

Rethinking the English Revolution of 1649

Despite the dramatic events of the trial and execution of Charles I in the winter of 1649, the period that followed tends to be characterized as one of constitutional inertia or backsliding rather than revolution. The regicide, it is argued, was not the product of deep-felt republican feeling but a matter of necessity and expediency; by extension the kingless Commonwealth regime established after the king's death was 'regarded from the start as a stop-gap, a mere expedient, never an experiment'; it was 'a government which, much of the time, did not know whether it was coming or going'.¹ The constitutional changes were an unforeseen consequence of the regicide: they were 'improvised, confused, and at moments panic-stricken'.² Few believed the trial and execution of the king would lead to the abolition of kingship. Besides hints of backroom dealings to put one of Charles' sons on the throne, the dilatoriness in establishing a kingless government after the regicide shows there was no enthusiasm for republican rule in England. The 'fact' that after the king's execution 'it took the Commons a week even to ask itself whether or not kingship should be abolished indicates the limits of republican feeling at this time.'³ Rather, kingly government was abandoned with much regret and only as a last resort. While the resolution for abolishing kingship on 7 February 1649 was testimony to the 'revolutionary daring of some rumpers' it owed 'much more to the absence of a plausible alternative policy'.⁴ Against their better judgement the majority of those at Westminster sleepwalked their

¹ I. Roots, *The Great Rebellion, 1642-1660* (1966), p. 138; B. Worden, *The Rump Parliament, 1648-1653* (Cambridge, 1974), p. 185.

² B. Worden, *God's Instruments: Political Conduct in the England of Oliver Cromwell* (Oxford, 2012), pp. 270-1.

³ Worden, *Rump Parliament*, pp. 172-3; Worden, *God's Instruments*, p. 263.

⁴ Worden, *Rump Parliament*, pp. 172-3.

way into kingless rule. It seems that from the moment the decision was taken to abolish kingship the restoration of monarchy was a matter of when not if.

It is time for a rethink. So many of those claims about the Commonwealth regime and its origins rely on evidence that is fragmentary and circumstantial. As the first part of this article demonstrates, such is the nature of the evidence that all of those key assumptions concerning this period – that settlement was hardly discussed prior to the regicide, that the Rump was unprepared for kingless rule, and that the decision to abolish kingship was taken slowly and hesitantly – might be qualified or questioned. This article concludes by suggesting that the genesis of the Commonwealth regime should be reconceptualised. Too often, the commitment to ‘republican’ forms of government is taken to be inversely proportional to commitment to kingship. Because there was a lack of positive republican feeling it usually follows that support for kingship must have been high. This supposition has done so much to dictate the way historians approach the evidence. By moving beyond forms of government, however, and focusing instead on the principles that guided those who fell in with the Commonwealth regime, 1649 appears a far more revolutionary moment than many later cared to remember.

I.

Even though preparations for the king’s trial occupied the attention of many at Westminster during the weeks before the regicide, considerations of settlement were never far behind. On Saturday 16 December 1648 the purged House of Commons, known to posterity as the Rump Parliament, ordered that their first business on the following Monday should be to consider ‘such Expedients’ as were to be ‘offered’ for

the ‘Settlement of the Peace and Government of the Kingdom’.⁵ While it is unclear from the Commons’ Journal whether that discussion took place, another order was made on 18 December that the House should ‘proceed’ on those ‘Expedients’ to be ‘offered’ for ‘Settlement’ as the first business the next morning.⁶ These few hints highlight the dangers of assuming that settlement was given scant consideration prior to the regicide. Silences in the record are not proof positive that debates and discussions were not happening. The Commons’ Journal is itself a poor record of the debates that occurred in the House – it is not an early modern Hansard. While votes and resolutions are routinely recorded and, for the most part, the heads of issues under discussion, whole debates could still pass by without so much as a mention.

Even less likely to survive are traces of those many private discussions concerning settlement that indubitably took place away from parliament. A rare, but by no means trustworthy, exception is provided by Bulstrode Whitelocke’s post-Restoration memoirs. On 18 December 1648, Whitelocke claims that he and fellow MP and lord commissioner of the great seal Sir Thomas Widdrington went ‘by appointm[en]t’ to the office of the Master of the Rolls, and Speaker of the Commons, William Lenthall. There they met with ‘L[ieutenant] G[eneral] Cromwell and C[olonel] Deane’ and had ‘a long discourse together about the present affayres’. To conclude, Cromwell appointed ‘another time... for us to meet againe & to consider & conferre how the settlem[en]t of the kingdome might be best effected, & to joyne Counsell for the publique good.’⁷ While this episode has fired the imaginations of historians hoping to uncover Cromwell’s motives and actions in those crucial weeks leading up to the

⁵ *CJ*, vi., 99 (16 Dec. 1648).

⁶ *CJ*, vi., 100 (18 Dec. 1648).

⁷ BL, Add. MS 37344, fols. 236r-v; Ruth Spalding (ed.), *The Diary of Bulstrode Whitelocke, 1605-1675* (Oxford, 1990). p. 226 (18 Dec. 1648).

king's trial, there is nothing in Whitelocke's tantalisingly vague account to suggest the meeting concerned saving the king's life. Indeed, had that been the topic of discussion one cannot help but think that Whitelocke would have stated the fact when he composed this account after the Restoration. Rather, the crucial point is that Cromwell appointed a further meeting with the lawyers to consider how the 'settlem[en]t' of England could be 'best effected'. It suggests that their discussions and those scheduled to take place in the Commons at that same time overlapped: they were not discussing the king's trial but already thinking through the consequences of its outcome.

According to Whitelocke these discussions continued on the evening of 21 December when 'by appointment' he and Widdrington 'went to the speakers' and met again with Cromwell.⁸ Cromwell 'discoursed freely' about the 'present affayres & actions of the Army'; the lawyers present then 'tooke the like liberty' to talk about the army and 'the settem[en]t of the kingdom'.⁹ At the conclusion of the meeting, Widdrington and Whitelocke were asked to draw up 'some heads uppon the discourse, to be considered by the same company to morrow.'¹⁰ Such was the urgency of this business that, despite 22 December being a fast day, Cromwell and Lenthall urged Whitelocke and Widdrington to skip the day's devotions to prepare those 'heads for a Declaration, what the Parlem[en]t intendeth for the settlem[en]t of the kingdome' which, Whitelocke adds tellingly, were to be 'offered to the Parlem[en]t & Councell of the Army'.¹¹ Whitelocke further admitted that this was a business 'not to be declined', not

⁸ BL, Add. MS 37344, fol. 237r; Spalding (ed.), *Whitelocke's Diary*, p. 226.

⁹ BL, Add. MS 37344, fol. 237r.

¹⁰ BL, Add. MS 37344, fol. 237r.

¹¹ BL, Add. MS 37344, fols. 237r-v.

least because ‘both the members of the house, & chief Officers of the Army’ had ‘ingaged’ and trusted them with that task.¹²

This last admission raises the possibility that the Commons prompted, and were waiting on, the meetings described by Whitelocke to formulate a set of proposals that would be the basis for their deliberations about the ‘Settlement of the Peace and Government of the Kingdom’. That there was apparently no such discussion in the Commons on 18 December, prompting the House to instead set aside the following morning to discuss the ‘Expedients’ that were to be ‘offered’, could suggest they were still waiting on Whitelocke, Cromwell and the rest to perfect those proposals. But, as Whitelocke noted, their meeting on the 18 December was long and inconclusive. Not until after the meeting on 21 December, did Whitelocke and Widdrington get down to preparing those ‘heads’ to be offered for the Commons’ consideration.

Although Whitelocke notes in his account of the meeting on 21 December that the heads, once completed, were to be ‘considered by the same company to morrow’, he does not record a meeting on 22 December.¹³ Rather, the next meeting in Whitelocke’s account occurred at the Speaker’s house on the afternoon of 23 December. Once again Whitelocke and Widdrington went to this meeting ‘according to appointm[en]t’, but this time there is no suggestion that Cromwell or any of the officers were in attendance. Rather, they met with ‘divers gentlemen of the house’ and ‘consulted about settling the kingdome by the Parlem[en]t, & not to leave all to the sword’.¹⁴ It seems likely that Whitelocke and Widdrington would have used this meeting to share with the

¹² BL, Add. MS 37344, fols. 237r-v.

¹³ BL, Add. MS 37344, fol. 237r. Of course this silence is not proof positive that the meeting did not occur.

¹⁴ BL, Add. MS 37344, fols. 237v-238v.

MPs those heads on which they had been working the previous day; perhaps the meeting was convened specifically to sound out the members before presenting the heads to the House for discussion? If so, the meeting on 23 December could offer clues as to the contents of those earlier meetings between Cromwell and the lawyers and their heads for a 'settlement'.

