians:

Surely there is a gracious moving wheel of Providence in all these vicissitudes. Usurpers have had the seat of jurisdiction, have held the reins in their hands, and driven on furiously these twelve years. ... God ... hath ... vindicated his truth and promises ... He hath restored our civil rights, and given us hope of a just settlement.

79

An anonymous pamphleteer demanding a return of limited monarchy complained that the nation had been "tossed like a Tennis-ball,

betwixt the mutiny of soldiers, and spleen of factions".⁸⁰
In Manchester Henry Newcome, "the wonderful young preacher",⁸¹
denounced the republican regime in his sermon Usurpation
defeated and David Restored (1660):

The people went in their simplicity, meaning no other than what was declared to them; .. force was put upon the Houses of Parliament, the lords clearly dismissed, near three hundred commoners pulled out, and kept out of the House of Commons! Many hundreds in the nation would never say a confederacy with them, and have suffered according to their first declared principles and innocent intentions under these usurpations. ... They pretend it is the parliament's cause still; and the people generally make no difference between a parliament consisting of Lords and Commons treating with the king ... and a bit of parliament, the lords removed, and the best and greatest number of the commons forcibly excluded. And to destroy the king, too! Alas! many went in wickedness, and many in simplicity, meaning no hurt, not foreseeing the guile nor understanding the treachery.

82

On the king's coronation day in April 1661 Richard Heyrick preached an exultant sermon, declaring monarchy the best form of government for order, peace and strength.⁸³

There is little evidence that presbyterian joy at the restoration was appreciably diminished by fears about the probable religious settlement once the king's cavalier and anglican supporters returned in triumph. All hope of a presbyterian established church had evaporated with the final departure of the Long Parliament, although there was no enthusiasm for bishops in England in the time of the Convention Parliament of 1660.⁸⁴ Since Charles II had no strong religious beliefs of his own, it is not difficult to accept that he would have been genuinely willing to allow a measure of toleration but, ironically, in view of presbyterian dedication to limited monarchy, it was precisely because Charles was restored as a constitutional, not an arbitrary, monarch that he did not have a free hand to grant indulgence in opposition to the cavaliers. Even had that been possible, the claim of the returning anglican clergy to their livings was irresistible, so that the writing was on the wall for presbyterian incumbents.

With these considerations in mind, it must surely be acknowledged that presbyterians showed a remarkable dedication to their political principles in that they were the most influential agents in bringing about the recall of the king although they knew that presbyterians would incur the severe hostility of the resurgent cavalier and anglican party. Looking back on the restoration in his autobiography, Henry Newcome wrote:

Affliction by law is known ... and more than is law cannot be inflicted. ... A Munsterian anarchy we escaped far sadder than particular persecution ... And methinks the trouble that befalls me, though it be more sharp, yet it is more kindly and is better taken, since coming from a lawful sovereign, than less that was inflicted by many usurpers. I did bless God every Sabbath day whilst I might preach for the deliverance, though I was but coarsely used upon his majesty's restoration.

85

Presbyterian political ideas during the reigns of Charles II and James II and VII are best summarised by discussing Scottish and English presbyterians separately in Chapters nine and ten respectively.

CHAPTER IX

THE SCOTTISH COVENANTERS 1660 - 1688

The aim of this chapter is to explain the political ideas of the Covenanters in the Restoration period. A fine modern history of the covenanting movement, I.B. Cowan's The Scottish Covenanters provides a reliable narrative of events, and should be consulted for details of the historical background to the ideas described here. The Scottish Recissory Act of 1661, which annulled all Scottish legislation since 1633, and a 1662 Act restoring episcopalianism heralded a decade of persecution of presbyterians, reaching a climax in the suppression of the Pentland Rising in 1666. The occurrence of such a rising indicated that the official policy of repression had failed, and in 1669 a new Scottish government, led by John Maitland, second Earl of Lauderdale (Duke from 1672), embarked upon a programme of conciliation. The two Indulgences of 1669 and 1672 reinstated one hundred and thirty-six deprived presbyterian ministers (about half of the total number originally ejected in 1663) to Scottish parishes. The indulged ministers provided a very important alternative to the established episcopalian church and enabled presbyterian services to take place legally, but some dissenting ministers, unable to accept this compromise measure of toleration, continued to hold illegal field, and house conventicles. In the 1670's the Scottish presbyterians were thus divided into the indulged and the conventiclors. The latter were strongly persecuted, and finally rose in rebellion in 1679, to be defeated and dispersed. The rebellion exposed the division, even among the conventiclors, between moderates and extremists ('Cameronians'). The militant leader of the cameronians, Donald Cargill and Richard Cameron, declared Charles II to be deposed and excommunicated. A renewed upsurge of Cameronian militancy in late 1684 was denounced by moderate presbyterian ministers, but the government, becoming more repressive with James VII and II's accession in February, 1685, used the cameronian resistance as an excuse to persecute violently all presbyterians. In the

next two years several dozen innocent persons (at the lowest estimates) were killed in Scotland by government forces and in general persecution was at its most severe.¹ After these years, James's Indulgence of 1687 was naturally viewed with great suspicion. The record of his reign was a more eloquent testimony to the evils of absolutism than any treatise of political theory, but the covenanter tracts of the period cannot be ignored because they were significant contributions to presbyterian constitutionalism.

The two longest and most significant publications embodying the political philosophy of the later covenanters were James Stewart's Jus Populi Vindicatum (1669) and A Hind let loose (1687) by Alexander Shields. Since these books were separated by eighteen years, they express slightly differing kinds of political justifications, according to their different circumstances. Stewart, a lawyer who eventually became Lord Advocate of Scotland in 1692,² wrote several tracts, including Naphtali, or the Wrestlings of the Church of Scotland For the Kingdom of Christ (1667), which was written jointly with James Stirling, a former minister at Paisley, and was designed as a justification of the Pentland Rising and a refutation of the case for episcopalianism. Stewart, who lived from 1635 until 1713, was still a young man when he wrote these books, and during the following two decades he was obliged to hide from the authorities and eventually to go into exile. In many respects his political philosophy was very similar to that of Samuel Rutherford, but it necessarily went further in allowing a right of resistance to the people even without, and indeed against, the parliament. Such a change had to be made because the parliament in the 1660's had renounced the covenant, in contrast to the pro-covenanting legislature of Rutherford's time.

In Stewart's view the National Covenant of 1638 and the Solemn League and Covenant of 1643 were still binding. All ranks of society in Scotland were obliged by oath to maintain the covenants and so too was Charles II, according to the coronation oath he had taken in 1651:

Whatever was done of late, by King or Parliament, or enacted, and concluded contrary to these covenants, vows and engagements, was ... a real and formal subversion of the fundamental constitution of our Christian and reformed Kingdome ...

The covenants were perpetually binding "so long as Scotland is Scotland".³ The same emphasis on the everlasting nature of the covenants appeared in a powerful sermon preached in 1663 by another notable covenanter, John Guthrie, minister of Tarbolton, who denied the notion that the Solemn League and Covenant made by the people could be disallowed by the king, by virtue of his supremacy, and so cease to be binding. He preached that the covenant was binding on all persons in the kingdom, even on those individuals who had not themselves taken it. It was also binding on all future generations. Even if the king had been forced to swear to it in 1651, as some alleged, the vow was still binding on him, according to God's word as discerned in scriptural precedent.⁴

Stewart's case, however, was not based only on religious arguments about the nature of vows and covenants, but on the claim that a free people should not be ruled by arbitrary means, military force and cruelty. Sir James Turner, commander of government forces in south-west Scotland in the mid 1660's, was allegedly a "bloody executioner of illegal tyranny ... having renounced all humanity & compassion, raged like a wilde beare to the laying waste of that countrey side."⁵ It was very much to be doubted, in Stewart's opinion, whether Turner "that singular instrument of barbarous cruelty, had any commission from King or Council, empowering him to such illegal exorbitancies...", and the intention of those who had risen in arms was not to dethrone the king, or to lessen his just and legal authority, but to resist and defend themselves from unjust violence and oppression and to seek redress of grievances.⁶

A "new order of Tyranno-gogues", notably "that Arch-deceiver, and prime parasite Sharpe" (James Sharp, Archbishop of St. Andrews) were alleged to be intent on following all the procedures recommended by the Jesuit Adam Contzen to ensure the

insinuation of Roman Catholicism into a country.⁷ Even royalist writers had always admitted the right of personal defence against sudden and illegal assaults of the king or his officers. Why, therefore, should not a considerable part of the nation defend their lives, estates, liberties and religion by forcible resistance against sanguinary soldiers, when all legal means of redress had been denied them? If private individuals had a right to defend themselves by force if necessary, how much more formidable was the right of a people "when all door of hope is closed" and when, moreover, the whole community was obliged by solemn bonds, vows and covenants.⁸ The people's right of resistance, wrote Stewart, did not require the prior approval of parliament, but was, in fact, augmented when the representatives of the people betrayed their trust by either neglecting to vindicate, by their authority, innocent oppressed people, or by becoming oppressors themselves. If the king's power was not absolute, then neither was that of the parliament, and so it could be resisted on the same grounds as a tyrannical monarch. Parliaments were no more infallible than princes and the people had a right to defend themselves whether or not parliament concurred. The Scottish parliament, far from keeping the king within his limits, had

screwed up his prerogatives to the highest peg imaginable, and did invest him with such an absolute unlimited and infinite power, that he might do what he pleased without controule. 9

Like John Brown, minister of Wamphray, in his Apologetical Relation of 1665, Stewart pointed out that to condemn private subjects resisting simply to defend themselves from tyranny, was to denounce the actions of James VI, Charles I, and Elizabeth, in helping foreign protestants to fight against their princes, at various periods in history, in the Netherlands, France, Piedmont and Germany. Furthermore, the Scottish reformation of the 1560's was a clear case of resistance.¹⁰

