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**'They themselves will be the Judges what commands are
lawfull': Legal pamphlets and political mobilisation in the
early 1640s**

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ABSTRACT

This thesis examines the pamphlets which defended Parliament's resistance against the King in the first English civil war (1642–1646), and the development of Parliament's legal case in response to the pressures of mobilisation, ideas and events. The civil war was explained, narrated and defended in cheap print, which was consumed by the reading public who were hungry for news, ideas and justifications. Increasingly, pamphlets used the device of an implied reader to construct obedience and solve the political problems thrown up by the debate, but this unprecedented opening-up of legal issues to public debate further complicated the parliamentary cause.

The thesis also integrates the printers and publishers who facilitated this public debate into its account of legal, political and religious ideas. By using typographic and bibliographic techniques, the thesis suggests that printers and publishers held coherent political and religious identities, and could exert influence over not only the pamphlets they produced, but increasingly the way that the parliamentary cause was understood.

As the concept of allegiance becomes more problematic, and as histories of the civil war focus more on the concept of mobilisation and the construction of the parliamentary cause, this thesis argues that closer contextualisation and a chronological examination of the debate elucidates in greater detail the complexities and complications of the parliamentary position. By tracing the way that Parliament's case developed throughout the conflict and the ways in which their justification had to flex to accommodate new ideas and events, this thesis examines the legitimising frameworks that pamphlet authors used to explain the civil war, which through the course of the conflict became increasingly contested and destabilised under the weight of the polemical pamphlets themselves.

The collapse of these legitimising frameworks, combined with a partisan press willing to intervene in the debate and a jury of readers willing to bring their own legal understandings to the issues of the day, left the parliamentary cause fractured and ultimately created a political environment where settlement could not be achieved.

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ABBREVIATIONS AND CONVENTIONS

| | |
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| <i>CJ</i> | Journal of the House of Commons |
| <i>CSP Ven</i> | <i>Calendar of State Papers Relating to English Affairs in the Archives of Venice</i> , ed. Allen B. Hinds (1925). |
| <i>EEBO</i> | Early English Books Online |
| <i>ESTC</i> | English Short Title Catalogue |
| <i>LJ</i> | Journal of the House of Lords |
| <i>ODNB</i> | <i>Oxford Dictionary of National Biography</i> |

NOTE ON DATES AND TRANSCRIPTIONS

Dates are given in old style, but with the new year taken to be on 1 January. While original spelling and grammar have normally been preserved in quotations, they have been updated to clarify meaning if necessary. All seventeenth-century works in the footnotes and the bibliography either have the Thomason Tract reference or the Wing reference when first used, along with a shortened title. The first reference to seventeenth-century works also include, if available, the 'Thomason date' in square brackets. These dates, written by George Thomason on the title page of his works, do not necessarily denote the day of publication, as Thomason may have also written it according to the day of acquisition or cataloguing. If this is not available, the 'Fortescue date' is used and is denoted by the prefix 'FD:'. This relies on the dates given in G.K. Fortescue, *Catalogue of the pamphlets, books, newspapers, and manuscripts relating to the Civil War, the Commonwealth and the Restoration, collected by George Thomason, 1640-1661* (1908). While the 'Fortescue date' can be a good guide to chronology when there is no 'Thomason date', occasionally Fortescue ordered the works according to events that the works describe, rather than following Thomason's ordering, and so again should not be considered to be an absolutely accurate date.

INTRODUCTION

In September 1642 Peter Bland, a young lawyer from Grays Inn, composed a pamphlet to ‘convince others more ignorant’ that no act ‘yet done’ by Parliament was illegal, but rather that their actions had been necessary and just. In the pamphlet he appealed to common, statutory and natural law, and concluded that ‘if the King forsake’ the Parliament, and ‘deny to passe those Bills they bring him for the good of the Kingdome’, then ‘necessity enables, nay commands them [the Parliament] to doe it without him’.¹ His contradictory and at times inflammatory pamphlet began a short publishing career of only eight pamphlets over six months, yet offered his readers a glimpse into the way that the law worked. Through his writing, Bland invited the public to engage with and learn about the law, and summarised precedents and cases that were otherwise inaccessible to them. He also demonstrated how counterarguments might be made against his arguments, and showed where the ‘fallacie’ and ‘mistake’ lay in those counterarguments.² It was, in short, a whistle-stop tour of legal argument; a manual on how to defend Parliament and its actions that offered the reader a tantalising taster of legal rhetoric. Bland’s writing and style of argument, however, was lacking in finesse – he had quickly got himself in hot water by attempting to demonstrate that a Parliament could overrule the King through examples of depositions and regicides. A few weeks after his first pamphlet, he had to publish – at his own cost – a redaction that blamed a missing leaf at the printers to distance himself from the perception that he had declared that it was lawful for the Parliament to depose the King.

Bland then turned his legal argument to focus on the way that hereditary powers were inherited.³ His prefatory writings in his first few pamphlets revealed his motivation for

¹ Peter Bland, *Resolved upon the question: Or A question resolved concerning the right which the King hath to Hull, or any other fort or place of strength for the defence of the kingdome. VVherein is likewise proved, that neither the setting of the militia as tis done by the Parliament, nor the keeping of Hull by Sir Iohn Hotham, nor any other act that the Parliament have yet done is illegall, but necessary, just, and according to that power which the law hath given them* (Printed for Matthew Walbancke, [29 September] 1642) E.119[4], pp. 15-6.

² *Ibid.*, p. 9.

³ Peter Bland, *A royall position, whereby 'tis proved, that 'tis against the common laws of England to depose a king: or, An addition to a book, intituled, Resolved upon the question: or, A question resolved concerning the right which the King hath to Hull, or any other fort of place of strength for the defence of the kingdom* (Printed for John Field, 1642) Wing B3163.

going to press – he wrote not to suggest that ‘Parliament knew not Law sufficient to iustifie their own actions, but to destroy their wonder whom he hath heard admire that the Parliament did not prove their own actions by visible Law, as well as disprove the Kings’.⁴ Bland assumed that ‘time and greater engagements will not permit [Parliament] to shew every private man the publicke necessities’, so he joined a growing number of parliamentary writers who aimed to do just that.⁵ He (and others like him) wrote to resolve for his reader that Parliament was acting legally, and would often stress that the responsibility lay with the reader to catch up with Parliament’s argument, rather than with the Parliament to make their argument clearer. His writings shine a light on a number of hitherto under-explored aspects of the civil war: the way that legal and constitutional argument was used in the partisan pamphlets; the way in which pamphlets offered the reader a glimpse of the complexity of the law and expected them to understand it; and how the reader was expected or even obliged to follow these debates. Bland’s writings suggest a relationship between the mechanics of political pamphlet debate, and the arguments that the pamphlets were making, as well as a relationship between the way that the law was written, and the audience that it was intended for.

This thesis is an investigation into the methods, limitations and consequences of the efforts of the parliamentary writers who tried to defend Parliament in their resistance against the King. By examining political pamphlets printed within the first English civil war, from 1642 to 1646, this thesis responds to the recent lack of examination of legal and constitutional argument from the early 1640s. In doing so, it works towards setting out not just an account of the political debate, but also an account of how political debate worked in such a turbulent period.

This thesis also responds to the recent transformation in the understanding of allegiance and political thought; both have undergone refashioning, which has led to a need for a greater degree of political contextualisation above and beyond the scope of conventional studies of political thought during the civil war. Political conversations describing events, justifying measures and mobilising the reading public took place not just in extra-ordinary works, but in ephemeral pamphlets, too.

⁴ Bland, *Resolved upon the question*, p. 4.

⁵ *Ibid.*

Analysis of the political debate through these ephemeral pamphlets reveals three interconnected themes. The first is the changing relationship between an implied reader constructed by the political pamphlets and the argument presented in them, and the parameters of the acceptable role that the implied reader could play within the parliamentary case. The second explores the relationship between legal theory and politics in a period when the inconsistencies and contradictions of the law coincided with unprecedented public debate and scrutiny of politics within Parliament itself. The third theme is the relationship between those that made pamphlets – the printers, booksellers, and publishers – and the arguments that their output made. By considering the interplay between the role of the implied reader, the open and sustained debate of intellectual issues in public forums, and the sociological and political processes by which these debates became public, the analysis helps to shine light on the pressures faced by those that wrote, made and read the pamphlets that tried to make sense of the first English civil war.

I. REVISIONISM, POST-REVISIONISM AND THE FLUCTUATING MARKERS OF ALLEGIANCE

Over the last 40 years, the historiography of allegiance has been transformed. The ‘Whig’ and the ‘Marxist’ tradition, which emphasised either the larger constitutional and structural problems of the state or a bourgeois revolution that was driven by social upheaval, have been discarded as determinist and teleological.⁶ Revisionism revolted against these ‘materialist or determinist histories and historiographies’,⁷ and instead historians such as John Morrill looked towards religious factors as being key in determining how a certain side was chosen.⁸ Throughout the second half of the 20th century, historians have been fascinated with the question of what made people fight for a certain side, and for some this has led to re-examination of the localities. For example, David Underdown has argued that those localities who favoured popular royalism were normally arable and conservative, and those who supported popular parliamentarianism

⁶ For a clear and concise summary, see Keith Thomas, ‘When the Lid Came Off England’, *The New York Review of Books*, 51 (2004), pp. 47-8.

⁷ John Morrill, ‘Revisionism’s Wounded Legacies’, *Huntington Library Quarterly*, 78 (2015), p. 577.

⁸ John Morrill, ‘The Religious Context of the English Civil War’, *Transactions of the Royal Historical Society*, 34 (1984), p. 178.

were mainly from the woodlands and the uplands, and driven to reform. Such studies found that allegiance could be related to pre-existing social, political and cultural forces.⁹

Increasingly, however, historians have argued that these accounts rely too much on a fixed understanding of allegiance that does not accurately reflect the experience of war.¹⁰ In recent scholarship, the participants of the conflict have become less binary, and words such as 'factionalism' and 'coalition' have become much more prominent in the accounts of parliamentary politics.¹¹ Historians no longer see allegiance as a rational choice between two sides that remained constant throughout the conflict, and recognise that to fight for the Parliament in March 1642 and in July 1646 was to fight for two very different ideologies. Morrill has highlighted the series of challenges that contemporaries faced – whether to act under the Militia Ordinance or the Commissions of Array, to obey orders from those who had, to pay loans, and so on – and called it 'a continuous stream of options'.¹² Allegiance as a concept is now much more complex and, as Jason McElligott and David Smith have recently argued, is not a 'fixed, unchanging and unchangeable entity'.¹³

Furthermore, some historians have contested a too simplistic notion of allegiance, and have suggested that an individual might be shown to have different allegiances displayed separately through external actions and internal beliefs. Rachel Weil has argued that the 'idea that allegiance existed in a person's "heart of hearts" may be anachronistic with

⁹ David Underdown, *Revel, Riot, and Rebellion: Popular Politics and Culture in England 1603-1660* (Oxford, 1985). See also Mark Stoyle, *Loyalty and Locality: Popular Allegiance in Devon During the English Civil War* (Exeter, 1994), who focuses on Devon and has applied Underdown's thesis there. For a recent examination of Underdown's work, see Ann Hughes, 'The 'Chalk' and the 'Cheese': David Underdown, Regional Cultures and Popular Allegiance in the English Revolution', *History Compass*, 11 (2013).

¹⁰ On this, see Ian Gentles, *The English Revolution and the Wars in the Three Kingdoms, 1638-1652* (Harlow, 2007), pp. 140-4; Andrew James Hopper, *Turncoats and Renegades: Changing Sides During the English Civil Wars* (Oxford, 2012), pp. 2-6.

¹¹ See, for example, John Adamson, 'The Baronial Context of the English Civil War', *Transactions of the Royal Historical Society*, 40 (1990); John Adamson, 'The English Nobility and the Projected Settlement of 1647', *Historical Journal*, 30 (1987); Jason Peacey, 'John Lilburne and the Long Parliament', *Historical Journal*, 43 (2000), p. 630; Rachel Foxley, 'Varieties of Parliamentarianism', in Michael J. Braddick (ed.), *The Oxford Handbook of the English Revolution* (Oxford, 2015), p. 414.

¹² John Morrill, *The Nature of the English Revolution* (London, 1993), p. 188.

