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# A very peculiar Royalist. Hobbes in the context of his political contemporaries

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Hobbes was a royalist. He supported Charles I during the Civil Wars and advocated absolutism of the most extreme variety. He can be grouped together with other royalist thinkers and writers of his time; people such as Sir Robert Filmer, Bishop Bramhall and Dudley Digges. His royalism is expressed and supported in his political writings.

A cursory glance at almost any modern commentary on Hobbes will reveal these sorts of assumptions about his political beliefs and partisanship during the period of the English Civil Wars of the 1640s. They are expressions of an orthodoxy that has grown up about Hobbes's political allegiances in modern Hobbes scholarship. Martinich, for example, says that '*Leviathan* is suffused with defenses of Charles I' (Martinich 1995: 16) and that in 1640 Hobbes was about to begin '[h]is career as a political theorist committed to the cause of the king' (Martinich 1999: 121). Johann Sommerville says that one of Hobbes's intentions was to 'rebut the principles commonplace among Charles I's parliamentary opponents' and that '[s]uch informed contemporary writers as the pseudonymous "Eutactus Philodemius" and Sir Robert Filmer *rightly regarded his theory as essentially royalist in character*'. (Sommerville 1992: 3, my emphasis). Richard Tuck, despite revealing the complexity of Hobbes's position, is also convinced that Hobbes should be read as a royalist. 'It is clear that Hobbes's sympathies were entirely on the side of Charles's government,' (Tuck 1993: 313).

The impression given by these commentaries is that Hobbes's loyalty to Charles I and the royalist cause is so well established and supported that it requires no argument and no detailed textual reference. The question I will address in this paper is whether this is right. Are we justified in making such assumptions about Hobbes's own political beliefs and his political theory? Is his royalism so apparent and so straightforward that we need not examine it at all?

At the time Hobbes was writing, this was certainly not the case; such universal assumptions about his royalism were not made and left unexamined. Sir Robert Filmer, who famously defended divine right theory in his posthumously published *Patriarcha* (1680), may have regarded Hobbes's theory as 'essentially royalist' (as above), but this did not mean that he thought the theory supported all the tenets of royalist thought; nor was he the only royalist writer of the time to question, in some sense, Hobbes's support of royalism. Edward Hyde (Earl of Clarendon), for example, accused Hobbes of publishing 'false and evil Doctrines' which were 'pernicious to the Sovereign Power of Kings, and destructive to the affection and allegiance of Subjects' (Clarendon 1676, Epistle Dedicatory); Bishop Bramhall referred to *Leviathan* as a 'Rebels catechism' (Bramhall 1995: 145).

These royalist writers regarded Hobbes's theory as, at worst, a justification of the 'Rebellion' and at best, a danger to the royalist cause. One might ask whether it is likely that these men, who were well-informed and immersed in the political rhetoric of the time, were completely mistaken about Hobbes's theory? And if Hobbes's writing lent itself to such (mis)interpretation by some of his more sophisticated contemporaries, one might further ask what Hobbes's intentions might have been in this regard? After all, Hobbes does say in *Leviathan* that his writing is 'occasioned by the disorders of the present time', (*Leviathan* 1968: 728) and it is most unusual for political writing of this time to give rise to such conflicting interpretations. As far as I know, no contemporary writers suggested that the Leveller John Lilburne, might really be writing in support of the royalists or that Sir Robert Filmer's arguments for divine right theory might be interpreted as intending to advance the cause of Cromwell. One point to be made is that Hobbes's writing is both too subtle and too complex to be categorized with the same simplicity as the more typical political pamphlets and treatises of the Civil War period. At the time of its publication, *Leviathan* was interpreted variously as an example of extreme royalist thought, as theoretical support for Cromwell's rebellion and as a justification for a switch of allegiance from the king to the new ruling 'rump' after the Civil Wars. It seems unlikely that, three hundred and fifty years later, the ambiguities which gave rise to such conflicting interpretations have all gone, somehow resolved with the advantages of hindsight. In what follows, I shall discuss some reasons for questioning the current orthodoxy of Hobbes's royalism, or at least for submitting it to further examination. What is the nature of that royalism? Are we right in assuming that Hobbes was and remained a devout royalist throughout his intellectual life? What kind of royalism are we justified in attributing to Hobbes? Are we correct, for example, in categorizing him together with other royalist theorists of the time like Filmer or Maynwaring or Digges? As a first step towards addressing these questions, I shall make a few remarks about the evidence that is available from Hobbes's personal life, then I shall turn to the writings of his contemporaries. A direct comparison of the political writing on each side of the conflict with Hobbes's own writing, reveals some surprising similarities between Hobbes and the parliamentarians. What significance might this have for an assessment of Hobbes's relationship to royalism? Some might argue that when Hobbes does seem to be aligning himself with some of the parliamentary principles or assumptions, he is doing so merely in order to derive his own royalist conclusions from them later in his argument. This position will only hold, however, first, if Hobbes's conclusions really are wholly royalist and, second, if we are able to reconcile any principles to which he allies himself on the way, with his conclusions. If, for example, Hobbes endorses the principle that there are some natural rights that are inalienable and therefore cannot be given up to the sovereign, this may have some significance for the conclusions he may then reach. If we were to interpret one of his conclusions as being that, in the end, individuals should give up all their natural rights to the sovereign, then we would have to try to show either how that can be reconciled with his endorsement of the principle that some rights cannot be given up, or we would have to say that there is an inconsistency in his argument. I shall say more about this below, but first, it might be helpful to define the term 'royalist'.

One way to define royalism is in reference to those people who supported Charles I and his rule against the parliamentarians in the period just before and during the Civil Wars; one might add those who supported Charles II and his claim to the throne after Charles I's execution in 1649. Alternatively one could define a royalist as someone who adhered to the tenets of royalist political thought. This is less easy to pin down than the first but can usually be taken to include support of absolutism in some sense.<sup>1</sup> Like *The Elements* and *De Cive*, *Leviathan* was a broadly royalist work. In *Leviathan*, Hobbes did not attenuate his absolutism' (Sommerville in Sorell edn 1996: 259). One or other of these definitions is usually assumed in the comments that are made about Hobbes's allegiances. Martinich, for example, assumes the first definition, as above, (with an added implication of the second, perhaps), while Sommerville assumes the second. Often the two are conflated, as they are with Clarendon who, as well as accusing

<sup>1</sup> The assumption that royalism necessarily involves absolutism has been questioned by the constitutional royalists (see, for example, Smith 1994). The notion of absolutism itself also poses problems. Glenn Burgess (1996) argues that absolutism was not nearly as widespread as it is often said to be in the early Stuart period and 'even those people most likely to have been absolutists were not' (ibid.: 18). The reason, according to Burgess, for the assumption that absolutism was widespread lies partly in the conflation of the two separate issues of limitation and resistance: a limited king being taken to be one that is resistible and an unlimited king one that is irresistible. In the case of the former, this 'simply discounts the fact that royal self-limitation, according to the oath to govern legally made before God in the coronation service, was perfectly feasible in a world where divine punishment for sin was an accepted fact of life' (ibid.: 19). Burgess lays part of the blame for the confusion at the hands of the parliamentary propagandists who also defined absolute government as *arbitrary* or *tyrannical* government. Burgess's own definition of absolutism is 'the view that monarchs were not bound to rule in accordance with the law of the land' (ibid.: 210). For the purposes of this paper, however, we can accept the definition of absolutism that Burgess questions, as at least part of what is usually understood by absolutism. The power of the sovereign is unlimited and the subjects have no right of resistance.

Hobbes of publishing 'false and evil doctrines', as above, also accuses him of actually supporting Cromwell.

it could not reasonably be expected, that such a Book [*Leviathan*] would be answer'd in the time when it was publish'd, which had bin to have disputed with a Man that commanded thirty legions, (for *Cromwell* had bin oblig'd to have supported him, who defended his Usurpation).

(Clarendon 1676: 5)

On the other hand there are those, like Filmer, who argue as above that Hobbes is royalist under one definition and anti-royalist under the other; in Filmer's case, that Hobbes supported the king while failing to support some of the central tenets of royalist thought.

With no small content I read Mr. Hobbes's book *De Cive*, and his *Leviathan*, about the rights of sovereignty, which no man, that I know, hath so amply and judiciously handled: I consent with him about the rights of exercising government, but I cannot agree to his means of acquiring it. It may seem strange I should praise his building, and yet mislike his foundation; but so it is, his *Jus Naturae*, and his *Regnum Institutivum*, will not down with me: they appear full of contradiction and impossibilities; a few short notes upon them, I here offer, wishing he would consider whether his building would not stand firmer on the principles of *Regnum Patrimoniale*.

(Filmer 1995: 1)

Filmer is not accusing Hobbes of deliberately arguing against support of the king but rather of failing to provide the best argument for absolute sovereignty.

## PERSONAL ALLEGIANCES

It is difficult to glean enough evidence from Hobbes's personal life to be absolutely sure about his political allegiances, although some commentators have sought to do exactly that. His close personal connections with the Devonshires, one of the most important aristocratic royalist families at the time, his appearances at Court, his collection of the Forced Loan,<sup>2</sup> the fact that he was put forward as a candidate for parliament in 1640 by the Earl

<sup>2</sup> The name given to an extra-parliamentary levy raised by Charles I in 1626–7 to help pay for the war against Spain. It was the cause of a great deal of controversy at the time, as it raised the question of whether the King could legitimately take money from his subjects without the agreement of Parliament. The Forced Loan was famously defended in the sermons of Sibthorp and Maynwaring and it was Maynwaring's later imprisonment in the Tower of London to which Aubrey refers as the reason Hobbes gave for fleeing to France (see below, p. 173). Hobbes, acting as secretary to the Earl of Devonshire, helped to collect the Forced Loan.

of Devonshire, his tutelage of the young Prince of Wales in exile, and his pension from the King after the Restoration; these events and relationships are all seen as pointing to royalism by association. The danger with this approach, perhaps, is the assumption that tasks undertaken by Hobbes as part of his duties for his employers, the earls of Devonshire and relationships maintained by Hobbes in his professional and private life, are taken to reflect his own personal political beliefs. The fact that in many cases there does seem to be a 'fit' between the political beliefs of his employers and his own political writings makes it all the more tempting to assume a blanket agreement between the two.

The evidence for such a marriage of political opinion, however, is not quite as conclusive as one might expect. Among his contemporaries he was not always seen as a royalist, as I have mentioned above, and Hobbes himself said little to place him categorically in the royalist camp during the period of the Civil Wars. As Quentin Skinner has remarked, 'Hobbes usually preserved a lofty silence over all debate about his political thought' (Skinner 1965: 214).<sup>3</sup> After the Restoration, Hobbes did claim to have been loyal to the King and attempted to rebut those who accused him of having supported Cromwell. I shall say something about these denials below, but first I shall consider the evidence from his life before and during the Civil Wars.

The fact that Hobbes associated a great deal with close allies of Charles I before and during the Civil Wars is both illuminating and confusing. He was financially and personally indebted to them and probably counted some of them amongst his friends. At the same time, he was not one of them. His extraordinary intellectual gifts and personable nature allowed him the privilege of mixing with many of the most important and influential Englishmen of his time, many of whom supported the King. How much of an insight this gives us into his own political beliefs, however, is questionable. If he was little more than an apologist for the King, as some suggest, why did he not write openly in defence of divine right theory, as Filmer did? Why did he not declare himself publicly as a royalist before or during the Civil Wars? Why did he include in *Leviathan*, passages that, by their apparent endorsement of principles that were at the centre of the arguments of the parliamentarians, he must have known would enflame other royalists? All of these questions can be answered in several ways. It could be for philosophical reasons that Hobbes did not defend the divine right of kings, as Sommerville suggests. 'He could not afford to admit the truth of patriarchalism of the Filmerian variety, for it was wholly incompatible with his system' (Sommerville 1992: 71n). In the effort to keep his theory

<sup>3</sup> Much more recently, however, Skinner has said that Hobbes's *theory* should be seen alongside those of contemporary royalists. 'Hobbes is thus lead to two contrasting conclusions about the liberty of subjects that bring his doctrine fully into line with that of other royalists such as Digges, Bramhall and Filmer' (Skinner 1998: 9).

consistent, he may not always have been able to say what the royalists wanted to hear. Or there could have been reasons of protection, of wanting to disguise his royalist partisanship, for fear of its possible repercussions regarding his future safety.<sup>4</sup> Or of course there is the possibility that he did not wholly support the royalist cause, in terms of political principles, even though he expressed feelings of sympathy and personal loyalty towards the King and his supporters. Or he may have changed some of his beliefs between, say, the time he wrote the *Elements of Law* and the time he wrote *Leviathan*. It is certainly the case that in *Leviathan* he argues against some of the central tenets of royalist thought, so at the very least he became a most unconventional royalist.