Infuriatingly, and perhaps tellingly, Whitelocke says little in his memoirs about his contribution to the meeting. He and Widdrington spoke their 'minds freely', but what they advised is left unsaid. What Whitelocke does make clear, however, is that the issue of 'settlement' under discussion at the meeting concerned the future of England's kingship. There were 'some of them... wholly ag[ains]t having any king att all', others 'were ag[ains]t having the present king or his eldest or second son, to be king', with some advocating 'the 3[rd] son the D[uke] of Gloucester... be made king' instead.¹⁵ Apparently no one advocated a settlement with Charles I. The choice facing MPs seems to have been between retaining kingship under a pliable candidate or simply dispensing with it altogether.

From as early as 23 December 1648, therefore, members of the Rump turned their thoughts to settlement; MPs were already considering a future without Charles and some even suggested having no king at all. Moreover, assuming that the meetings between Cromwell and the lawyers set the agenda for the meeting of 23 December, it is possible that these deliberations had begun earlier still. Beyond his opaque references to 'settlement', Whitelocke is silent about the content of those meetings with Cromwell. It seems he had something to hide, particularly when one considers his

¹⁵ BL, Add. MS 37344, fols. 237v-238v.

tantalising aside that those heads he helped to draft on 22 December were a ‘worke of no smalle difficulty, & *daunger*’.¹⁶ One is left wondering why he felt the task was so dangerous?

A likely explanation for Whitelocke's unease is that the proposals for settlement on which he was working were predicated upon the king's demise. After all, as Whitelocke relates in his memoirs, it was not until 23 December that the preparations for the king's trial began in earnest. It was ‘now’ that the ‘fierce party’ in the purged House of Commons ‘sett on foote, and begunne their great designe of taking away the King, whom divers in the debate did not sticke to name, for the greatest Delinquent’.¹⁷ Those of the ‘contrary opinion’, which presumably included Whitelocke, could do nothing ‘knowing they should be presently secluded the House’ if they opposed; rather, they ‘indeavoured to have putt the buisnes wholly upon the Army’ so that if they wanted ‘the thing done, they should doe it themselves’.¹⁸ But, as Whitelocke laments, the officers were ‘subtle enough to see & avoyd that, & to make those whom they left sitting in the Parlement to be their stales, & to doe their most durty worke for them.’¹⁹ This excuse certainly helped Whitelocke explain the awkward fact that he and Widdrington headed the list of the committee of 38 MPs appointed that day ‘to consider how to proceed in a way of Justice against the King.’²⁰ What is important here, however, is that – in Whitelocke's account – the initiation of preparations for the king's trial on 23 December provide the context for that meeting of MPs later that

¹⁶ BL Add. MS 37344, fols. 237r-v. Emphasis added.

¹⁷ BL Add. MS 37344, fols. 237v-238v.

¹⁸ BL Add. MS 37344, fols. 237v-238v.

¹⁹ BL Add. MS 37344, fols. 237v-238v.

²⁰ *CJ*, 6:102-3 (23 Dec. 1648); *Whitelocke's Diary*, 227 (23 Dec. 1648); BL Add. MS 37344, fols. 237v-238v. Understandably, after the Restoration, Whitelocke was particularly keen to prove that his appointment to this committee was no reflection of his sympathy for the king's trial. The excuses he tendered to the Convention Parliament on this count can be found in *Whitelocke's Diary*, 592-6 (2 June 1660).

same day. The sequence is logical enough – only *after* the Commons had begun their proceedings against the king, and therefore all hope of saving him seemed lost, did Whitelocke and other MPs discuss alternative constitutional solutions. Yet, the ‘daunger’ of Whitelocke’s work upon the heads on 22 December and his failure to state that those earlier meetings with Cromwell concerned preserving the king leaves one to wonder whether he had already come to accept the king’s demise earlier than he cared to admit. Perhaps he had given up on the idea of a settlement with Charles before the ‘fierce party’ had foreclosed that option by initiating preparations for the trial.

Even after the trial preparations began on 23 December, the question of settlement did not disappear but rather became enmeshed with the trial preparations and proceedings themselves. On 26 December the committee of 38 MPs charged with making preparations for the king’s trial was also told to ‘consider’ and present to the House ‘some general Heads concerning a Settlement’.²¹ On 2 January 1649, the committee ‘appointed to take into Consideration the Settlement of the Kingdom’, apparently one and the same with the committee of 38, was prompted to meet that afternoon and to ‘speedily present something to the House to that Purpose’.²² On the following day, receiving news that the Lords had refused to consent to the ordinance for erecting a court to try the king, the Commons resolved that their ‘first Business’ the next morning should be ‘those Affairs that tend to the Safety and Settlement of the Kingdom’.²³ The result was a set of momentous resolutions on 4 January in which the Commons declared that: ‘the People are, under God, the Original of all just Power’; that ‘the Commons of England, in Parliament assembled, being chosen by, and representing the People, have the Supreme Power in the Nation’; and that ‘whatsoever is enacted, or

²¹ *CJ*, vi. 105 (26 Dec.).

²² *CJ*, vi. 108 (2 Jan.).

²³ *CJ*, vi. 109-110 (3 Jan.).

declared for Law, by the Commons, in Parliament assembled, hath the Force of Law' without the consent of King or Lords.²⁴ Two days later the Commons passed, without the Lords' approval, its 'Act' for erecting the High Court of Justice.²⁵

Worden has suggested that the Commons' resolutions on 4 January 'stand in contrast to the confused and gingerly moves against the office of king'.²⁶ Yet this is true only if those resolutions and the abolition of kingship are seen as distinct, rather than complimentary, actions. True, the resolutions of 4 January were, first and foremost, a means to expedite the king's trial, but they also endorsed unambiguously a set of principles concerning government that could not easily be backtracked on in the future. In effect, they foreshadowed and underpinned all the constitutional changes that followed. At a stroke the legislative role of both the King and House of Lords was obliterated. Even though the Commons had yet to declare the office of king unnecessary, they had gone a long way to rendering it a political non-entity. As Marchamont Nedham complained in late 1648, kings shorn of their legislative powers were 'meere *Scare-crowes* of *Royaltie*'; a king without a legislative veto was 'none at all': England could certainly 'be no longer a *Monarchie* or *Kingdome*'. To retain such a king would be a 'Mockery', designed merely to 'amuse the people with the name of King'.²⁷ Now that the Commons had indeed taken the step of obliterating the king's negative voice, all that remained to be seen was whether they would placate the people with the perfect candidate for a pliable puppet king: the infant duke of Gloucester. On 23 December it appears the matter remained open, with debate between those looking

²⁴ *CJ*, vi. 110-111 (4 Jan.).

²⁵ *CJ*, vi. 113 (6 Jan.); S.R. Gardiner (ed.), *Constitutional Documents of the Puritan Revolution, 1625-1660*, (3rd edn., Oxford, 1906), pp. 357-8.

²⁶ Worden, *God's Instruments*, pp. 278-9.

²⁷ [M. Nedham?], *A Plea for The King and Kingdome; By way of Answer to the late Remonstrance of the Army...* (London, 1648), pp. 24-5.

to retain the pretence of kingship and those against having any king at all. It was only as the Rump began to focus its attention upon the practicalities of the outcome of the king's trial, particularly in the wake of the resolutions of 4 January, that it became clearer which course they were prepared to take.²⁸

II.

Those who remained at Westminster between Pride's Purge and the regicide simply could not allow the issue of the nation's settlement to remain in limbo until after the king's trial. The majority seem to have been energized by that same motive that Whitelocke claims dominated the meeting of MPs on 23 December – they were determined 'not to leave all to the sword'.²⁹ Above all, they wanted to ensure that the outcome of the trial caused minimal disruption to the governance of the nation; it should not bring to a halt the machinery of local government or the functioning of the law courts. Consequently, in the weeks leading up to the regicide a number of seemingly mundane questions occupied the Commons, the answers to which compelled them to confront the likely consequences of the king's trial for the future governance of the country. In dealing with those practicalities, however, they tended to take decisions that seem like rather more than pragmatic responses to difficult circumstances. Rather than devising expedients that left open or equivocal the nature of

²⁸ The rumour concerning putting the Duke of Gloucester on the throne reached its zenith in late Dec. but faded thereafter. The opaque reference about a quarrel over 'drinking to Harry the Ninth' in a letter of 6 Jan. 1649 from clerk of the Commons Ralph Darnell to Whitelocke suggests the incident occurred in the recent past. But Darnell also reports how a resolution on 6 Jan. that the trial commissioners should next meet in the Painted Chamber – the alleged scene of the quarrel – was taken by some to mean that attitudes towards the trial and its outcome had since changed. See D. Underdown, *Pride's Purge* (Oxford, 1971), p. 183 and footnote for Darnell's letter. By 8 January, Nedham reported that should those pursuing the king's trial 'ridd their hands of his Majesty' they would 'guilt their designe' upon Gloucester too and would instead 'assert (though not declare) themselves (yet) in the posture of free states'. He also added that the plan to crown Gloucester had not been helped by the fact that 'divers of that fackcion that have forborne sitting in the house' since Pride's Purge 'declared they would not submitt to the D. of Glouc.' See Bod. Lib., Clarendon MS 34, fol. 72v.