¹³ Jason McElligott and David L. Smith, 'Introduction: Rethinking Royalists and Royalism During the Interregnum', in Jason McElligott and David L. Smith (eds), *Royalists and Royalism During the Interregnum* (Manchester, 2010), p. 15.

respect to early modern mentalities', and that instead allegiance should refer to external actions.¹⁴ Weil suggests that we should embrace the examination of external actions, rather than becoming obsessed with the uncovering of a 'purely internal and purely political belief', bereft of 'external perception, malicious accusation, financial circumstance, and bureaucratic procedure'.¹⁵ The suggestion took as inspiration work by Ann Hughes in the 1980s which argued that the Warwickshire Indemnity Committee 'encouraged and helped construct political division', and that circumstantial conditions forced people to act in certain ways by making them choose between polarised markers of allegiance.¹⁶ More recently, Hughes has argued that contemporaries acknowledged it 'was painfully obvious that political obligation was not natural or innate, but a matter to be negotiated and constructed'.¹⁷ A historian is now required to examine the circumstances of the events that forced the historical actor to make a decision in order to understand what that decision might signify, meaning that there is a need for study of particular campaigns and the polarised markers of allegiance that were constructed either by institutions or, increasingly throughout the civil war, print.

In the wake of these criticisms, Michael Braddick has suggested using the concept of mobilisation – the 'influenc[ing] or bypass[ing of] the formal institution of government through appeal to opinion outside them' – rather than a notion of fixed allegiance in examinations of historical actors.¹⁸ Braddick writes that those involved in attempts to mobilise through printed pamphlets 'competed for control of standard languages and metaphors', corroding the 'authority and legitimacy of the formal institutions of government', but also prompting intellectual creativity and wider distribution of arguments and ideas.¹⁹ Print could generalise incidents and give them national

¹⁴ Rachel Weil, 'Thinking About Allegiance in the English Civil War', *History Workshop Journal*, 61 (2006), p. 184.

¹⁵ *Ibid.*, p. 190.

¹⁶ Ann Hughes, 'Parliamentary Tyranny? Indemnity Proceedings and the Impact of the Civil War: A Case Study from Warwickshire', *Midland History*, 11 (1986), p. 69.

¹⁷ Ann Hughes, *Gender and the English Revolution* (Abingdon, 2011), p. 92.

¹⁸ Michael J. Braddick, 'Mobilisation, Anxiety and Creativity in England During the 1640s', in John Morrow and Jonathan Scott (eds), *Liberty, Authority, Formality: Political Ideas and Culture, 1600-1900: Essays in Honour of Colin Davis* (Exeter, 2008), p. 175. For an application, see Michael J. Braddick, *God's Fury, England's Fire: A New History of the English Civil Wars* (London, 2008).

¹⁹ Braddick, 'Mobilisation', p. 176.

consequences, but it could also, when challenged, lead to escalation of ideas.²⁰ Print had to explain what was happening, what it meant, and who to believe, and could lead to the possibility of multiple mobilisations within both royalist and parliamentary coalitions.²¹ In short, the concept of mobilisation allows a historian to examine how people reacted to specific developments as they happened without pigeonholing the actor into a binary category, or needing to find a political or religious coherence in their beliefs.

The concept of mobilisation allows a historian to focus not on attempting to understand what people thought, but rather investigating how they responded to certain situations. Political ideas are to be considered in tandem with the political events that prompted them, ensuring a clear emphasis on an individual's choices. Focusing on responses to particular problems, rather than fixed markers of allegiance, allows us to examine the process by which decisions are made – decisions which are later (and often anachronistically) categorised into a binary by historians. Decisions have consequences that might appear on one side or another of a binary, but the decision itself should not necessarily be seen as an active marker of allegiance. By examining actions with due attention to the immediate climate of the political decisions that they were being forced to respond to, we can understand the context in which historical actors took these decisions, what might have prompted them to do so, and what it meant at the time to make such a decision.

A focus on the specific events that necessitated decisions, rather than a broader categorisation of actions, means that the focus should be on the way that a historical actor's actions were justified. Rather than reconstruct the actor's motivations – which may have been lost to time – Quentin Skinner has recommended that we consider the way that they legitimate their actions. By this, he is referring to the means by which people justify their actions, and their use of 'intersubjectively normative' vocabulary – intersubjective in the sense that the words are defined by a community, rather than an individual, and normative in the sense that they are 'words that not only describe, but, in describing, also evaluate'.²² Thus, the process of legitimisation requires an agent to not

²⁰ *Ibid.*, pp. 182, 190.

²¹ *Ibid.*, p. 192.

²² James Tully, 'The Pen Is a Mighty Sword: Quentin Skinner's Analysis of Politics', in James Tully (ed.), *Meaning and Context: Quentin Skinner and His Critics* (Princeton, N.J., 1988), p. 13. For a

just 'tailor his normative language in order to fit his project', but also to tailor 'his projects in order to fit the available normative language'.²³ Legitimation then can have two roles: 'repressive and productive' – productive in the sense that it could empower action, and repressive in the twin senses that actions needed to be either restricted and curtailed to correlate with the initial project, or the project itself could be dictated by the vocabulary surrounding it.²⁴ Applying this methodology, Barbara Donagan has convincingly demonstrated how, by focusing on the way that actions were legitimated, a historian can examine how the action of supporting Parliament shifts without presuming (or imposing) a cause for supporting Parliament.²⁵

Because actions were legitimated by appeals to the law, the central authority and ability of the law to interpret and guide was challenged and negotiated. This, as Skinner assures us, happens to most legitimising vocabularies which are intersubjective by nature, but its effect is particularly noticeable in the law. The law operated both as a vocabulary and as a source of authority, and these roles bled into each other. As actions were legitimated using the law, the authority of the law was eroded.

II. POLITICAL THOUGHT

In the 1960s, the history of political thought came under increasing attack for failing to examine the context in which 'great' works of political thought were created. The 'status quo', according to Skinner (a pioneer of the Cambridge School), was to read texts 'as though they were written by a contemporary', and use that reading to examine 'fundamental concepts' that were timeless.²⁶ The 'fundamental concepts' that were being appealed to were actually modern creations, and by searching for a 'doctrine' that was 'constitutive of the subject', historians were constructing rather than discovering coherence, and condemning writers for failing to meet anachronistic expectations of the

helpful application, see Michael J. Braddick, *State Formation in Early Modern England, c. 1550-1700* (Cambridge, 2000), pp. 68-71.

²³ Quentin Skinner, *The Foundations of Modern Political Thought, Vol. I. The Renaissance* (Cambridge, 1978), pp. xii-xiii.

²⁴ Tully, 'Pen Is a Mighty Sword', p. 14.

²⁵ Barbara Donagan, 'Casuistry and Allegiance in the English Civil War', in Derek Hirst and Richard Strier (eds), *Writing and Political Engagement in Seventeenth-Century England* (Cambridge, 1999), p. 90.

²⁶ Quentin Skinner, 'Meaning and Understanding in the History of Ideas', in Quentin Skinner (ed.), *Visions of Politics: Regarding Method* (Cambridge, 2002), p. 57.

discipline.²⁷ In order that these ‘dangers might be avoided’, Skinner argues that if ‘we wish to understand a text, we need to give an account not merely of the meaning of what was said, but also of what the writer in question may have meant by saying what was said’.²⁸ However, in order to understand the ‘illocutionary intentions’ of the author, ‘we need first of all to grasp the nature and range of things that could recognisably have been done by using that particular concept, in the treatment of that particular theme, at that particular time’.²⁹ The examination of language, then, is crucial for the reconstruction of context.

J. G. A. Pocock also used linguistic analysis in order to recover context, although broadly his method focused less on the individual author. His work *The Ancient Constitution* uncovered what he called the ‘common-law mind’, which was the shared language of politics that dominated the early 17th century, and Pocock emphasised the importance of vocabulary in political thought.³⁰ For him, language (or in his later works, ‘discourse’) was the vocabulary of politics, and the historian should ‘show how it functioned paradigmatically to prescribe what [the contemporary] might say and how [the contemporary] might say it’.³¹ In other words, language could constrain behaviour, as well as convey meaning, and thus for Pocock texts get their meanings from language, rather than the author.³²

In the wake of these important interventions, attention is increasingly being paid to the importance of ‘minor’ works. According to Richard Ashcraft, political theory should not be ‘confined to a few great books that [are] the conceptual property of a few extraordinary individuals’, but rather a ‘more descriptively diverse characterization of political theory is needed precisely in order to appreciate the breadth and scope as a

²⁷ *Ibid.*, pp. 59-67.

²⁸ *Ibid.*, p. 79.

²⁹ Quentin Skinner, ‘Motives, Intentions and Interpretation’, in Skinner (ed.), *Visions of Politics: Regarding Method* (Cambridge, 2002), p. 102.

³⁰ J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (2nd edn, Cambridge, 1987).

³¹ J. G. A. Pocock, ‘Languages and Their Implications’, in J. G. A. Pocock (ed.), *Politics, Language and Time: Essays on Political Thought and History* (London, 1972), p. 25.

³² For a critical summary of the differences between Pocock and Skinner, see Mark Bevir, ‘The Errors of Linguistic Contextualism’, *History and Theory*, 31 (1992), pp. 278-9.

cultural phenomenon'.³³ 'Lesser contemporary political writers', Ashcraft has argued elsewhere, have been ignored which has meant that a picture of a 'genius isolated' has developed, and this needs to be challenged.³⁴ To understand these great works, we need to understand that they were engaged in a dialogue with the texts surrounding them. This is, in essence, what the Cambridge School attempts to rectify, but in doing so it risks continuing to denigrate 'minor' works, and in practical terms, the focus remains somewhat anachronistic. As Mark Knights puts it, disciples of the Cambridge method stress the importance of contextual methodology not because they are 'interested in the minor works', but rather to use the minor works to better inform the account of the 'major works'.³⁵ He continues that 'minor works are only minor if one is interested in exploring canonical writers', or if it is believed that these canonical writers 'are the main motors of linguistic and conceptual change'.³⁶ However, as Knights' study and others have demonstrated, minor works often make important interventions into the meaning of languages, concepts and theories that underpin politics. The ongoing dialogue and conversation, in other words, are worthy of examination on their own terms, not just as a precursor to understanding 'great' works.

As such, the methodological treatises of Pocock and Skinner were written to 'justify an existing historical practice', rather than to necessarily transform who or what should be examined.³⁷ Indeed, Skinner has since explained that he aimed to do 'for Hobbes what [Peter] Laslett had done for Locke'.³⁸ Because of this, the Cambridge School method often creates an account of political thought that looks broadly similar to those that

³³ Richard Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government* (Princeton (NJ), 1986), p. 6.

³⁴ Richard Ashcraft, 'Rethinking the Nature of Political Theory: A Single-Handed Defense of a Dialogue', *The Journal of Politics*, 44 (1982), p. 580.

³⁵ Mark Knights, *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford, 2004), p. 45.

³⁶ *Ibid.*, p. 46; A similar point is made by Kevin M. Sharpe, *Politics and Ideas in Early Stuart England: Essays and Studies* (London, 1989), pp. 4-9.

³⁷ Mark Bevir, 'The Contextual Approach', in George Klosko (ed.), *The Oxford Handbook of the History of Philosophy* (Oxford, 2011), p. 14.

³⁸ Skinner quoted in *ibid.*

preceded it, and the canonical texts have remained canonical.³⁹ Mark Goldie, commenting on Skinner's *Foundations of Modern Political Thought*, has emphasised that his style of scholarship has paradoxically led to a focus on discourses, rather than authors and texts.⁴⁰ At the same time, it is often difficult to distinguish how that approach differs from examinations by political theorists.⁴¹ Skinner has been criticised for the questions that he is asking of sources – John Coffey has argued that his historical practice consistently neglects religion for a secularised politics, as has Keith Thomas.⁴² Indeed, Thomas suggests that the reason for this may be because Skinner aims to examine past solutions and apply them to modern problems – teleology is inevitable because of the conversation that Skinner wants to take part in: the nature of liberty and republicanism.⁴³

At times, then, there is a disparity between the methodological aims of the Cambridge School, and the histories that those following the Cambridge method have achieved. By looking more broadly than the canonical works and significant figures, and focusing on the 'minor' as well as the 'major', there can be a new contextualised political history of the civil war.

Scepticism towards the notion of a clear elite/popular divide has led historians to discuss more complex models of social order, which has in turn impacted the places where politics might be seen.⁴⁴ A less strict division can help account for the middling sort, and

³⁹ A point made by Peter Lake, 'Puritanism, (Monarchical) Republicanism, and Monarchy; or John Whitgift, Antipuritanism, and the "Invention" of Popularity', *Journal of Medieval and Early Modern Studies*, 40 (2010), p. 463.