Hobbes's autobiographies and private correspondence do not make absolutely clear his political allegiances in the period up to and particularly, during the Civil Wars. There are some references in his verse autobiography to his 'defense o'th'King's prerogative' (v.a. 260, in Hobbes 1994a: lx.) and to 'The King's Defense and Guard' (ibid., v.a. 275) and Charles II's 'Right to England's Scepter undenied' (ibid., v.a. 218: lix), but of course the autobiography was written long after the Restoration of the monarchy in 1660. It was clearly to his own personal advantage at that time to say that he was and always had been, loyal to the King. There are no references that I can find in his surviving correspondence that overtly state a commitment to the royalist cause, (although letters have been lost and Hobbes is said to have destroyed some. See Aubrey's *Life of Hobbes* 14, (l 339) in Hobbes 1994a: lxviii). There are some references that are fairly unambiguous, however, and these imply that Hobbes was perceived and perceived himself as loyal to the King. Describing his reasons in a letter to Viscount Scudmore for leaving England for Paris just before the war, Hobbes says:

The reason I came away was that I saw words that tended to aduance the prerogative of kings began to be examined in Parliament. And I knew some that had a good will to have me troubled, and might for any thing I saw in their honestyes make both the wordes and the witnesses. Besides I thought if I went not then, there was neuerthlesse a disorder coming on that would make it worse being there than here.

(Malcolm (ed.) 1994(l): 115)

<sup>4</sup> At the time Hobbes was writing *Leviathan*, Cromwell held power and the royalists had been defeated. For a discussion of the effects of the threat of persecution on writers, see Leo Strauss, *Persecution and the Art of Writing* (1988):

The term persecution covers a variety of phenomena, ranging from the most cruel type, as exemplified by the Spanish Inquisition, to the mildest, which is social ostracism. Between these extremes are the types which are most important from the point of view of literary or intellectual history. Examples of these are found in the Athens of the fifth and fourth centuries BC, in some Muslim countries of the early Middle Ages, in seventeenth-century Holland and England, and in eighteenth-century France and Germany – all of them comparatively liberal periods. But a glance at the biographies of Anaxagoras, Protagoras, Socrates, Plato, Xenophon, Aristotle, Avicenna, Averroes, Maimonides, Grotius, Descartes, *Hobbes*, Spinoza, Locke, Bayle, Wolff, Montesquieu, Voltaire, Rousseau, Lessing and Kant, and in some cases even a glance at the title page of their books, is sufficient to show that they witnessed or suffered, during at least part of their lifetimes, a kind of persecution which was more tangible than social ostracism. (p. 33, my emphasis)

Aubrey, again recounts, 'he told me that Bishop Manwaring (of St. David's) *preach'd his doctrine*; for which, among others, he was sent prisoner to the Tower. Then thought Mr. Hobbes, 'tis time now for me to shift for myself, and so withdrew into France and resided in Paris' (Hobbes 1994a: lxvii). The doctrine to which he refers is that given in the *Elements of Law* and Maynwaring was a staunch royalist so it seems that Hobbes saw the *Elements of Law* as a work that would be interpreted as royalist and therefore one that put him in danger from Parliament after 1640. Here then, is some strong evidence for saying that Hobbes did see himself as a royalist just before the outbreak of war.

At times when one might expect a response to the dramatic political events of the Civil Wars, however, such as the execution of Charles I in 1649, or the Restoration in 1660, there are no comments in the surviving correspondence. He does mention in a letter to Gassendi in 1649 that he is preparing to return to England, 'I am in fairly good health for my age, and I am certainly looking after myself, preserving myself for my return to England, should it happen by any chance' (Malcolm 1994(l): 179). This letter was written less than eight months after the execution of Charles I at a time when the monarchy and the House of Lords had been abolished and England was declared a republic. If Hobbes had any misgivings about returning to England and making a promise of obedience to this new regime, he said nothing, at least in this letter. It has been suggested that in April 1649 he fully expected the future Charles II to succeed in his efforts to defeat the parliamentary forces and restore the monarchy (Tuck 1993: 323) and that it was with this in mind that he planned his return to England. Even if he did believe this, however, there is little reason to think that he could have been confident of acceptance at the court of a restored Charles II when he had just been rejected by Charles in St. Germain.<sup>5</sup> In addition, it is hard to believe that he could have felt so confident of a

<sup>5</sup> Hobbes went to the exiled royal court at St. Germain outside Paris, to present Charles with a copy of the manuscript of *Leviathan* and was told that Charles would not see him (Tuck 1993: 326). It is thought that his unconventional religious views had alienated Queen Henrietta and other Catholics, although there was some disagreement about who should take the 'credit' for his banishment from court. Clarendon said the Catholics were not involved and that it was he who was responsible for the 'discountenancing of my old friend, Mr H[obbes]' (Sommerville 1992: 25, quoting Robertson 1905, 73nl. Hobbes's exclusion from court was still being reported as news on 3 February 1652: H. M. C. seventh report, p. 458). See also Tuck 1993: 325–6.

royalist victory. At the time Charles refused to see Hobbes in October 1651, he (Charles) had just returned from England after the resounding defeat of the royalists at Worcester in September. By the time Hobbes actually left for England, (late 1651 or early 1652, according to Malcolm, Hobbes left Paris in mid-December 1651 and travelled to England shortly afterwards (Sorell ed., 1996)) there could have been little hope of a royalist victory. On his return to England, Hobbes submitted to the new republican government by taking the 'Engagement', a promise of obedience required of all adult males since 1650.<sup>6</sup>

The events of Hobbes's personal life up to the outbreak of war may not provide an absolutely definitive answer to the question, 'Was Hobbes a royalist?' in the first sense defined above as support for Charles I and his rule. On the other hand, most of the evidence from this period does point towards royalism, particularly when we take into account his comments about the *Elements of Law* and the response to it. The next period of Hobbes's life, the time of his exile in Paris, from 1640 to 1651, which took him through the Civil Wars and into the first two years of the Commonwealth, provides less concrete evidence of his own political views. All we have are the facts of his continuing associations and friendships with leading royalists like the Earl of Newcastle, his relationship with the court in exile and his tutoring of the young Charles and of course his reworked political theory, *Leviathan*, written in the last year or two of this period and published in England in 1651 (Tuck 1993). *Leviathan*, as mentioned above, was seen by some royalists as a justification of the rebellion, others saw it as staunchly royalist in its main argument but as containing a way for those who had loyally supported Charles I through the Civil Wars, to submit to the new government and try to regain estates lost during the Civil Wars (*Leviathan* 1968: 719). The fact that *Leviathan* caused such controversy on the question of its political interpretation makes this period the one where Hobbes's exact political beliefs are most difficult to ascertain.

In the years after the Restoration, he did state, in retrospect, his support for Charles I and denied having supported Cromwell. Such demonstrations of support for the winning side should always be treated with some scepticism but are worth looking at nonetheless. I have already mentioned above, some of the statements given in his autobiographies. He also wrote an essay, in the third person, with the title 'Considerations upon the reputation, loyalty, manners and religion of Thomas Hobbes' (1680; first published in 1662 under a slightly different title; in Molesworth EW4: 409–40) in which

<sup>6</sup> Quentin Skinner has argued that some of those writing after the execution of Charles I, seeking to justify allegiance to the new regime and to persuade those on both sides that it was now legitimate for them to support and obey the new government, had certain arguments in common about the legitimacy of submitting to a de facto government and should therefore be put together and called the 'de facto theorists'. He also argued that there is a strong case to be made that Hobbes can be considered a de facto theorist. The de facto theorists are discussed in the second part of this paper.



he specifically addressed the accusation that he had written 'in defence of Oliver's title'. In this work, he wrote first about the *Elements of Law*, his first political work that circulated in manuscript form in 1640 two years before the Civil Wars began.

When the Parliament sat, that began in April 1640, and was dissolved in May following, and in which many points of the regal power, which were necessary for the peace of the kingdom, and the safety of his Majesty's person, were disputed and denied, Mr. Hobbes wrote a little treatise in English, wherein he did set forth and demonstrate, that the said power and rights were inseparably annexed to the sovereignty; which sovereignty they did not then deny to be in the King; but it seems understood not, or would not understand that inseparability. Of this treatise, though not printed, many gentlemen had copies, which occasioned much talk of the author; and had not his Majesty dissolved the Parliament, it had brought him into danger of his life.  
(Molesworth edn 1839 EW4: 414)

Here Hobbes seems to be saying that the *Elements of Law* had been written in defence of the King's sovereignty. He goes on:

He was the first that had ventured to write in the King's defence; and one, amongst very few, that upon no other ground but knowledge of his duty and principles of equity, without special interest, was in all points perfectly loyal.  
(ibid.)

At face value this is a clear statement of loyalty to Charles I and should probably be accepted as exactly that. Indeed, this interpretation can be supported by the doctrine that Hobbes outlines in the *Elements of Law*, particularly in relation to his insistence that individuals give up their right of resistance to the sovereign when they empower him.

This power of coercion, as hath been said . . . consisteth in the transferring of every man's right of resistance against him to whom he hath transferred the power of coercion. It followeth therefore, that no man in any commonwealth whatsoever hath right to resist him, or them, on whom they have conferred this power coercive.  
(*De Corpore Politico* xx, in Hobbes 1994b: 112)

This does sound like a description of the institution of a sovereign who will have absolute power over his subjects and therefore fits easily with most standard royalist arguments of the time. In *Leviathan*, however, Hobbes had been more ambiguous on this question, as at Chapter 14, 'a man cannot lay down the right of resisting them, that assault him by force, to take away his life' (*Leviathan* 1968: 192). The question of the right to resist, what Hobbes means by it, its relationship to the right to defend one's body from attack and its application to the sovereign's power, is a complicated one and will not be addressed here, except to point out that in some passages in *Leviathan*, such as that above, Hobbes seems to suggest that as the individual subject cannot give up his right of resistance, he must then retain it

even against the sovereign.<sup>7</sup> At least there is enough ambiguity in what he says in *Leviathan* to enable this argument to be made, unlike the *Elements of Law* where he states unequivocally, as above, that every man does transfer his right of resistance to the sovereign and that therefore no man has the right to resist the sovereign. It is also the case that in *Leviathan*, Hobbes adds in the Review and Conclusion the principle that a subject may justifiably submit to another sovereign ‘when the means of his life is within the Guards and Garrisons of the Enemy’ (*Leviathan* 1968: 719). In other words, he may cease to obey his sovereign if the sovereign has been conquered. This implies that the subject may judge when his life is no longer being protected by his sovereign. If there is evidence for the argument that Hobbes changes his position on some principles that are important for royalism in *Leviathan*, he may be being disingenuous when he quotes from the *Elements of Law* to back his response to the accusations that he supported Cromwell’s side in the Civil Wars.

Hobbes does also defend *Leviathan* in this work, when he turns from defending the *Elements of Law* to answering ‘that other charge, that he writ his *Leviathan* in defence of Oliver’s title’, and here he defends his intentions first by pointing out that when he was writing *Leviathan*, Cromwell was not yet Lord Protector.