The interpretation of Romans xiii in Jus Populi Vindicatum presents no surprises to any reader aware of the view of that

text taken by presbyterian writers during the period of the civil wars and interregnum. The use of the term "higher powers .. ordained of God" and the description of rulers as being God's ministers for good, were held to exclude tyranny from the apostolic injunction against resistance. A king who attempted to exercise an arbitrary, absolute, tyrannical power was not one of the higher powers, ministering for good, as described in the text. Resistance to such a king could be justified.¹¹ In 1665 John Brown, for the same reasons, had also concluded that this resistance, forbidden against a lawful ruler, was permitted against tyranny:

the Apostle is speaking of the civil magistrate doing his duty, and, in his place, as God's deputy, exercising the duties of his calling, and executing his office; but, in the other case, the magistrate is out of his function and calling; for God giveth no command to do evil, nor to tyrannise. He is not God's vicegerent when he playeth the tyrant, and therefore he may be resisted and opposed without any violence done to the office or ordinance of God. 12

In Stewart's theory, there was, before any governments existed in the world, a state of nature when each man had governed his own affairs as best he could, "having no other law to square his actions by, than the moral law, or law of nature". In this condition no one had more right than anyone else to claim and exercise civil authority. Although parents had authority over their children, husbands over wives, masters over servants, and so on, these forms of domination did not and could not entitle any of them to a civil authority. If a multitude in this condition were led by natural, rational instinct to associate themselves in a civil society, it could not be supposed that they had gone about it rashly or irrationally, like animals rather than as human beings. It followed, therefore, that by constituting political governors, they did not reduce themselves to a worse condition than before this constitution. Their aim was to secure outward peace and tranquillity, freedom from the oppression of foreigners or each other, and, as Christians, the good of religion and of their souls. If they saw that government did not tend towards these ends, or had a tendency to destroy them, they would

never have consented to it. If people acted rationally at the first setting up of governments and governors (a major assumption), it could never be claimed that they gave away their power of self-defence in cases of necessity, where rulers should fall short of providing assistance, still less in cases where rulers proved their open and avowed enemies. The right of self-defence was natural and inalienable. The "conveyance of the Magisterial power" was from the people, in the sense that they designated the individual or individuals who would rule, the people having previously chosen the form of government (monarchy, aristocracy, democracy, or a mixture of these). Even a ruler who came to power by lineal succession was originally constituted and chosen by the people, because it was from the people's free choice that his family and line was chosen to rule, rather than another house.¹³

A sovereign had no despotic power over the property of his subjects. Since the people chose a ruler to preserve their rights from the injury and oppression of others,

it cannot be supposed that rational People would make choice of one great robber to preserve them from lesser robbers.

If the sovereign were the ultimate proprietor of all their goods, they would be worse off by having set up civil government, before which they had in nature a just right and title to their own goods. Even royalists did not grant that a king might sell and dispose of his kingdom as he pleased. It could not even be claimed that the sovereign was usufructuary of the realm and so entitled to do as he wished with that which he had by right. The sovereign's power was

properly a fiduciary power, such as the power of a tutor or patron ... created of the People that he might defend them from injuries and oppressions ... he hath no more power than (that) of a Tutor, Publick Servant, or Watchman.

14

There were always terms and conditions presupposed in all relationships arising from mutual consent and contract, like the relationships of husband and wife, master and servant,

tutor and pupil, lord and vassal, or pastor and people. The awareness of human beings of their own instincts to domineer, oppress and tyrannize over others (the very awareness which induced them to establish civil government) would have led them to impose terms and conditions upon a sovereign. The mutual relations of king and people could arise in no other way than

by a real compact and formal, either explicite or implicite, that this man and not that man is made Sovereigne, There must be some conditions on which this mutual compact standeth: for a compact cannot be without conditions. 15

In accepting his crown, a monarch either explicitly or implicitly accepted conditions relating to those ends for which the people established government. The successor to a hereditary throne was obliged to fulfill the same conditions as his father. If the king had no obligations to his subjects, they would have no obligation to him. If the king failed in, or exceeded, his duty, the people had a right to gain redress. The passage in which Stewart asserts this right reminds us that he was by profession a lawyer and so expressed the contract theory in a more legalistic manner than did the clergy, from whose ranks presbyterian political writers usually came:

I do not say that every breach, or violation, doth degrade him (the ruler) de jure; but that a violation of all, or of the maine, most necessary, and principally intended conditions, doth. ... Lawyers grant that every conditionall promise giveth a right to the party to whom the promise is made, to pursue for the performance: and this is the nature of all Mutual compacts. And therefore by vertue of this mutual compact, the Subjects, have jus against the King, a Right in law to pursue him for performance. 16

This right of redress was apparent in all cases of mutual compact: a parish could remove its minister if he preached heresy, a vassal could renounce his lord in some cases, a servant could defend himself against his master's unjust violence, and children could defend themselves against a father taken with a mad frenzy. It was absurd to say that in a mutual conditional compact, one party should still be bound

to perform all his obligations although the other party performed none of his.¹⁷

The difference between monarchy and fatherhood was emphasised. The relationship of father and child did not rest on consent, agreement or compact:

Subjects come not out of the loyns of their King ...
The son createth not the Father as the Subjects
create the King ... Children give not paternity
unto their Parents; but Subjects give the King
ship, at least instrumentally, under God. 18

The king's power was not like that of a husband either, because husbands could not be limited by their wives as sovereigns were by their subjects. The sovereign had a power of life and death, which husbands did not have. Wives were appointed to help their husbands, but a sovereign was appointed for the benefit of the community rather than vice versa. Also, the idea of the sovereign being head of the commonwealth was only a metaphor. It was no valid argument to assert that the body of the community could not make a compact with the head. The sovereign was set up by the people for their own good and their own ends.¹⁹ A ruler set up by the people could not be absolute, although there existed de facto absolute princes who had gained power by false, corrupt means, or by conquest. The Scottish monarchy had been founded by consent, not conquest as alleged in James VI and I's Basilikon Doron. Stewart repeated most of the arguments of Rutherford's Lex Rex (see Chapter IV above) regarding the circumstances in which Fergus, the first king of Scots had been called to the crown in about A.D. 500, and the constitutional procedure of tanistry by which the Scottish people always

had liberty to choose the fittest of the family, when the nearest in line, was not judged fit for government

a practice inconceivable had the dynasty been founded in conquest.²⁰ (Nobody who had believed the interpretations of this matter by Rutherford and Stewart could have felt much doubt about the constitutional legality of placing William and Mary on the Scottish throne in 1689.)

Since nothing could be held which purported to invalidate the word of God, private persons must practise and defend the true religion, even if it was rejected and prohibited by authority. It was, of course, a basic assumption of the rigid covenanters that there was but one correct interpretation of the word of God and that anyone disagreeing with this true interpretation was either ignorant or evil. With this belief, it was impossible to accept that civil authority had a right to impose a state religion of its choice and to intervene over doctrinal matters. Arbitrary, absolute, unlimited state authority could not be allowed because it threatened the liberty of true religion: it was lawful

to fight for the defence of Religion, wherein is comprised all true and desireable liberty, and to save posterity from tyranny and bondage in their souls and consciences ... It is lawful for Subjects to defend their lives and libertyes, in order to the defence of the true Religion, and the interests of Jesus Christ, when their losseing of these should certanely tend to the losse of Religion. Ergo it cannot be unlawful to defend Religion which is the maine and principal thing. 21

The supreme civil power in any state, whatever its form of government, had been set up by the people, under God, and the people were therefore above this supreme power. The conventiclors were justified in banding together in defiance of the civil power because

when the Ends of government are manifestly and notoriously perverted, People .. may, according as the exigent of their case requireth, associate into new societies for their defence and preservation. 22

A clear declaration of this radical principle appeared in Naphtali, and it deserves to be quoted at some length:

That as all societies, governments, and laws are appointed in a due subordination to God and his superior will and law, for his glory and the common good of the people, including the safety of every individual; so if either this subordination be notoriously infringed, or these ends intolerably perverted, the common tie of both society, government, and law, is in so far dissolved. Hence it is that a King or rulers commanding things directly

contrary to the law of God, may be and have been justly disobeyed, and by fury or folly destroying or alienating the kingdom, may be and have been lawfully resisted. ...

That through the manifest and notorious perversion of the great ends of society and government, the bond thereof being dissolved, the persons, one or more thus liberated therefrom, do relapse into their primeve (sic) liberty and privilege, and accordingly as the similitude of their case and exigence of their cause doth require, may, upon the very same principles again join and associate for their better defence and preservation, as they did at first enter into societies. 23

Jus Populi Vindicatum (and Naphtali) expressed a more radical political philosophy than did Lex Rex, because James Stewart unequivocally upheld a popular right of resistance by the common people, even without the sanction of parliament and the nobility of the kingdom. In its basic principles and assumptions, however, Stewart's political theory is not very different from that of Rutherford, and may be considered an adaptation of the philosophy of Lex Rex to the new circumstances of the 1660's.