⁴⁰ Mark Goldie, 'The Context of the Foundations', in Annabel Brett and James Tully (eds), *Rethinking the Foundations of Modern Political Thought* (Cambridge, 2006), p. 10.

⁴¹ Sharpe, *Politics and Ideas in Early Stuart England*, p. 10.

⁴² John Coffey, 'Quentin Skinner and the Religious Dimension of Early Modern Political Thought', in Alister Chapman, John Coffey, and Brad S. Gregory (eds), *Seeing Things Their Way: Intellectual History and the Return of Religion*. (Notre Dame, 2009); Keith Thomas, 'Politics: Looking for Liberty', *The New York Review of Books*, 52 (2005), pp. 51-3; Sharpe, *Political Ideas in Early Stuart England*, p. 6.

⁴³ Thomas, 'Looking for Liberty', p. 53.

⁴⁴ Tim Harris, 'Introduction', in Tim Harris (ed.), *The Politics of the Excluded, c. 1500-1850* (Basingstoke, 2001), pp. 21-4; Tim Harris, 'Problematizing Popular Culture', in Tim Harris (ed.), *Popular Culture in England, c.1500-1850* (Basingstoke, 1995), p. 14; Michael J. Braddick and John Walter, 'Introduction. Grids of Power: Order, Hierarchy and Subordination in Early Modern

also account for pamphlet culture and its contents being available to a very wide population, both socially and geographically.⁴⁵ While their experience of exposure to print would vary in its intensity, it was possible for audiences to interact with print without necessarily purchasing the pamphlets themselves, meaning that unprecedented levels of print were available to an unprecedented audience.⁴⁶ While sharp distinctions were still drawn by contemporaries between polite and plebeian culture, and those who were involved in collecting and collating a wide range of pamphlets such as Thomason would distinguish between the two, this simple binary has been supplanted in recent analysis by a more complex picture.⁴⁷

One of the consequences of Revisionism was that the social depths of politics became shallower. The 'principle-centred' account of politics was replaced by one that focused on a high political culture based in the court.⁴⁸ Regions and localities which once were seen by historians such as Brian Manning as geographical-economies that could help explain popular politics were repainted in accounts that tended towards either a lack of awareness of political debates, or stressed a neutralism and passivity.⁴⁹ The focus of politics was drawn to 'high' political actors, rather than a wider political consciousness, which might in part be attributed to the Revisionist suspicion of printed material, preferring to focus on manuscript sources instead.⁵⁰ However, as work by historians such

Society', in Michael J. Braddick and John Walter (eds), *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001).

⁴⁵ Tim Harris, 'Popular, Plebeian, Culture: Historical Definitions', in Joad Raymond (ed.), *Cheap Print in Britain and Ireland to 1660* (Oxford, 2011), p. 54; Jason Peacey, *Print and Public Politics in the English Revolution* (Cambridge, 2013), pp. 56-91.

⁴⁶ Peacey, *Print and Public Politics*, pp. 80-8.

⁴⁷ Harris, 'Popular, Plebeian, Culture', p. 52.

⁴⁸ Kevin Sharpe and Peter Lake, 'Introduction', in Kevin Sharpe and Peter Lake (eds), *Culture and Politics in Early Stuart England* (London, 1994), pp. 1-4; For the definitive criticism of this approach, see Richard Cust and Ann Hughes, 'Introduction: After Revisionism', in Richard Cust and Ann Hughes (eds), *Conflict in Early Stuart England: Studies in Religion and Politics, 1603-1642* (Harlow, 1989).

⁴⁹ Brian Manning, *The English People and the English Revolution, 1640-1649* (London, 1976); Morrill, *Nature*; Alan Everitt, *The Local Community and the Great Rebellion* (London, 1969).

⁵⁰ On this, see Cust and Hughes, 'After Revisionism', pp. 12-3; Sharpe and Lake, 'Introduction', pp. 3-4; Peacey, *Print and Public Politics*, p. 7; Philip Baker, 'Rhetoric, Reality, and Varieties of Civil-War Radicalism', in John Adamson (ed.), *The English Civil War: Conflict and Contexts, 1640-1649* (Basingstoke, 2009), pp. 204-5; Ann Hughes, *Gangraena and the Struggle for the English Revolution* (Oxford, 2004).

as Thomas Cogswell, Alastair Bellany and Jason Peacey demonstrates, a wider range of sources can greatly inform our understanding of politics in early Stuart England.⁵¹ Work by historians such as Andy Wood has highlighted that early assessment of the population of the lower orders as pre-political was misguided. Rather, while elites pored over tomes, 'more humble individuals were making their own appeals' to the past in order to prove their undeniable rights, revealing themselves to be just as political.⁵² The laws could be used proactively, and to legitimate action. For example, agrarian protests 'drew justification from the law', and claimed to be defending the law rather than subverting it.⁵³ Those involved in enclosure riots could exploit ambiguous legal definitions by ensuring that just two people were involved in disputes rather than more, meaning that they would be charged with the much lesser crime of trespassing, rather than the charge of rioting which required three or more people.⁵⁴ Legal institutions provided an arena in which actors could plead their poverty, and Steve Hindle has shown that they would often do so, showing political savvy and understanding.⁵⁵ On a bigger scale, Mark Goldie has described an 'unacknowledged republic', where there was a supreme monarch, but also citizens who saw themselves as 'self-governing communities'. The chance of an adult male holding office was high, and they were invited to take part of the governing of the state.⁵⁶ Furthermore, historians such as John Walter and Ted

⁵¹ Thomas Cogswell, 'Underground Verse and the Transformation of Early Stuart Political Culture', in Mark Kishlansky and Susan Amussen (eds), *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown*. (Manchester, 1995); Alastair Bellany, "'Raylinge Rymes and Vaunting Verse": Libellous Politics in Early Stuart England, 1603-1628', in Kevin Sharpe and Peter Lake (eds), *Culture and Politics in Early Stuart England* (London, 1994). For more in depth summaries of these changes, see Noah Millstone, *Manuscript Circulation and the Invention of Politics in Early Stuart England* (Cambridge, 2016), pp. 8-9; Peacey, *Print and Public Politics*, pp. 8-13.

⁵² Andy Wood, 'The Place of Custom in Plebeian Political Culture: England, 1550-1800', *Social History*, 22 (1997), p. 49.

⁵³ John Walter, 'Grain Riots and Popular Attitudes to the Law: Maldon and the Crisis of 1629', in John Styles and John Brewer (eds), *An Ungovernable People? The English and Their Law in the Seventeenth and Eighteenth Centuries*, 1980), p. 83; John Walter, 'The English People and the English Revolution Revisited', *History Workshop Journal*, 61 (2006), p. 175.

⁵⁴ Andy Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (Basingstoke, 2002), p. 42.

⁵⁵ Steve Hindle, *The State and Social Change in Early Modern England, c.1550-1640* (Basingstoke, 2000).

⁵⁶ Mark Goldie, 'The Unacknowledged Republic: Officeholding in Early Modern England', in Tim Harris (ed.), *The Politics of the Excluded, c.1500-1850* (Basingstoke, 2001).

Vallance have stressed the importance of the state oaths. Walter has argued that the Protestation was the culmination of a 'call to active citizenship' to 'provide the support in the form of money and men to fight a civil war'. It was both a 'call to duty' and a 'call to conscience'.⁵⁷ The Protestation was a legitimising tool that empowered behaviour and action, which reciprocally empowered and, at times, could be used against the Parliament. Vallance has examined the use of state oaths, and has argued that they enjoyed a much wider breadth of participation than had previously been thought.⁵⁸ Prior to the civil war, popular culture was imbued with political meaning, and the civil war helped create a space where this political culture could be performed.⁵⁹ Early seventeenth century England, then, has been shown to be a much more political nation than had previously been considered.

Studies of politics and cheap print take inspiration from research that has examined wider reading practices. In a number of studies, historians have clearly demonstrated that common and shared languages could have great depth, and reading practices could demonstrate real engagement with topical issues at hand. Work by Margaret Spufford has emphasised that cheap books were not just consumed by the middling or lower sorts, but rather they were consumed by a much wider audience than is sometimes given credit, and Tessa Watt has argued that there was a 'two-way cultural flow' between London and the country.⁶⁰ Alexandra Walsham has shown that providentialism was not just the beliefs of some 'zealous Protestants', but was rather a much wider phenomenon.⁶¹ Peter Lake and Michael Questier has demonstrated that 'murder pamphlets' had a complex relationship with the popular, and used their violent and pornographic content in order to make sophisticated arguments about the nature of

⁵⁷ John Walter, *Covenanting Citizens: The Protestation Oath and Popular Political Culture in the English Revolution* (Oxford, 2017), p. 243.

⁵⁸ Edward Vallance, *Revolutionary England and the National Covenant: State Oaths, Protestantism, and the Political Nation, 1553-1682* (Woodbridge, 2005).

⁵⁹ Walter, 'English People'; John Walter, *Crowds and Popular Politics in Early Modern England* (Manchester, 2010).

⁶⁰ Margaret Spufford, *Small Books and Pleasant Histories: Popular Fiction and Its Readership in Seventeenth-Century England* (London, 1981); Tessa Watt, *Cheap Print and Popular Piety, 1550-1640* (Cambridge, 1991), p. 323.

⁶¹ Alexandra Walsham, *Providence in Early Modern England* (Oxford, 1999), p. 2.

Protestantism, politics and providence.⁶² Through their work on Protestantism, these historians have emphasised the benefit of the study of 'cheap' print, and demonstrated that it can reveal two-way relationships between readers and authors. Printed works could bring divinity, theology and liturgy to a wide and practically engaged audience.

Transformations in the understanding of political thought, an expansion of the political nation and the recent scholarship on reading and Protestantism have shown that by widening the scope of studies, we can develop a more nuanced account of the politics of the early seventeenth century.

Previous studies of the pamphlet debates of the civil war normally involve examination of the same authors and their significant pamphlets: Henry Parker, William Prynne, Charles Herle, Philip Hunton and Edward Bowles as defenders of Parliament; Henry Ferne, Edward Hyde and John Bramhall as its attackers.⁶³ On occasion, certain anonymous pamphlets are also considered important, namely *Touching the Fundamentall Lawes* (1643), and *Remonstrans Redivivus* (1643).⁶⁴ Examination of the political thought of the early 1640s has remained focused on pamphlets of known authorship, with a few exceptions.

This is partly due to a lack of investigation into the political thought of the 1640s more generally. Often, studies on the topic stop either in 1640 or in 1642.⁶⁵ Those works that do continue into the civil war have their focus either on specific well-known writers, such as Prynne or Parker, or are wider survey studies encompassing the century, rather than the decade.⁶⁶ Establishing more exactly the nascence and nature of these political ideas

⁶² Peter Lake and Michael C. Questier, *The Anti-Christ's Lewd Hat: Protestants, Papists and Players in Post-Reformation England* (New Haven (CT), 2002), section 1.

⁶³ Glenn Burgess, *British Political Thought, 1500-1660: The Politics of the Post-Reformation* (Basingstoke, 2009), pp. 193-211.

⁶⁴ For example in Rachel Foxley, *The Levellers: Radical Political Thought in the English Revolution* (Manchester, 2013), pp. 35-6.

⁶⁵ This is, in part, because of the focus of revisionism into the origins of the civil war, rather than the war itself. See, for example, Alan Cromartie, *The Constitutionalist Revolution: An Essay on the History of England, 1450-1642* (Cambridge, 2006); Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (Basingstoke, 1992); Glenn Burgess, *Absolute Monarchy and the Stuart Constitution* (London, 1996); Charles Prior, *A Confusion of Tongues: Britain's Wars of Reformation, 1625-1642* (Oxford, 2012).

⁶⁶ William Lamont, *Marginal Prynne, 1600-69* (London, 1963); Michael Mendle, *Henry Parker and the English Civil War: The Political Thought of the Public's "Privado"* (Cambridge, 1995); Burgess,

would not only inform our account of the war itself, it could also help us understand how these political ideas emerged, and what precipitated their development.