What was Oliver, when that book came forth? It was in 1650, and Mr. Hobbes returned before 1651. Oliver was then but General under your masters of the Parliament, nor had yet cheated them of their usurped power. For that was not done till two or three years after, in 1653, which neither he nor you could foresee. What title then of Oliver’s could he pretend to justify? (Hobbes 1839 EW4: 420)

Of course Hobbes could still have supported Cromwell’s victory against the King during these years and he predicts that his defence will not satisfy his accusers and puts the objection into their mouths. ‘But you will say, he placed the right of government there, wheresoever should be the strength; and so by consequence he placed it in Oliver’ (ibid.). Hobbes then asks rhetorically and with some irony why he was never thanked by Parliament or Cromwell for this support if it was true and goes on to say that he had in fact written ‘in the behalf of those many and faithful servants and subjects of his Majesty, that had taken his part in the war, or otherwise done their

<sup>7</sup> The significance of the fact that in *Leviathan* the individual retains his right to self-defence into the commonwealth is not often recognized by modern Hobbes scholars but see, for example, Jean Hampton, *Hobbes and the Social Contract Tradition* (1986) ‘according to Hobbes, each human being carries with her into the commonwealth a “self-defense” right’ (ibid.: 198).

utmost endeavour to defend his Majesty’s right and person against the rebels’ (ibid: 420–21). These subjects were forced, after the King’s defeat, ‘to promise obedience for the saving of their lives and fortunes; which in his book he hath affirmed they might lawfully do’ (ibid.). He expands on this defence for several pages and then refers to his falling out with the future King. ‘Perhaps you will take for a sign of Mr. Hobbes his ill meaning, that his Majesty was displeased with him. And truly I believe he was displeased for a while, but not very long’ (ibid.: 424). He was assured by many people, he says, that ‘his Majesty had a good opinion of him’ and ‘testified his esteem of him in his bounty’. Here Hobbes is probably referring to the pension of one hundred pounds a year that Charles II sometimes paid him after the Restoration. And it is true that Charles, having refused to see him at St. Germain, accepted him again at court, after the Restoration. How should these denials by Hobbes be interpreted? If we accept what he is saying in *Considerations* . . . as the simple truth then we must conclude that his loyalty *during* the Civil Wars lay with the King even though he allowed that a switch of allegiance after his (the King’s) defeat and execution

was justified for those who had supported him. We might conclude that before 1650 the evidence certainly seems to be stronger for royalism than otherwise. After 1650 the picture is partially clouded by his own admission (in 1662) of having, (in *Leviathan*), justified a switch in allegiance to Cromwell's regime, and also perhaps by his return to England and taking of the Engagement and by writing and publishing a book that would cause royalists like Bramhall, Filmer and Clarendon to accuse him of, at the very least, endangering the royalist cause, which is not to say that these matters *cannot* be explained in a way that would still allow us to define Hobbes as a staunch royalist even after 1650. It is just that these actions after 1650 *require some explanation* if they are to be squared with the received view of Hobbes as a conventional royalist. (It could also be argued that after 1650 it became increasingly unclear what royalism entailed and what the royalist cause was. Royalists could argue for any number of strategies that might include serving under Cromwell in order to be in a strong position to help restore the throne to Charles II at a later date).

On the other hand, there might be cause to question such vociferous denials, as those in the *Considerations . . .* on Hobbes's part; we might ask whether he protests too much. The denials were, after all, written after the Restoration. Whatever conclusions we reach about Hobbes's personal loyalty to Charles I and Charles II, however, we shall see, when we look at what he wrote, particularly in *Leviathan*, that he undermined some central tenets of royalist political thought.

There was an outpouring of political writing in the period just before and during the Civil Wars from thinkers of all political persuasions in England. An examination of these writings, next to Hobbes's, can, I believe, throw some light on the extent and the limits of his conventional royalist thinking. I have divided the political writings into five groups of political thinkers to

whom I will refer as: the 'Radical Royalists', the 'Moderate Royalists', the 'Moderate Parliamentarians', the 'Radical Parliamentarians' and the 'De Facto Theorists'. For the 'Radical Royalists' I will look at Sir Robert Filmer, whose defence of divine right theory in his famous work *Patriarcha*, places him as an unbending absolutist and unquestioning supporter of Charles I. For the 'Moderate Royalists' I will look at the writings of Edward Hyde, Lord Clarendon, who, as a member of Parliament before the Civil Wars, was critical of some of Charles I's excesses in government and supported a certain amount of reform, but who, once the war started, swung behind the King and became one of his closest advisers. After the Restoration he became a minister in the new Government of Charles II before eventually falling from grace (Rogers 1995: xv). I will also refer to some members of a circle of friends sometimes referred to as the Tew Circle,<sup>8</sup> a group of intellectuals whom Tuck picks out as the group in which we should place Hobbes. For the 'Moderate Parliamentarians' I shall include both the 'Independents' of the Parliamentary army such as Cromwell and Ireton and the more moderate of the pro-parliamentary political thinkers such as Philip Hunton, Henry Parker, and Charles Herle. The 'Radical Parliamentarians' to whom I will refer include the section of the army that comprised the Levellers and Leveller thinkers such as John Lilburne and Richard Overton, as well as the thinkers of the even more radical 'Diggers', particularly Gerrard Winstanley. Finally I shall look briefly at the 'de facto Theorists'.

I will concentrate where possible on what each of these political groups/factions has to say about certain key political concepts. This provides a focus which allows a comparison with Hobbes on subjects that are vital to some of the most important political issues of the Civil Wars; namely: Sovereignty, Law, Equality and Rights. The comparison shows that Hobbes is closer to the non-royalists than he is to the royalists on what he says on three out of four of these key political concepts.

<sup>8</sup> The 'Tew Circle' is a name that has sometimes been given to a group of theologians and intellectuals, at least some of whom had royalist sympathies, who used to gather at Viscount Falkland's house at Great Tew near Oxford in the 1630s. Their number included Henry Hammond, John Selden, Clarendon, William Chillingworth and Dudley Digges. It has been suggested that Hobbes could be considered a member of this group and Tuck has argued that his political theory is closer to the work of these men (and to John Selden in particular) than to any other group of writers (see Tuck 1993: 279, 305). Others think it unlikely that Hobbes was a 'member' (Rogers edn 1995: xvi).

## RADICAL ROYALISTS

Filmer's *Patriarcha*, though only published posthumously in 1680, is thought to have been written and circulated in manuscript form between 1635 and 1642 and actually written even earlier<sup>9</sup>. In it he defends divine right theory and attacks the view

first hatched in the schools [that] Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at the first by human right bestowed according to the discretion of the multitude. (Filmer 1991: 2)

This view, he says, 'contradicts the doctrine and history of the Holy Scriptures, the constant practice of all ancient monarchies, and the very principles of the law of nature' (ibid.: 3). From this mistaken doctrine has been drawn the 'perilous conclusion' that 'the people or multitude have power to punish or deprive the prince if he transgresses the laws of the kingdom'. Filmer is attacking those who argued that sovereignty comes from the people and what is said to follow from that, namely, the proposition that there is a right to rebellion on the part of the subjects. Such a view, Filmer argues, stems from 'the supposed natural equality and freedom of mankind and liberty to choose what form of government it please' (ibid.). This is an 'erroneous principle' whose effective contradiction would lead to the collapse of the 'vast engine of popular sedition' (ibid.).

Filmer also wrote a book directed specifically against *Leviathan* and two other works, entitled *Observations Concerning the Original of Government, upon Mr. Hobs Leviathan, Mr. Milton against Salmasius, H. Grotius De Jure Belli*, published in 1652. In this work he attacks Hobbes's view of sovereignty as one that assumes that people are sprung from the earth like mushrooms, with no attachments or obligations to one another. In fact, he says, we have natural obligations arising out of our roles as children and parents, and he uses this to criticize the notion of the right of nature described by Hobbes (Filmer 1995: 4).

Filmer argues against the principle of 'natural equality' by locating the rights of kings in a line of patriarchal power handed down by God to Adam and succeeding patriarchs. A natural subjection of people to king is thus posited, analogous to the natural subjection of child to father,

this subjection of children is the only fountain of all regal authority, by the ordination of God himself [and so] it follows that civil power not only in general is by divine institution, but even the assignment of it specifically to the eldest parent, which quite takes away that new and common distinction which refers only power universal as absolute to God, but power respective in regard of the special form of government to the choice of the people. (Filmer 1991: 7)

On the question of how sovereignty is transferred, Filmer states that the Crown never devolves to the people. In cases where there is not a straightforward heir, the crown will go to 'the prime and independent heads of families (ibid.: 11).

<sup>9</sup> 'the work as it was finally printed may have been composed in three stages' (Tuck 1993: 262). A manuscript was first discovered by Peter Laslett in 1939 and dated to 1635–42. Another manuscript 'seems to have been finished in about 1629, and it was modified by Filmer during the later 1630s to form the version which Laslett printed; but part of the 1629 manuscript may date from c. 1614 . . . the second section which deals mainly with the history of the English Parliament, is appropriate to the parliamentary politics of the 1620s' (ibid.).

So, according to Filmer, sovereignty lies solely and completely in the monarch and is bestowed by God. On the rights and duties of the sovereign' Filmer, says,

the king, as father over many families, extends his care to preserve, feed, clothe, instruct and defend the whole commonwealth. His wars, his peace, his courts of justice and all his acts of sovereignty tend only to preserve and distribute to every subordinate and inferior father, and to their children, their rights and privileges, so that all the duties of a king are summed up in an universal fatherly care of his people.  
(ibid.: 12)

Filmer goes on to say that any theory which says that the people may choose their form of government is a paradox which he likens to the notion that a father could have his power given to him by his children. Monarchy is the form of government intended by God. To those who would support democracy, Filmer points to what he sees as the weaknesses in the democracy of Rome, that it only lasted for about four hundred and eighty years, that there were confusing shifts in the form of government, that it was rife with sedition that led to Civil Wars and that it could only extend to one city.

The alternative of a 'mixed monarchy' whereby sovereignty is divided between King, Lords and Commons is given short shrift by Filmer. It is a notion that bears directly on arguments of the time concerning the power of Parliament and whether it shared in the 'sovereignty' of the king. Filmer dismisses the idea as an 'impossibility' and 'contradiction' which converts the government into a democracy taking away from the king his sovereignty. Only if the king preserves the absolute power in himself using the assembly merely for advice, can the monarch remain sovereign. If the nobles and commons each have a voice as well as the king, the nobles and commons together could 'make a law to bind the king, which was not yet seen in any kingdom but if it could the state must needs be popular and not regal' (ibid.: 32).

On the subject of law, Filmer stresses that kings are above the law and argues that it is one of the great mistakes of those who say that kings get their power from the people that they make the king subject to positive laws. A king makes the law and is tied only to God's law or the law of nature in his exercise of his lawmaking power.

For as kingly power is by the law of God, so it hath no inferior law to limit it. The father of a family governs by no other law than by his own will, not by the laws or wills of his sons or servants.  
(ibid.: 35)

The king is not obliged to uphold all the written laws of the kingdom but only those he judges to be 'upright . . . according to the equity of his conscience joined with mercy' (ibid.: 43). The king is also above the common law. Filmer argues that common laws are just customs which at some point became laws which they could only have done by the command of a superior. And as the first power is the kingly power the common law must originally have been the 'laws and commands of kings at first unwritten' (ibid.: 45). In other words the king is above the common law just as he is above statute law and may change it as he sees fit. The subject, on the other hand, is always obliged to obey the commands of the sovereign even if these go against his (the sovereign's) laws.

Before laws were written, Filmer argues, the word of the king was law. Positive law therefore comprises the commands of the king, written down for the convenience of both king and people. The power to make law is the defining mark of a king. 'That which giveth the very being to a king is the power to give laws; without this power he is but an equivocal king' (ibid.: 44). Of laws made in Parliament, Filmer says that they may be

suspended by the king for reasons known only to him. The proper role of Parliament in the making of laws, according to Filmer, is merely to advise and inform the king and thereby to strengthen the laws which the king ordains. The laws themselves can only be made by the king. '[I]n parliament all statutes or laws are made properly by the king alone' (ibid.: 57).

On the question of rights, Filmer says, not surprisingly, that rights are to be preserved and distributed by the king. All natural rights are to be given up to the king. If natural rights are retained by the people there will be a consequent loss of sovereignty for the king or worse,

all those liberties that are claimed in parliaments are the liberties of grace from the king, and not the liberties of nature to the people. For if the liberty were retained it would give power to the multitude to assemble themselves *when* and *where* they please, to bestow sovereignty and by pactions to limit and direct the exercise of it.