²⁹ BL, Add. MS 37344, fols. 237v-238v.

England's future settlement the Commons acted as if the obliteration of kingship was a foregone conclusion.

One such issue that soon came under the Commons' consideration was the form of oath to be sworn by newly appointed officeholders. While there had hitherto been a requirement to swear oaths of allegiance to the king and his successors, the debates over settlement made uncertain to whom, or to what, future officeholders should swear. With elections to the Common Council in the City looming, the Commons empowered a committee on 28 December to 'consider of the Oaths to be taken' by the elected councilmen, as well as the form of 'all other Oaths taken, through the whole Kingdom'.³⁰ Although the Commons prompted this committee to make report of the form of the oath to be taken by the common councilmen on 4 January, that day's discussions were ultimately dominated by the Commons' resolutions concerning the supremacy of the people's representatives.³¹ Instead, on 5 January, with the form of the oath still left unresolved, the Commons merely ordered that the Lord Mayor should call together the 'newly elected' councilmen and 'suspend the Taking of Oaths till further Order'.³²

That the Commons were unprepared to enforce the traditional oaths could suggest continued uncertainty about the precise nature of the future settlement; they suspended the oaths in order to leave their options open. Yet, this does not sit well with the Commons' much more definite resolution on 13 January that the oath 'taken by the Common Council' and all other 'subordinate Officers' in the City should no longer contain the clause to 'be true to our Sovereign Lord the King, that now is, and to his

³⁰ *CJ*, vi. 105 (28 Dec.)

³¹ *CJ*, vi. 109 (3 Jan.).

³² *CJ*, vi. 111 (5 Jan.).

Heirs and Successors, Kings of England'.³³ Perhaps it is unsurprising that the new officers were no longer required to swear allegiance to the 'king that now is': it confirms further the sense among those MPs who continued sitting at Westminster that Charles I's demise was effectively sealed. What is more revealing, however, is that the City officials would not be asked to swear allegiance to Charles' heirs and successors as 'Kings of England' either. The implication seems to be that there would be no future king to give allegiance to: an impression reinforced by two further resolutions taken by the Commons on 15 January annulling the requirement for sheriffs and MPs to take the oaths of Supremacy and Allegiance before executing their offices.³⁴

Equally revealing were a number of provisions made by the Commons from the beginning of January 1649 for settling procedures in the law courts. On 3 January 1649 the House empowered the committee drafting the legislation for the king's trial to likewise 'consider of a Way for the carrying on publick Justice, according to the Laws of the Kingdom'.³⁵ The result was a draft ordinance, presented to the Commons by the lawyer John Lisle on 6 January, 'for settling Proceedings in Courts of Justice' which was read and committed.³⁶ The issue was given further consideration on the morning of 9 January when the Commons, sitting as a grand committee, discussed 'the Government and the Settlement of the Kingdom'. Their resolution, reported later that day, was that the 'Name of any one Single Person' would no longer be used 'in the Stile of Commissions under the Great Seal, Writs, nor any other legal Proceedings, for

³³ *CJ*, vi. 116 (13 Jan.)

³⁴ *CJ*, vi. 117 (15 Jan.); these resolutions were already foreshadowed on 9 Jan. when the Commons ordered that that oath to be taken by the new sheriff of Norfolk was to 'be dispensed with', *CJ*, vi. 115. The Acts establishing the oaths of allegiance and supremacy were eventually repealed by the Commons on 9 Feb. 1649, *CJ*, vi. 136.

³⁵ *CJ*, vi. 110 (3 Jan.).

³⁶ *CJ*, vi. 112 (6 Jan.).

the carrying on the Justice of the Kingdom.’³⁷ Almost a month before abolishing the kingly office, the Commons had effectively decided that those juridical powers once inherent in the kingly office would not reside in a single person. The rule of law and the office of king were no longer deemed synonymous.

After being approved by the Commons this resolution was forwarded to the committee preparing the ordinance for settling proceedings in the law courts.³⁸ On 10 January Lisle reported amendments to that ordinance, presumably bringing it in line with the grand committee’s resolution. The ordinance was then recommitted and the committee empowered to seek the advice of lawyers and judges to help them devise the new styles to be used in the writs and proceedings.³⁹ Nine days later the Commons ordered the committee to bring in the completed ordinance the following morning – the same day that the public sessions of the king’s trial were due to open.⁴⁰ Not until 23 January, however, did Lisle finally report ‘several Stiles to be used in Writs, Commissions, and other Proceedings, for the Opinion of the House therein’.⁴¹ The Commons resolved, without division, that ‘the Stile to be used in all Writs, &c. and other Proceedings in Courts of Justice, shall be *Authoritate Parliamenti*.’⁴² Whitelocke was personally entrusted with the task of penning ‘an Order for the Alteration of the Stile of Writs, and other Process’. Reported later that same day, this order stated that in all ‘Writs, Patents, Commissions, Indictments’ and legal proceedings, ‘instead of the King’s name’, the

³⁷ *CJ*, vi. 114 (8, 9 Jan.).

³⁸ *CJ*, vi. 114 (9 Jan.).

³⁹ *CJ*, vi. 115 (10 Jan); BL, Add. MS 37344, fos. 243r-v.

⁴⁰ *CJ*, vi. 122 (19 Jan.).

⁴¹ *CJ*, vi. 123 (23 Jan.); BL, Add. MS 37344, fo. 250r; Spalding, (ed.), *Whitelocke’s Diary*, p. 228.

⁴² *CJ*, vi. 123.

style would ‘be changed’ to ‘*Authoritate Parliamenti Angliæ*’; ‘the Peace of the King’ would become the ‘Publick Peace’.⁴³

Practicalities still needed working out. On the Commons’ orders, Whitelocke and other MPs met with the judges at Sergeant’s Inn to ‘advise... about the new stile of writts’ in order to help draw up ‘several Precedents’. But Whitelocke found some of the judges reluctant ‘to joyne with us’: they ‘could not advise in this buisnes’ because they claimed it amounted to ‘an *alteration of the government of the kingdome*’. Plainly, the judges saw nothing tentative or half-hearted in the Commons’ activities – they recognised they were effectively being asked to condone a ‘change of governement’.⁴⁴

Unperturbed, Whitelocke met with solicitor-general Edmund Prideaux and other MPs at Lisle’s house on 26 January to finalise the ‘Act’ – as it was now styled – which was presented to the Commons later that same day and twice read.⁴⁵ Despite wanting no part in the king’s trial, those MPs who continued sitting at Westminster choreographed their activities to anticipate its outcome. On 27 January, the same day that the High Court gave its verdict against the king, the Commons read the Act for the third time and passed it. But the rush to finalise the legislation inevitably left some loose ends and it was further ordered that ‘Clerks and Officers’ should be consulted to help prepare ‘Precedents of Several Natures’ of the various new writs.⁴⁶

In the meantime, on 29 January the Commons decided to publish the essentials of the Act right away, to coincide with the king’s death. It announced that ‘in all Courts of

⁴³ *CJ*, vi. 123 (23 Jan.).

⁴⁴ *CJ*, vi. 123; BL, Add. MS 37344, fo. 250r; Spalding, (ed.), *Whitelocke’s Diary*, p. 229.

⁴⁵ BL, Add. MS 37344, fos. 250v-251r; *CJ*, vi. 123 (26 Jan.)

⁴⁶ *CJ*, vi. 123 (27 Jan.).