Studies have tended to view parliamentary political theorising as monolithic and unanimous, but a coherent Parliamentary political position is often difficult to find, and at times was explicitly contradictory (compare, for example the declarations of the 19 May and the 26 May 1642).⁶⁷ Increasingly, it is becoming clear that there was not necessarily a consistent Parliamentary position, but rather that parliamentarianism was a coalition bound together mainly by the fact that they were fighting against the King.⁶⁸ Because parliamentary thought was so scattered, it becomes even more important to look at the granular detail. Many historians who have examined the political thought of the early 1640s use the period as a precursor to the theories of later groups such as the Levellers, rather than examining the thought of the early 1640s itself. Such an approach can create both teleological and episodic accounts of the debate – teleological in the sense that it is assumed that ideas, once arrived at, remained constant and not tied to context, and episodic in the sense that often months are suggested as having gone by without polemical developments. Ernest Sirluck, Louis G. Schwoerer and David Wootton are exceptions to the rule in that they have examined a much wider number of pamphlets, allowing a historian a glimpse into the confusions, contradictions and incoherence of pamphlet debates in the early 1640s.⁶⁹

Sirluck, in an introduction to the debates of the 1640s that arguably has never been surpassed, describes the 'Debate-at-Law', grouping an impressive number of pamphlets into lines of attack. Royalist tracts either argued that the public would suffer just as much under Parliament as they had under Charles, that the power entrusted to Parliament could be withdrawn, that they should follow the divine rights of kings, or

British Political Thought; James S. Hart, *The Rule of Law, 1603-1660: Crowns, Courts and Judges* (Harlow, 2003).

⁶⁷ See below.

⁶⁸ Foxley, 'Varieties', p. 420.

⁶⁹ Ernest Sirluck, 'Introduction: The Background', in Ernest Sirluck (ed.), *Complete Prose Works of John Milton* (London, 1959); Lois G. Schwoerer, "'The Fittest Subject for a King's Quarrel': An Essay on the Militia Controversy, 1641-2", *Journal of British Studies*, 11 (1971); David Wootton, 'From Rebellion to Revolution: The Crisis of the Winter of 1642/3 and the Origins of Civil War Radicalism', *English Historical Review*, 105 (1990).

argued that natural law was insufficient.⁷⁰ Parliamentary defences either claimed Parliament's supremacy over positive laws, attempted to argue that their actions were in fact following positive law, attacked the notion that the people could withdraw their trust, or attempted to reimagine the constitution so that the people had to obey Parliament because it acted for their preservation.⁷¹ Ultimately this work stands as a contextual essay for examination into John Milton's works, but remains an excellent companion to early legal debates. Schwoerer has examined the militia crisis and argued that the debates helped polarise the nation, and led to 'probing examinations of political and constitutional questions'.⁷² The article's strength is that rather than belittling the inconsistency of the debates, it often relishes the incoherence of the works, allowing authors autonomy to change their opinion, and for them to hold multiple and often incompatible views. Wootton has looked to the same period, and argued that the transition from rebellion to revolution occurred in the winter of 1642/3, where pamphlets suggested changes to the constitution.⁷³ Such studies show how productive it can be to acknowledge, rather than smooth over, the inconsistencies of political thought in the period when building a picture of the legal-political landscape.

The recent focus on the concept of mobilisation, rather than allegiance, has changed the way that we need to approach political thought in the early 1640s. If we cannot identify clear markers of allegiance with which to categorise participants because the decisions they made were continuous, active and flexible, then we must apply the same caution to the political print that guided and fuelled these choices. Those who were being asked to make immediate and complex decisions with inevitable consequences relied on pamphlets that were context-specific – works that were prompted by events, rather than self-sufficient theses – and therefore the pamphlets should be studied as part of an ongoing and closely contextualised conversation. If historians isolate the ideas from that conversation, we are at risk of stripping away the reasons why the process of the debates in the civil war was so demanding on the shared political languages, and why these decisions were so agonising. People were being forced to make choices to which there was no easy answer for the problems posed to them. More often than not, printed works

⁷⁰ Sirluck, 'Introduction', pp. 25-35.

⁷¹ *Ibid.*, pp. 38-45.

⁷² Schwoerer, "The Fittest Subject for a King's Quarrel", p. 46.

⁷³ Wootton, 'From Rebellion to Revolution'.

were interventions – moments in an ongoing process of political thinking – rather than works of political thought intended for posterity.

To pay attention to such detail is in one sense a continuation of the trend started by the Cambridge School towards contextualisation, and immersion in a wider pool of texts. Often, however, the practice of this method does not go far enough – pamphlets were first and foremost a response to contemporary political events, to what happened last week in the streets surrounding the Houses of Parliament, or to the experience of a military disaster at Brentford, and unless the pamphlets are contextualised in their individual political moments, there is a danger of either misinterpretation, or over-interpretation.⁷⁴ Examining the political, military and financial contexts is vital in reconstructing why pamphlets argued what they did, partly because the relationship between ideas and events is not a simple one. Ideas presented in pamphlets were dependent on events because often the conviction in the righteousness of a cause and the ideas that justified it had a reciprocal relationship – both reinforced and confirmed the other. As Kevin Sharpe reminds us, events could necessitate new ideas, as measures taken by the Parliament needed to be defended and justified, rather than vice versa.⁷⁵ Much as the concept of mobilisation encourages the historian to examine the context of the decisions by the actors, contextualising the political ideas of the civil war requires the historian to also examine what events prompted those ideas and, to some degree, made those ideas necessary.

Alongside ideas and events, the mechanics of pamphlet debate itself also served to fuel political debate. Pamphlets not only worked to mobilise, but also to maintain momentum, and they often operated to justify pre-formulated opinions that the reader either already held, or needed to hold. This was, in part, because the concepts that legitimated mobilisation were constantly contested, needing protection and reiteration to maintain a favourable meaning. Control of language and a need to respond to opposing pamphlets, thus, was as key a part of the production of print as was arguing over abstract intellectual principles or making sense of events.

⁷⁴ On this point, see Jason Peacey, *Politicians and Pamphleteers: Propaganda During the English Civil Wars and Interregnum* (Aldershot, 2004), pp. 5-8.

⁷⁵ Sharpe, *Politics and Ideas in Early Stuart England*, pp. 3-10, 63-8.

This study will examine the complexities of these arguments and their contexts with a focus on the law. The law was an important mechanism for political thought – indeed it was arguably the most crucial framework for discussions of justice, sovereignty and religious truth in seventeenth century England. A focus on legal themes in polemical pamphlets can therefore help elucidate in new detail the ways that politics worked during the civil war.

III. LEGAL POLEMIC

In order to examine the way that the pamphlets work, this thesis distinguishes between frameworks and polemic in the following way. Frameworks were the arena within which the political discussion took place, and were established by official Parliamentary sources. The frameworks relied either upon one or several claims to authority, for example the law, and set the languages and parameters of the political debate. On a secondary level, the polemic utilised a set of justificatory tools based on the established framework to demonstrate their case for their chosen side. In these works there was space for creative licence – pamphleteers could push the boundaries of the framework, and do so to further their own political or, increasingly, their religious ends. While the polemic was dependent on the framework in order to construct argument, there was a reciprocal relationship between the two, where the process of constructing polemical pamphlets inevitably shaped and distorted the frameworks that the arguments relied upon.

As is almost a cliché in works that discuss the law, it is important to stress that early modern England was bound in a universal faith in the law, and that it regulated every aspect of life.⁷⁶ The law was used to both extend the authority of the state, and was also its claim to authority, and the English believed their law was eternal, impartial, and perfect.⁷⁷ By far the most influential analysis explaining this phenomenon, and the way that the law was so treasured, remains Pocock's account of the 'common law mind'.⁷⁸ He argued – largely based on the works of jurist Edward Coke – that immemorial custom was revered by early modern English society, and because it had existed for so long

⁷⁶ Hart, *The Rule of Law*, p. 1.

⁷⁷ See Margaret Judson, *The Crisis of the Constitution: An Essay in Constitutional and Political Thought in England, 1603-1645* (New Brunswick, N.J., 1949), pp. 44-67; Braddick, *State Formation*, p. 163.

⁷⁸ Pocock, *The Ancient Constitution*.

reason dictated that it should not be changed. As generations had considered the common law to be suitable and profitable to their existence, why should later generations challenge it, and deny the logic of their inheritance? Glenn Burgess has reinforced this concept against attacks by historians such as Johann Sommerville by highlighting the deep-set consensus, and has described a 'shared language of an entire political nation' based on the common law.⁷⁹ By appealing to this 'shared language' – what this thesis refers to as a framework – politicians were appealing to the dominant ideological concept.

However, it is important to recognise that, despite its centrality to the language of politics, the law had several fundamental qualities which made it remarkably unsuitable as a framework for sustained polemical debate. Firstly, there was an inherent tension between 'artificial reasoning' – the method that lawyers had developed to truly appreciate the 'rationality and coherence of English law', and in turn to 'interpret the world plausibly to contemporaries'⁸⁰ – and the need for arguments to be persuasive. Reasoning was being used to persuade the reader, but that reasoning was expected to persuade the reader while simultaneously denying that the reader could meaningfully acknowledge the reasoning unless they were trained lawyers. Thus, the glorification of the common law based on reason often in practice sat uneasily with the lawyers' monopoly of understanding.⁸¹ The system as a whole relied on consensus, rather than disputes. Harris has emphasised that often rather than fighting against the system, participants were working within it to try and get it to work again.⁸² Similarly, the *arcana imperii* drew power from the fact that it could solve problems, and when this broke down efforts were made to repair it.⁸³

⁷⁹ Burgess, *Ancient Constitution*, p. 17; J. P. Sommerville, *Royalists and Patriots: Politics and Ideology in England 1603-1640* (London, 1999).

⁸⁰ Burgess, *Absolute Monarchy*, p. 81; William J. Bouwsma, 'Lawyers and Early Modern Culture', *The American Historical Review*, 78 (1973), p. 309.

⁸¹ Rosemary O'Day, *The Professions in Early Modern England, 1450-1800* (Harlow, 2000), p. 113.

⁸² Tim Harris, 'Revisiting the Causes of the English Civil War', *Huntington Library Quarterly*, 78 (Winter 2015), pp. 620-5; A similar argument is made by Sharpe, *Political Ideas in Early Stuart England*, pp. 63-8.

⁸³ Michael J. Braddick, 'Administrative Performance: The Representation of Political Authority in Early Modern England', in Michael J. Braddick and John Walter (eds), *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001).

Secondly, the process of printing the law in text form meant that it increasingly became open to interpretation, threatening the lawyers' legal monopoly. Jerome de Groot suggested that the royalists constructed a 'legal space' in which to argue their political position through their pamphlet publications, and as a result of this, the law that was publically read and debated 'was no longer innate and inviolate, but normative and contingent, subject to qualification and discussion'.⁸⁴ He focuses on propaganda (that is to say, sanctioned works) rather than wider polemic but highlights that authors, by challenging those who disagreed with their legal understanding, were able to accuse their opponents of threatening to destroy society itself.⁸⁵ Textualising the law also meant that the author could exert influence over the law itself. The author of published work could 'project intellectual power better than the writer of manuscripts',⁸⁶ and in doing so claim their own authority over the law. As controls over the transmission of texts were reduced, lay readers would read what they wanted, not simply what they were told to read by lawyers. Tied to this, Sharon Achinstein has argued that writers created a 'revolutionary reader' when 'writers sought to arm readers with equipment with which to fend off enemy opinions', invited them to enter a political debate 'by learning how to read and understand political rhetoric', and equipped them 'to deal with propaganda' and polemic.⁸⁷ Readers could be used to disarm opposing views, and once trained might be trusted to maintain a 'correct' understanding.

Thirdly, the process of printing gave the printer power to decide which legal works should be reproduced and which ignored, and introduced economic imperatives.⁸⁸ Legal works increasingly became commodities, and thus the reasoning within the pamphlets was dependent on market as well as intellectual forces. In short, by writing and printing the law, authors and printers were able to be directly involved in changing what it said if

⁸⁴ Jerome de Groot, *Royalist Identities* (Basingstoke, 2004), p. 20.

⁸⁵ *Ibid.*

⁸⁶ Richard J. Ross, 'The Commoning of the Common Law: The Renaissance Debate over Printing English Law, 1520-1640', *University of Pennsylvania Law Review*, 146 (1998), p. 438.

⁸⁷ Sharon Achinstein, *Milton and the Revolutionary Reader* (Chichester, 1994), p. 8.

⁸⁸ Ross, 'The Commoning of the Common Law', pp. 437-8.

they could get enough people to read and agree with their understandings. To print the law was 'both the dissemination and exercise of power'.⁸⁹

These features of the law – a claim to rest on a singular truth, and its vulnerability to change both through writing and printing – meant that it was a fundamentally unstable framework. The most significant consequence of this was that in order to continue to appear omniscient, the law was required to mutate – the law was therefore both unchanging and constantly in flux. The problem in the early 1640s was that both sides had learned lawyers and divines fighting their respective cases, and declaring each other wrong or misguided; those well-educated men, pamphleteers argued, were either naturally ignorant, or were wilfully and maliciously ignorant. The efforts to disguise, protect, or advertise the law's mutations depending on the political point intended all had destabilising impacts on the framework of the law.