(ibid.: 55)

His response to Hobbes's contention in Chapter 21 of *Leviathan* that the rights to self-defence and self-preservation are retained by individuals, is to say that such 'doctrines' are 'destructive to all governments whatsoever' (ibid.: 195).

#### MODERATE ROYALISTS

Moderate royalists such as Edward Hyde, who became the Earl of Clarendon, rejected some of the more extreme and absolutist elements of Filmer's defence of the monarchy, while still supporting many of the central tenets of the monarchist position. According to Christopher Hill, Clarendon 'rejected theories of divine right, of kings or bishops, and was critical of the conduct of the Laudian hierarchy' (Hill 1967: 202). And his backing of some reform of the excesses of Charles I when he sat in Parliament during the early years of his reign confirms this view. Many remarks of Clarendon's do however sound closer to divine right theory than Hill's comment implies; 'all power was by God and Nature invested into one Man' (Clarendon 1676: 72), for example. And when the country polarized for the Civil Wars, his royalism was unflinching. He backed the King in the wars, became Charles II's leading minister after the Restoration and wrote a book attacking *Leviathan* as 'pernicious to the Sovereign Power of Kings, and destructive to the affection and allegiance of Subjects' (Clarendon 1676 Dedicatory Epistle). In this book, *A Brief View and Survey of the Pernicious Errors to Church and State In Mr. Hobbes's Book Entitled Leviathan*, he accuses Hobbes of supporting Cromwell, of influencing or being influenced by the Levellers (ibid.: 181), and, as I mentioned above, of introducing under the guise of support for a powerful sovereign, doctrines such as the right to defence against the sovereign, that were 'utterly inconsistent with the security of prince and people' (ibid.: 87).

Clarendon's royalism is as deep-seated as Filmer's, even if it stops short of the more extreme tenets of divine right theory. The suggestion that people might be in some sense equal, for example, is seen as absurd by Clarendon. He takes for granted a natural hierarchy in society and in government.

[I]n all well instituted Governments . . . the Heirs and Descendants from worthy and eminent Parents, if they do not degenerate from their virtue, have bin alwaies allowed a preference and kind of title to employments and offices of honor and trust.

(ibid.: 182–3)

Hobbes's suggestion that such privileges should be given only as a recognition of ability is treated with contempt by Clarendon and dismissed as being like the pronouncements of 'a faithful leveller'. Indeed, Clarendon lists Hobbes's egalitarianism as just one of his false assumptions, saying 'he

takes many things for granted which are not true; as . . . that “nature hath made all men equal in the faculties of body and mind” ’ (ibid.: 26). (He is also misrepresenting what Hobbes says on equality, which of course is not that all men are equal in their faculties but that their differences are not so great and that they should be treated as equals (*Leviathan* 1968: 212, 385–6). He is similarly outraged by what he sees as the attack on the right of succession by Hobbes, when Hobbes says that the sovereign may choose any successor he wishes. Clarendon accuses Hobbes of

invading the right of all Hereditary Monarchies in the world by declaring, that by the law of nature which is immutable, it is in the power of the present Sovereign to dispose of the succession, and to appoint who shall succeed him in the Government; and that the word Heir doth not of itself imply the Children or nearest Kindred of a man, but whomsoever a man shall any way declare he would have succeed him; contrary to the known right and establishment throughout the World, and which would shake if not dissolve the Peace of all Kingdoms.  
(ibid.: 61)

These words demonstrate once more the distance perceived by some royalists between their position and Hobbes’s. Monarchs rule by right and sovereignty should be passed by natural succession down a hereditary line. Another point of difference Clarendon sees between himself and Hobbes is on the question of wherein sovereignty lies or originates. Hobbes argues that ‘the sovereign power is conferred by the consent of the People assembled’ (*Leviathan* 1968: 229). Clarendon dismisses the claim in the following way: ‘that which the levelling fancy of some men would reduce their Sovereign to, upon an imagination that Princes have no authority or power but what was originally given them by the People’ (Clarendon 1676: 71). He goes on to argue that if it was really up to a group of equals to confer such power, they would not give up their own power to someone who could then use it against them.

It cannot be imagined possible in nature, that ever such an assembly of men of equal authority in themselves, will ever agree to make one Man their sovereign with such an absolute Jurisdiction over the rest, as must devest them of all property as well as power for the future; and whereas in truth all power was by God and Nature invested into one Man, where still as much of it remains as he hath not parted with.  
(ibid.: 72)

Clarendon’s assertion that all power resides in the monarch and that its source is God and nature, is in direct conflict with any view that says that sovereign power is originally in the people and is then given to a monarch or an assembly. Such a view, held by both parliamentarians and Hobbes, raises the question when or how the sovereign power might be retained by the people or devolve back to the people, for example when a monarch abuses his power. If it resides solely in the monarch, then it is never the people’s to give up or claim back. The people’s obedience to the monarch is then a permanent requirement and the preservation and good of the people is something the monarch should protect according to his judgement, and perhaps according to natural law but *not* something the people themselves can have any responsibility for or any right to assert. The sovereign power, according to Clarendon,

where still as much remains as he hath not parted with, and shared with others, for the good and benefit of those (and the mutual security of both) for whose benefit it was first intrusted to him; the rest, which is enough, remains still in him, and may be applied to the preservation of the whole, against the fancies of those who think he hath nothing but what they have given him; and likewise against those who believe that so much is given him, that he hath power to leave nobody else any thing to enjoy; the last of which are no less enemies to Monarchy than the former.



(ibid.)

On the question of law, Clarendon, a lawyer by profession himself, criticizes Hobbes for making the sovereign too powerful and for being arrogant in his presumption of defining law without reference to experts in the field. '[C]ontrary to the notions of all other men, he must introduce a notion of Law, contrary to what the world hath ever yet had of it' (ibid.: 119). He will not disagree with Hobbes on the principle that it is the sovereign who makes the law but he does object to the ease with which Hobbes implies that a sovereign may undo the laws he has made.

He saies the Sovereign is the only Legislator: and I will not contradict him in that. It is the Sovereign stamp, and Royal consent, and that alone, that gives life and being, and title of Laws, to that which was before but counsel and advice: and no such constitution of his can be repeal'd and made void, but in the same manner, and with his consent. *But we say*, that he may prescribe or consent to such a method in the form, and making these Laws, that being once made for him, *he cannot but in the same form repeal, or alter them; and he is oblig'd by the Law of justice to observe and perform this contract, and he cannot break it, or absolve himself from the observation of it, without violation of justice.* (ibid.: 121–2 my emphasis)

Clarendon stresses that Hobbes has gone too far in emphasizing the sovereign's complete independence from the laws that have been made. He criticizes Hobbes's deduction from his definition of law that 'the sovereign is Sole Legislator, and that himself is not subject to Laws, because he can make, and repeal them: which in truth is no necessary deduction from his own definition' (ibid.: 119), and he gives as an example an arbitrary repealing of an established law such as that of male primogeniture, which, if changed, would cause utter confusion.

Doth Mr. Hobbes believe that the word of the King hath power to change this course, and to appoint that all the sons shall divide the Estate, and the Eldest Daughter inherit alone? and must not all the confusion imaginable attend such a mutation? all governments subsist and are establish'd by firmness and constancy, by every mans knowing what is his right to enjoy, and what is his duty to do: and it is a wonderful method to make this Government more perfect, and more durable, by introducing such an uncertainty, that no man shall know what he is to do, nor what he is to suffer, but that he who is sovereign tomorrow, may cancel, and dissolve all that was don or consented to by the Sovereign who was yesterday, or by himself as often as he changes his mind. (ibid.: 123–4)

His argument is that while the king makes the law, he cannot change or repeal it without going through the processes of receiving advice and going through the formalities that have been established over time. It seems that he is arguing that the sovereign is to some extent bound by previous laws and by the role of Parliament in the lawmaking process, or at least that he cannot change them at will. Law is the word of the king in accordance with the law of nature and yet the word of the king alone cannot alter or repeal the law.

No Eminent Lawyer hath ever said that the two Arms of a Common-wealth are Force and Justice, the first whereof is in the King, the other deposited in the hands of the Parliament; but all Lawyers know, that they are equally deposited in the hands of the King, and that all justice is administered by him, and in his name: and all men acknowledge that all the Laws are his Laws; his consent and authority only giving the power and name of a Law, what concurrence, or formality soever hath contributed towards it; the question only is, whether he can repeal or vacate such a Law, without the same concurrence and formality. . . . For tho it be confess'd that those old Laws become new by this consent of his, the Laws of the Legislator, that is of that Sovereign who indulges the use of them; yet he cannot say that he can by his word vacate and repeal those Laws, and his own concession, without dissolving all the ligaments of Government, and without the violation of faith, which himself confesses to be against the Law of Nature.

(ibid.: 124–5)

Clarendon's view of the law then, is somewhat equivocal. He declares, like Filmer, that the word of the king is law but makes it clear that, unlike Filmer, he does not mean this literally. He supports a more constitutional form of lawmaking by the sovereign, with consultation of experts in the field, an acceptance of the need for consistency and obedience to the body of law that has already been established according to the traditions of the commonwealth.<sup>10</sup>

On the question of rights, Clarendon, like other royalists, was outraged by the argument that there was a universal right of self-preservation that entailed a right to resist the sovereign, (as I mentioned above). Clarendon

<sup>10</sup> This is a view closer to the sort of constitutionalism, rooted in common law, of legal thinkers such as Sir Mathew Hale and Sir Edward Coke, (see, for example Glenn Burgess, *Absolute Monarchy and the Stuart Constitution*, 1996).

thinks that Hobbes gives too much liberty to the subject on the one hand and too little on the other.

[T]ho he (Hobbes) be so cruel as to devest his Subjects of all that liberty, which the best and most peacable men desire to possess, yet he liberally and bountifully confers upon them such a liberty as no honest man can pretend to, and which is utterly inconsistent with the security of Prince and People; which unreasonable Indulgence of his, cannot but be thought to proceed from an unlawful affection to those who he saw had power enough to defend the transcendent wickedness they had committed, tho they were without an Advocate to make it lawful for them to do so, till he took that office upon him in his *Leviathan*. (Clarendon 1995: 234)

Here again, Clarendon is accusing Hobbes of supporting Cromwell, because of his advocacy of the right to self-defence against the King. In a series of publications in the early 1640s, members of the Tew Circle attacked the argument being made by parliamentarians such as Henry Parker, that the rights of self-preservation or self-defence could be applied to justify resistance to the sovereign. Dudley Digges argued in a pamphlet published posthumously in 1644, 'The Unlawfulness of Subjects Taking up Arms against their Sovereign', that the right to self-preservation was not a law but merely a right of nature which could be given up, just as all other natural rights could be given up. In language uncannily close to that of *Leviathan* (*Leviathan* 1968: 189), Digges says:

If we look back to the law of Nature, we shall finde that the people would have had a clearer and most distinct notion of it, if common use of calling it *Law* had not helped to confound their understanding, when it ought to have been named the *Right* of nature; for *Right* and *Law* differ as much as Liberty and Bonds: *Jus*, or right not laying any obligation, but signifying, we may equally choose to doe or not to doe without fault, wheras *Lex* or law determines us either to a particular performance by way of command, or a particular abstinence by way of prohibition; and therefore *jus naturae*, all the right of nature, which now we can innocently make use of, is that freedome, not which any law gives us, but which no law takes away, and laws are the severall restraints and limitations of native liberty. (Tuck 1993: 274)

Royalists such as Digges and others of this group are using an argument that can be found for example in Grotius, that individual rights such as the right to self-defence can and should be given up to the sovereign.

That private war may be lawful, so far as Natural law goes, I conceive is sufficiently apparent from what has been said above, when it was shewn, that for any one to repel injury, even by force, is not repugnant to Natural Law [Chap. II]. *But perhaps some may think that after judicial tribunals have been established, this is no longer lawful*: For though public tribunals do not proceed from nature, but from the act of men, yet equity and natural reason dictate to us that *we must conform to so laudable an institution; since it is much more decent and more conducive to tranquillity among men, that a matter should be decided by a disinterested judge, than that men, under the influence of self-love, should right themselves according to their notions of right*. (Grotius 1853, bk. I, ch. III (1)(2): 95, my emphasis)

The right to self-defence, as with all natural rights, is alienable and should be given up to the sovereign.