The Indulgences of 1669 and 1672 divided the Scottish presbyterians into the indulged ministers and their congregations on the one hand, and the illegal house and field conventiclors on the other, but the second Scottish rebellion of the Restoration era, in the spring of 1679, created a further division of the conventiclors themselves into moderates, who were willing to submit to the government after the rebellion's defeat, and the intransigent 'Cameronians' who continued to resist. The Cameronians emphasised the division between civil and ecclesiastical authority. The existing government was disowned completely and the conventiclors formed their scattered remnants of support into the 'United Societies' (from 1681), an affirmation of the dissolution of their ties with a government destructive of the true purpose of governments, and their consequent right to come together in a new association. The Cameronians not only looked forward to a regenerate, godly society in Scotland, a country they considered

to be the chosen "bride of Christ",²⁴ but they apparently considered that they themselves already were a new society. Their leaders regarded Charles II as though he were deposed, and solemnly excommunicated both the king and his brother, because, in Richard Cameron's terms,

the king hath lost his right to the crown, when he caused the covenants to be burnt, he was no longer justly a king; but a degenerate plant; and hath now become a tyrant. 25

In the early 1680's, there was no lengthy treatise of political philosophy to compare with Jus Populi Vindicatum. Robert MacWard, in his The Banders Disbanded (1681) briefly reiterated the presbyterian interpretation of Romans xiii, 1-4, and the sinfulness of both passive obedience and non-resistance.²⁶ In 1683 James Renwick (1662-88) wrote that the right of resistance belonged to the people, united or individually, not merely to the primores regni, the chief men of the realm. God and the law of nature gave the people their right to cast off a tyrannous yoke by the same power by which they were able to set up governors over themselves.²⁷ Thomas Forrester's Rectius Instruendum (1684) included a statement of the distinction between political authority and the authority of parents and husbands. "A subject, and a slave," he wrote, "are quite distinct things" and "the preservation of the Subjectes liberty" was "one of the great ends of the Magistrates Authority", which God had restrained and limited.²⁸

The longest and most elaborate work justifying the coventiclers of the 1680's was A Hind let loose, published in Amsterdam in 1687, and brought from Holland to Scotland. Its author was a young clergyman, Alexander Shields (1660-1700). There exists a biography of Shields, Hector Macpherson's The Cameronian Philosopher: Alexander Shields, in which the main sources of his political theory are identified as George Buchanan, John Knox and Samuel Rutherford,²⁹ but it has never been recognized that the philosophy of A Hind let loose was also based upon one other surprising but essential source, which was not even Scottish, viz. Edward Gee's The Divine

Right and Original of the Civil Magistrate from God (1658).

It was a surprising source because Gee was a moderate and conservative presbyterian, while Shields was an extreme radical, but it was essential because the basis of Shields' argument was that King James was not only a tyrant but also a usurper, and Gee's book was the definitive presbyterian denunciation of political usurpation. Although Gee's book is mentioned by Shields,³⁰ there are several crucial passages of A Hind let loose which directly correspond to sections of The Divine Right and Original, sometimes even using the same, or very similar, wording. These passages make no acknowledgment to Gee and consequently only a reader of A Hind let loose who was also very familiar with Gee's book could discern the extent of the Cameronian philosopher's debt to the English presbyterian theorist.

"My dispute at present," claimed Shields, "is not levelled against Monarchy, but the present Monarch" (James VII and II).³¹ His remarks on the execution of Charles I, however, suggest that he was a less an enthusiastic monarchist, even if he was no republican:

though it was protested against both before and after by the Assembly of the Church of Scotland, out of zeal against the Sectarians, the executioner of that extraordinary Act of Justice; yet it was more for the manner than for the matter, and more for the motives and end of it than for the grounds of it, that they opposed themselves to it, and resented it.

32

The reigns of Charles II and James VII and II had been, he claimed,

a compleat and Habitual Tyranny, and can no more be owned to be Magistracy than Robbery can be acknowledged to be a rightful possession.

Every error or injustice by a ruler did not make him a tyrant to be disowned, for it was only a habitually tyrannical ruler who could be rejected by his subjects.³³

In the eyes of Shields, James VII was guilty of usurpation, as well as tyranny. Several reasons for this indictment

were given. First, it was undeniable that James, unlike his brother, father, and grandfather, had never been crowned king of Scots, and he had not taken the coronation oath. He could not be made king until the people

make a Compact with him, upon tearmes for the safety of their dearest and nearst Liberties ... The Kings of Scotland, while uncrowned, can exerce (sic) no Royal Government ...

34

Secondly, as a Roman catholic James was not entitled to come to the throne, and in addition, the English parliament, in the previous reign, had excluded him from succeeding to the throne for this very reason, so consequently he had set himself on the throne without consent.³⁵ Finally, it was alleged that James had murdered his brother Charles II, and so, being a murderer, he could not be king.³⁶ None of these arguments really proved James to be a usurper, and the charge of murdering Charles was completely false. It was James' actions as king which alienated him from his subjects, and provided ample evidence to charge him with tyranny and a drive towards absolutism. Why then did Shields strive so hard to show, on weak evidence, that James was also a usurper, rather than simply a tyrannical despot? This question, so essential to an understanding of A Hind let loose does not even seem to have been asked, let alone answered. Could it be that Shields was particularly anxious to make use of a body of arguments against usurpation, which he had read and found very persuasive?

Shields presented the familiar argument that Government was properly speaking a moral authority or power (potestas), by contrast with natural power (potentia), which was mere might or force. A lawfully invested and constituted ruler had a moral power but tyrants and usurpers only had a natural power, which was no more than a brutish domination and violence:

In Natural power the Sword is the Cause: in Moral it is only the Consequent of Authority: In Natural power the Sword legitimates the Scepter: in Moral the Scepter legitimates the Sword: The Sword of the Natural is only backed with Metal, the Sword of the

Moral power is backed with Gods warrant: Natural power involves men in passive subjection, as a traveller is made to yield to a Robber; Moral power reduces to a Consciencious submission. 37

This definition was taken from the first chapter of Gee's Divine Right and Originall of 1658.³⁸ Moral power and authority meant a lawful right to rule.³⁹ This power was ordained by God, as stated in Romans xiii, 1-2, and conveyed to the king by the people, God's appointed means. Representatives, subordinate magistrates, like members of parliament derived their authority from the same source. Government was thus from God although

now he doth not by any special Revelation determine, who shall be the Governours in this or that place; Therefore He makes this Constitution by mediation of men, giving them Rules how they shall proceed in setting them up. And seeing by the Law of Nature He hath enjoined Government to be, but hath ordered no particular in it ..., He hath committed it to the positive transaction of men, to be disposed according to certain General Rules of Justice.

Chapter five of Gee's book is then cited in support of the view that any substantial irregularity in a ruler's coming to power, or incapacity of his person, made his rule no ordinance of God.⁴⁰

It was to be assumed that people acted rationally when they came together in association for mutual preservation, through the creation of a polity, not to make their condition worse, but better. They could therefore choose the form of government, and the limitations upon it, which were most to their advantage, and were able to resume the rights which they conferred on rulers. In all that they did, the people had in mind certain good and necessary ends, the glory of God and the good of mankind, and if their government was found to be useless for, or destructive to, these ends, they were to be released from their obligation to it. Although the necessary conditional compact was not always express and explicit, so that a written copy of it could be produced, yet it was always understood, implicitly at least, to be transacted in the ruler's admission to the government, in which the law of God had to regulate both parties. The

ruler's power was a trust:

a Kings power is but fiduciary; and therefore he cannot be unaccountable for the power credited to him. And if the Generation had minded this, our Stewarts should have been called to an account for their Stewardship ere now. Hence I argue, If a Covenanted Prince (Charles II), breaking all the Conditions of his compact, doth forfeit his right to the Subjects Allegiance, then they are no more to owne him as their Sovereign.

41

Shields used the same arguments as Gee to refute the patriarchal political theory of Sir Robert Filmer, which had been revived and republished in 1680 at the time of the Exclusion crisis in England (on the Exclusion crisis, see Chapter ten below). It does not appear to have been noticed by historians of political philosophy that Shields was among the critics of Filmerian theory.⁴² This oversight is almost as disturbing as the failure to recognise the influence of Edward Gee on Shields. The Cameronian philosopher's chief criticism of the notion that monarchical authority had descended from Adam was succinct, even although it was not original:

...It will be asked, how passed this from him (Adam) unto others? whether it went by father-hood to all the Sons, fathers to their posterity? which would multiply as many Common-wealths, as there have been fathers since: Or if it went by Primogeniture only to the first born, that he alone could claim the power which would infer the necessity of an universal Monarchy, without Multiplication of Common-wealths. 43

It was obvious that mankind had spread to various parts of the world and had not remained under one ruler in a single civil society. Consequently government could not have been founded upon the right of fatherhood, nor could it have been refounded on that basis when the human race had divided into different tribes or societies:

if it be refounded on the Right of fatherhood: either every Company had one Common Father over all, or every Father made a Common-wealth of his own Children: The Latter cannot be said, for that would multiply Common-wealths ad infinitum: Neither

can the first be said, for if they had one Common Father, either this behoved to be the Natural Father of all the Company, which none can think was so happily ordered by Babels confusion: Or the eldest in age, and so he might be incapable of Government, and the Law of Nature does not direct that the Government should alwise be astricted (sic) to the eldest of the Community: Or else finally he behoved to be their Political Father, by consent.

44

Consent was the only valid foundation of government, with even hereditary monarchy deriving its right from the peoples original consent, and the status of subjects was not therefore the same as that of children, servants, wives, or slaves.⁴⁵

According to Shields, James VII and II was ineligible to rule because he was a Roman catholic, a murderer, and an adulterer, and was not legally invested with the crown by the consent of his subjects. He was therefore a usurper:

in the Usurpation of this Man, or Monster rather that is now mounted the Throne, there is no lawful investiture in the way God hath appointed, ...
Ergo there is no Moral power to be owned.

Mere possession of power gave no true right to rule and the fact that Providence had allowed a man to come to power was not a sign of God's approval without the warrant of his Word which backed all lawful authority.⁴⁶ "Hence," wrote Shields,

would follow infinite absurdities: this would give an equal warrant in case of vacancy to all men to step to and stickle for the throne, and expose the Common-wealth as a booty to all aspiring spirits; for they needed no more to make them Sovereigns, and lay a tye of subjection upon the consciences of the people, but to get into possession ... if providential possession may authorize every intrusive acquisition to be owned.