IV. HOW THE DEBATE EVOLVED

In order to capture and analyse this shifting, unfixed characteristic of the law, this thesis focuses on the process of political thinking, rather than on political thought. Political thinking was the active process or conversation that took place day-to-day, and made sense of the events that occurred. Of course, political thinking and political thought were intimately linked, and the distinction between thinking and thought should by no means be considered a binary. Indeed, the active process of political thinking developed problems that needed to be resolved by political thought: the nature of sovereignty, the extent of Parliamentary power, the role of the public in the constitution. They are different parts of the same approach, rather than fundamentally distinct. As our understanding of what it meant to fight for Parliament or for the King becomes more complex, we need to adapt our understanding of the political thought and thinking that rationalised these decisions.

Because the conversation was taking place to make sense of unfolding contemporary events it had to respond with agility to the rapidly shifting political, military and financial circumstances. As war aims changed, so did the political discussion that was taking place, because often the discussion was a political, rather than an intellectual,

⁸⁹ D. Alan Orr, 'A Prospectus for a "New" Constitutional History of Early Modern England', *Albion: A Quarterly Journal Concerned with British Studies*, 36 (2004), pp. 438, 443.

exercise.⁹⁰ As such, political thinking in the pamphlets needed to be reactive to shifting contexts and circumstances, rather than proactive, suggesting that it was events, rather than ideas, that drove the pamphlet debate. To understand these events is to help reconstruct why the political debate charts the course that it did, and is to help identify why shared political languages were put under such strain that they broke down. In short, the micro-contexts are key to understanding the political ideas of the first civil war.

To account for this focus on micro-contexts, the texts studied were chosen using George Fortescue's catalogue of the Thomason Tracts, which offers an imperfect but useful chronology of George Thomason's pamphlets.⁹¹ This allows the historian to go through the printed works month-by-month, meaning that it is possible to be both sensitive to the shifting focus of the pamphlet discussion over time, while also identifying periods of intense printing activity. Pamphlets were selected when they offered an account of the conflict, or explicitly promised a discussion of the church or the law. As commodities as well as texts, pamphlet titles more often than not are instructive of their contents, advertising their subject to those browsing a bookseller's shelves.⁹² The pamphlets selected through this method – normally consisting of around a quarter of Thomason's monthly collection – were supplemented by those found in secondary reading, and by internal references or retorts within the texts themselves.

Attending to the process of political thinking necessitates expanding the scope of historical investigation to include not only authors but also other participants. Firstly, while political thinking could take place between authors who were explicitly involved in pamphlet debate, it could also take place between different printers and publishers who attempted to intervene in the political debate more implicitly. Work by Peacey has demonstrated that political ideas were repackaged and reiterated by partisan printers

⁹⁰ Peacey, *Politicians and Pamphleteers*, pp. 5-8.

⁹¹ George Knottesford Fortescue (ed.), *Catalogue of the Pamphlets, Books, Newspapers, and Manuscripts Relating to the Civil War, the Commonwealth and the Restoration, Collected by George Thomason, 1640-1661* (London, 1908).

⁹² According to Phil Withington, 'Title-pages reflected [their contents] intentionally insofar as they served the same functions as book covers today', in Withington, *Society in Early Modern England: The Vernacular Origins of Some Powerful Ideas* (Cambridge, 2010), pp. 8-9.

working in collaboration with politicians in attempts to manipulate the pamphlet market.⁹³ While anonymously printed pamphlets can obscure these efforts to influence the market, this thesis uncovers several printers with clear political and religious identities through the collection of the ornamental initials of individual printers between 1640 and July 1646. By using the attributed woodcuts, reproduced in the appendices, anonymously printed pamphlets can be examined and attributed likely printers. Thus, this thesis argues, printers were able to maintain coherent political identities, and present ideas about politics and the constitution in serial, and in doing so were political actors in themselves.

Secondly, readers played a crucial role in constructing and negotiating meaning, and could be used to legitimate parliamentary resistance against the King. Throughout the conflict, the role of the implied reader was contested and renegotiated – at the beginning of the conflict, the idea of an implied reader was used by pamphleteers to provide an extra-Parliamentary confirmation of who was best to judge the law. But increasingly, as the conflict developed, the implied reader was used to solve intellectual and theoretical problems about its political justifications, and was able to play a bigger role in the constitution, and in the understanding of the law and politics as a whole.

The political thinking that this thesis examines, then, took place within conversations that were constructed and negotiated by the triple pressures of authors, printers and publishers, and readers. The conversations that constitute this process of political thinking acted as both the means to define the purpose and nature of the conflict, and also offered the reader ways to understand the events and give them a broader meaning. As allegiance is being understood as a concept that is more fluid, our understanding of political thought similarly needs to be changed to account for the fluctuations and shifts in the meaning of the conflict. In light of these historiographical developments, this thesis has been written and the ideas presented in a broadly chronological way. Writing in this way means that the historian is forced to confront the gaps in the conversations as well as the continuations, and account for why topics might disappear from the political conversation. Such an approach means that we can see more clearly how ideas emerge, and how the way that the cause was defined changed the way that the cause was understood both by the polemic and by the readers more generally.

⁹³ Jason Peacey, 'Fiery Spirits' and Political Propaganda: Uncovering a Radical Press Campaign in 1642', *Publishing History*, 55 (2004).

Therefore the chapters take the following format, following the civil war through four chronological sections, separated when the debate changed significantly. Chapter One explores the legal and constitutional arguments of the paper war by focusing on the way that subjects were mobilised, and examines how the arguments made were formed under the pressure of polemical debate. In this debate, both sides claimed to be the ultimate arbiters of legal propriety, revealing and creating tensions in legal and constitutional views. Increasingly, as events pushed people into active choices, as pre-war posturing was transformed into preparation for war, and as the presses became open to more voices through the collapse of regulation, a meta-argument emerged over who was the ultimate arbiter in legal and constitutional dispute. Tensions over this question were to divide the parliamentary alliance throughout the 1640s, and also served to limit the power of Parliament's claims.

Chapter Two examines the debate after the outbreak of actual war, and the effects of the associated military and political demands upon these uncertain foundations. By the summer of 1643, tensions within parliamentarianism over the question of arbitration had led to a fracturing of the parliamentary coalition. The Vow and Covenant of June 1643 was an attempt to resolve these issues by placing parliamentary legitimacy not on the basis of contested arguments about the law and constitution, but on a collective oath which at the same time would reveal who were the enemies of the parliamentary cause.

The Parliamentary forces' military failures in the first half of 1643 and the threat of moves for peace led to a military alliance with the Scots that created a new framework for the polemical argument: the Solemn League and Covenant. Chapter Three examines the extent to which this new framework avoided contested arguments about the law and instead grounded the parliamentary cause on the future of Protestantism. This political and military alliance shifted the conversation dramatically within a new framework, and reversed the early Stuart achievement of the common law which had made the law the guardian of the true religion. Instead, parliamentary legitimacy now rested on its pursuit of the true religion rather than its legal claims.

Chapter Four examines the role that printers and publishers played in the development and understanding of the parliamentary cause. The logic of a developing public argument and the use of the imagined reader who was increasingly invoked as an arbiter meant that the cause of the conflict was continuously in flux. By using typographic and bibliographic techniques, this chapter examines the printers and publishers that

facilitated this public argument, and argues that some of them can be seen as being political agents in their own right.

Chapter Five examines the arguments at the end of the war, which culminated in the Newcastle Propositions. By July 1646, the parliamentary polemic had become incoherent to all but Parliament's most ardent followers, and the parliamentary coalition was deeply divided on fundamental questions in which there was considerable radical potential. At the heart of these divisions was the issue of the potential for Parliaments to act illegally or tyrannously, something that was being increasingly dramatized in prison writings. Furthermore, the attempt to ground Parliament's claims on a version of true Protestantism had become equally problematic by 1645.

In the process of writing about Parliament's case at the beginning of the conflict, Bland had opened himself, and the Parliament, up to criticism of not only the judgments that they reached, but also the means by which they reached the decisions, and the legitimacy of others to follow their decisions. By facilitating and encouraging public debate over statutes, legal reasoning and conscience, the polemic had constructed and came to rely upon an adjudicative and informed reader, who eventually proved unable to be contained by the parameters of the official frameworks.

CHAPTER 1: FROM OBSERVATOR TO ARBITER: MARCH TO OCTOBER 1642

Resolved, &c. That in this case of extream danger, and of his Majesties refusall, the Ordinance agreed on by both houses for the *Militia*, doth oblige people, and ought to be obeyed by the Fundamentall Laws of this Kingdome.⁹⁴

Houses of Parliament, ‘Severall Votes Resolved upon by both Houses of Parliament, concerning the securing of the Kingdome of *England* and Dominion of *Wales*’, (March 1642).

Concerning the *Militia* two *quare*’s are ordinarily made; to wit,

1. Whether it be lawfull for the *Parliament* to settle it without the *Royall assent*.
2. Whether it be lawfull for us to obey it, so settled by *Them*?⁹⁵

Richard Ward, *A Vindication of the Parliament*, (October 1642).

This chapter examines the period between March and October 1642, in which debate was conducted for the benefit of the reading public over the legality of Parliament’s resistance against the King. The previous two years had seen the emergence of a

⁹⁴ Edward Husbands (ed.), *An exact collection of all remonstrances, declarations, votes, orders, ordinances, proclamations, petitions, messages, answers, and other remarkable passages betweene the Kings most Excellent Majesty and his high court of Parliament beginning at His Majesties return from Scotland being in December 1641 and continued untill March the 21, 1643 which were formerly published either by the Kings Majesties command or by order from one or both Houses of Parliament : with a table wherein is most exactly digested all the fore-mentioned things according to their severall dates and dependancies* (Printed for Edward Husbands, T. Warren, R. Best, FD: 21 March 1643), E.241[1]&E.243[1], p. 112. It should be noted that the construction and publication of *An exact collection* itself was a political intervention – see Braddick, *God’s Fury, England’s Fire*, pp. 272-3. To this end, whilst I have cited *An exact collection* for ease of access, I have also read the original pamphlets but found no difference in the text unless otherwise stated.

⁹⁵ Richard Ward, *The Vindication of the Parliament and their proceedings, or, Their military designe prov’d loyall and legall a treatise wherein these things are ingeniously and sincerely handled: to wit, 1. that the militia as settled by the Parliament is lawfull : 2. that it is lawfull for us to obey it, so settled by them : 3. that the Parliament is not to be deserted : 4. that in aiding the Parliament the King is not opposed : 5. that the Parliament, as the case stands, may not confide in the King : 6. that this necessary defensive warre of theirs is indubitably justifiable* (s.n., [15 October] 1642) E.122[19], p. 2.

constitutional crisis driven by religious fears, in which Parliament and the King fought over executive powers. This led to the adoption of emergency custodial powers by the Houses of Parliament, with significant constitutional ramifications. During this crisis the King and the Parliament, and then later anonymous pamphleteers, began to produce works that justified their side's position, and proved the opponent's works wrong. The use of legal language as a framework for debate in these works opened the door to significant division and conflict over key legal concepts and terminology. Fundamentally, the process of framing debates within a legal framework, and the printing of legal arguments, meant that settlement between the King and the Parliament would be made much more difficult, and ultimately that the understanding of the law and the constitution as a whole would be transformed.

The constitutional crisis had brought with it a collapse in the meaningful authority of the law as a political language. Within politics, the law relied on consensus to provide solutions to political problems, but when opinion was divided and lawyers disagreed on fundamental points, a vacuum was created that had to be filled. This collapse was exacerbated by the process of printing and disseminating legal ideas so that it was not possible to disguise disagreements behind *arcana imperii*. Rather, readers were exposed to, and had to deal with, contesting legal claims of authority in an era of unprecedented printing of pamphlets.

The first section of this chapter examines how the theory of the Great Council, by which Parliament had justified their opposition to the King from 1640 to 1642, became increasingly problematic, and suggests that Parliament began to actively include the implied reader in its rhetoric in order to construct a positive imperative that the public were required to follow.