Clarendon and other moderate royalists ostensibly advocate a less extreme form of royalism than that of Filmer: the more absolutist stance on law, for example, is toned down by Clarendon to a hybrid of absolutism and constitutionalism. On the other hand, when it comes to sovereignty, equality and rights they are close to divine right theorists. Clarendon is antiegalitarian and says that sovereignty comes from God and Nature. He also argues against the notion of a right to self-defence against the king and

takes the general position that all (natural) rights should be given up to the sovereign.

#### MODERATE PARLIAMENTARIANS

The arguments used by the moderate parliamentarians in the 1640s were often not new in themselves but rather new expressions or applications of arguments that had been circulating in the 1620s and thirties and sometimes even earlier. The ideas of Sir Edward Coke, the former Attorney-General to Queen Elizabeth I and Lord Chief Justice to James I (father of Charles I) were taken up by the next generation and used to strengthen the case for Parliament against the King. Coke had written extensively on English law and particularly on English common law and the English constitution, as mentioned above. He posited a science of law that could decide questions regarding the powers of the king and the liberties of the subject (Sommerville 1992, Dow 1985, Burgess 1996). The common law itself was said to be immemorial and the result of the wisdom and experience of many generations of both subjects and monarchs.

English law, or the law of the land (*lex terrae*), was made up, in Coke's view, of three things: common law (which was also called common or general *custom*, or a law of reason); statute law; and (particular or local) custom . . . although it was not the only type of law that made up *lex terrae*, common law was, for Coke, the original and the archetype of law. It was the fundamental law of England, and consisted of unwritten immemorial customs. Statute law was essentially parasitic upon common law. (Burgess 1996: 166–7)

Custom was defined by Coke as 'a Law, or Right not written, which being established by long use, and the consent of our ancestors, hath beene, and is daily practised' (ibid.). (It is this view of the common law that Hobbes refers to with such contempt in *Leviathan*).

The view of the common law associated with Coke was frequently used by parliamentary writers to stress the pre-existence, in England, of a body of law in which were enshrined the rights of the people and the prerogatives of their sovereigns. England, they said, is a country ruled by an ancient law and if any particular sovereign violated the law or the rights enshrined in it, they would be breaking that law or overstepping their prerogative. This contrasts strongly with the view of law argued for by Filmer, discussed above, that the sovereign's command is law and the sovereign himself is above the law. Parliamentarians applied the idea that there were laws that a sovereign should not break or misapply, to justify, first, criticism of Charles I, in the hope of reform, and later, rebellion and civil war against the sovereign. On 20 January 1649 in the charges brought against Charles I, the King was described in the following way:

That the said Charles Stuart, being admitted king of England, and therein trusted with a limited power to govern by and according to the laws of the land, and not otherwise; and by his trust, oath and office being obliged to use the power committed to him for the good and benefit of the people, and for the preservation of their rights and liberties. (Blitzer 1963: 84–5)

Parliamentarians saw the King as subject to laws that were already in place before he was King. And, as we have seen, some moderate royalists such as Clarendon were also sympathetic to this view. This view of the law influences the view of sovereignty. If sovereignty is defined as by the absolutist Bodin, as the power to make law, then the king's sovereignty is seen by this group as being of a limited kind.

Philip Hunton, a moderate parliamentarian, published 'A Treatise of Monarchie' in 1643 (in reply to which Filmer wrote 'The Anarchy of a Limited or Mixed Monarchy'). Hunton argues that England was a mixed

monarchy, the theory that the country is governed by a combination of king, lords and commons (as mentioned above)<sup>11</sup>. According to Hunton, sovereignty lies in the combination of the three estates. The king has the power to make law, but only in conjunction with the legislative body of Parliament (Sanderson 1989<sup>12</sup>: 30–1, Dow 1985: 16–17) and he must rule according to the laws that have been made by the three estates. I conceive and am in my judgement persuaded, That *the sovereignty of our Kings is radically and fundamentally limited*, and not only in the use and exercise of it . . . it is radically limited; for as I showed before, every mixed Monarchy is limited . . . his sovereignty and our Subjection is legal, that is restrained by Law . . . The very Being of our Common and Statute Laws and our Kings acknowledging themselves bound to govern by them, doth prove and prescribe them limited; for those Laws are not of their sole composing, nor were they established by their sole authority, but by the concurrence of the other two Estates: so that to be confined to that which is not merely their own, is to be in a limited condition.

(Hunton 1643, Part II, Ch. 1: 31–2)

Henry Parker, a lawyer who was made secretary to the Commons in 1645, wrote a number of political pamphlets between 1640 and 1644, his most famous being his 'Observations upon some of his Majesties late Answers and Expresses' published in 1642. Parker locates sovereignty first in the people:

Power is originally inherent in the people, and it is nothing else but that might and vigour which such and such a society of men contains in itself, and when by such and such a law of common consent and agreement it is derived into such and such hands.

(Parker 1642: 1)

<sup>11</sup> The notion of the three estates had been introduced to England in the mid-sixteenth century, representing the classical idea of tripartite government of the one, the few and the many. There are two versions, one including the king, as above, and one excluding the king, with the three estates being bishops, lords temporal and commons. Although Charles said he supported the notion of the three estates in his answer to the Nineteen Propositions, we are justified in regarding this with scepticism. The writers of his reply, Falkland and Culpeper, committed the King to at least two propositions that were contrary to his real position. First, by naming the king one estate among three, he was damaging his claim to sovereignty. Second, by excluding the bishops, he strengthened the case of those who wanted to eliminate episcopacy. For a full discussion of the three estates, see Michael Mendle, *Dangerous Positions, Mixed government, the Estates of the Realm and the Making of the Answer to the xix propositions*, 1984.

<sup>12</sup> Sanderson refers to Herle and William Bridge to support the general point, 'As a respectable resistance, Parliamentary action was clearly distinguishable from a rebellion of mere *private* men. . . . Charles Herle was . . . insistent on this point: he did not hold that the private man may resist' (Sanderson 1989: 37).

The power of kings therefore, is derived from the people,

power is but secondary and derivative in Princes, the fountain and efficient cause is the people . . . And hence it appears that at the founding of Authorities, when the consent of societies conveys rule into such and such hands, it may ordaine what conditions and prefix what bounds it pleases, and that no dissolution ought to be thereof, but by the same power by which it had its constitution. (ibid.: 2)

The king's power comes from the people and is limited by law. If a king did fail to act in the interests of the people, then Parliament could act to restrain the king. Parliament could then act without the king, though the circumstances are restricted, that is, only if the king fails to act according to his duty. But under that circumstance, Parliament, it seems, becomes sovereign, at least temporarily. It has been argued that Parker was the 'first genuine theorist of parliamentary sovereignty' (Burgess 1996: 177), and if he was making Parliament sovereign in the sense of having the last word on the law, without appeal, then it could be said that he was moving beyond Coke (who put common law above everything), or even that he was arguing against Coke. 'When Coke wrote of the "absolute" authority of parliament he was not advancing a theory of "parliamentary sovereignty" . . . Coke thought of parliament as a sovereign court rather than a sovereign legislator' (ibid.: 180). In other words, for Coke it was the law itself that was sovereign rather than the body responsible for its enactment.

It is also worth noting that, according to Parker and other moderate parliamentarians like Hunton and Charles Herle, sovereignty originates in the people but is given or transferred to the people's representatives in Parliament. They did not take the more radical step of saying that any power is retained by the ordinary people outside Parliament. As Charles Herle puts it, 'The Parliament *is* the people's own consent, which once passed, they cannot revoke . . . We acknowledge no power can be employed but what is reserved and the people have reserved no power from themselves in Parliament' (Dow 1985: 18).

The arguments that the King's power and authority were limited by laws and a constitution and possibly by a claim to the sovereignty of Parliament, were common on the parliamentary side by the end of the Civil Wars. In January 1649, the Rump Parliament passed a resolution stating that 'the people are, under God, the original of all just power: and also . . . the Commons of England in Parliament assembled, being chosen by and representing the people, have the supreme power in this nation' (ibid.: 20).

The language of the moderate parliamentarians is peppered with references to the 'interests' and 'liberties' of the English people. But if the English people were held to be sovereign by these writers, it was only in an indirect sense, because it was Parliament that not only represented the people but *was* the people. For Parker, for example, it made no sense to suggest that Parliament could be acting against the interests of the people or could be called to account by them, because the power that had been given to Parliament could not be retracted by them (Sommerville 1992: 61). On equality, the difference between the moderate parliamentarians and their royalist counterparts could be said to consist not so much in the opposite view to the royalists; that there is *no natural hierarchy* but rather that the hierarchy should be extended downwards. They wanted the 'middling sort' of gentry, professionals and merchants who made up the Commons to be accepted as the representatives of the people. The ordinary people were not always able to represent themselves and so, according to the moderate parliamentarians, they should rely on their representatives. The following description of the Commons by Parker illustrates the point.

That Princes may not be now beyond all limits and Lawes, nor yet left to be tryed upon those limits and Lawes by any private parties, the whole community

in its underived Majesty shall convene to do justice, and that this convention may not be without intelligence, certaine times and places and formes shall be appointed for its regiment, and that the vastnese of its own bulke may not breed confusion: by vertue of election and representation: *a few shall act for many, the wise shall consent for the simple, the vertue of all shall redound to some, and the prudence of some shall redound to all.*

(Parker 1642: 15, my emphasis)

And in the Putney debates<sup>13</sup> Ireton makes it clear who the 'Independents' thought should be included in the franchise.

I think that no person hath a right to an interest or share in the disposing of the affairs of the kingdom, and in determining or choosing those that shall determine what laws we shall be ruled by here . . . that hath not a permanent fixed interest in this kingdom . . . that is, the persons in whom all land lies, and those in corporations in whom all trading lies.

(Blitzer 1963: 66–7)

<sup>13</sup> The Putney Debates were a series of meetings of the parliamentarian or New Model Army's General Council of Officers at Putney Church, in October and November 1647, after parliamentarian victory in the first Civil War (1642–6). They debated how the kingdom was to be settled and particularly discussed whether the franchise should be extended and if so to whom. The main groups opposing one another were the 'Independents' or 'Grande'es' and the representatives of the radicals in the army (for the most part the Levellers), who had been chosen by their regiments as 'Agitators'. These men had been so successful at radicalizing the troops that they refused to disband after the fighting was concluded.

Taking as their excuse the back pay that was owed to them, the soldiers refused to disband while negotiations for a permanent settlement were being conducted by the king, parliament and their officers. Fearing, quite rightly, that the relatively conservative, Presbyterian-dominated parliament wished to arrive at terms that would combine limited monarchy with the establishment of Presbyterian church government in England, the soldiers of the New Model [army] sought means of achieving the republican, Congregationalist regime for which they had fought . . . [t]he subject for discussion was the future constitution of England, the point of departure the two constitutional proposals that had been put forward during the summer: the *Heads of Proposals*, representing the views of the officers and *An Agreement of the People* written by the Levellers in the army.

(Blitzer 1963: 28)

On the question of rights, the moderate parliamentarians, such as Parker, defended the right to resist the king. Resistance was justified on the grounds that the king is limited by law and if he breaks the law he can be said to be attacking the people. The people then have the right to defend themselves against the king. Parker puts it in the following way:

we must not think that it can stand with the intent of any trust, that necessary defence should be barred, and natural preservation denied to any people; as no man will deny, but that the People may use means of defence, where Princes are more conditionate, and have a sovereignty more limited . . . it is not just nor possible for any nation to enslave itself, and to resign its own interest to the will of one Lord, as that that Lord may destroy it without injury, and yet have no right to preserve itself: For since all natural power is in those which obey, they which contract to obey to their own ruine, or having so contracted, they which esteeme such a contract before their owne preservation, are felonious to themselves and rebellious to nature.  
(Parker 1642: 8, 20)

Here Parker is going against the Grotian view mentioned above, that the right to self-defence must be given up to the sovereign.