47

These expressions are, in fact, straight from Gee's Divine Right and Originall, and Shields also followed Gee in pointing out that if mere possession gave a right to rule, it would oblige everyone to accept the legitimacy of the Devil and the Pope.⁴⁸ Although not properly acknowledged for the most part, Gee was mentioned as having quoted cases demonstrating that Christians in the classical Roman Empire had declined to

recognise the claim of usurpers to the Empire.⁴⁹

A usurper had, by definition, come to power by unlawful means, and therefore his power could not be restrained by law and he could not be a limited monarch. What was there to limit him? If he had not come to his power by legal means, he would not restrict himself to legal limits in the exercise and retention of it. "That Ruler," stated Shields,

who cannot be Gods Minister for the peoples good cannot be owned: (for that is the formal reason for our consciencious subjection to Rulers Rom 13. 4,5.) But Absolute Sovereigns are such as cannot be Gods Ministers for the peoples good; for if they be Gods Ministers for good, they must administer justice, preserve peace, rule by Law, take directions from their Master; and if so, they cannot be absolute.

50

Only if government complied with the specifications of Romans xiii, 1-5, could there be a conscientious, rather than an enforced obedience to it,

And without conscience there is little hope for Government to prove either beneficial or permanent: little likelihood of either a reall, regular, or durable subjection to it. ... Government founded upon a bottom of conscience, that will Unite the Governed to the Governours by inclination as well as duty.

51

This statement was drawn directly from Section seven of the unpaginated preface to Gee's Divine Right and Originall, a preface which Shields had mentioned only two pages earlier in reference to another matter, which clearly indicates that the book was in the forefront of his mind at least, if not actually in front of him as he wrote. To Shields Gee was "an ingenious Author",⁵² but apparently not one who ought to be properly acknowledged. In The Divine Right and Originall it was considered essential

that Government be laid upon a bottom of conscience ... Without this, there is little hope for it to prove beneficial, or permanent; little likelihood of either a reall, regular, or durable subjection to it. The discernable standing of Government upon consciencious grounds is the only thing that can bring in conscience, and consciencious submission to it.

53

On the difficult subject of after-consent giving legitimacy to a conquest, Shields also drew upon Gee, whose view has been explained in Chapter seven. "Though we deny," began Shields,

that Conquest can give a just Title to a Crown; yet we grant in some cases, though in the beginning it was unjust yet by the peoples after consent it may be turned into a just Title. It is undeniable, when there is a just ground for the war; if a Prince subdue a whole Land ... they may ... consent that he be their King upon fair and legal, and not Tyrannical conditions.

Even if the war had not been just, after-consent, if freely given, could authorize the conqueror as lawful ruler. Shields repeated word for word, apart from the insertion of the noun "dedition", a statement from Gee's book:

[an unjust conquest] may be an inducement to the Conquered, if they be indeed free and uningaged to any other, to a submission, dedition, and delivery up of themselves to be the subjects of the victor, and to take him for their Sovereign. 54

Like Stewart's Jus Populi, A Hind let loose made use of the analogy of the feudal vassal's right to renounce the contract which bound him to his lord, particularly if the latter had clearly abused his power or failed in his obligations.⁵⁵ It was claimed by the conventiclers that subjects could, by the same token, declare their ties with the government to be dissolved. Obviously this comparison with feudal procedure was of greater interest in Scotland, where the survival of the institutions and terminology of feudalism was more evident, than it would have been in England. Shields mentioned the Netherlands resistance to Philip II of Spain in the sixteenth century, and the declaration of William the Silent, in justification of resistance, that when a lord broke the reciprocal bond between lord and vassal, the vassal was discharged from his obligations to his lord. "This," it was claimed, "was the very Argument of the poor suffering people of Scotland, whereupon they disowned the Authority of Charles the Second."⁴⁵

A Hind let loose included a long chapter on "Defensive Armes Vindicated" repeating many of the arguments for resistance noted in Jus Populi Vindicatum. It would be tedious to the reader of this chapter to repeat them here. Let it suffice to observe that the subject was worked over at great length by Shields, who was in little danger of tripping up as he trod this familiar ground. (One modern Scottish historian has even described Shields' style of writing on resistance as "punchy prose".⁵⁷) There followed a chapter of equal length on the subject of "Extraordinary execution of judgement by private men"⁵⁸ in which an attempt was made to justify the murder of Archbishop Sharp of St. Andrews by conventicler extremists in May 1679, a dramatic event which had helped to bring about the division of the conventicler movement into moderates and the more fanatical persons known as cameronians. A series of religious and biblical arguments were produced, but these very much offer a kind of special pleading, convincing only to the converted, or, rather, to the fanatical. It would, however, have been difficult for Shields to omit this subject from his book altogether, given the importance of this assassination and its repercussions.

Shields denounced the new Indulgence of 1687, which again gave Scotland a measure of toleration by royal proclamation, although the field conventicles were still illegal. It was, he wrote, a "wicked Toleration", "this Popish Toleration".⁵⁹ The Conventiclors opposed toleration for both religious and political reasons. The main religious reason was that the true religion, as they saw it, had to be exalted and acknowledged to the exclusion of all false doctrines. True religion was not something merely to be tolerated. The political reason was, of course, that the toleration had been granted by an act of royal fiat, an exercise of prerogative power, and so to accept it was to approve a monarchical right to suspend the law. This power, if allowed, meant that the ruler was not subject to the rule of law and ultimately could not justifiably be restricted in the exercise of extensive prerogative powers. These two reasons against Indulgence were

clearly expressed on 29th January 1688 by James Renwick, a leading conventicler who was executed soon afterwards, in a sermon which proved to be his last. "A toleration," he declaimed, "is always evil, seeing that which is good cannot be tolerated, but ought freely to be owned and countenanced as such".⁶⁰ Concerning the political danger of accepting the Indulgence, he said that the liberty of worship it allowed placed the gospel in greater bondage than before:

for it is such a liberty as comes from the fountain of absolute power, which is the alone incommunicable prerogative of JEHOVAH; yet the granter of this liberty takes this to himself, and requires all his subjects to observe it without reserve: And the accepters of this liberty do recognosce (sic) such a power in him who grants it, by accepting this liberty.

61

It was widely realised, in both England and Scotland, that whatever was granted by absolute power could subsequently be taken away by it. The revocation in October 1685 of the Edict of Nantes, and the final outlawing of the persecuted Huguenots in France, proved this argument beyond any reasonable doubt.

In a publication attributed to Alexander Shields and James Renwick called An Informatory Vindication of A Poor, wasted, misrepresented Remnant of the Suffering, Anti-Popish, Anti-Prelatick, Anti-Erastian, Anti-Sectarian, True Presbyterian Church of Christ in Scotland (1687), the Indulged ministers were denounced for having acknowledged a wicked, arrogated supremacy.⁶² As the title of this publication in 1687 announced, the conventiclors were "anti" a great many things, and their refusal to compromise that which they believed to be religious truth has already been emphasised. Would the success of their extreme and fanatical ideology (setting aside for a moment the undoubted fact that their meagre numbers meant such a triumph was impossible) have simply replaced one kind of persecution with another? According to An Informatory Vindication, this view was not justified:

We positivly disoune, as horrid Murder, the killing of any because of a different persuasion and opinion

from us; albeit some have invidiously cast this odious Calumny upon us, from this extensive Declaration of war (the first Sanquhar Declaration of 22nd June 1680): for against the latter sort, to wit, such as acknowledge the Usurper, or any way side with and strengthen him, and do not rise in a hostile manner under his banner, no killing is intended at all.

63

The Informatory Vindication was also of interest with regard to its interpretation of Scottish history in the Interregnum. While stating that it was a great sin to have had anything to do with Charles II in 1650, it also denounced Cromwell's usurpation of power and the religious toleration of his time.⁶⁴

In assessing the importance of the Cameronian political philosophy, we must, at the very least, agree with Professor Gordon Donaldson's view that their thought contained elements in harmony with the constitutionalism of the period. Professor Donaldson pointed out that their description of Charles II having "inverted all the ends of government", was using a phrase which in fact appeared in the 1689 Claim of Right, the justification of the Glorious Revolution in Scotland.⁶⁵ The differences between moderate and extreme presbyterians in political theory were less than their practical differences over the correct attitude to adopt towards a hostile administration. The resistance of the militant Cameronians was almost suicidal, and its futility is emphasised by the fact that the collapse of James VII's government, in 1688-89, was not brought about by any domestic rebellion in his kingdoms. In spite of the considerable attention given to the conventiclers during the three centuries which have passed since their struggle, their political philosophy has rarely been examined and analysed in detail. Since many previously controversial aspects of the movement have been clarified in recent years, it is an appropriate time to remedy this oversight concerning these matters of political theory which have been raised in this chapter.