The conversation in the long summer of 1642, then, focused on the question of who should be the ultimate judge in the dispute between the King and his Parliament. Initially, the implied reader was appealed to in order to observe between two rival judges. They were to read different interpretations of statutes, and decide whose legal understanding was correct and whose was misguided. For example, according to the Parliament in their *Third Remonstrance*, "The case is now truly stated, and all the world may judge where the fault is, although we must avow that there can be no competent

Judge of this or any the like case but a Parliament'.⁹⁶ However, the constitutional complexity of the debate, and the political needs of either side, led to the implied reader's role expanding to a role of arbitration. The effect of this process was to expand the judicial space with which the public interacted, and in some cases to legitimise them to interpret and interact with the central concepts of the law.

However, there was a new complexity to this development. Both parliamentarians and royalists constructed legal cases that attempted to persuade the reader of their own legality through the printing of statutes and legal theories, while simultaneously emphasising that the reader had little or no legitimacy to decide on legal matters. Pamphleteers attempted to equip the reader with enough legal understanding to dismiss the opposing side's sophistry, while maintaining that their pamphlet's own legal arguments were unassailable, thus keeping the reader at arm's length from the legal discussion. This contradiction – requiring an active critiquing of the opposing view but a passive acceptance of the pamphlet's own case – was the inherent flaw in use of the law as the framework of the debate between the parliamentarian and royalist polemic, and was a key reason why the framework was unsustainable in the long term.

The second section will examine the way that the figure of the reader had become wholly integrated into the legal debate. References to readers were included in the rhetoric of authors in order to justify works going to press, and to validate the Parliament's actions. As implied readers became an increasingly intrinsic part of the polemic, they could be used as solutions to, as well as excuses for, some of the political problems that writers, propagandists and theorists faced.

Between March and October 1642, the 'paper wars' saw the vacuum, which had been created by the collapse of meaningful authority of the law as a tool by which to resolve the constitutional crisis, filled by the inclusion of implied readers who played an increasingly key, but also frustrated, role in the construction of meaning. In short, the public were being constructed as arbiters, rather than observers.

⁹⁶ *A remonstrance or the declaration of the Lords and Commons, now assembled in Parliament, 26 of May, 1642 in answer to a declaration under His Majesties name concerning the businesse of Hull, sent in a message to both Houses the 21 of May, 1642* (Printed for Iohn Franke, FD: 26 May 1642) E.148[23], p. 18.

I THE CONSTITUTIONAL CRISIS

In the summer of 1642, the constitutional crisis in England reached a crescendo. Religious fears had driven Parliament to enact measures which had put pressure on accepted beliefs and practices, and had in turn revealed significant divisions in the understanding and process of the law. Parliament's initial justification for resisting the King, based on the Great Council, did not contain any imperatives for the public to act, and therefore over the next several months more complex understandings of the law were sought out to ensure that the public would obey commands. Legal disagreements over who should judge the law would mean that a solution to the conflict became not only difficult, but increasingly untenable without a significant reassessment of the understanding of 'the law' and its place in the constitution.

I. RELIGIOUS FEARS AND THE GREAT COUNCIL

In 1640–42, the Houses of Parliament were driven to claim unprecedented emergency powers by a climate of intense anti-papery; prompted by elite and popular fears of papists, Parliament took control of the militia as a precautionary measure. Arguments for the necessity of these measures were initially based on theories of the Great Council and pervasive 'evil' counsellors within the King's court. But the process of taking control of the militia would need to be legal, and required engagement with legal concepts and theories.

Parliament's desire for control of the militia had been spurred on by fears that had religious origins, and this terror of papists was maintained throughout the civil war that ensued. The popular fear of papists was 'extra-legal', meaning it was not principally concerned with law, but at its highest level the threat they were seen to pose was towards the 'fundamental laws and principles of government'.⁹⁷ In addition to the papist threat to the everyday practice of Protestantism, it was feared that papists could subvert the established law, and thus shake the very foundation upon which the Protestant religion was based. The threat that papists represented was thus simultaneously religious and secular.

A significant component of the Ten Propositions in June 1641 were the measures to ensure that papist influence was stemmed. This included restricting the Queen's

⁹⁷ Anthony Fletcher, *The Outbreak of the English Civil War* (London, 1981), p. 82.

freedom to practise her religion or to have papists in her service; the education of the King's children ('especially in matters of religion and liberty'); and ensuring that papal influence at a court level was curbed.⁹⁸ Indeed the leader (in all but name) of the House of Commons, John Pym, and the rest of the Parliamentary leadership seem to have been obsessed with the idea of a papist conspiracy.⁹⁹ Likewise, the Irish Rebellion in late October 1641 had fed the public's fears, and had provided their imaginations with armed papists committing religious atrocities. This crisis, carefully maintained by Pym, showed the public that there was a popish plot. Pamphlet literature, often accompanied with recycled woodcuts from Protestant suffering on the Continent and tales from John Foxe's '*Book of Martyrs*', catalysed this hysteria.¹⁰⁰

The culmination of this trend of anti-poperity was *The Grand Remonstrance*, a declaration of Parliamentary grievances, which had attacked the Catholics for their part in a plot for the 'eminent ruine and destruction' of England and Scotland.¹⁰¹ Indeed, its list of concerns was prefixed first and foremost with complaints of 'Jesuited Papists, who hate the laws, as the obstacles of that change and subversion of religion which they so much long for'.¹⁰² It gave a full account of the state of the kingdom, and claimed that Charles had been duped. However, it was also divisive. It passed in the Commons by a handful of votes, and it was decided that it could not be printed – the Lords did not give it their support at all.¹⁰³

These fears had led to the passing of legislation relating to the militia, which was then rejected by the King in February 1642. By rejecting the bill, the King had inadvertently given justification to Parliament to push the bill through as an ordinance, as Charles's

⁹⁸ 'Die Jovis, 24 Junij, 1641. A Large Conference with the Lords, Concerning Several Particulars About Disbanding the Army, the Capuchins, &c', in John Rushworth (ed.), *Historical Collections of Private Passages of State*, vol. 4, 1640-42 (1721), pp. 279-303.

⁹⁹ Fletcher, *Outbreak*, p. 64.

¹⁰⁰ Ethan H. Shagan, 'Constructing Discord: Ideology, Propaganda, and English Responses to the Irish Rebellion of 1641', *Journal of British Studies*, 36 (1997), pp. 172-3.

¹⁰¹ 'A Remonstrance of the State of the Kingdom presented to the King at Hampton Court, 1. Dec. 1641. in the Name of the Commons House of Parliament' in Rushworth (ed.), *Historical Collections of Private Passages of State*, vol. 4, pp. 436-471.

¹⁰² *Ibid.*

¹⁰³ Braddick, *God's Fury, England's Fire*, p. 171; James S. Hart, 'Rhetoric and Reality: Images of Parliament as Great Council', in Michael J. Braddick and David L. Smith (eds), *The Experience of Revolution in Stuart Britain and Ireland: Essays for John Morrill* (Cambridge, 2011), pp. 86-7.

rejection of the bill was used as the proof that Parliament needed to show that the King was absent and that there was an emergency.¹⁰⁴ Parliament claimed its authority to act came from its traditional role as the Great Council, which was entrusted with ensuring the safety of the kingdom; by doing nothing, Parliament would not only be allowing the popish plot to continue, but also would mean that it, as a body, it was neglecting its role in a national emergency. During 1641 the theory of the Great Council had developed from a 'Council in Parliament' to a 'Council of Parliament', and meant that Parliament as a whole could now assume similar powers to the medieval concept of baronial councils.¹⁰⁵ Parliament conceived itself as having a custodial role rather than a legislative one, that was empowered to solve the King's absence until he was willing to cooperate with them once again.

This did, however, create a problem in constitutional law. Subjects could not be forced to accept any order that was not signed by the King, because he maintained a negative veto on legislation, regardless of common danger. According to Charles, 'His Subjects cannot be Obligated to Obey any Act, Ordinance or Injunction to which His Majesty hath not given His consent: And therefore Hee thinks it necessary to publish, That Hee expects, and hereby requires Obedience from all His loving Subjects, to the Laws established'.¹⁰⁶ For parliamentarians there lacked an obligation for positive action – legally, at least, if the King refused to sign the bill, the subject should do nothing. With Parliament's taking control of the militia, this theoretical impasse became a reality, in which Parliament needed to find legal justification that overrode the King's negative veto in order to force the subject to obey their commands. Thus, while Parliament could act as the Great Council in extraordinary times, this solution lacked the power to force the subject to obey.

Parliamentary declarations mirrored public fears, and charged Charles with thinking the crisis 'causelesse, and without any just ground'.¹⁰⁷ Parliament's case was reliant on the supposition that the King was either unwilling or unable to deal with the papists, and therefore they needed to assume that power temporarily. Despite Parliament's efforts,

¹⁰⁴ Braddick, *God's Fury, England's Fire*, p. 187.

¹⁰⁵ Hart, 'Rhetoric and Reality', pp. 77-83.

¹⁰⁶ Husbands (ed.), *An exact collection*, pp. 113-4.

¹⁰⁷ *Ibid.*, p. 97.

this argument went, Charles was unwilling to see what a danger the kingdom was in, and was refusing to act in a suitable manner to solve the problem – in other words, he had rejected the bill because he thought it was unnecessary. The King responded to this accusation by arguing that he did not disagree that there was a need to settle the militia, but that the use of an ordinance was the wrong method. Indeed, Charles quickly retorted that he wanted an ‘Act of Parliament, rather than an Ordinance’, and later that ‘We never denied the thing ... We onely denied the way’.¹⁰⁸ This would prove to be a powerful refrain, and particularly useful when it came to Charles’s measures to raise forces later in the year.

The figures of ‘evil counsellors’ received the brunt of the accusations, and were blamed by the Parliament for the King’s wrongdoings. They were supposed to be the ones who had encouraged the King to reject the Militia Bill, and were ‘Enemies to the State, and mischievous Projectors against the defence of the Kingdom’.¹⁰⁹ While ‘his Majesties wisdom and goodnesse kept them from the heart’, Pym argued, ‘they could not be kept out of the Court’.¹¹⁰ It was an argument that had grounds in recent judicial history (such as in the case of Strafford, indicted by the Parliament the previous year), but also one that was provided for by constitutional theory. The legal maxim that the ‘king could do no wrong’ had stemmed from the medieval period, and in the seventeenth century was interpreted to mean that if the king attempted to order something illegal, the order would be void.¹¹¹ This was something of a legal necessity – if the king was to have extra-legal powers yet be constrained by the law, it followed that none of his actions could be termed illegal. It also provided an explanation for malpractice. If the king himself could not be committing the illegal acts, then his advisors were, and therefore they would be liable to be attacked.

The threat of evil advisors was also used by the Parliament to legitimise extra-ordinary acts. Parliament was able to justify John Hotham’s refusal to grant access to the King at

¹⁰⁸ *Ibid.*, pp. 91, 125–6.

¹⁰⁹ *Ibid.*, p. 95.

¹¹⁰ John Pym, *Master Pym's speech in Parliament. Wherein is expressed his zeal and reall affection to the publike good. As also shewing what dangers are like to ensue by want of their enjoying the priviledges of Parliament* (Printed for Andrew Coe and Marmaduke Boat, FD: 17 March 1642) E.200[37], p. 6.

¹¹¹ Joyce Lee Malcolm, ‘Doing No Wrong: Law, Liberty and the Constraint of Kings’, *Journal of British Studies*, 38 (1999), p. 167.

Hull by arguing that he could not let the King enter the town 'with such Counsellours and Company as then were about [him]'.¹¹² Parliament made their position even clearer in July, when they argued that despite 'so many Declarations ... of their loyalty and fidelity to his Majesty', he was still being 'mised by the suggestions of evill Counsellours' – to Parliament, it seemed the King refused to see that they were attacking his advisors, not him.¹¹³ Given the events preceding the winter of 1641, Parliament were unwilling to trust Charles to sort out the problems facing the kingdom, given the popular fear that his court was infected with papists. If the King was left to it, the Parliamentary argument went, his advisors would see that they and other malignants were protected.

All the peace propositions had provisions that Parliament would have at least some say in the selection of the King's advisors, in either the form of nominations or confirmations. By questioning Charles's ability to choose his own advisors, Parliament was challenging his ability to make sound decisions about those that surrounded him. This would leave Parliament as the only other body that could reasonably nominate advisors for the King. This issue would prove to be non-negotiable for Charles, who seems to have been resolved to retain his freedom to select who advised him, regardless of the consequences.

Parliament, then, believed they needed to take control of the militia to ensure the safety of the kingdom, due to Parliamentary and popular fears of papists and an uncooperative King besotted with evil advisors. By contrast, the King saw a Parliament acting beyond its purview, and threatening to unking him. However, the problem at law was how to get the subject to act, rather than do nothing. As things stood, the subject was not compelled to do anything, as theoretically the Militia Ordinance did not have the status of legislation.