The moderate parliamentarians argued for the right of self-defence to be retained against the king but in other cases such as that of the people retaining rights against Parliament they argued against the retaining of rights. We are left with a rather confusing picture regarding which rights must be given up to the sovereign and which rights may be retained by individuals. On sovereignty and law the moderate parliamentarians argued for a more constitutional form of monarchy in which the king is limited to some extent by established law and the judgements of Parliament. On equality, this group advocated a shift in the hierarchy so that more power is given to the 'middling sort', but they stopped short of any argument for real egalitarianism.

## RADICAL PARLIAMENTARIANS

### **The Levellers**

The Levellers took the ideas of the moderate parliamentarians a stage further and challenged not only the royalists but also many of the assumptions of the moderate parliamentarians. On equality for example, John Lilburne wrote in 1646 'All and every particular and individual man and woman, that ever breathed in the world, are by nature all equal and alike in their power, dignity, authority, dominion or magisterial power one over and above another' (Dow 1985: 37). This sort of radical egalitarianism was almost as unattractive to the moderates and 'Grande'es' of the New Model Army as it was to their royalist opponents.

Equally radical is the Leveller view of sovereignty, which is said to reside in the people, and through them in their representatives in Parliament. In 'London's liberty in chains discovered' Lilburne writes

. . . all lawful powers reside in the people, for whose good, welfare, and happiness, all government and just policies were ordained: and forasmuch as that government which is violent and forced, (not respecting the good of the people, but only the will of the commander) may be properly called Tyranny: (the people having in all well ordered and constituted common-wealths, reserved to themselves the right and free election of the greatest Ministers and Officers of State).  
(Lilburne 1646a: 2)

Sovereignty originates in the people and is to be transferred to Parliament, (specifically the Commons alone, not to a king even of limited power), by regular elections every two years, or even every year. And certain rights are to be retained by the people.



The natural rights to be reserved by the people include freedom of religion, freedom from being drafted into an army, and the right of all to be treated equally under the law. (The second of these rights is echoed by Hobbes in Chapter 21 of *Leviathan* and the third in Chapter 15 [*Leviathan* 1968: 269–70, 212]), Lilburne writes,

. . . though Kings or Parliaments may confirme unto the people their rights, freedoms and liberties; yet it lies not in their power to take them from them againe when they please; no *not at all*: because all betruſted powers are (as both Kings and Parliaments, and all other Magiſtrates whatſoever are,) & ought always to be, for the good of the Truſters, and not for their miſchief and hurt. (Lilburne 1646b, title page)

The contrast between the position of the Levellers and that of the moderates or ‘Independents’ on the question of sovereignty is clear in the following response by Cromwell to the Leveller document ‘An Agreement of the People’ when it was discussed at the Putney debates. ‘Truly this paper doth contain in it very great alterations of the very government of the kingdom, alterations from that government that it hath been under, I believe I may almost say, since it was a nation’ (Blitzer 1963: 49). He goes on to warn the Council of the Officers of the parliamentary army of the ‘confusion’ and ‘absolute desolation’ that may result from such radical changes. On the question of law, the Levellers appealed to the idea of ancient English laws as some of the moderates had done, but again, they took the argument further. The law is seen to come from the sovereign people, as Lilburne writes,

[t]he only and ſole legiſlative Law-making power is originally inherent in the people, and derivatively in their Commiſſions choſen by themſelves by common conſent and no other. In which the pooreſt that lives, hath as true a right to give a vote, as well as the richeſt and greateſt; and I ſay the people by themſelves, or their legal Commiſſions choſen by them for that end, may make a Law or Lawes to govern themſelves, and to rule, regulate and guide all their Magiſtrates (whatſoever) Officers, Miniſters, or Servants, and ought not in the leaſt to receive a Law from them, or any of them, whom they have ſet over themſelves, for no other end in the world, but for their better being, and meerly with Juſtice, equity, and righteousneſſe, to execute the Lawes that they made themſelves, and betruſted them with. (Lilburne 1646b: 4)

The Levellers argued that the laws protecting the freedom of the English people extended not only to Magna Carta and common law but also to those laws that had existed before the Norman Conquest, which event they said, marked the beginning of the oppression of the English people. The laws of the Anglo-Saxons before the invasion were said to be laws that protected their liberties and it was these lost freedoms that they wanted to recover (Wolfe 1967: 17–18, Dow 1985: 37–8, Sanderson 1989: 110). Dow describes their view by saying that the Norman Conquest:

represented the enslavement of a free English people and the repression of Anglo-Saxon representative institutions. They regarded the law itself as part of the Norman bondage, and despite appeals to Magna Carta and other enactments they believed the mainstream of the common law had been corrupted and that wide-ranging legal as well as political reform would be necessary to restore the lost rights and liberties of the people. (Dow 1985: 38)

The Levellers also appealed to natural law as a check on English laws. Lilburne, for example, defines the ‘fundamental Law of the Land’ as ‘the PERFECTION of reason, conſiſting of Lawfull and Reaſonable Cuſtomes, received and approved by the people. . . . But ſuch only as are agreeable to the law Eternall and Naturall’ (Wolfe 1967: 12). On ſpecific rights that remain with the people, the Levellers include the

right to change the government if it fails to protect the people, as well as those mentioned above. William Walwyn, writing in 1645, says ‘so ought the whole Nation to be free therein even to alter and change the publique forme, as may best stand with the safety and freedome of the people’ (ibid.: 6). On rights, the Levellers articulated a view of natural rights with the important difference from the moderates that some rights were said to be irrevocable or inalienable: the right to choose one’s religion, the right to be treated equally under the law, the right to choose not to fight a war, and the right to defend and preserve oneself. All these liberties are seen as natural rights of individuals that cannot be given up or transferred either to the king or to Parliament. The language of protection, the language of the royalists, is replaced by the language of oppression, as when Overton writes ‘Wee are resolv’d upon our Natural *Rights* and *Freedoms*, and to be enslaved to none, how Magnificent soever, with Rotten Titles of Honour’ (ibid.: 11). The natural rights of individuals are now seen as best protected when *retained* by individuals or *reclaimed* rather than, as the royalists would argue, when transferred or given up to a superior power which is seen to be more capable of protecting them than they are themselves. In the following passage Overton says this about authority, that it is:

alwayes in the hands of the *Betrusted* or of the *Betrustees*, while the *Betrusted* and *dischargers* of their *trust*, it remaineth in their hands, but no sooner the *Betrusted* betray and forfeit their *Trust*, but (as all things else in dissolution) it returneth from whence it came, even to the hands of the *Trustees*: For all iust *humaine powers* are but *betrusted*, confer’d and conveyed by ioynt and common consent, *for to every individual in nature, is given individuall propriety by nature, not to be invaded or userped by any . . . for every one as he is himselfe hath a selfe propriety, else could not be himselfe*, and on this no second may presume without consent; and by naturall birth, all men *are equall and alike borne to like propriety and freedome, every man by naturall instinct aiming at his own safety and weale . . .* Now as no man by nature may abuse, beat, torment or afflict himself, so by nature no man may give that power to another, seeing he may not doe it himselfe.

(Tuck 1979: 149)

The notion of inalienable natural rights stemming from a natural right over one’s own self has much in common with what Locke was to argue over forty years later and the argument that, just as a man may not destroy himself, he may not allow another to destroy him is similar to what Hobbes says in Chapter 14 of *Leviathan* (*Leviathan* 1968: 192).

### **The Diggers**

Even more radical than the Levellers, were the Diggers, who sought to take over the common lands and form a community that would live off the land, holding it and tilling it in common and sharing the proceeds with the poor and needy. Sometimes calling themselves ‘true levellers’, it is in the writings of Gerrard Winstanley that their philosophy is most clearly presented. He advocated a real ‘levelling’ of society where no honours or privileges would exist except those earned by merit, industry or age. Land and its produce were to be held in common, although houses and their contents would be owned and lived in by individual families. The fruits of the land were to be enjoyed by all (Winstanley 1973). As with the Levellers, the Norman Conquest is seen as the beginning of the people’s oppression. Winstanley says of the Normans, ‘when the Norman power had conquered our forefathers, he took the free use of our English ground from them, and made them his servants’ (ibid.: 275).

On sovereignty, Winstanley begins from what sounds like the patriarchal position of Filmer with Adam as the first ‘Governor’, but moves quickly to a democratic form of government.

The original root of magistracy is common preservation, and it rose up first in a private family: for suppose there were but one family in the world, as is

conceived, father Adam's family, wherein were many persons: Therein Adam was the first governor or officer.  
(ibid.: 314)

But, he says, this was by necessity and does not sanction despotic rule. 'All officers in a true magistracy of a commonwealth are to be chosen officers' (ibid.: 317). And these officers 'are to be chosen new ones every year' (ibid.: 319). Sovereignty truly resides in the people, as with the Levellers, but the form of parliamentary democracy suggested, is more radically democratic and more participatory than that put forward by the Levellers. On equality, the radical egalitarianism of the Diggers extends to the proposal that there should be no hereditary honours or privileges at all. They supported universal manhood suffrage and as all officers were to be newly elected yearly, there would be no class of governors or administrators. The exceptions to universal suffrage were those who had supported the king or his army or who 'are interested in the monarchical power and government' who are 'are neither to choose nor be chosen officers in the commonwealth'; and, rather curiously, another group deemed unworthy of holding office 'yet they may have a voice in the choosing', namely 'drunkards, quarrellers, fearful ignorant men, who dare not speak truth lest they anger other men; likewise all who are wholly given to pleasure and sports or men who are full of talk' (ibid.: 321).  
On law, Winstanley appeals to his own version of natural law to define 'Law in General' in the following way:

the true ancient law of God is a covenant of peace to whole mankind; this sets the earth free to all; this unites both Jew and Gentile into one brotherhood, and rejects none: this makes Christ's government whole again, and makes the kingdoms of the world to become commonwealths again. It is the inward power of right understanding, which is the true law that teaches people, in action as well as in words, to do as they would be done unto. [Particular laws should be] short and pithy [and] often read [so that the people know what they are and] he bare letter of the law established by act of Parliament shall be the rule for officer and people, and the chief judge of all actions.  
(ibid.: 377–9)

The natural rights endorsed by the Diggers were extended, from those proposed by the Levellers, to apply to common ownership of land and common ownership of its produce. (Or one could say that the natural right to private property was denied by the Diggers). Other freedoms such as liberty to choose a religion, free use of trading, and a liberty to satisfy 'lusts and greedy appetites' are said to be examples of the wrong kind: 'freedom under the will of a conqueror' (ibid.: 294); all these freedoms 'are freedoms: but they lead to bondage, and are not the true foundation-freedom which settles a commonwealth in peace. *True commonwealth's freedom lies in the free enjoyment of the earth.* True freedom lies where a man receives his nourishment and preservation, and that is in the use of the earth' (ibid.: 294–5).

## THE 'DE FACTO' THEORISTS

This group of thinkers, writing after the execution of Charles I, sought to justify allegiance to the new regime and to persuade those on *both* sides that it was now legitimate for them to support and obey the new government. Sometimes called the 'Engagement theorists' after the promise of obedience to the new government known as the 'Engagement' that was required of all adult males after January 1650, Quentin Skinner has argued that those who had certain arguments in common about the legitimacy of submitting to a 'de facto' government should be called 'de facto theorists'. He has also argued in the past that there is a strong case for placing Hobbes amongst these de facto theorists. More recently, however, in both his essay 'Liberty and Liberalism' (mentioned above) and in his fascinating book

*Reason and Rhetoric in the Philosophy of Hobbes*, he has argued that Hobbes had a strong allegiance to the royalists, referring for instance to Hobbes's 'dislike of Parliaments and his preference for the royalist cause' (Skinner 1996: 229).

The argument of the de facto theorists, simply put, is that allegiance is owed to whatever group or individual has demonstrated the power to keep the peace and protect the people. This defence of the new commonwealth after the Civil Wars 'concentrated on the government's practical ability, as a matter of fact, to maintain order and enforce obedience rather than on its moral right to do so' (Dow 1985: 22).