CHAPTER X

FROM RESTORATION TO GLORIOUS REVOLUTION

(i) Reluctant Non-conformists

Presbyterians in the 1660's, after the Act of Uniformity in 1662, were reluctant non-conformists. They were generally conservative in matters of state and ecclesiastical affairs. At the Restoration they had hoped for comprehension, i.e. inclusion in the established Church of England, rather than toleration or indulgence as a dissenting sect,¹ and, as John Corbet (1620-1680), rector of Bramston, Hampshire (ejected 1662) stated, some presbyterians would certainly have accepted a limited episcopacy, but not the "height of Prelacy or Hierarchy of the latter times".² The presbyterians had never denied the primitive episcopacy of the early church, and a limited episcopacy, which did not suppose bishops to be of a different order of ministry from presbyters, was not so far from presbyterianism.³ The main principle of presbyterians was not rigid adherence to a particular form of church government, but the fact that "they admire and magnifie the Holy Scriptures, and take them for the absolute perfect Rule of Faith and Life".⁴ They opposed the "prelatists" who had withdrawn from such principles as predestination and the assurance of salvation of the elect and who had termed them puritan doctrine.⁵ "The presbyterians," wrote Corbet, "preferr an uniting accomodation, though upon yielding terms, before division withan intire Toleration ..."⁶

The presbyterian clergy made it clear in their representations to Charles II just after the Restoration that it was Arminianism and prelacy which they opposed, not episcopacy:

we do dissent from the Ecclesiastical Hierarchy or Prelacy disclaimed in Covenant ...; yet we do not, nor ever did renounce the true ancient primitive Episcopacy, or Presidency, as it was ballanced or managed by a due commixtion of Presbyters therewith, as a fit means to avoid Corruptions, Partialities, Tyrannies, and other evils which may be incident to

the administration of one single person: which kind of attempered Episcopacy, or Presidency, if it shall by your Majesties grave Wisdom and gracious Moderation, be in such a manner constituted ... we shall humbly submit thereunto. 7

The kind of prelacy disclaimed was "that of Diocesans upon the claim of a superior order to a Presbyter, assuming the sole power of Ordination, and of publick Admonition of particular Offenders ..." etc.⁸

The loyalty of presbyterians to the monarchy, their coming to terms with Charles I, and their opposition to the usurpation and regicide of 1649 were mentioned by their spokesmen to emphasise the value and justice of their comprehension in the new church settlement.⁹ Corbet wrote that the presbyterians had acted vigorously to expedite the return of the king and now hoped that the royalists prevailing would act with moderation.¹⁰ Episcopalian divines "by treading the Presbyterians under foot" would weaken the protestant cause against roman catholics, who, being under the influence of foreign interests, were the real enemies of the state.¹¹ The presbyterians, "a numerous party, not of the dreggs and refuse of the nation, but of the judicious and serious part thereof",¹² would present a problem if they were not included in the established church:

Wherefore in the present case it should be minded, that the dissenting party is not small, that it is not made up of the rabble multitude, nor yet of Phanatique spirits, but of honest and sober people, who act from principles of knowledge, and can render a reason of their practice, in things pertaining to conscience, with as much discretion as any sort of men in the Nation. 13

In spite of all these arguments the claim of the returning anglicans to the church livings occupied by presbyterians and independents made it inevitable that the Act of Uniformity would make it difficult for puritans to conform, so that most could be ejected.¹⁴ Charles II's attempt to bring a degree of toleration by a royal Declaration of Indulgence was voided by parliament in 1662 although the knowledge of the king's opposition to persecution helped to moderate it, particularly

in view of the justices' dependence on the monarch's favour.¹⁵ Even the ejection of dissenters was not sufficient to secure the position of the restored anglicans, who did not want their displaced rivals to be free to take the congregations away from the established church. The repressive measures of the so-called Clarendon Code helped to make life difficult for puritan ministers in the reign of Charles II. The presbyterians continued to desire comprehension rather than toleration. Thus in 1672 John Humfrey, a leading apologist for the dissenters, emphasised the differing aspirations of two types of non-conformist:

If the Presbyterian be comprehended, he will be satisfied to act in his Ministry without endeavouring any alteration otherwise of Episcopacy: If the Congregationalist be Indulged, he will be satisfied though he be not comprehended, for that he cannot submit unto.

16

Douglas R. Lacey has written that since so many presbyterians became occasional conformists, the word presbyterian was usually employed to describe those dissenters who came closest to conformity.¹⁷ Presbyterian gentry often prevented the full enforcement of the persecuting measures of the Cavalier Parliament, even to the extent of enabling a few dissenting ministers to retain their livings.¹⁸ Lacey lists a number of distinguished presbyterians in the Cavalier Parliament, like Hugh Boscawen (1625-1701) M.P. for Tregony in Cornwall, Richard Hampden (1631-1695) M.P. for Wendover in Buckinghamshire, Sir Edward Harley (1624-1700) M.P. for Radnor Borough, Sir John Maynard (1604-1690) M.P. for Beeralson, and John Swinfen (1613-1694) M.P. for Tamworth,¹⁹ and Colonel John Birch (1616-1691) M.P. for Penryn should also be mentioned. Denzil, first Baron Holles (1599-1680), although now a veteran also served in this parliament and retained his standing as a presbyterian leader. Sir Anthony Ashley Cooper, first Earl of Shaftesbury, a member of the governing "Cabal" of 1667-1672, continued, according to Lacey, to adhere to his presbyterian views although he put political opportunism first.²⁰

The persecution of presbyterians in the 1660's, since it was ordained by law, was passively suffered and there was

no forcible resistance as in Scotland. The Conventicle Act of 1670, followed by an intensive campaign against dissenting services with dissenters sentenced by justices of the peace without due process of law,²¹ did arouse opposition since it was seen as a manifest invasion of rights. It was objected that Englishmen could not be deprived of their liberty or property except by the lawful judgement of their peers, these being fundamental and natural rights contained in Magna Carta and in other records of English liberties.²² The fact that the Conventicle Act had been passed by Parliament did not legalise it if it manifestly contradicted the fundamental laws. Presbyterians never allowed that Parliament possessed an absolute sovereignty, any more than they would have acknowledged such a power in the monarch. They were constitutionalists who measured the legality of legislation or executive action according to fundamental laws which were

not only Laws themselves, but the Rule and Standard of all future Laws, and that which is the Judge of Laws, in order to the securing of our Liberties and Freedoms, or else where were our Foundation? 23

The anonymous writer of these words, in The Englishman, Or A Letter from a Universal Friend (1670), further explained that

our Fundamentals were not made by our Representatives, but by the People themselves; and our Representatives themselves limited by them; which it were good that Parliaments as well as People would observe, and be faithful to: For no Derivative Power can Null what their Primative Power hath Establisht. 24

Some hope of relief from persecution came with the royal Declaration of Indulgence of 1672, suspending the execution of all penal laws against non-conformists and Roman Catholics, and allowing dissenting ministers to hold public services on obtaining a licence. Shaftesbury, then still known as Baron Ashley, ensured that his secretary John Locke provided all the necessary information and arguments upholding the royal supremacy in ecclesiastical affairs so that the government would go ahead with the Indulgence.²⁵ Lacey has pointed out the dilemma which faced Presbyterians with regard to this

Indulgence: should they welcome a religious liberty brought about by an act of prerogative power suspending statutory law?²⁶ Naturally any relief from persecution was welcome whatever misgivings there might be. Among dissenting ministers out of 1,339 licensed, 923 were presbyterians, and although Charles II was forced by the Cavalier Parliament to withdraw his Indulgence in 1673, the licences were not formally cancelled until 1675 and there was no return to a severe campaign of persecution until 1682.²⁷ Apart from the political principle mentioned, some presbyterians were afraid that the Indulgence gave "too much encouragement to the sectaries".²⁸ The Lancashire presbyterian ministers issued a "Humble adresse and petition" of thanks and loyalty to the king, emphasising that they were and had been

true and faithful to the Civil Monarchicall government and the Kingly interest of your Majestie and your royal familie as Gods sacred ordinance to and over us which is the joynt and grounded perswasion of our hearts and from which we could never hitherto be removed by all the temptations artifices and endeavours of the late usurpers or their instrument, having bin sadly touched in our very hearts with a sharpe and deepe sence of the horrid barbarous and unparalleld murder of your royal father and publiquely declared against the same.

29

A similar declaration was issued by the Yorkshire ministers.³⁰

John Humfrey opined in 1672 that the king's supremacy in ecclesiastical matters entitled him to suspend the penal laws against dissenters, and added that no lawyer disputed the legal existence of the suspending and dispensing powers, only their extent.³¹ Since the civil magistrate was described by St. Paul in Romans xiii, 3-4, as God's minister for good, he could not ignore the common good in matters ecclesiastical.³² Although all authority came from God, the exercise of it by particular rulers was conditional upon the consent of the people in the erection of civil societies. With this doctrine in mind, it was to be understood that any exercise by the ruler of the prerogative powers of suspending and dispensing was justifiable only if he was persuaded in his conscience that

he was doing nothing but that for which he had the hearts and goodwills of the generality. Now in the case of the Indulgence, it could reasonably be supposed, according to Humfrey, that if the whole Nation convened and gave their vote on whether the king should have the power he had exerted, "or whether it should lye in the power of this present Parliament, and not in him alone", then the majority vote would be for the king.³³ The emphasis on the words "this present Parliament" is a reference to the changes in public opinion which made the Cavalier Parliament, elected on a tide of royalist sentiment in 1661, a rather unrepresentative body by 1672. It was not the case that Humfrey believed the people would wish the king rather than any parliament to be responsible for deciding whether or not to grant Indulgence. It would also be wrong to imagine that Humfrey was simply a hard-pressed dissenter uncharacteristically allowing a latitude in the use of prerogative power out of expediency or desperation to secure the ending of persecution. On the contrary, Humfrey genuinely recognised the necessity for discretionary powers to allow flexibility for the executive part of government to act for the common good. Even thirty years later, after the Glorious Revolution, with its indictment of suspending power, he still emphasised the need for discretionary powers in the ruler, although these might not be in the form of the old suspending and dispensing power misused by James II:

the supream Law in all Politics is the Common Good; if a Prince, in the use of his Power only, which is Negative, shou'd upon occasion do something other-wise than Law, for the Benefit of the Subject (Bona Fide) and not his private Ends, I do believe, both Politically and as a Divine, that he may have a good Conscience in it; and when he has, that he is not to account he acts then against the Law, but according to it, seeing he does Govern in such a Case by the Supream Law, unto which all others are subordinate. Not long before King Charles's death, the Justices were sending Mr. Baxter to Prison for Conventicling, but he hearing of it, and being told it might kill the ill good Man, out of his kind Nature sends word immediately he would have him forborn. To have controuled the Law to a Mans hurt, it had been Tyranny; but when it was only for Good, without Detriment to any, who cou'd open his mouth against it? It is to be supposed no Law-giver can foresee

all Cases that may happen, ... when Equity and a good Conscience is against the Letter of the Law. 34

Obviously the example of this excusing of Richard Baxter from imprisonment was a more modest action by Charles II than the Indulgence of 1672 excusing many from legal penalty, but the point is that Humfrey really understood the value of allowing some discretionary powers of this kind to a ruler. Presbyterian constitutionalism was not based on a narrow, rigid insistence on governments always adhering to the very letter of the law, whether statute law or case law, but on the restraint of governments by those fundamental principles of the purposes and ends of government in general which emanated from the belief that the consent of the governed was essential for the constitution and individuation of any political authority and that rational beings could not be supposed to have given their consent to a form of authority liable to be constantly or grossly detrimental to the common good.