Law, Justice or Equity’ and in all ‘Writs, Grants, Patents, Commissions, Indictments’ and other legal instruments:

Instead of the Name, Stile, Title and *Teste* of the King, heretofore used, That from henceforth the Name, Stile, Title, and *Teste* of *Custodes libertatis Angliæ* *authoritate Parliamenti* shall be used, and no other.⁴⁷

This was a subtle but significant departure from the Commons’ earlier resolution that the style should be ‘*Authoritate Parliamenti Angliæ*’. Most likely it was devised to answer emerging concerns about the separation of powers, or lack thereof, in a constitutional arrangement where the Commons alone wielded legislative and executive authority. In effect, the Rump created a fictive corporate body, the ‘Keepers of the Liberty of England’, separate from, but empowered by, parliament. It also suggests that, at this point, the emphasis was very much on the speedy dissolution of the Rump and the summoning of a new parliament. The style of ‘*Authoritate Parliamenti Angliæ*’ was appropriate only so long as there was a parliament in session; the creation of the fictive Keepers, by contrast, provided a corporate entity in whose name the executive powers could continue unabated in the intermission between parliaments. But while these last-minute revisions demonstrate that the Commons were still working through practicalities as they went along, it hardly suggests they were unprepared for a constitutional future without a king.⁴⁸

Perhaps most suggestive of all, however, was the Rump’s provision for a new great seal. Of course, this was not the first time in recent years that parliament had ordered a new great seal to be made. When Charles I left London in January 1642 he took the

⁴⁷ C.H. Firth & R.S. Rait, eds., *Acts and Ordinances of the Interregnum, 1642-1660* (3 vols., London, 1911), i. 1262-3; *CJ*, vi. 124 (29 Jan.); BL, Add. MS 37344, fos. 251r-251v.

⁴⁸ Firth & Rait, eds., *Acts and Ordinances*, i., 1262-3. A further ‘Act For Better settling of Proceedings in Courts of Justice’ was eventually passed on 17 Feb. 1649. *Ibid.*, ii. 6-9; *CJ*, vi. 144.

seal with him, throwing parliament into disarray as it tried to administer the portion of the country under its control. The Commons' solution was to vote on 15 May 1643 for the creation of a new great seal 'to attend the Parliament'.⁴⁹ Some feared what this meant for the future of England's monarchy. John Maynard, for one, reportedly told the Commons that he could see 'noe end in making a new great seale unles they meant to make a new King'.⁵⁰ Parliament assuaged those fears by stressing that there was nothing radical about their actions: the new seal was an exact replica of that with the king, except it bore the date 1643 rather than 1640. As William Prynne argued in a tract published by authority of the Commons in September 1643, 'to make a New Seale, onely like, or not much different from the old, to supply its absence, with the Kings owne Picture, Armes, stile and Title' was 'no wayes to impeach, but confirme his Royall Authority'.⁵¹ As Prynne saw it their case was in stark contrast to that of the Dutch Revolt where 'the Kings old Seales' were defaced and 'new Seales' appointed 'with the names and Titles of the private Governours and Provinciaall Counsuls of every Province, without the name and Title of the King of Spaine, whose authority they abjured': such action was 'in truth... to set up a new King, and government'.⁵²

The new great seal of 1649 was a different proposition entirely. On 6 January the Commons appointed a committee 'for the Framing of a Great Seal'; three days later the committee's proposed design, reported by Henry Marten, was approved without division.⁵³ On the one side there was a 'Map of the Kingdome of *Ireland*, and of *Jersey* and *Guernsey*, together with the Map of *England*'. In the border around the map was the legend 'The Great Seal of England, 1648'. On the other side was a 'Sculpture of

⁴⁹ *CJ*, iii. 86, 129-30, 155, 306-7.

⁵⁰ BL, Harley MS 164, fol. 389r.

⁵¹ W. Prynne, *The Opening of the Great Seale of England* (London, 1643), p. 25.

⁵² *Ibid.*, p. 24.

⁵³ *CJ*, vi. 112-13, 115 (6, 9 Jan. 1649).

the House of Commons' around which ran the inscription 'In the First Year of Freedom, by God's Blessing restored, 1648'.⁵⁴ If Prynne argued that the 1643 seal, bearing the same images of kingship as the old, reaffirmed the Commons' commitment to monarchical authority, such a reading could hardly be applied to the 1649 seal. Rather, its iconography reflected those crucial resolutions passed by the Commons on 4 January 1649. On one side was a map representing the people of the Commonwealth, the 'Originall of all just power'; on the other was a depiction of the people's representative, the Commons. Had they been contemplating only a brief interregal period – a holding pattern after the regicide for the return of monarchy in some form in the near future – one wonders why they failed to advertise the fact in the new seal by at least invoking the iconography of the crown, if not the king's image. It was a perfect opportunity to do what Nedham feared and give the people the image of a king to 'amuse' them. Yet nowhere on the seal was there any hint of kingly authority or, for that matter, the House of Lords.

Rather, its design asserted boldly that the people – or rather the people's representatives – had reclaimed those powers that originally derived from them alone. The 'freedom' that the seal boldly claimed had been 'restored' by God's blessing was the people's right to be governed according to the laws that they themselves had created, without the tyrannical interference of kings. The laws, the guarantor of the people's freedom, would no longer be servile to the will of just one man but would be exercised in the name of the people, for the common good. As such, the iconography of the seal, agreed on 9 January, reflected those changes to legal proceedings confirmed by the grand committee earlier that same day. On 4 January 1649, the

⁵⁴ *CJ*, vi. 115 (9 Jan.).

Commons resolved that the King and Lords had no legislative function. Five days later, in their resolutions concerning the law courts and the design of the great seal, they divested the King of his juridical functions as well. What remained? Should it surprise us that on 7 February the Commons concluded that the office of king was ‘unnecessary’?

Indeed, the introduction of the new seal was carefully managed to coincide with the constitutional changes that followed the regicide. On 7 February, after formally resolving to abolish the kingly office, the Commons ordered that the new seal should be delivered the next day.⁵⁵ The seal’s engraver, Thomas Simon, would have had his work cut out to get the seal prepared in time. Whereas it had taken over two months to prepare the 1643 seal, he may have had as little as 12 days to complete that of 1649.⁵⁶

It is easy to underrate the logistical effort needed for a constitutional change as far-reaching as that achieved in 1649; it required time and preparation. To ensure the new regime could take up the reins of the executive power as soon as the change of government was effected the new seal had to be planned well in advance. As in 1643, so in 1649, the Commons recognised that the seal was vital for the effective exercise of the executive powers. In the days following its introduction, new patents were issued under the seal to the Judges, Sheriffs and Commissions of the Peace. By these means the organs of justice and local government were empowered by, and brought into line

⁵⁵ *CJ*, vi. 133 (7 Feb.)

⁵⁶ This is on the assumption that Simon began the work only after receiving the Commons’ authorization on 26 Jan. In 1643, Simon was appointed to create the seal in mid-July and delivered it in late Sept. *CJ*, iii. 174, 257. The speed with which the seal was made can also be inferred from its inferior quality: the matrices soon wore out, prompting the Commons to order a replacement seal, to the same design, less than three years later. A.B. Wyon & A. Wyon, eds., *The Great Seals of England, From the Earliest Period to the Present Time* (London, 1887), pp. 90-92; *CJ*, vii. 51 (17 Dec. 1651).

with, the new regime.⁵⁷ So, while the great seal has endured as one of the most instantly recognisable representations of the Commonwealth regime, it was hardly an afterthought. Rather it pre-empted the constitutional changes that followed. Its forethought is exemplified by the fact that even before the Commons got around to ordering that ‘the Arms of the late King, over the Speaker’s Chair, be forthwith taken down’, the new seal, in its depiction of the chamber, had already expunged the offending item.⁵⁸

On 8 February 1649, when Widdrington and Whitelocke brought the old parliamentary seal of 1643 ‘solemnly into the house’, MPs watched on in silence. After passing an Act ‘for the old Seale to be broken’, a workman then smashed it ‘in pieces’ on the Commons’ floor ‘in the face of the house’. Thereupon the House passed another Act ‘establishing the new Great Seale, to be the Great Seale of England’.⁵⁹ This scene, which gave physical expression to the resolution of the previous day for abolishing the office of king, was no less evocative than that acted out on the scaffold outside Whitehall nine days earlier. Yet, it was a scene that had been in preparation for several weeks before the regicide.

III.

Even those MPs who abhorred the king’s trial were not unwilling to consider, and prepare for, its consequences. It was those provisions, particularly after the Commons’ resolutions of 4 January, which facilitated the kingless regime that followed. Patently, there were some among the judges and lawyers who were uncompromisingly of the

⁵⁷ *CJ*, vi. 138, 140 (12, 14 Feb.); *BL*, Add. MS 37344, fo. 260v.

⁵⁸ *CJ*, vi. 142 (15 Feb.).

⁵⁹ *BL*, Add. MS 37344, fos. 257r-259v.

opinion that government could not continue without a king; that to alter the form of legal proceedings was tantamount to a change of government. Yet, it is also clear that there were a majority among the Rumpers, Whitelocke included, who held no such scruples. They saw no reason why the administration of justice could not continue without a king. Ultimately, they did not believe a king was integral to legal government and were not prepared to stick upon that point. As such, the Commons' preparations in the weeks before the regicide for government without *the* king had made entirely plausible government without *a* king. Officeholders were no longer required to swear allegiance to any king and the laws would no longer run in any king's name. They had effectively made the king a legal non-entity. On 7 February kingship was abolished because it was deemed 'unnecessary', but those discussions and preparations prior to the regicide had surely made that conclusion clear enough.