Although the scope of this 'theory' is not equal to those discussed above, it deserves mentioning, not least because Skinner was persuasive in arguing that some of Hobbes's writing, for example in the Review and Conclusion of *Leviathan*, seems to argue for a de facto theory of obedience.

*Conquest* (to define it) is the Acquiring of the Right of Sovereignty by Victory. Which Right, is acquired, in the peoples Submission, by which they contract with the Victor, promising Obedience, for Life and Liberty.

And thus I have brought to an end my Discourse of Civill and Ecclesiasticall Government, occasioned by the disorders of the present time, without partiality without other designe, than to set before mens eyes the mutuall Relation between Protection and Obedience; of which condition of Humane Nature, and the Laws Divine, (both Naturall and Positive) require an inviolable observation. (*Leviathan* 1968: 721,728)

According to the de facto theorists, sovereignty lies in whatever man or assembly has the power to govern and protect the people. This leaves open the question of whether the government should be monarchical, democratic or of some other form. So long as the government can provide security and is strong enough to govern, it can legitimately command the obedience of its citizens. The end of government is said by many de facto writers to be 'security' or 'protection' or 'peace'. Then any group or individual who can provide this has a legitimate claim to govern.

On the question of law, some de facto theorists claim that there can be legitimate submission to an unlawful government (Ascham 1649), while others try to show that even a usurping power might be considered lawful provided that it maintains 'the same law and equity which the excluded magistrates ought to have done, if they had succeeded' (Skinner 1972: 89). Also, as above, if 'the end of all law and government' is concerned with 'the need to preserve our persons and estates' then a de facto government can also make and enforce law.

On rights, Ascham argues that if government breaks down;

[o]ur generall rights surely are not yet all lost, though all the world be now trampled over, and impropriated in particular possessions and rights: there yet remains some common right, or naturall community among all men, even in impropriation; so that that which is necessary for any naturall subsistence and necessary to another belongs justly to mee, unless I have merited to lose the life which I seeke to preserve. (Ascham 1649, Part I, ch. IV: 12)

Believing himself to be arguing against Hobbes and Grotius, Ascham makes a plea for the retention of some natural rights:

Mr. *Hobbes* and H. *Grotius* are pleased to argue severall wayes for obliging people to one perpetuall and standing Allegiance. *Grotius* supposes such a fixed Allegiance in a people, because a particular man may give himself up to private servitude forever, as among the Jews and Romans. Mr. *Hobbes* supposes, that because a man cannot be protected from all civil injuries, unless all his rights be totally irrevocably given up to another, therefore the people are irrevocably and perpetually the Governors.

To these two arguments I answer, that what weight of reason Soever they may have at the beginning of a war, they signify nothing at the end of it. For both

of them suppose the ties made to those only who are in possession of us . . . such a total resignation of all right and reason, as Mr. *Hobbes* supposes, is one of our morall impossibilites . . . Out of which, and many other arguments, it is evident that our General and Original rights are not totally swallowed up either in the property of goods or in the possession of persons. (ibid. Part II, ch. XIII: 121–3)

Ascham was then able to argue that rather than being bound to a government that was no longer functioning, by a 'perpetuall and standing Allegiance'; instead, when government broke down, men retained some rights which would enable them to transfer their allegiance to a new de facto government.

## COMMENTARY ON TABLE

What is shown in the table cannot tell us whether Hobbes's theory is, in the end, one that supports royalism. It cannot tell us about his argument or his conclusions, nor can it demonstrate in a systematic or detailed way, what each faction argues. It only presents, in summary form, comments and/or positions held on each issue or concept, that are typical for that faction and that have been discussed in a little more detail in the preceding sections. What it does show, that I think is of some interest, is that on some issues that were the subject of much passionate debate at the time, Hobbes took up positions or assumptions that were directly opposed to those of the other royalists and very close to the pronouncements of the parliamentarians and even the radical parliamentarians. It becomes clear when the writings of the political factions are compared directly in this way that Hobbes, at least in *Leviathan*, is surprisingly close to the parliamentarians and even to the radical parliamentarians in what he says, for example, on the issues of equality and rights. Leaving aside the broader philosophical question of whether his theory as a whole could be said in any way to support the parliamentarian side, we can at least say that on the subjects of equality and rights and even to some extent on sovereignty, Hobbes allies himself to beliefs or assumptions such as the natural equality of men or the origin of sovereignty in the people, that were commonly used by non-royalists to support their arguments. The danger of 'borrowing' some of the assumptions used by the parliamentarians was that Hobbes could then be (mis)read as agreeing with them and possibly even supporting their cause. This was indeed what happened in the case of royalists like Clarendon and Bramhall. On the other hand if Hobbes was merely granting some of his opponents' assumptions to show that he could, even then, argue to royalist and absolutist conclusions, then his argument would be all the stronger for it. Of the four subjects I have chosen, it is only on the law that what Hobbes says is close to what other royalists argue. The law consists in what the sovereign commands, can be changed by the sovereign at will and the sovereign is above the law. On sovereignty, on the other hand, he starts with the assumption that the origin of sovereignty lies in the people. This was an

### Table 1

*Radical Moderate HOBBS Moderate Radical De Facto  
Royalists, Royalists Parliamentarians Parliamentarians Theorists  
Filmer*

*Sovereignty* Lies solely in the king. by whose agreement and the people, the people whatever  
Bestowed by God. (Filmer by God and sovereign (individual king and them in their assembly  
1991: 7). Nature or assembly). Parliament. representatives demonstrates  
(Clarendon 2 Sovereign power lasts 2 Limited by law. in Parliament, power to  
1676). only as long as the 3 If violated elected every secure peace  
sovereign provides peace by king then one or two and govern.  
and protection, unclear reverts to years  
however, whether or how Parliament. (Commons only).

it reverts to the people. 4 Mixed (Lilburne  
3 Sovereignty is undivided. between king, 1646: 2).  
Parliament, law  
and constitution.

Law 1 The word of The word of 1 The command of the 1 The common 1 The Ancient 1 The commands  
the king. the king in sovereign in accordance law and the Laws of of the de facto  
2 Tied only to accordance with the laws of nature. constitution England, pre- government.  
God and the with the law 2 The sovereign 'is not and the natural 1066 Magna 2 Some de facto  
law of nature. of nature. Subject to the Civill law. Carta, natural theorists say that  
3 Written laws Lawes' (*Leviathan* 1968: 2 The sovereign law and a usurping power  
may be repealed 313) and may change can make laws approved may be  
or suspended them. as long as they customs that do lawful provided  
by king without 3 'The Law of Nature do not violate not violate the that it maintains  
explanation. and the Civill Law, the above. law of nature. 'the same law and  
contain each other and 2 The law- equity which the  
are of equall extent'. making power. excluded.

**Table 1** continued

*Radical Moderate HOBBS Moderate Radical De Facto*  
*Royalists, Royalists Parliamentarians Parliamentarians Theorists*  
*Filmer*

(ibid: 314). originally in the magistrates ought  
people and to have done, if  
derivatively in they had  
Parliament. succeeded'

(Skinner 1972: 89).

*Equality* Equality is an 1 There is a 1 'Men by nature Equall' 1 Moderate 1 Radical 1 Power can  
'erroneous natural hierarchy (*Lev.* 1968: 183) The egalitarianism – egalitarianism – change hands  
principle' (Filmer (Clarendon differences between people The hierarchy to all men and but must always  
1991: 3). 1676: 182–3). are not so great that anyone be extended to women 'are by be obeyed.

2 It is 'not true' or any group has a special include the nature all equal 2 Rous adapts  
that 'nature claim to any benefit. 'middling sort' and alike in Romans 13 to  
hath made all 2 *Equity* – all should be of people. power, dignity, 'we must obey  
men equal in dealt with equally according 2 The ordinary authority, *whatever* powers  
the faculties of to the law of nature. people to be dominion or are in a position  
body and mind' 3 'The inequality that represented in magisterial power to command  
(ibid.: 26). now is, has bin introduced Parliament by (Lilburne 1646, obedience' for  
by the Lawes civill' those better *The Free Man's* anyone excelling

(ibid.: 211). qualified to *Freedom* in power must  
represent them. *Vindicated* in have received it  
'a few shall act Dow 1985: 37). from God (Dow  
for many, the 1985: 23).

wise shall consent

for the simple'

(Parker 1642: 15).

**Table 1** continued

*Radical Moderate HOBBS Moderate Radical De Facto*  
*Royalists, Royalists Parliamentarians Parliamentarians Theorists*  
*Filmer*

*Rights* 1 All natural All natural 1 Some natural rights to 1 Some natural 1 Some natural 1 Must give up  
rights to be rights to be be retained, some rights retained rights are as many natural  
given up to the given up to the inalienable. e.g. right to inalienable: rights as required  
king. king. 2 (a) Self-defence and self- self-defence (a) self-defence; for protection.

2 Rights to be preservation (even against even against (b) to be treated But  
preserved and the sovereign) are the king. equally under 2 Some rights to  
distributed by *inalienable*; 2 No rights the law; be retained, e.g.

the king (b) not to incriminate retained by the (c) to change the self-defence, so  
(Filmer 1991: oneself; people from form of that allegiance can

55, 195). (c) not to execute a parliament government if it be switched to  
dangerous/dishonor-able (Herle, in Dow, fails to protect new government

office or fight in a war 1985: 18). the people; 'Our General and  
unless required for the (d) to choose Original rights are

defence of the religion. not totally

commonwealth; swallowed up'

(d) to appeal to the law and (Ascham 1649:

be treated with equity; 123).

(e) to any act not prohibited by law (*Leviathan*, 1968, (21))

assumption used by parliamentarians against absolutism and criticized by royalists for having disastrous consequences. Filmer, for example, argues that the opinion that the people may choose their government led to the 'perilous conclusion, [which is] that the people or multitude have power to punish or deprive the prince if he transgress the laws of the kingdom' (Filmer 1991: 3). Clarendon declares that it 'has been always held as a manifest and undeniable Argument, that sovereigns never had, nor can have their Power from the people' (Clarendon 1676: 41). Here, perhaps we have an example of the dangers of reading too much into Hobbes's borrowing of parliamentary assumptions. Filmer's 'perilous conclusion' would clearly not be accepted by Hobbes, as is demonstrated by what he says on the law.

What Hobbes has to say about natural equality, is fundamentally opposed to the consensus of opinion on the royalist side. Indeed, Hobbes's view that despite some differences in ability, all men are roughly equal and should be treated equally, seems even more radical than the moderate parliamentary position. The notion of natural equality is of course an ancient one and was taken up by the parliamentarians to advance their cause. Hobbes directs some sneering remarks against an ancient opponent of the notion of natural equality when he attacks Aristotle:

The inequality that now is, has bin introduced by the Lawes civill. I know that *Aristotle* in the first booke of his *Politiques*, for a foundation of his doctrine, maketh men by Nature, some more worthy to Command, meaning the wiser sort (such as he thought himselfe to be for his Philosophy; ) others to Serve, (meaning those that had strong bodies, but were not philosophers as he; ) as if Master and Servant were not introduced by consent of men, but by difference of Wit: which is not only against reason; but also against experience. For there are very few so foolish, that had not rather governe themselves, than be governed by others.  
(*Leviathan* 1968: 211)

In the *Elements of Law* after a similar passage criticizing Aristotle, Hobbes says that as long as we consider some men more worthy by nature than others to rule '[w]hich foundation hath not only weakened the whole frame of his politics but hath also given men colour and pretences, whereby to disturb and hinder the peace of one another' (Hobbes 1994: 93), we will not be able to live in peace. He concludes that 'we are to suppose, that for peace sake, nature hath ordained this law, *That every man acknowledge other for his equal*. And the breach of this law, is that we call PRIDE' (ibid.) As Sanderson says 'The equality of men is . . . a vital assumption of the Hobbesian theory of politics' (Sanderson 1989: 88). Whether Hobbes favoured the introduction of measures such as extending the franchise, as the Levellers and Diggers did, in order to bring about a greater political equality in seventeenth-century England, is another question and will not be addressed here. What does seem clear is that in contrast to most royalists, Hobbes is committed to the notion that men should be treated as equals.