Humfrey stated his rejection of one particular theory of the origin of civil society:

a great mistake in Policy ... is that all Societies are formed by Contract between the Governor and Governed, wherein both parties have their interests to secure, which lays the leven of Civil Wars: Whereas if it be placed in the mutual agreement of the people themselves in choosing their Governour and kind of Government, as they judge best for their general advantage ... (it) answers the end of the institution, He is the Minister of God to us for good.

Ruler and people were within the same society, and the good of one was the good of the other.³⁵ To accept the authority of the ruler to command obedience in things intrinsically sinful and expressly forbidden by God was a wicked Hobbesian principle. In religion the word of God was the rule to be followed, in politics God had appointed the common good as the rule, and conscience must decide whether the acts of clergy and rulers were commensurate with their rule. If a law seemed notoriously against the common good, then it must not be obeyed, although any penalty for this disobedience was to be suffered patiently. If a thing was only a little

against the common good and the damage to the public from it would not be so great as the dissident's suffering, then it was for the common good that it should be obeyed. The ruler was to be accorded subjection always, and obedience when his commands were for the common good.³⁶

Although the Cavalier Parliament ensured that the 1672 Indulgence was withdrawn in the following year, the effusion of publications advocating toleration continued unabated. This campaign had begun in 1667, after Clarendon's fall, and in the 1670's it became part of the rising tide of opposition to government policy and the alleged trend towards arbitrary rule in England coupled with a failure to resist the increase in French power under the personal administration of Louis XIV, the cousin whom Charles II appeared to envy.

John Corbet's Discourse of the Religion of England (1667) expounded arguments against the persecution of dissenters which recurred often in subsequent pamphlets. He wrote that violent compulsion was not compatible with the Christian religion which was rational and sought a willing compliance, and did not truly exist at all where it was not received with judgement and free choice. Persecution would also be ineffective in removing or reducing dissent, for Englishmen were not so bloody as to afflict their quiet and harmless neighbours with harsh penalties. Dissenters were, he claimed, most numerous among the trading and business community, and to persecute them caused a decline in trade and commerce. It harmed those who were, for the most part, sober, frugal and industrious: "They are not the Great Wasters, but mostly in the number of Getters".³⁷ Corbet declared that the English people could never be reduced to the condition of French peasants without the destruction of England's strength. He explained that trade, which was the very life of England, could not be managed by a people in a slavish and sordid condition. In a trading nation wealth was constantly gained by different hands, with new men always rising to the rank of gentleman and some former gentry families decaying. Any

Englishman was allowed to purchase land so there was an incentive to gain wealth for this purpose, and the demand for, and access to the purchase of land kept up its value. When the estates of ancient gentry families were declining, they could be propped up by marriage into citizen families, but if traders failed, this source of money must fail also.³⁸

Sir Charles Wolseley's Liberty of Conscience, The Magistrates Interest (1668) agreed that the persecution of dissenters harmed trade and hindered the most industrious people. He explained that it was inevitable that among dissenters "the Sober, Serious and Religious sort of men, that every way make a Nation prosper", should predominate and be disproportionately represented, because

'Tis debauched, loose, expensive people that over-live their Estates, and neglect their Callings, that help to pull a State down; Such men will be sure to conform to anything, that secures them in present Luxury.

39

Persecution harmed men of sincere principles who could not dissemble, while those of loose principles and loyalties escaped the net. Also, nothing promoted a religious opinion more than making men suffer for it, because the constancy and courage of men in suffering for a belief would sooner persuade others of its worth than all the discourses and sermons in the world.⁴⁰ Wolseley drew a clear distinction between political authority and the authority of a father over his family. He rejected patriarchalism and the descent of political authority from Adam, and held that political authority originated by mutual agreement of many families together for the general good.⁴¹ Here, as in Humfrey, the theoretical origin of government affected the issue of religious persecution because a form of government set up by rational beings for their common good implied that something so detrimental to the interests of society as the persecution of the industrious dissenters was contrary to the true purpose of government.

The pamphlet The Present Interest of England Stated (1671)

which was published anonymously, stated that imposing upon conscience in matters of religion was the most damaging thing to trade, and liberty of conscience was the common interest of the whole nation.⁴² A pamphlet attributed to the Duke of Buckingham, one of the governing Cabal which persuaded Charles II to offer Indulgence, contrasted the trading success of the Dutch, with their liberty, frugality, and tolerance, against the relative failure of France, a far larger nation, caused by its oppressive arbitrary regime, which was incompatible with trade.⁴³ Thomas Carter's Non-Conformists No Schismatics, No Rebels (1670) emphasized the loyalty of dissenters and the corrupting effect of an enforced conformity:

are Swords and Prisons rational Arguments to convince mens minds of the lawfulness of these things? Nay, is it not the way to teach men to act against the light of their Consciences, and to debauch their Principles, till no Principles will hold them? 44

The loyalty of presbyterians to the monarchy and constitution was presented by Colonel John Birch when he spoke in the Commons in February 1673 in support of an unsuccessful Bill for granting Ease to Protestant Dissenters. He reminded M.P.s that presbyterians had declared against the murder of Charles I and the Cromwellian usurpation, and that one of their number, Christopher Love, had even lost his life because of his loyalty. As for the Engagement, continued Birch, there could be found none of the presbyterian persuasion who took it.⁴⁵ This bill was designed to allow a narrow toleration which would have benefited presbyterians in particular, but it was coupled with an address stating that the penalties against dissenters could be suspended only by parliament, not by a royal Declaration based on the supposed suspending power of the crown.⁴⁶ This rebuff was not acceptable to Charles II, but he had to withdraw the Indulgence in March 1673 to ensure the passage of a finance bill in the Commons. The subsequent collapse of the Cabal brought Shaftesbury and Buckingham into opposition at a time when the Anglo-Dutch war (1672-74) had wrought a dramatic swing in opinion against the king's pro-French foreign policy. The widely circulated

pamphlet England's Appeal from the private cabal at Whitehall to the Grand Council of the Nation (1673) listed French acts of aggression and the prospects of further aggrandizement and warned that Louis XIV could become "the Universal Monarch" or at least "master of the best part of Europe".⁴⁷ The increasing distrust of Charles II was reflected in a series of parliamentary bills aimed at restricting the possibilities of the use of arbitrary power by the crown against the subject, and the king decided to put a stop to these measures by proroguing parliament on 24th February 1674, a prorogation which lasted until April 1675.⁴⁸ Prorogation was preferred by the king to dissolution because the state of public opinion was so hostile that a newly elected parliament would have been liable to adopt an even firmer line against the crown.

When parliament eventually reassembled, the opposition leaders argued that the extremely long prorogation really amounted to a dissolution, and that a general election was required. Denzil Holles, the presbyterian leader in the Lords, claimed it was legally dissolved and that a few gentlemen were "perpetuating their own Rule to the exclusion of all others ...".⁴⁹ The court party were afraid to dissolve a parliament elected on the wave of pro-cavalier sentiment in 1661. A newly-elected parliament would have reflected the great change in public opinion against the court.⁵⁰ Holles also reiterated the traditional view of England's mixed form of government, but emphasised that the Commons was now the strongest part of the government and warned that the country was threatened by the French aim "to Erect an Universal Monarchy in Europe".⁵¹ Shaftesbury pointed out that the French naval build-up was a serious danger, but also that there was an internal threat to the constitution from the rise of principles of arbitrary government and divine right comparable to the growth of such ideas during the Laudian ascendancy of Charles I's reign, while Buckingham attacked the persecution of protestant dissenters, and its detrimental effect on the trade, wealth and strength of England.⁵² The prelates were denounced as "Creatures and Supporters of

boundless Prerogative" in A Letter From a Parliament-Man (1675) by "T.E.", who argued that all their promotions, dignities, and domination depended on prerogative power. Liberty should be given to dissenting protestants to keep up the balance against boundless prerogative, but it was almost too late to save the country:

we have almost destroyed the State; and advanced Prerogative so much by suppressing Nonconformity, that it's well nigh beyond our reach or power to put a Check to it. 53

Andrew Marvell's An Account of the Growth of Popery and Arbitrary Government in England (1677) expressed many of the fears of this period. It began with the bold and unequivocal assertion that,

There has now for divers Years, a Design been carried on, to change the Lawful Government of England into an Absolute Tyranny, and to convert the Established Protestant Religion into down-right Popery.

He recalled Mary Tudor's reign

"in which Papists made Fuel of the Protestants,"

the Spanish armada, the gunpowder plot and the Irish massacre of 1641, and wrote that once again the Roman clergy on the continent were anticipating the recovery of the former monastic and abbey lands in England. Few sizeable estates in England, he stated, did not include some former property of the pre-Reformation church which its owners would forfeit as heretics if catholicism was to return. There was a great need to restrain the power of France.⁵⁴

The most immediate threat to protestant England was not directly from France, but from the fact that James, Duke of York, heir to Charles II's throne, was a fervent Roman catholic. The aim of the supposed Popish Plot of 1678⁵⁵ was to kill Charles so that there could be an immediate succession of his catholic brother to the throne. In the Popish Plot scare all the old deeply-rooted fears of catholicism, emphasised in Chapter one, erupted again. The credibility

of the Plot was enhanced immeasurably by the one indisputable fact upon which it was built up, namely the Duke of York's religion, which he embraced with all the zeal of a convert. Whatever anyone came to think about the Plot, and the punishment of the supposed plotters and their accomplices, that fact remained a political problem of paramount importance.