So why did it take over a week after the regicide for the Commons to resolve upon the abolition of the kingly office? This apparent delay is the clincher for those who claim there was no appetite for constitutional change. But there is a danger that we expect too much. To alter a government was hardly the work of a moment. The likeliest means to condemn the new regime to failure would have been to make haste: to destroy first and consider the replacement as an afterthought.

The Rump did not seize upon the moment of Charles's execution to declare against kingship. Instead, on the day of the king's death they rushed through the House an Act declaring it treason for any person to be proclaimed 'King, or Chief Magistrate' without the 'free consent of the People in Parliament... signified by a particular Act or

Ordinance for that purpose'.⁶⁰ Its immediate purpose was to stymie Royalist attempts to proclaim Charles II as successor to the throne. Implicit in the Act, however, was the assumption that Charles I's death had put the office of king into a state of indefinite abeyance. From that point forward there was no incumbent in that office unless the Commons declared otherwise. Conspicuously, the Act avoided styling England a kingdom: transgressors were adjudged traitors 'to the *Commonwealth*'.⁶¹ So, while this Act has usually been taken as a sign that the Commons were reluctant to rule out kingship, it could just as plausibly be argued that they were in no hurry to rule it in. Rather, any formal vote on the future of England's kingship would have to wait until other pressing constitutional issues had been resolved – specifically the fate of the House of Lords.

Although it has been suggested that the abolition of the Lords 'attracted much less attention, and proved much less contentious, than the removal of kingship', the evidence hardly bears this out.⁶² In fact, the Lords' future was already a matter of some discussion in the weeks prior to the regicide. The Commons' assertion of popular sovereignty on 4 January inevitably gave rise to the question of what role the Lords should have, if any, moving forwards. According to one royalist newsletter, in early January 1649 there had already been 'Severall motions' in the Commons 'ag[ains]t the Peers'.⁶³ The presence of messengers from the Lords at the door of the Commons on 9 January prompted further debate about whether the Commons 'having voted the supream power in themselves' should now 'owne the lords so farre, as to entertaine

⁶⁰ *CJ*, vi. 125-6 (30 Jan. 1649); Firth & Rait (eds.), *Acts and Ordinances*, i., 1263-4.

⁶¹ Firth & Rait (eds.), *Acts and Ordinances*, i., 1263-4. Emphasis added.

⁶² Worden, *God's Instruments*, pp. 280-1.

⁶³ Bod. Lib., Clarendon MS 34, fol. 73v: John Lawrans to Edward Hyde, 12 Jan. 1648/9.

their message'.⁶⁴ Some even moved that 'the house of Peeres might be wholly suppress'.⁶⁵ When put to the question, however, it was agreed by 31 votes to 18 to call in the messengers, Cromwell reportedly being one of those in favour.⁶⁶ Yet, despite this apparent conciliatory gesture towards the Lords, it should be noted that immediately after hearing the messengers the Commons went on to agree upon the form of their new great seal, complete with its image of the Commons, without the Lords, as the representation of the supreme authority in the land.⁶⁷

Even though they did not abolish the Lords immediately, the majority in the Commons stood by the resolutions of 4 January and denied the upper chamber a legislative power. This was particularly evident in their deliberations over an 'Act' which they passed on their own authority on 16 January for adjourning the Hilary law term.⁶⁸ In response, two days later, the Lords made the provocative move of sending 'down an Ordinance' to the Commons 'for their concurrence' which 'was the same in effect, for adjournem[en]t of the terme which the Commons past before'.⁶⁹ According to Whitelocke, the Commons' response was clear: 'having before voted, That they were the Supreme power... they would not owne the Lords as formerly, by agreeing to this Ordinance'.⁷⁰ Instead, they sent no reply to the Lords other than that they would 'send an Answer by Messengers of their own': the early modern equivalent of "don't call us, we'll call you". A question was then propounded whether 'the Lords Concurrence be desired to the Three Votes of 4 January instant', a move which would have made

⁶⁴ *CJ*, vi., 114-15 (9 Jan. 1649); Bod. Lib., Clarendon MS 34, fo. 72r.

⁶⁵ Bod. Lib., Clarendon MS 34, fo. 73v.

⁶⁶ *CJ*, vi., 115 (9 Jan. 1649); Bod. Lib., Clarendon MS 34, fo. 73v.

⁶⁷ *CJ*, vi., 115 (9 Jan. 1649).

⁶⁸ *CJ*, vi., 119 (16 Jan. 1649); BL, Add. MS 37344, fols. 245v-246r; Spalding (ed.), *Whitelocke's Diary*, p. 228.

⁶⁹ BL, Add. MS 37344, fol. 246r; *CJ*, vi., 121 (18 Jan. 1649).

⁷⁰ BL, Add. MS 37344, fol. 246r.

nonsense of the Commons' supremacy which those votes embodied, but the question to put the question was itself rejected by 25 votes to 18.⁷¹

The issue of the Lords did not go away, however. Having touched on the matter in the weeks prior to the regicide, it soon came to the fore thereafter. The issue of kingship may not have surfaced until 6 February, but considerations about the Lords continued almost immediately after the regicide.

According to Whitelocke, the impetus for the debate was the arrival on 1 February of yet another messenger from the Lords, this time carrying a request 'for a Com[mit]tee to be named of both houses to consider of a way to settle the Nation'. Although the Commons deferred to the next day whether 'the Lords Messenger should be called in or not', ultimately the messenger was never admitted and the Commons refused even to recognise his presence in their Journal.⁷² Rather they ordered that the next day should be 'appointed' for the business of 'settling the general Government of the Kingdom'.⁷³ According to one newsbook, the Commons had already raised the question on 1 February of 'Whether a Kingly Government should be continued or not?' but ultimately voted that 'the House consider of the Lords House' and 'Whether it shall be continued' before moving onto the 'manner of Government'.⁷⁴ This is confirmed on 2 February with a specific order in the Journal that 'in the first place' they should 'take into Consideration and Debate the House of Lords, in order to the Business of the Day,

⁷¹ *CJ*, vi., 121 (18 Jan. 1649).

⁷² BL, Add. MS 37344, fols. 254v-255r; *CJ*, vi., 127-9 (1 Feb. 1649); *LJ*, x., 649-650 (1, 2, 5 Feb. 1649). The incident is also recorded in R.W. Blencowe (ed.), *Sydney Papers: Consisting of A Journal of the Earl of Leicester, And Original Letters of Algernon Sydney* (London, 1825), pp. 61-3. Whitelocke notes that the Lords sent another message on 5 Feb. but it was also ignored. BL, Add. MS 37344, fols. 255v-256r.

⁷³ *CJ*, vi., 128 (1 Feb. 1649).

⁷⁴ *The Moderate: Impartially Communicating Martial Affaires to the Kingdom of England*, 30 (30 Jan. – 6 Feb. 1649), fo. hh1v.

for the Settlement of the Government'.⁷⁵ Indeed, it seems the debate on the Lords was already underway on 2 February and probably continued into the next day before resuming on Monday 5 February. Again it is worth remembering that the Journal does not record all issues debated on any given day. Without the accounts of Whitelocke or the newsbook reports it would be impossible to tell what the Commons had spent its time debating on 5 February. The only hint in the Journal is the record of a motion, ultimately defeated, to bring candles into the chamber to allow discussion to continue into the night.⁷⁶ What precisely the Commons were debating in the fading light, however, is not recorded.

Given that the Commons had already asserted their supremacy and denied the Lords a legislative power prior to the regicide one is left wondering why this discussion lasted as long as it did. Some clues are offered by Whitelocke's account. The 'long & smart' debate on the 5 February lasted 'till 6. a clocke att night' and concerned 'whither the House of Lords should be continued a Court of Judicature, or a Court consultary only' and whether a committee should be appointed to 'consider what power or constitution, the Lords should have'.⁷⁷ If this report is accurate, the day's discussions focused on the judicial functions of the House of Lords: whether it should remain the highest court of appeal or whether it should simply offer legal advice. The debate also touched upon the 'composition' of the Lords – probably giving rise to the question of whether it was appropriate for its members to claim a hereditary right to sit there. Whitelocke admits that he contributed to the debates, informing the Commons 'out of records & histories

⁷⁵ *CJ*, vi., 129 (2 Feb. 1649).

⁷⁶ *CJ*, vi., 132 (5 Feb. 1649); Whitelocke notes on 5 Feb. that the Lords sent another message but it too was ignored, BL Add. MS 37344, fols. 255v-256r; see also *The Moderate*, 30 (30 Jan. – 6 Feb. 1649), fo. hh2v.