His belief that the suitability of one individual or group to rule over others is a man-made fiction rather than a divinely-ordained truth, puts Hobbes outside conventional royalist thinking. It may also have repercussions for his analysis of sovereignty. A sovereign who rules by right, ordained by God, as part of a natural process of authority, passed down from generation to generation, has no need of extra justification and his right to rule is beyond question. Presumably only God could take away the right. Hobbes's stipulation, therefore, that a sovereign's right to rule lasts only as long as he is able to protect his subjects must have had a false ring for anyone who believed that the monarch's right to rule comes from God and that he is its only rightful bearer.

Perhaps the most interesting of the comparisons on the table is the comparison on natural rights. Both the Filmerian royalist and the more moderate royalist say quite clearly that all natural rights (including the rights to self-defence and self-preservation) are alienable and all are given up to the king. This is also what Grotius says. The parliamentarians, on the other hand, say that some rights must be retained by individuals and both the moderates and the radicals agree that the right to self-defence, even against the king, must be retained. The radicals go further saying that several rights must be retained, including a right to rebellion and a right to be treated equally under the law. Some de facto theorists such as Ascham also suggest that some rights should be retained.

What Hobbes says about rights, when compared to these groups of thinkers, is closer to the parliamentarians than to the royalists. Hobbes says that some natural rights can be retained and not given up to the sovereign, and of these some *must* be retained. The rights to self-defence and self-preservation are inalienable, they *cannot* be given up to the sovereign. This point distinguishes him from the royalists who are in agreement that all rights must be given up to the sovereign.<sup>14</sup> This is a point of close similarity in both language and substance between Hobbes and the parliamentary writers. Even some of the more radical proposals of the Levellers and Diggers such as the argument that there is a right not to take up arms, have their echoes in Hobbes. In Chapter 21 of *Leviathan* Hobbes says that we have a right not to fight unless the 'Defence of the Common-wealth, requireth at once the help of all that are able to bear Arms' (*Leviathan* 1968: 270). There has been much ink spilt by Hobbes scholars in explaining how to square what he says about retaining the rights to self-defence and self-preservation with his (alleged) absolutism. I will not contribute to that discussion here but just wish to draw attention to some of what Hobbes says

<sup>14</sup> And as Curley points out, the rights that Hobbes says must be retained may make the liberty of the subject 'very great indeed' and show that writers like Bramhall 'had some reason to accuse Hobbes of having written 'a rebel's catechism' (Hobbes 1994a: xxxviii).



on natural rights in the context of what his contemporaries were saying and using in their defence of the royalist and parliamentary causes.

There are other statements that Hobbes makes, however, for example on property rights, or rather the lack of property rights, of subjects, that seem to put him firmly on the side of the most extreme royalists and absolutists. The subjects hold no property rights at all against the sovereign. Once again this poses a problem for the categorization of his theory.

## CONCLUSION

It has not been my intention to argue that Hobbes was not a royalist. It is extremely unlikely that he did not see himself as loyal to both Charles I and Charles II. That in general terms he had a much higher opinion of monarchy than of democracy also seems to be clear and there are other important tenets of royalist thought that Hobbes fully supported in his writing; the sovereign is not party to a contract with the people which he can then be said to have broken; the people do not hold property rights against the sovereign and the king is the only true representative of the people. Where I would argue that Hobbes scholarship sometimes fails to do justice to the complexity of Hobbes's political theory, however, is in its tendency to categorize the theory as conventionally royalist or royalist in a way so straightforward that no further explanation is required. Whatever else the theory is, it is not *conventionally* royalist even though it supports some radically royalist ideas. And even if its conclusions are also conducive to royalism they are reached by way of some assumptions that were anathema to other royalists and to royalist thought at the time.

What I have tried to do is to put Hobbes's political writing on certain specific issues, into the particular context of the writings of political thinkers and propagandists of the pre-Civil War and Civil War years. By directly comparing what Hobbes says on specific political subjects with what the royalists, the parliamentarians and the de facto theorists say, we are able to see, what must have been obvious to his contemporaries, that although he associated with and worked for leading royalists, and was generally seen as writing in defence of the royalist cause; his writing contains some surprising similarities to the writings of the parliamentarians and this despite its apparently absolutist themes. Some of what he says is even close to the pronouncements of the Levellers and the Diggers. The suggestion that Hobbes might have been influenced by some of the pro-parliamentary writers of this period is not new of course; it was made in Hobbes's own time by people like Clarendon and Bramhall and was first made to me by B. H. Baumrin. But the tendency of some modern Hobbes scholars to ignore the strange mixing together of elements from opposing arguments, contributes to an oversimplification of the theory and of the assumptions made about Hobbes's own political beliefs. It is quite difficult, for example, to reconcile a belief in the natural equality of men and the inalienability of the natural rights of self-defence and self-preservation, with the belief in the absolute power of an undivided sovereign, whose word is the law and who is, himself, above the law. It could be argued that Hobbes did not really believe in the natural equality of men or the inalienability of some natural rights, but was merely using these 'parliamentarian' assumptions on the way to his royalist, absolutist conclusions. It is not possible, however, to discover with any certainty whether Hobbes believed some of the assumptions he used in his argument and not others. A more useful question therefore, might be whether, in his writing, he commits himself to any assumptions or principles, such as equality, which limit the outcome of his argument.

If, for example, Filmer had committed himself to the principle of the natural equality of men, could he then have argued for divine right theory or would his admission of that principle rule out a required assumption of

divine right theory, namely that some people have a right to rule that is bestowed by God. Similarly, if Hobbes commits himself to the inalienability of the right to defend and preserve ourselves, can he argue for an absolutism so complete that it rules out all justified resistance on the part of the subjects? Or has he thereby weakened the argument for absolutism? And if he has weakened the argument for absolutism, are we justified in saying that he was a 'political theorist committed to the cause of the king' (Martinich 1999: 121).

At least one contemporary royalist thought that some of the principles Hobbes commits himself to in *Leviathan* are inevitably destructive to the royalist cause. In Clarendon's words there are 'the most mischievous principles, and most destructive to the Peace both of Church and State, which are scattered throughout that book of *Leviathan*' (Clarendon 1676: 5).  
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## REFERENCES

Ascham, A. (1649) *Of the Confusions and Revolutions of Governments. Wherein is examined, How farre a man may lawfully conforme to the Powers and Commands of those who with various successes hold kingdoms divided by Civil or Foreign Wars*, London.

Bernstein, E. (1963) *Cromwell and Communism, Socialism and Democracy in the Great English Revolution*, New York: Schocken Books.

Blitzer, C. (ed.) (1963) *The Commonwealth of England, 1641–1660, Documents of the English Civil Wars, The Commonwealth and Protectorate*, New York: Capricorn Books.

Bramhall, J. (1658) *The Catching of Leviathan* (London) in Rogers (ed.) (1995) *Leviathan, Contemporary Responses to the Political Theory of Thomas Hobbes*, Bristol: Thoemmes Press.

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Burgess, G. (1996) *Absolute Monarchy and the Stuart Constitution*, New Haven, London: Yale University Press.

Earl of Clarendon (1676) *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State in Mr. Hobbes's Book, entitled Leviathan*, Oxford.

Earl of Clarendon, in Rogers (ed.) (1995) *Leviathan, Contemporary Responses to the Political Theory of Thomas Hobbes*, Bristol: Thoemmes Press.

Dow, F. D. (1985) *Radicalism in the English Revolution 1640–1660*, Oxford: Basil Blackwell Ltd.

Filmer, R. *Patriarcha, The Natural Power of Kinges Defended against the unnatural Liberty of the People. By Arguments, Theological, Rational, Historical, Legall*, in J. P. Sommerville (ed.), (1991) *Sir Robert Filmer, Patriarcha and Other Writings*, (1995) Cambridge: Cambridge University Press.

— *Observations on Mr. Hobbes's Leviathan*, in Rogers (ed.) (1995). Bristol: Thoemmes Press.

Hampton, J. (1986) *Hobbes and the Social Contract Tradition*, Cambridge: Cambridge University Press.

Hill, C. (1958) *Puritanism and Revolution, Studies in Interpretation of the English Revolution of the Seventeenth Century*, London: Secker & Warburg Ltd.

— (ed.) (1983) *Winstanley: the Law of Freedom and Other Writings*, Cambridge: Cambridge University Press, (originally published: (1973) Harmondsworth, Penguin.

Hobbes, T. *Considerations upon the Reputation, Loyalty, Manners and Religion of Thomas Hobbes*, Sir W. Molesworth (ed.) (*The English Works of Thomas Hobbes*, 11 vols.) EW4: 409–40 (London, 1839–45).

— (1968) *Leviathan*, C. B. Macpherson (ed.), London: Penguin Books.

— (1994a) *Leviathan*, Edwin Curley (ed.), Indianapolis: Hackett Publishing Company Inc.

— (1994b) *Human Nature and De Corpore Politico* (The Elements of Law Natural and Political) J. C. A. Gaskin (ed.) Oxford: Oxford University Press.

Hunton, P. (1643) *A Treatise of Monarchy: Containing Two Parts. I. Concerning Monarchy in General. Part II. Concerning this Particular Monarchy*, London.

Lilburne, J. (1646) *Liberty Vindicated against Slavery*, London.

— (1646a) *Londons Liberty in Chains Discovered*, London.

— (1646b) *The Charters of London, or, The Second Part of Londons Liberty in*

- Chains Discovered*, London.
- Malcolm, N. (ed.) (1994) *Thomas Hobbes, The Correspondence Vols. I and II*, Oxford: Oxford University Press.
- Martinich, A. P. (1995) *A Hobbes Dictionary*, Oxford: Blackwell Publishers Ltd.
- Mendle, M. (1984) *Dangerous Positions: Mixed Government, the Estates of the Realm, and the Making of the Answer to the xix Propositions*, Alabama: University of Alabama Press.
- Parker, H. (1642) *Observations upon some of his Majesties late Answers and Expresses*, London Tracts Vol. X.
- Rogers, G. A. J. (ed.) (1995) *Leviathan Contemporary Responses to the Political Theory of Thomas Hobbes*, Bristol: Thoemmes Press.
- Sanderson, J. (1989) *But the People's Creatures, the Philosophical Basis of the English Civil War*, Manchester: Manchester University Press.
- Shaw, H. (1968) *The Levellers*, New York: Harper and Row.
- HOBBS: A VERY PECULIAR ROYALIST 207
- Skinner, Q. (1965) 'Hobbes on Sovereignty an Unknown Discussion', in *Political Studies* (13): 213–18.
- (1972) (ed.) G.E. Aylmer *Conquest and Consent: Thomas Hobbes and the Engagement Controversy, The Interregnum: The Quest for Settlement, 1646–1660*, London: Macmillan.
- (1996) *Reason and Rhetoric in the Philosophy of Hobbes*, Cambridge: Cambridge University Press.
- (1998) *Liberty Before Liberalism*, Cambridge University Press: Cambridge.
- Smith, D. (1994) *Constitutional Royalism and the Search for Settlement 1640–1649*, Cambridge: Cambridge University Press.
- Sommerville, J. P. (1992) *Thomas Hobbes: Political Ideas in Historical Context*, New York: St. Martin's Press, Inc.
- Sorell, T. (ed.) (1996) *The Cambridge Companion to Hobbes*, Cambridge: Cambridge University Press.
- Strauss, L. (1988) *Persecution and the Art of Writing*, Chicago: University of Chicago Press.
- Tuck, R. (1979) *Natural Rights Theories, Their Origin and Development*, Cambridge: Cambridge University Press.
- (1993) *Philosophy and Government 1572–1651*, Cambridge: Cambridge University Press.
- Winstanley, G. (1973) *The law of freedom in a platform: or, True magistracy restored*, R. W. Kenny (ed.) New York: Schocken Books (reprinted from *The Works of Gerrard Winstanley* (1941) G. H. Sabine (ed.) with new intro.
- Wolfe, D. M. (1967) *Leveller Manifestoes of the Puritan Revolution*, New York: Humanities Press.