(ii) Exclusionist ideas and propaganda

The Exclusion crisis of 1679-81⁵⁶ derived its name from the efforts of the parliamentary opposition to exclude James from succeeding to the throne, by passing an Act of Parliament to that effect. The final dissolution of the Cavalier Parliament in 1678, with the collapse of Danby's court party amid revelations relating to the receipt of French subsidies by the crown, brought the first general election since 1661. Now there were three general elections in only two years, with Exclusionist (or "whig") majorities in each of these short parliaments. In J.R. Jones' The First Whigs, which carefully narrates and analyses the Exclusion crisis, the oldest component of the Exclusionist or whig party is stated to have been comprised of a group which Jones called the "old Presbyterians". This group consisted of those who had opposed the introduction of the Clarendon Code in the 1660's and included many veterans of the civil wars and interregnum. Jones gives its leaders as Holles and Wharton in the House of Lords, and Boscawen, Swinfen and Sir Nicholas Carew in the Commons, and attributes to many members of the group a resentment of Shaftesbury's domination of the whigs and a suspicion that he was exploiting the dissenters for his own ends.⁵⁷

Many of the Exclusionist pamphlets and speeches naturally concentrated on warning of the consequences if the exclusionists should fail, and James be allowed to succeed his brother. One fear which they exploited was the danger that landowners would be deprived of their ex-church lands, which the catholic clergy desired to obtain.⁵⁸ Worse still, protestants, being regarded as heretics under catholic rule, would forfeit all their property rights and laws made in a parliament composed

of heretics would be invalid.⁵⁹ Protestants might even be burned alive as in Mary Tudor's reign.⁶⁰ James was bound to persecute, according to whig pamphleteers. His religion made human merit the path to salvation (in contrast to the calvinist doctrine of predestination): merit caused money to be lavished on church and clergy in catholic countries, while the people were impoverished, merit could come from the assassination of 'heretic' rulers, but what greater merit could there be than the converting of a heretical protestant kingdom? It would be a meritorious act sufficient to make James a saint of the first magnitude. Roman catholicism was a religion which authorized any cruelty and inhumanity for its propagation, alleged the whigs.⁶¹

The harmony of popery and arbitrary government was an important preoccupation of Exclusionists, as it had been of puritan writers in Charles I's time. Now, however, the chief foreign power threatening to impose these oppressive doctrines was France instead of Spain. An anonymous whig in 1681 emphasised

the growing greatness of the French, which, at this day, threatens all Europe with chains; and immediately tends not only to the decay of Great Britain's trade and glory, but also to the diminution, oppression, and (if it lay in human power) utter subversion of the reformed religion throughout the world.

62

Hugh Boscawen told the Commons in 1679 that "Popery and French Government are almost check-mate with us", and in December 1680 he stated:

There has been an universal conspiracy of the Papists, not only here, but over all the western part of the World, to bring in their Religion, and the greatest encouragement given to a Popish Successor; therefore we ought to consider how to prevent it. ... We all know, at this day, that the Jesuits make the greatest part of their application to the French King, as setting up for the Universal Monarchy.

63

Colonel Birch warned that popery could not grow except by arbitrary government, although Hampden, while agreeing about

the symbiosis of popery and arbitrary government, opined that "Popery, in a great measure, is set up for Arbitrary Power's sake; they are not so forward for religion".⁶⁴ Roman catholics, claimed David Clarkson, found arbitrary government

agreeable to their principles and designs ...
they are for an universal monarchy, by which this
and others must be swallowed up. 65

Shaftesbury, in a major speech to the House of Lords on 25th March 1679, stated:

Popery and Slavery, like two sisters, go hand in hand, sometimes one goes first, sometimes the other in a doors, but the other is always following close at hand. In England, Popery was to have brought in Slavery; in Scotland, Slavery went before and Popery was to follow. 66

England should take note of the absolute power of the crown in Scotland and avoid the same fate.

The brevity of the Exclusion parliaments was considered to be part of the attempt to pave the way for absolutism. The "Popish and Arbitrary Party" were alleged to have advised the calling of frequent, short and useless parliaments to weary the gentry with the expense of many elections and fruitless journeys, so that eventually they would be content to sit at home and give the court a free hand, and if the court could but dominate one House of Commons it would make Englishmen perpetual slaves and roman catholics by law.⁶⁷ The whigs denied their opponents' accusation that they shared the principles of the republican Commonwealthsmen of the Interregnum: it was the courtiers and catholics who really were intent on the subversion of the constitution; "I fear the change of our Government from none but the Papists"; wrote one anonymous pamphleteer,

absolute Monarchy or a levelling Democracy will either serve their turn; ... those Governments are both Tyrannical, and the Priest hates only truth and liberty, the Bloody Luxurious Tyrant, and the unlearned mean Clown both readily obey his dictates: whilst the wealthy Free-man thinks for himself, and will not venture his Soul nor his Money against common sense. 68

The whigs were not republicans, but their tory opponents were on firmer ground with the accusation that the rhetoric and style of agitation of 1641, which led up to civil war, was revived in whig propaganda.⁶⁹ Tories exploited the fear of the Exclusion crisis leading possibly to another civil war.

Another strong point of tory propaganda was the doctrine that the king's hereditary rights were the cornerstone upon which all private rights of inheritance depended.⁷⁰ Landowners might well be sensitive about the precedent provided by the disinheriting of James by the Exclusion Bill. If the heir to the throne could be thus deprived, the heirs to private estates might one day be threatened upon some pretext or another by rival claimants. David Clarkson's attempt to counter this claim may be quoted:

The succession of the crown, and a common descent much differ; for if an heir that is a subject prove loose and debauched, it little damnifies the publick; more deserving persons may happily perchance step into his possessions, and be more serviceable to the publick; the damage is still but private to his own family; but in case of the crown, there is none so senseless but must needs conceive the damage most fatal because universal. The whole nation must inevitably suffer; religion subverted and property destroyed, and the whole people in danger of their lives.

He wrote that in a private case it was, however, possible for an entail to be set aside, or an heir disinherited, in certain circumstances and therefore exclusion should be possible in the succession to the throne:

And therefore the grand inquisitors of state, and conservators of the liberties of England, the parliament, may for weighty causes refuse the heir presumptive, and for the safety of the nation settle it where they in honour and prudence shall conceive most proper.

71

In a period when no very clear distinction was drawn between the nature of private property rights and the rights of a prince to inherit the throne, the tory argument on this point was hard to counter. Clarkson's reply, that in a private

case disinheriting an heir or breaking an entail was sometimes possible, probably did not hold much appeal for his contemporaries. In the reign of Charles II it had become harder to set aside an entail, and, on the assumption that it would remain difficult, there was a significant increase in the amount of land entailed, a trend which eventually went so far that by the early eighteenth century probably a half or more of the land in the country was settled under long-term limitations on its disposal.⁷² In view of this tendency, Clarkson's remarks on behalf of the exclusionists must have seemed rather weak and unsatisfactory. The tory exploitation of landowners' distrust of anything which encouraged the disinheriting of legal heirs was facilitated by the increasing popularity, from 1680, of James, Duke of Monmouth, Charles II's eldest son, whose weak claim to the crown commended him to some whig nobles, particularly Shaftesbury, although he was not favoured by rank-and-file whigs. From the point of view of the gentry, both whig and tory, to permit an illegitimate son to inherit by parliamentary sanction would have created an uncomfortable precedent. Although the first Exclusion bill had provided for the succession of the next legitimate heiress, James' eldest daughter, Princess Mary of Orange, the tories were able to exploit the absence of this provision in the second bill.⁷³

Richard Baxter reiterated many of the old presbyterian political principles. The influence of Edward Gee's writings on Baxter has already been mentioned. In The Second Part of the Nonconformists Plea for Peace (1680) Baxter rejected the patriarchalist view, which had been reinforced by the reprinting of Filmer's works in 1679-80,⁷⁴ and he denied that the power of kings arose naturally from paternal authority.⁷⁵ God had not made any one form of government, whether monarchy, aristocracy or democracy, universally necessary, and, although political authority came from God, at the constituting of societies the people had the choice of who would govern and of the form of government.⁷⁶ Baxter wrote that England had a mixed form of government, as Charles I had admitted in his answer to the Nineteen Propositions of 1642, and the sovereign

did not have an unlimited power over the lives and estates of the subject.⁷⁷ Usurpers to the throne had no true authority or right to conscientious obedience, added Baxter, who in 1683 replied to the University of Oxford's condemnation of his political ideas by recalling that he had always defended "Mr. Gee's book" (The Divine Right and Originall), a work which opposed the usurpation of civil power.⁷⁸ By emphasising his agreement with Gee, who had written in favour of the lawful monarchy during the Interregnum, Baxter hoped to exonerate himself from the ridiculous charge that his own principles were subversive.