⁷⁷ BL, Add. MS 37344, fols. 255v-256r; Spalding (ed.), *Whitelocke's Diary*, p. 230 (5 Feb. 1649); these debates are also recorded almost identically *The Moderate*, 30 (30 Jan. – 6 Feb. 1649), fo. hh2v; see also Blencowe (ed.), *Sydney Papers*, pp. 61-3.

the constitution and rights' of the Lords.⁷⁸ Yet he is conspicuously tight-lipped on whether he vindicated the Lords' rights or reaffirmed the case for their subordination to the people's representatives.⁷⁹

It was apparently only on the following day, 6 February, that the Commons discussed the legislative function of the Lords. The majority of MPs were still in no mood to backtrack on their resolutions concerning the Commons' supremacy. The question propounded for debate was merely whether they should 'take the Advice of the House of Lords, in the Exercise of the Legislative Power, in pursuance of the Votes of this House, of the Fourth of January last'. Even if it had passed this would hardly have restored the Lords to a legislative veto. Whereas on 18 January the Commons questioned whether the Lords' 'concurrence' should be sought, now they merely asked whether they should seek their 'advice'.⁸⁰ Even couched in these terms the question was defeated by 44 votes to 29: 'carried in the Negative by many voyces', as Whitelocke put it.⁸¹ Having debated the judicial functions and composition of the Lords the previous day, and now reinforcing their determination to deny them a share of the legislative power, the Commons moved to their final resolution. Without division they declared 'That the House of Peers in Parliament is useless and dangerous, and ought to be abolished.'⁸²

⁷⁸ Spalding (ed.), *Whitelocke's Diary*, p. 230 (5 Feb. 1649); BL, Add. MS 37344, fols. 255v-256r.

⁷⁹ Infuriatingly, or perhaps conveniently, Whitelocke claimed he was unable to provide any details because his notes for those speeches had been borrowed and subsequently lost. The fact that he was entrusted by the Commons with the 'especial Care' of drafting the Act for abolishing the Lords probably means his arguments were not wholly supportive of the Lords. See *CJ*, vi., 132 (6 Feb. 1649).

⁸⁰ *CJ*, vi., 121, 132 (18 Jan., 6 Feb. 1649); *The Moderate*, 31 (6-13 Feb. 1649), p. 298.

⁸¹ BL, Add. MS 37344, fols. 256r-256v. Intriguingly, it does not seem that lower attendances in the House advantaged the 'radicals'. On 18 Jan. the Noes managed to get 58% of the votes. On 6 February, despite 30 more MPs voting, the proportion of Noes actually increased to 60%. *CJ*, vi., 121, 132.

⁸² *CJ*, vi., 132 (6 Feb. 1649).

In comparison to the Lords, the subsequent debate over the kingship on 6 and 7 February seems to have been relatively straightforward. Even though Whitelocke described the debate as ‘long & quicke’ [i.e. lively], it seems to have lasted barely a day in aggregate. It began on 6 February – yet, part of that day had already been spent on the Lords.⁸³ On 7 February the House sat late into the evening, but the kingship was just one, albeit an important one, of an impressive range of issues dealt with that day including, among other things, orders for erecting a Council of State, settling arrangements for the trial of a number of Royalist peers and hearing information regarding the activities of the Earl of Ormonde in Ireland.⁸⁴ When the House got around to taking ‘into Debate the Business of Kingship’ the question was propounded whether ‘the House be turned into a Grand Committee’ – thereby allowing freer debate without the usual rules of the House, a tactic often favoured for contentious issues. The suggestion was rejected without division. Ultimately, it was resolved, again without division, that ‘it hath been found by Experience, and this House doth declare, That the Office of a King in this Nation, and to have the Power thereof in any Single Person, is unnecessary, burdensome, and dangerous to the Liberty, Safety, and publick interest of the People of this Nation; and therefore ought to be abolished.’⁸⁵ Whereas the debates over the Lords on 5 and 6 February had provoked two divisions, the debate over the kingly office saw none at all.⁸⁶ Rather than noting the apparent delay in dealing with the kingship issue, we should actually be impressed by the speed with which that issue was despatched when it was discussed, especially in a House already beginning to re-fill with supposedly conservative members.

⁸³ BL, Add. MS 37344, fols. 256r-256v; *CJ*, vi., 132 (6 Feb. 1649).

⁸⁴ BL, Add. MS 37344, fol. 256v; *CJ*, vi., 133 (7 Feb. 1649).

⁸⁵ *CJ*, vii., 133 (7 Feb. 1649).

⁸⁶ *CJ*, vii., 132 (5 & 6 Feb. 1649).

IV.

England's constitutional future had been under consideration before the regicide and was settled almost immediately thereafter. In the weeks before the Rump passed their Act abolishing the kingly office preparations had been made for the exercise of the government without a monarch – not only was the king stripped of any legislative power but the judicial functions of that office were also removed. Any apparent delay in abolishing the kingly office after the regicide can be explained not by hesitancy, but by the intrusion of other pressing constitutional matters – not least the future of the House of Lords.

What remains, then, of the claim that the kingless regime established in 1649 was a *pis aller*? Discounting retrospective accounts of the period, written from the (dis)comfort of the Restoration, there is little positive to suggest that those MPs who continued sitting under the Commonwealth regime viewed it as a stop-gap; that they hoped to get back to a monarchical settlement as soon as possible.⁸⁷ Rather the evidence is largely negative: there was little enthusiasm for republican (usually, but not always, taken to be a synonym for kingless) forms of government in 1649.⁸⁸ Few defences of the new regime stressed the superiority of kingless forms of government; fewer still lauded republics, ancient or contemporary, as a pattern to be copied in England.⁸⁹ Defences of the new regime were usually apologetic pronouncements that stressed necessity and

⁸⁷ The key evidence is usually provided by Whitelocke's memoirs, not least his account of a meeting between Cromwell and several MPs that reputedly took place shortly after the Battle of Worcester in 1651. I intend to address more closely the issue of Whitelocke's attitude towards kingship and the veracity of his account of the 1651 meeting in a future article.

⁸⁸ For definitions of 'republicanism' as a constitutional principle, see B. Worden, 'Republicanism, Regicide and Republic: The English Experience', in M. Van Gelderen and Q. Skinner (eds.), *Republicanism: A Shared European Heritage: Volume 1, Republicanism and Constitutionalism in Early Modern Europe* (2002), pp. 307-27 and especially f.n. 16.

⁸⁹ A notable exception is the Rump's *Declaration of the Parliament of England Expressing the Grounds of their late Proceedings And of Settling the present Government In the way of A Free State* (1649), p. 16.

did not exult in the arrival of kingless rule. Even the new regime's choice of title was inherently conservative. By styling itself a 'Commonwealth' rather than a 'Republic' it chose the 'most unrevolutionary term available'.⁹⁰

It was as if the English could not let go of their monarchical past. Kevin Sharpe, in particular, noted how the Commonwealth's ultimate failure was its inability to eradicate kingship from the popular imagination and foster a distinctive republican culture. Because it could not obliterate the imagery or language of England's royal past it was destined never to establish itself as a lasting alternative to monarchy.⁹¹ This was a society that revered its past; any deviation from it was bound to fail.

But just how stable was England's past during this period? After all, the paper wars that raged alongside the fighting of the Civil Wars saw extensive debate about the origins and nature of England's constitution. Those claims of popular sovereignty and Commons' supremacy, advanced expediently during the opening stages of the conflict as parliament struggled to defend its actions and exactions had, by the late 1640s, become deeply entrenched. By the time the Rump passed its resolutions on 4 January 1649 these ideas were no longer abstractions, to be invoked only when necessity dictated: they had become the norm. This was not simply a reflection of the fact that those ideas had become more familiar through prolonged use: it was also because parliament's apologists had rooted them firmly within English history.

⁹⁰ Worden, *God's Instruments*, pp. 277-8

⁹¹ Kevin Sharpe, '“An image dotting rabble”: the failure of republican culture in seventeenth-century England' in K. Sharpe (ed.), *Remapping Early Modern England: The culture of seventeenth-century politics* (Cambridge, 2000), pp. 223-4.

We must not overlook the radical potential of the past. Appeals to history did not necessarily betray conservative thinking; novel claims could be veiled beneath a language of continuity and precedent. A prime example of this can be found in the writings of the MP Nathaniel Bacon. Excluded briefly from the Commons after Pride's Purge, Bacon was emphatically not a radical figure.⁹² Yet his reading of the English constitution – epitomised in his two-part treatise *An Historical Discourse of the Uniformity of the Government of England* - shows just how far once abstract ideas about the nature of kingship and the origins of sovereign power found concrete expression in England's past.