II. THE POSITIVE IMPERATIVE

Since the theory of the Great Council of Parliament lacked the ability to compel the public to act, the Houses of Parliament found a solution within their established legal purview that allowed them to seize executive power and require the public to obey their commands. On 15 March 1642, the Houses of Parliament printed votes that explained that the King's refusal to sign the Militia Bill 'doth oblige people', and that Parliament

¹¹² Husbands (ed.), *An exact collection*, pp. 179–80.

¹¹³ *Ibid.*, p. 387.

'ought to be obeyed by the Fundamentall Laws of this Kingdome'.¹¹⁴ Parliament (with the King) had relatively established legislative, judicial and conciliar powers which it could draw upon; in these votes, however, the Houses were eager to suggest that they were not legislating or innovating, but rather they were only interpreting and passing judgement on already-enacted law in their established judicial role as the highest court in the land.¹¹⁵ The distinction that Parliament was attempting to draw is made clear by Simonds D'Ewes, who wrote in his journal that when 'it is said that all men ought to obey this ordinance, it is not thereby implied that an ordinance of parliament hath the same virtue and efficacy that an act of parliament hath or that we can bind the liberties and properties of the subjects by such an ordinance against their wills', but rather that the subject, by not acting, 'might be guilty of raising war and tumults within the realm' through their inaction.¹¹⁶ Thus, by appealing to an older, higher and crucially already-enacted law, the impasse created by reliance on the theory of the Great Council was broken. The Houses were in effect stating that to do nothing was to actively break the fundamental law.

The exploitation of a higher, more fundamental law should be seen as a logical extension to the hierarchical jurisdictions in England as a whole. Both Braddick and Clive Holmes have shown the extent to which subjects were content to utilise and exploit the multiple jurisdictions available to them when involved in litigation to ensure they received the judgement they desired (or their opponent was bankrupted by the cost of the simultaneous legal proceedings).¹¹⁷ Similarly, Coke was relatively comfortable with the idea of a fundamental law in the sense that it was part of the common law, believing it to be part of the 'basic principles of the constitution' (including, for example, Magna

¹¹⁴ *Ibid.*, p. 112.

¹¹⁵ Michael Mendle, 'The Great Council of Parliament and the First Ordinances: The Constitutional Theory of the Civil War', *Journal of British Studies*, 31 (1992), pp. 135-8.

¹¹⁶ Simonds D'Ewes in V. F. Snow and A. S. Young (eds), *Private Journals of the Long Parliament, 7 March to 1 June 1642* (London, 1982), pp. 40-1. D'Ewes' account also reveals that the clause 'cost a long dispute', and 'Divers spake against it and said that nothing but a law could bind the subject'.

¹¹⁷ Braddick, *State Formation*, p. 158; Clive Holmes, 'The Legal Instruments of Power and the State in Early Modern England', in Antonio Padoa-Schioppa (ed.), *Legislation and Justice* (Oxford, 1997), pp. 269-90.

Carta).¹¹⁸ Thus Parliament appealing to a higher law made sense within the legal framework of England.

This imperative to act, put forth by Parliament, was justified by the ‘most ancient Law of the Kingdome’ which was self-preservation.¹¹⁹ It would be illogical that the kingdom could be left unable to defend itself if the King had abandoned his Parliament, and therefore it must have had a ‘most ancient Law of this Kingdome, even that which is fundamentall and essentiall to the constitution and subsistance of it’.¹²⁰ If, as legal understanding at the time would have it, the common law was the most reasoned and best system imaginable, nurtured through countless years of reasoning, then there would have to be not only prerogative powers placed in the King in order for the country to operate,¹²¹ but also the capacity for self-preservation if the King proved unwilling or unable to act to defend it. Following this reasoning, logically there had to be a fundamental law to appeal to, which would invalidate the King’s veto. The Houses were claiming the sole power to judge a group of higher laws, and had established themselves as ultimate arbiter because of their status as the highest court in the land – to challenge their judgement, according to the votes published in March 1642, was to be seen as a ‘high breach of the priviledge of Parliament’.¹²² This would, as Michael Mendle highlights, effectively give Parliament executive power through adjudicative means.¹²³

Parliament’s defence of their actions rested on the idea that the Houses were acting as a court, and thus their actions had to be legitimated through this specifically judicial framework. However, by tying the justification to a public image of a court, they had inherited the blurred distinctions between judicial and legislative powers and were restricted in how the Houses were allowed to be seen to be acting by the public. The uneasy relationship between judicial and legislative power which Parliament was exploiting was immediately seized upon by the King, who exclaimed that he would never

¹¹⁸ J. W. Gough, *The Fundamental Law in English Constitutional History* (Oxford, 1955), p. 41.

¹¹⁹ Mendle, ‘Great Council’, p. 158,

¹²⁰ Husbands (ed.), *An exact collection*, p. 197.

¹²¹ Michael J. Mendle, ‘Politics and Political Thought 1640-1642’, in Conrad Russell (ed.), *The Origins of the English Civil War* (London, 1973), pp. 223-5.

¹²² Husbands (ed.), *An exact collection*, p. 114.

¹²³ Mendle, ‘Great Council’, p. 158,

‘allow Our Subjects to be bound by your printed votes’, or that ‘under pretence of declaring what the Law of the Land is, you shall without Us make a new Law, which is plainly the case in the *Militia*’.¹²⁴ If Parliament were acting in deference to these higher laws, argued the King, why had they not ‘told Our good Subjects what those Fundamental Laws of the Land are, and where to be found’?¹²⁵ The Houses were not acting in a judicial manner, the King charged, but rather they were exploiting judicial power in order to make new laws, and disregard old ones.

The Houses also had to maintain the idea that they were acting in their role as a court. This was a particularly pertinent issue, as memories of injustice were repeated to the public by both King (to show his affection to his Parliament, and how far he had committed himself to the rule of law) and by the Parliament (to demonstrate how necessary the supreme court of Parliament was to prevent further injustices).¹²⁶ The King made this point explicit when he argued that, while he did not deny that the Houses had a right to judge what the law said when there was a ‘particular doubtfull case brought before them’, they could not ‘make a generall Declaration’ which contradicted the written law.¹²⁷ If they could indiscriminately choose what laws to judge on, Charles argued, then Parliament would not need the power to make laws, because they could ‘suspend Statute’ and make ‘this Order, which is no Statute, to be obeyed and executed’.¹²⁸ This was a key point of contention. As Parliament were borrowing a shared public image of a court in order to explain why it was acting as it was, the reading public would also be able to compare its proceedings to the highly ritualised and structured proceedings of courts that they were aware of. The idea that a court could initiate its own investigations and cases could seem eerily similar to that of Star Chamber, still fresh in the public memory.¹²⁹ Charles’s attacks reveal how important this argument was seen to be to Parliament’s defence. He needed to prove that Parliament was acting as a bicameral legislature, rather than merely a court, as it claimed. To this effect, he was able to call upon the public conception of what made a court, and the way that it should act.

¹²⁴ Husbands (ed.), *An exact collection*, p. 126.

¹²⁵ *Ibid.*, p. 175.

¹²⁶ *Ibid.*, pp. 105–11.

¹²⁷ *Ibid.*, p. 251.

¹²⁸ *Ibid.*, p. 250.

¹²⁹ Hart, *The Rule of Law*, p. 28.

The contemporary understanding of the king's judicial power was that it was placed in his courts. This was a key component in the theory of the king's two bodies, in which it showed that the king's power could be divested from him to someone else.¹³⁰ For example, a judge could rule with royal authority, and even if the king disagreed, it remained the king's authority.¹³¹ By extension, parliamentarians argued they could pass judgement against the King's consent, because all inferior courts could also do this.¹³² Parliament was thus able to argue that the King, when out of his courts, was not allowed to speak on matters relating to law. Hence, for the King to proclaim that Hotham was guilty of high treason without using his courts, for example, was to act beyond his jurisdiction.¹³³ Parliament claimed that the King had no authority to judge Hotham because the fact that the case was being considered in the highest court meant that, theoretically at least, the King had already passed his judgement in his inferior courts but that judgement had proved to be indecisive. One writer argued that it was not a problem that the King was excluded from the highest court, because he was excluded from inferior courts too.¹³⁴ The King questioned the validity of this argument, by stating that they had not enquired 'the opinion of the Judges' at all before using an Order of Parliament to declare Hotham innocent of treason.¹³⁵ However, the principle stuck. The Parliament, (that is, the Lords and Commons), formed the 'supreme court of judicature', and for it to be challenged was to be a 'high breach of the priviledge of parliament'.¹³⁶ For all intents and purposes, then, the King was already excluded from judging the law.

In practical terms, the power to claim jurisdiction over the law proved to be the power to act with executive authority. The King, being geographically distant and estranged from his Parliament, was unable to have access to any part of the judicial powers. While some

¹³⁰ Ernst Hartwig Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, 1997); Conrad Russell, *The Fall of the British Monarchies 1637-1642* (Oxford, 1995), pp. 505-11.

¹³¹ Braddick, *God's Fury, England's Fire*, pp. 190-1.

¹³² *Reasons why this kingdome ought to adhere to the Parliament* (s.n., [01 August] 1642) E.108[30], p. 10.

¹³³ Husbands (ed.), *An exact collection*, p. 162.

¹³⁴ *What kinde of Parliament Will please the King; and how well he Is affected to this present Parliament* (s.n., [July] 1642) E.155[12], p. 1.

¹³⁵ Husbands (ed.), *An exact collection*, p. 181.

¹³⁶ *Ibid.*, p. 114.

scholars such as Corrinne Weston and Janelle Greenberg have presented the King's *Answer to the XIX Propositions*, where Charles abandoned his claim to be above the three estates of Parliament, as the moment when Charles uttered the words that could be used to 'dethrone him', their account has been criticised for overplaying the importance of the *XIX Propositions* in the development of the idea of the monarchy as an estate.¹³⁷ Weston and Greenberg's account of the *Answer to the XIX Propositions* as a tactical error has been challenged by historians such as Alan Cromartie, who has argued that the exclusion of the King from the court of Parliament meant that Charles was willing, as expressed in his *Answer*, to sacrifice his position above the estates to ensure that he was involved in Parliament, where 'you must admit Us to be a part'.¹³⁸ In this reading, therefore, Charles had recognised the peril of his position at the beginning of June 1642 – he had well and truly lost the power of the negative voice, as he could have no say in judicial matters outside the court.¹³⁹ However, it can be argued that by positioning the monarch (and replacing the bishops) alongside the Lords and Commons as one of the three estates, Charles challenged the validity of the court of Parliament, and was able to have at least some influence over the executive power. If it is taken that the judicial power was being used as an executive and the King was included within the court of Parliament, it would mean that the consensus of the Lords and the Commons could be challenged, and thus their use of the executive stopped.

The Parliament's decision to frame their justifications using the fundamental law, and to construct a positive imperative with it, was to oblige the subject to follow Parliament in defence of an as-yet-undescribed law. However, it also tied Parliament to the language of the judiciary, which could be explicitly compared with other courts whose jurisdictions had over-reached, such as the Star Chamber. By making its own actions reliant on the fundamental law, Parliament had bound the conflict to a legal framework. By doing so, the central concepts of the law could be and were openly contested, rather than just the

¹³⁷ Corinne Comstock Weston and Janelle Renfrow Greenberg, *Subjects and Sovereigns: The Grand Controversy over Legal Sovereignty in Stuart England* (Cambridge, 1981), p. 40; John Sanderson, 'The Answer to the Nineteen Propositions Revisited', *Political Studies*, 32 (1984), pp. 627-33.

¹³⁸ Cromartie, *Constitutionalist Revolution*, pp. 264-5; Husbards (ed.), *An exact collection*, p. 317.

¹³⁹ Indeed, this was a theme that Charles had peddled before – in his *Answer to the Parliamentary Remonstrance* of 19 May, he argued that 'If, as in the usage of the word *Parliament*, they have left Us out of their thoughts, so by the word *Kingdom*, they intend to exclude all Our people, who are out of their wals'. Husbards (ed.), *An exact collection*, pp. 242-3.

manifestations of it. Parliament had appealed as high as the common law could go to make their case – if and when the King refused to agree that their interpretation was correct, the basis of the common law would be proved ambiguous, expanding the debate from a spat between various estates of government towards one that rested on a disagreement over the basis of the common law. In other words, the conflict was framed in such a way that the authority of the law was going to be called into the political debate.