One whig exclusionist pamphlet which expressed very clearly and concisely the basic political theory of presbyterian constitutionalism was A Word without Doors concerning the Bill for Succession (1679) by "J.D.". The author stated that the inclination of mankind to live in societies, and therefore the existence of political authority and government which necessarily flowed from living in societies, proceeded from nature, and therefore from God, the author of nature. The existence of government was thus ordained by God for the common good of mankind, but God had not specified that any particular form of government was necessary. As long as some form of government existed, the divine purpose might be served by the rule of one, a few, or many governors, by monarchy, aristocracy, or democracy. The authority of the ruler or rulers might be limited either to a greater or lesser extent in different polities, and they might be placed in office for any specified length of time, or indefinitely. There could be hereditary succession, or periodic election of rulers. All these things, stated the author, were ordained and varied by the positive laws of particular states, and not established by any natural or divine law. God had left it up to each nation or state to select whichever form of government it thought most liable to promote the common good and best adapted to the character and circumstances of the people. Accordingly, the form of government could subsequently be altered, or amended in any of its component parts, by the

mutual consent of the rulers and the governed whenever they saw reasonable cause to do so. The truth of the foregoing assertions was evident both from the diversity of governments extant in the world and by the same nations living sometimes under one form of government, and sometimes another. From all these facts, it was plain, stated this pamphleteer, that "no Magistrate has his particular Government, or an Interest of Succession in it, by any Institution of Nature, but only by particular Constitution of the Commonwealth within itself."⁷⁹

The author argued the legality of Exclusion from these basic principles. Since the form of government and the restraints on its legal power depended purely on human and positive laws, that same human authority (in England vested in King, Lords, and Commons) which made those laws for the good of the community was "Superintendent over them, and both may and ought to make any Addition to, or Alteration of them, when the public Good and Welfare of the Nation shall require it". The only alternative was to believe that, when a human authority established an institution, system or practice intentionally for the common good of the society, and the thing thus established proved destructive to the society because of unforeseen circumstances and emergencies at some subsequent time, the society was nevertheless irrevocably committed and must regard this accidental evil as moral and unchangeable. Such a view was senseless and repugnant to the author of A Word without Doors. "I hope by this time . . .," he concluded,

you begin to see that the Bill for disabling the Duke, was not so unjust and unreasonable as was pretended; and that the course of Succession (being founded upon the same bottom with other Civil Constitutions) might likewise as justly have been altered by the King, Lords and Commons, as any other Law or Custom whatever. 80

The principles set down in A Word without Doors asserted that the theoretical origin of particular forms of government and political institutions was the mutual agreement of each society of rational human beings. The tory patriarchalist view found the theoretical origin in the divine order of the creation and the first "monarchy" of Adam, and exalted

paternalistic monarchy, accountable to its divine originator rather than its human subjects, and hereditary succession. (The ideas of Filmer have been summarised in Chapter Seven.) Since the whigs, following the presbyterian constitutionalists of the civil wars and Interregnum, placed the origin of constitutions, whether written or customary, in purely human actions taken for the rational purpose of the common good, they could use this theory to justify subsequent constitutional changes being made by human decisions.

The final failure of the Exclusionist whigs at the Oxford Parliament of March 1681, cleared the way for a tory-anglican reaction directed particularly against the dissenters, who had backed the whig cause. In the 1680's a drive towards greater royal control of local and county administration was paralleled by a severe persecution of non-conformists which was only relieved by the uneasy Indulgences of James II, widely recognized as a strategem to help Roman catholics rather than protestant dissenters. Charles II had to ally himself firmly with the high church anglican tories, although he had no genuine liking for either their religious beliefs or their persecuting zeal, because the only alternative, the whigs, demanded from him something which he totally abhorred - the exclusion of the rightful heir to the throne. Tory writers gleefully pointed out that presbyterians themselves had in the past opposed toleration and justified the suppression of religious dissidents. Sir Roger L'Estrange, a leading tory writer, was the most notable compiler of presbyterian statements and exhortations against toleration from the 1640's.⁸¹ L'Estrange's two books of Dissenters' Sayings (1681) quoted many presbyterian authors of the past, including Edwards, Case, Cranford, and Newcomen, whose views have been shown in previous chapters. The anglican tories ignored the fact that presbyterians had desired to be part of a comprehensive national established church from which the restoration settlement had excluded them, forcing them into an unwilling separation from the national church. Had they been comprehended, as they wished to be, they would not have required toleration. It was still possible

to publish the opinion that persecution was often counter-productive, creating sympathy for the dissenters and a revulsion from the government, and that trade and commerce were hindered by the oppression of industrious non-conformists.⁸² This pragmatic approach was temporarily eclipsed by the strength of the anglican reaction but it was not refuted or eliminated.

(iii) The coming of the Glorious Revolution

The rebellion in favour of the Duke of Monmouth, which followed James II's accession in 1685, did not secure the support of any notable presbyterians, and several of their spokesmen condemned it.⁸³ Although they welcomed the relief from persecution afforded by James II's two Indulgences of 1687 and 1688 (persecution had, in fact, been informally ended soon after James came to the throne), presbyterians did not directly approve the use of the royal dispensing power, and they realised that since James aimed mainly to assist the Roman catholics he would probably abandon the protestant dissenters when it suited him to do so.⁸⁴ The Marquess of Halifax's A Letter to A Dissenter (1687), warning of these dangers and frankly admitting, on behalf of most leading anglicans, that the persecution of the protestant dissenters had been a repugnant episode which should never be repeated, did not fall on deaf ears. Also the recent persecution of French protestants after the revocation of the Edict of Nantes in 1685 provided vivid proof that a toleration granted by the prerogative of a monarch could be just as easily, and suddenly, cancelled by the same arbitrary means.

Many tories, as well as the whigs, supported William of Orange in his invasion of England in 1688, and the Glorious Revolution did not represent an outright victory for whigs and their political philosophy, a philosophy which had, as we have seen, inherited much from the principles of the presbyterian constitutionalists. The fact that James II had conveniently fled the country and had not been forcibly removed from the throne, or ejected by the armed resistance of

subjects, made the revolution into an affair which could be justified in fairly conservative terms. Even so, the whig constitutionalist view that forms of government, and appointments of particular governors, were established by human actions was vindicated against the principles of divine right toryism and patriarchalism. The agreement to crown William and Mary was a clear departure from the strict hereditary succession which the tories had held to be inviolable in their anti-exclusionist publications in the latter part of Charles II's reign. The supposed abdication of James, by his flight from England, was a useful and valuable legal fiction, but it could not adequately explain why the infant Prince of Wales had been passed over. The notion being put about that he was not really a royal baby, but a craftily insinuated substitute, was no more than a scurrilous rumour, which was hardly sufficient to justify his disinheritance. The succession was also amended to allow William a crown although, strictly speaking, his marriage to Mary only entitled him to be prince consort. The coronation oath taken by the new monarchs was significantly altered in that they had to swear to uphold the protestant reformed religion and to observe parliamentary statutes. The new religious clause effectively excluded any Roman catholic from legally ascending the throne in future, and may therefore be regarded as a vindication of the Exclusionists against the tories. The Declaration of Rights, subsequently the Bill, and ultimately the Act of Rights abolished the royal suspending power in regard to legislation and carefully restricted the right of dispensing with it in individual cases. Non-parliamentary taxation was declared illegal. These provisions, along with the condemnation of James's various misdeeds as ruler, were matters upon which most whigs and tories could agree, but although the contents of the Declaration can be considered bipartisan, the Convention's insistence on its acceptance by William and Mary as a pre-condition for their accession was a triumph for whig principles and for constitutionalism. The principles that rulers were limited by the governed, and that the form of government and the

appointment of particular rulers was the product of purely human positive laws, were endorsed.

The Toleration Act of 1689 limited government in a slightly different manner. It provided for a minimal extension of religious liberty to protestant dissenters, without emancipating them from such civil restrictions as the Test and Corporation Acts, although even these could in effect be evaded through the widespread practice of occasional conformity. The broader significance of the Toleration Act was really that it was an affirmation of the principle that the ruler was not entitled to determine the religion of all his subjects and to compel them all to go to the state church. By contrast with the violently imposed religious uniformity of Louis XIV's France, England could reasonably regard itself as a champion of religious freedom.

The conservatism of the 1688-89 revolution does not mean that it should be regarded as merely a victory for upper class oligarchy against royal absolutism or a triumph of the enfranchised political nation over arbitrary government and the illegal, unmerited advancement of roman catholics to office-holding. It can be argued that the very principles which the revolution vindicated were those most liable to allow eventual progress towards a wider political representation, liberty, and participation in the future. There had been a clear endorsement of the view that forms of government and particular governors were established and limited by human actions and could be altered or amended by human agreement. They were not divinely ordained, and therefore unchangeable without sin and sacrilege. However conservatively the revolution was interpreted during the next century, these basic implications were inescapable. Constitutional development was possible. If divine right absolute monarchy on the French model, and the notions of Filmerian patriarchalism, had predominated instead, political development in the future could have come only through destructive revolution, a type of revolution very different from the bloodless event of 1688-89.

The Calvinist antecedents of John Locke's political philosophy of the Two Treatises of Government (1690) have been explained in John Dunn's The Political Thought of John Locke.⁸⁵ Locke's case against Filmer repeated many of the points first made in Edward Gee's Divine Right and Originall of 1658, particularly with regard to the distinction between paternal and political power, and the insistence on the people's consent as the sole foundation for government combined with the belief that the people themselves could not, however, exercise the governing power which was transmitted by them to the rulers. Locke had apparently first read Gee's book during the 1660's.⁸⁶ The constitution of forms of government and the appointment of rulers were considered by Locke to fall firmly within the sphere of human activity, but the ultimate source of all political authority was God, the author of the laws of nature and the creator of human reason, towards whose purposes the actions of that authority must be directed if its legitimacy was to be maintained.⁸⁷ To those who wrote within the presbyterian constitutionalist tradition these beliefs provided for political philosophy a basis of scripture and reason rather than historical antiquarianism. We have seen that it was these beliefs which distinguished Charles Herle's political thought from that of other parliamentarian political writers during the civil war. The same beliefs were the heart of Locke's political philosophy, and all those in subsequent ages who have argued for the alteration or overthrow of particular governments, on the grounds of their being destructive of the ends of government in general, have drawn upon this tradition.

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