In the first part of his treatise, published in 1647, Bacon looked for the origins of England's constitution in the 'beautifull composure' of the Saxon Commonwealth.⁹³ Saxon kings, he claimed, were nothing more than 'servants of State' elected by the people to serve the public good; they had no negative voice, no power 'to make, dispense with, or alter Laws' but could only 'execute... the Laws established'.⁹⁴ To this extent, the Saxon Commonwealth was never really a monarchy. True, 'afarre off it seems a Monarchy, but in approach discovers more of a Democracy'.⁹⁵ To substantiate this further, in the second part of his treatise – published in 1651 – Bacon explored England's medieval and more recent past to show that kings had often proven superfluous. In particular he pointed to those various interregnums when monarchs were 'short or beyond in Age, or Wit, or possibly given over to their lusts, or sick, or absent'. In all these cases the government did not grind to a halt. As long as the people

⁹² J. Greenberg, 'Bacon, Nathaniel (*bap.* 1593, *d.* 1660)', *Oxford Dictionary of National Biography*; online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/1000>, accessed 1 July 2015].

⁹³ N. Bacon, *An Historicall Discourse of the Uniformity of the Government of England. The First Part. From the first Times till the Reigne of Edward the third* (1647), p. 111.

⁹⁴ *Ibid.*, pp. 49-50, 51-3.

⁹⁵ *Ibid.*, p. 111.

had their laws, executed for their benefit, then ‘all the while’ the government was ‘maintained with as much Honour and Power as under the most wise and well disposed King that ever blessed the Throne’.⁹⁶ For Bacon, the laws of England – not its kings – were the essence of its government. As such, despite the abolition of kingship in 1649, the government had not been altered but revived; the principles of its Saxon purity were restored. For this reason Bacon could conclude that as he ‘found this Nation a Common-Wealth’ at the beginning of his treatise in 1647 ‘so I leave it, and so may it be for ever’.⁹⁷ To Bacon’s mind the government that followed the regicide was inherently the same as that which preceded it: the abolition of kingship had made no discernable difference.

This reading of English history, galvanised by parliamentary assertions of popular sovereignty, makes intelligible any apparent confusion surrounding the timing of the new regime’s creation. Those who emphasise delay and irresolution, suggest that the government was only finally established on 19 May when the Rump passed its Act declaring England to be a Commonwealth. Taking Bacon’s reading of the past, however, it could be argued that the reason that Act took so long to materialise is because many found it unnecessary. The regime’s apologists claimed that the Commonwealth was not *created* in 1649; it was simply restored or revived. It is in this context that the inscription of the new great seal becomes intelligible: 1649 was ‘the First Year of Freedom, by God’s Blessing restored’.⁹⁸ That freedom was not a *form* of government but a *state* of government – to be governed by the laws that the people themselves had created.

⁹⁶ N. Bacon, *The Continuation of an Historical Discourse, of the Government of England, Untill the end of the Reigne of Queene Elizabeth* (1651), p. 303.

⁹⁷ *Ibid.*, pp. 306-7.

⁹⁸ *CJ*, vi. 115 (9 Jan.).

The Commonwealth regime marked a return to how things *should* have been under kings. It heralded the revival or renewal of principles on which England's kingship had originally been founded but from which kings had consistently deviated. It was in these terms that the Rump's *Declaration*, ordered to be published the same day as they passed the Act abolishing the kingly office, defended 'the present Government' as settled 'in the way of A Free State'.⁹⁹ Echoing Bacon, the *Declaration* asserted that the 'first *Institution* of the *Office* of King in this Nation, was by *Agreement* of the *People*'. The people 'chose one to that Office' for a clear purpose: the '*protection* and *good* of them who chose him', to govern them 'according to such *Laws* as they did consent unto'.¹⁰⁰ Yet history demonstrated 'how very few' kings ever 'performed the *Trust* of that *Office*'.¹⁰¹ As the Act abolishing the kingly office emphasised, 'for the *most part*' the 'Regal power and prerogative' had been used 'to oppress, and impoverish and enslave the Subject'.¹⁰²

This was not an absolute repudiation of kingship. Few of the regime's apologists claimed kingship was an illegitimate form of government, provided it served the people's interests. As Serjeant-at-law Francis Thorpe explained in his speech before delivering the charge to the grand jury at York in March 1649, all lawful governors were 'made by the People, and for the People'. Endorsing the Commons' resolutions of 4 January, he stressed that the 'People (under God)' are 'the Originall of all just Power'. As such they could 'let the Government run out into what *Forme* it will, Monarchy, Aristocracy, or Democracy': the fact remained that the 'Originall Fountain

⁹⁹ *CJ*, vi, 166 (17 Mar. 1649); *A Declaration of the Parliament of England Expressing the Grounds of their late Proceedings And of Setling the present Government In the way of A Free State* (1649).

¹⁰⁰ *Declaration of the Parliament...Expressing the Grounds of their late Proceedings*, p. 6.

¹⁰¹ *Ibid.*, p. 6, 13.

¹⁰² Gardiner (ed.), *Constitutional Documents*, p. 385.

thereof is the consent and agreement of the People'.¹⁰³ Like Bacon, Thorpe claimed that even though England's government had 'anciently been Monarchical in frame' it 'never was a pure Monarchy'. In 'Theorie' England had always been a 'Monarchy governed by Lawes'; the King was 'bounded and compassed with lawes above him, being the Rules already made' by the people alone and 'given him to Rule by'.¹⁰⁴ But English history demonstrated that the practice failed to match the theory. Most regrettably, kings had unjustly claimed a negative voice over the legislature, thereby making their will the law and leaving the people of England 'arrant Slaves and Vassals'.¹⁰⁵

Much the same point was made in the lawyer John Parker's suggestively titled tract of 1650: *The Government of the People of England precedent and present the same*.¹⁰⁶ For Parker, Englishmen were under the 'same Government at this present, as of right it was *or ought* to have been heretofore' when they had kings.¹⁰⁷ In effect, their 'Ancestors' had 'lived happily' under 'popular Government' for 'hundreds of years'.¹⁰⁸ As Parker put it: 'all Government is in the people, from the people, and for the people'.¹⁰⁹ It was not the King, but the 'Lawes' made by the people themselves, which 'were and are the Governours'.¹¹⁰

¹⁰³ F. Thorpe, *Sergeant Thorpe Judge of Assize for the Northern Circuit, His Charge, As it was delivered to the Grand-Jury at Yorke Assizes the twentieth of March, 1648* (1648), pp. 2-3.

¹⁰⁴ *Ibid.*, pp. 3-4.

¹⁰⁵ *Ibid.*, p. 7

¹⁰⁶ J. Parker, *The Government of the People of England precedent and present the same* (1650); although the work of a lawyer, there is uncertainty over which 'John Parker' this tract should be attributed to: see S.M. Jack, 'Parker, John (fl. 1631-1680)', *Oxford Dictionary of National Biography*, online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/21316>, accessed 1 July 2015].

¹⁰⁷ *Ibid.*, p. 9. Emphasis added.

¹⁰⁸ *Ibid.*, p. 9.

¹⁰⁹ *Ibid.*, p. 7, p. 1

¹¹⁰ *Ibid.*, p. 9.

Because scholars have fixated upon attitudes towards forms of government as a litmus test for radicalism the period's most revolutionary dimension has been ignored.

Evidently those deeply committed to republican forms, or vehemently opposed to monarchical ones, were few. But it hardly follows that the majority yearned for kingship. True, many of the defendants of the new regime admitted that, in theory, kingship could be compatible with a Commonwealth. But their reading of history, infused by parliamentary arguments and bolstered by recent experiences, taught them that kings rarely served the purposes for which they were chosen. Because so much was entrusted to just one man the potential for the government to descend into tyranny was intolerably high. There was nothing to suggest that situation would change.

Instead, they claimed that forms of government should only be retained so long as they secured the ends of government – the public good or *common-wealth*. As such, the most striking aspect of these early defences of the Commonwealth regime was their *indifference* towards forms of government. Rather than defend any one form the Commonwealth's apologists stressed that the liberty of the English people was embodied in their freedom to choose their laws and those who executed them.

As the Rump's *Declaration* of March 1649 put it, because kingly government failed to secure those ends for which it was created, that 'same *Power* and *Authority* which first erected a *King*, and made him a *publique Officer* for the common good' was perfectly entitled to '*change* the Government for a *better*' and '*resolve* into A *Free State*'.¹¹¹

Similarly, Thorpe stressed that there was no necessity to adhere to forms of government once they proved unfit for purpose: if the people found 'cause to dislike' their 'former choice' of government, they 'being not tyed...to any one Form' could

¹¹¹ *Declaration of the Parliament...Expressing the Grounds of their late Proceedings*, p. 16.

‘choose againe and take some other Form’ and thereby avoid the ‘evils they suffered under their former choice’.¹¹² The form of government was simply a means to an end.

There was nothing special about kings – they were never essential to the effective functioning of England’s government. The kingly office was abolished not only because it was necessary for the ‘liberty, safety and publique interest of the people’ but also because the exercise of that office in any one person was itself ‘unnecessary’.¹¹³ To substantiate this point the Rump’s *Declaration* answered directly those claims that ‘the good *old Laws and Customs of England, the Badges of our Freedom...* will by the present *alteration of Government* be taken away, and lost to us and our posterities’. The people need not fear. Parliament was certain that there was a ‘clear *Consistency*’ between England’s laws and ‘the present *Government of a Republique*’. Any change was in ‘*Form onely*’ but had left ‘intire the *Substance*’. The fact that there was no king made no difference. When executing the laws, the ‘*name of King*’ was used ‘for *Form onely*’ and had ‘no *power of personal Administration or Judgement*’. It was the law, not constitutional forms, which provided the substance and continuity of England’s government. So long as England’s governors recognised that their ‘*Authority*’ was ‘by the Law, to which the people have assented’, England’s laws, customs and freedoms were safe.¹¹⁴

The Commonwealth established in 1649 was lauded less because it established a form of government and more because it safeguarded principles of government: popular sovereignty and parliamentary supremacy. It is this radical anti-formalism that can so easily be mistaken for a longing for kingly forms. For instance, Worden points to the

¹¹² Thorpe, *His Charge*, pp. 2-3.

¹¹³ Gardiner (ed.), *Constitutional Documents*, p. 385.

¹¹⁴ *Declaration of the Parliament...Expressing the Grounds of their late Proceedings*, pp. 23-4.

apparent ‘ambiguity’ in the Act for abolishing the kingly office – specifically the key clause that ‘the Office of King’ and to have ‘the power thereof *in any single person*’ was ‘unnecessary, burthensome and dangerous to the liberty, safety and publique interest of the people’.¹¹⁵ It is argued that this wording was contrived to leave the ‘door open for the mixed monarchical solution long desired by many MPs’.¹¹⁶ But was it? For one thing, when a mixed monarchical solution was promoted in the parliamentary *Humble Petition and Advice* of 1657, its proponents freely admitted that a return to kingship was not easily reconciled to the provisions of the 1649 Act. Rather, they invoked parliamentary supremacy to dismiss the Act altogether: stating that where one parliament had taken away kingship another might reverse that decision and set it up again. To this extent, the real loophole in the 1649 Act was not to be found in its provisions but in those principles that animated it: that the people were free to settle whatever government they, or more properly their representatives, decided was in their best interests.¹¹⁷

In reality, the Rump’s resolution to abolish kingship ‘in any single person’ seems to have been calculated to exemplify the point that, even though the office of king was abolished, those ends for which kingship had been established remained. As Thorpe explained at York, the Commons had abolished the office of king as corrupted by the single person but not those powers and ends which, in theory, had defined that office. The king was merely the ‘chiefe Officer’ who was ‘trusted’ by the people with the ‘Administration of that Government’; it was nothing more than a synonym for ‘the

¹¹⁵ Worden, *Rump Parliament*, pp. 172-3; Worden, *God’s Instruments*, p. 271; Gardiner (ed.), *Constitutional Documents*, p. 385 emphasis added.

¹¹⁶ Worden, *Rump Parliament*, pp. 172-3.

¹¹⁷ See for example the speeches made by Nathaniel Fiennes and Lord Broghill in *Monarchy Asserted, To be the best, most Ancient and legall form of Government, in a conference had at Whitehall, with Oliver late Lord Protector...* (1660), pp. 66-67, 72-3.

publique Interest of the People'.¹¹⁸ It was this aspect of the kingly power that the Commons wanted to preserve, albeit they would no longer entrust it to any one person. Rather, the 'people themselves (by their Representatives)' would be 'the only Keepers of their owne Liberties'; they resolved to 'keep the Crowne within its proper place the Cabinet of the Law, and to allow the Law only to King it among the people'.¹¹⁹ Here was the consummation of what Alan Cromartie has described as a 'constitutionalist revolution'. The king became, in effect, an 'excrescence on the system': an entity defined and bound completely by England's laws and therefore allowed no discretionary power whatsoever.¹²⁰

V.

In an age saturated by providential thinking, a mindset which 'devalued political planning' and demanded a willingness to face the future with an open not a closed mind, the political history of the Interregnum has so often been written as if the path that lay ahead was all too clear. Of course many of those involved in the regimes of the 1650s, looking back over those events after 1660, wanted to claim as much – that they always hoped, or never doubted, that monarchy would return. But this does not do justice to their outlook in 1649. To explain the English Revolution we do not need to get into the minds of so-called 'Republicans' like Ludlow, Chaloner and Marten nor do we need to look for novel constitutional designs. Rather, we must appreciate the radical edge of those ideas and principles that guided the Rump's supposedly more conservative members and adherents, particularly lawyers such as Nathaniel Bacon,

¹¹⁸ Thorpe, *His Charge*, p. 11.

¹¹⁹ *Ibid.*, p. 9

¹²⁰ A. Cromartie, 'The Constitutionalist Revolution: The Transformation of Political Culture in Early Stuart England', *Past and Present*, 163 (1999), p. 117-18. Unlike Cromartie, however, I do not think it follows that the adherence to Common Law principles in the 1650s made inevitable the return to kingly forms.

John Parker, Francis Thorpe and Bulstrode Whitelocke. The actions and writings of these men demonstrate that the belief in the supremacy of the people's representatives was not simply the preserve of a radical minority but ran deep among parliamentarians. Even those Rumpers unwilling to approve the regicide were prepared to own those principles embodied in the Commons' resolutions of 4 January 1649. Their distaste for the army's arbitrary actions in the winter of 1648-9 made them determined to uphold the rule of law. Yet, having absorbed parliamentary arguments, and applied them to England's past, they concluded that the rule of law did not necessitate rule by a king but government grounded upon the people. They stressed that forms were only ever secondary to the ends of government: that maintaining kingship could never be more important than securing the Commonwealth.

With time, those claims about the popular foundations of the regime became less common in official and semi-official pronouncements. Much more pervasive were those *de-facto*-ist defences, epitomised by the Engagement controversy, whereby protection was deemed as a sufficient ground to obey the incumbent powers.¹²¹ Yet this need not be a sign that those earlier ideas had been abandoned or never had any purchase among the regime's supporters. It was more the symptom of a regime that struggled to live up to expectations. As the Act abolishing the kingly office announced, the removal of that office had left open 'a most happy way... for this Nation... to return to its just and ancient Right of being governed by its own Representatives'. To achieve this, however, the Rump must dissolve itself and provide for a successor 'so soon as may possibly stand with the safety of the people'.¹²² If all government really was 'in the people, from the people, and for the people' then the composition of parliament

¹²¹ See Q. Skinner, 'Conquest and Consent: Hobbes and the Engagement Controversy' in Q. Skinner (ed.), *Visions of Politics: Volume III, Hobbes and Civil Science* (Cambridge, 2002), pp. 287-307.

¹²² Gardiner (ed.), *Constitutional Documents*, pp. 386-7.

must reflect this.¹²³ As it struggled for survival, however, the Rump was hardly likely to advertise the discrepancy between its professed ideals and the disappointing reality. Whether out of sheer weight of business or the corruption of its members, the Rump's failure to dissolve itself and provide for successive parliaments, meant those commonwealth principles on which its establishment had been justified increasingly became a source of embarrassment and censure.¹²⁴

Only with time, and the experience of the Rump's failure, would those who once supported the kingless Commonwealth consider alternative forms of government. Yet their principles remained the same. Even the offer of kingship to Cromwell in 1657 was really a means to ground government upon the people, or more properly the people represented in parliament. The fact that Bacon and Whitelocke both backed Cromwellian kingship did not mean they were trimmers; they had not turned their back on their former principles.¹²⁵ After three years of arbitrary rule under the Protectorate of the *Instrument of Government* – a constitution which never received parliamentary approbation – the *Humble Petition and Advice* offered the chance to establish not a monarchy but a Commonwealth: a government approved by the people in parliament and governed by the laws that the people themselves had made. Even for those who offered Cromwell the Crown, the form of government was far less important than its substance.

¹²³ Parker, *Government of the People of England*, pp. 7, 1.

¹²⁴ See, for instance, Nedham's editorials in the government newsbook *Mercurius Politicus* from October 1651 to August 1652 – later republished in his critique of the Protectorate, *The Excellencie of a Free State* (1656).

¹²⁵ See the list of 'kinglings' in *A Narrative of the late Parliament (so called)* (London, 1657/8), pp. 22-23.