III. THE 'PERILL OF THE LAW'

The process of Parliament taking executive power would not only require flexible interpretations of the law, but would bring about a debate over who exactly should be interpreting the law. Paradoxically, the debate about who should be permitted to interpret the law manifested itself in the public's being given an increased space in which they could assess legal argument.

During the 'paper wars' of the spring and summer of 1642, statute law was publicly interpreted for a reading audience.¹⁴⁰ Considering his position after being denied entrance to Hull, it is not surprising that Charles was particularly eager to debate the interpretation of statutes. After proclaiming Hotham a traitor, the King published a letter to the 'Major of *Kingston upon Hull*', justifying his accusation with reference to the statute of 25 Edw. III, and appended the statute 11 Hen. VI c.1, 'lest a mis-understanding of Our intentions, or of the Law may misguide any of Our loyall and wel-affected Subjects'.¹⁴¹ By highlighting the 'Perill of the Law on the one side', and his own compassion on the other,¹⁴² Charles showed the public the letter of the law, challenging both the public themselves and the Parliament to construct defences that went directly against it. For Charles, to deny a particular line of reasoning was one thing; to reject a quoted legal definition in statute was another.

¹⁴⁰ Parliament's relationship with print before 1642 is discussed by Sheila Lambert, 'The Beginning of Printing for the House of Commons, 1640-42', *The Library*, 6 (1981) and Alan Cromartie, 'The Printing of Parliamentary Speeches November 1640-July 1642', *Historical Journal*, 33 (1990).

¹⁴¹ Husbands (ed.), *An exact collection*, pp. 154-5.

¹⁴² *Ibid.*, p. 155.

In these cases, Parliament proved happy to follow this trend, and published works explaining at significant length where Charles's interpretation of statute law was mistaken. For example, in the Houses' *Third Remonstrance* of 26 May, they explained that the problem was not so much that the statute was wrong, but rather that the King had misunderstood what it meant. They challenged Charles's interpretations of both statutes, arguing that the former really meant that war against the King was war 'against his Lawes and Authority', not necessarily his personal commands, and that the latter statute must refer to wars that have been 'allowed and received by the Parliament in behalf of the Kingdom'.¹⁴³ Parliament, therefore, styled itself as the custodian of the law – they had shown that they were aware of the statutes and had considered them, but they had decided that their actions were agreeable to the 'scope and purpose' of the law,¹⁴⁴ even if the King had demonstrated that they were 'expressly contrary' to statute.¹⁴⁵ This reading, however, would not mean that the Parliament was above condemning the King's Commissions of Array issued on 12 July for incorrectly quoting a statute. They argued that the text that the King had used had later been deemed 'grievous and dangerous', and as the King had failed to use the corrected text, it was 'void, and not warranted by that Law',¹⁴⁶ even if the scope and purpose was agreeable in law.

Printing and contesting statute law before the reading public meant that statutes increasingly became open to challenge and qualification. By making public the difference of opinion, statute law could be seen to be flexible according to definition and interpretation. While it was in Charles's interests to allow the public to see the law and read it at face value, Parliament's defence often relied on the law being read in a particular way to justify their actions – otherwise their actions could be shown as being against statute law. However, both Parliament and King were able to maintain multiple understandings of what the law meant, and what part of the law should be appealed to. This polysemic use of the law is of great significance, and suggests that the law was being used as a political tool, rather than being used simply as a guide and a reference.

¹⁴³ *Ibid.*, pp. 280–1.

¹⁴⁴ *Ibid.*, p. 301.

¹⁴⁵ *Ibid.*, pp. 301–2.

¹⁴⁶ *Ibid.*, pp. 387–91.

Similarly, interpretative readings of the law forced both Parliament and the King to decide who should be judging what the law said. In turn, this would reveal significant breaches in understanding both of the nature and the meaning of the law between both King and Parliament, even at this early stage in the conflict. The King argued that he was not asking the people to judge which side was right or was wrong in the eyes of the law, but rather that he was appealing to the people so that they might demand that the law would be the judge – it was the Parliament who were guilty of appealing to the public in order to ignore the law. The King, responding to a petition from subjects in York in which they lamented their ‘unfitness to become Judges betwixt your Majesty and Parliament in any thing’, explained that he had ‘never intended to have you be Judges betwixt him and his Parliament’.¹⁴⁷ Rather he wanted to ensure that the law was upheld and maintained, and to ‘Let the Law be judge’ of who is right and who is wrong.¹⁴⁸ Similarly, in May, Charles’s letter to his Privy Council in Scotland stressed that ‘We did not require of you, that you should sit as Judges upon the affairs of another Kingdom: We onely intended to have both Our Sufferings and Our Actions ... made thoroughly known unto you’.¹⁴⁹ Charles therefore argued that the law should be the judge, but the people could play a role in ensuring that it was followed.

The Houses, however, claimed that in their judicial capacity they had the power to judge the law, and also went further still. Because the King’s judicial power was located within the courts, for the King to challenge the supreme court of Parliament would be similar to the ‘Kings-Bench’ being challenged by the Common-Pleas – it would not make sense in the judicial hierarchy in which the body politic was understood.¹⁵⁰ Equally, however, the court metaphor could be restrictive, and this needed to be challenged. For example, questions were raised about whether a judge could also be a witness in a case that he was presiding over.¹⁵¹ The parliamentarian propagandist Henry Parker argued that the law was its own interpreter in ‘perspicuous, uncontroverted things’; however, if it was

¹⁴⁷ *Ibid.*, p. 189.

¹⁴⁸ Charles I, *His Majesties answer to the petition of the Lords and Commons in Parliament assembled* (Printed by Robert Barker, FD: 17 June 1642) E.152[2], p. 8.

¹⁴⁹ Husbands (ed.), *An exact collection*, p. 256.

¹⁵⁰ Pym, *Master Pym’s speech*, p. 3.

¹⁵¹ Oliver St. John, *Mr. St. Johns Speech, or Argument in Parliament, Shewing, whether a man may be a Judge, and a Witness in the same Cause* (s.n., [23 March] 1642) E.200[41].

challenged, Parliament had to interpret the law, because otherwise the King would be ruling over other courts.¹⁵²

Parliament's position flirted with increasingly flexible readings of the law. The anonymous pamphlet *A Question Answered* (which later appeared in Edward Husbands's *Exact Collection*, suggesting a Parliamentary sanction), and other works following it, argued 'That there is in Laws an equitable, and a literall sence'. If the letter of the law is 'taken abstract from its originall reason and end, [it] is a shell without a kernel, a shadow without a substance, and a body without a soule'. Laws should be executed 'according to their equity and reason, which (as I may say) is the spirit that gives life to Authority, the Letter kills.'¹⁵³ In other words, the equity of each individual law had to be assessed, and had to be considered in the context of what the original purpose of the law was. This could also be seen in the wider debate over the understanding of political liberty as highlighted by Skinner. His conceptualisation of liberty in the 1640s is two-fold: firstly, rights and liberties could be enjoyed 'without undue interference'; and secondly, if anyone else could interfere with your liberties, you were not free. In this sense, positive law could not force anyone to abandon or subvert their own rights.¹⁵⁴ Charles believed this to be the stuff of chaos. His objection was both to the idea that the public had a role to play in assessing which legal case – his or the Houses' – was right, but also to the increasingly pervasive notion that works such as *A Question Answered* promulgated: that '*humane lawes doe not binde the conscience*'.¹⁵⁵

Already, then, there was a significant division in the way that both sides were willing to understand the law, and at its heart, this was a discussion over whether the law was understood as a controller, or something to be controlled. The King maintained that the law should judge who was right ('Let the law judge by whom it is violated'¹⁵⁶), and the

¹⁵² Henry Parker, *Observations upon Some of his Majesties Late Answers* (s.n., [02 July] 1642) E.153[26], pp. 35-6.

¹⁵³ Husbands (ed.), *An exact collection*, pp. 150; This argument would later be particularly important for parts of Leveller political theory – on this, see Andrew Sharp, 'John Lilburne and the Long Parliament's *Book of Declarations*: A Radical's Exploitation of the Words of Authorities', *History of Political Thought*, 9 (1988).

¹⁵⁴ Quentin Skinner, 'Rethinking Political Liberty', *History Workshop Journal*, 61 (2006), pp. 156-70.

¹⁵⁵ Husbands (ed.), *An exact collection*, p. 151.

¹⁵⁶ *Ibid.*, p. 364.

Parliament believed that they alone should have that ability. This was not only an intellectual debate, but a political one with real potential consequences for both sides; as soon as the debate was resolved in favour of one side, they could accuse the other of acting illegally. Mendle reminds us that in the seventeenth century opponents of royal power had failed to win major cases, and the King could and would put pressure on judges in key cases.¹⁵⁷ Similarly, it would be unlikely that Parliament would judge against itself.

IV. THE CONSTITUTION

In the process of constructing legal cases to defend their actions, Parliament was being forced to reassess how they presented the constitution as a whole. As Russell demonstrates with his close readings of the declarations and proclamations of the 'paper wars', Parliament utilised English land law and the concept of trust in order to define the powers and limitations of the King's prerogative.¹⁵⁸ The King, by making war against his Parliament, was breaching the 'trust reposed in Him by his people', and he was only entrusted with his properties for the good of the kingdom.¹⁵⁹ The good of the kingdom, of course, was placed in the trust of the Lords and Commons, along with the power of defending laws and making new ones as they saw fit.¹⁶⁰ However, their relationship with the laws was becoming much closer. Previous thought often had it that the King was the fountain of justice.¹⁶¹ Increasingly, however, Parliament was being given that credit. For example, according to Denzil Holles, Parliament had originally created the law, and was the sole body allowed to act to 'preserve the Law'.¹⁶² The same month, *A Short Discourse*

¹⁵⁷ Mendle, 'Politics', p. 221.

¹⁵⁸ Russell, *Fall*, p. 510.

¹⁵⁹ Husbands (ed.), *An exact collection*, pp. 259, 266.

¹⁶⁰ *Ibid.*, p. 269.

¹⁶¹ See, for example, John Pym, 'The Speech or Declaration of John Pym', in John Rushworth (ed.), *Historical Collections of Private Passages of State*, vol. 8, 1640-41 (1721), pp. 661-671.

¹⁶² Denzil Holles, *The speech of Denzell Holles Esquire* (Printed for Thomas Vnderhill, [15 July] 1642) E.200[48], p. 1.

also presented this understanding, and argued that the cavaliers aimed to ‘root up the foundation of the Law, the Parliament it self’.¹⁶³

Much of the debate surrounding the trust of kingship, and Parliament’s relationship with that trust, probed issues surrounding Charles’s Coronation Oath. On 26 May 1642, the Houses had declared that Charles had acted ‘contrary to his Oath’ by refusing to ‘assent to good laws as their people shall chose’, (the laws that Parliament had ‘chosen’), and as proof published a copy of the Oath in Latin.¹⁶⁴ Charles had countered that they had produced it in Latin as ‘they knew many of Our good Subjects could not’ understand, and reproduced a different translated version.¹⁶⁵ Charles’s version did not promise to provide new laws, but rather only committed him to ‘hold and keepe the Laws and rightfull Customes’.¹⁶⁶ A month after the Houses had produced their version of the Oath, Edmund Prideaux, D’Ewes, Roger Hill, and William Constantine were sent to the Exchequer see what oath Charles had actually taken at his coronation.¹⁶⁷ This was a significant point of contention, because as the writer John Marsh would later identify, and as Charles feared, in the former version to deny laws would be to automatically break the Coronation Oath, which in turn would strip the King of the negative voice.¹⁶⁸ In other words, if it could be shown that the King had breached the trust placed in him, control of the militia could be rightly taken from him by the Parliament.

Discussions over the constitution, then, had major impacts on the types of arguments that each side could make. Disagreements that appeared at first to be minor – for example the text of the Oath – led to wildly differing relationships between the estates of government. Two works, produced late in the summer of 1642, demonstrate why it was

¹⁶³ *A short discourse, tending to the pacification of all unhappy differences, between His Majesty and His Parliament shewing the meanes whereby the same may speedily be done, and that it rests in His Maiesties sole power to effect it* (s.n., [08 July] 1642) E.107[21], p. 7.

¹⁶⁴ Husbands (ed.), *An exact collection*, p. 268.

¹⁶⁵ *Ibid.*, p. 290.

¹⁶⁶ *Ibid.*, p. 291.

¹⁶⁷ *JC*, ii, pp. 633-34. For the different versions of the Oaths, see Michael J. Braddick and Mark Greengrass (eds), ‘The Letters of Sir Cheney Culpeper, 1641-1657’ in *Seventeenth-Century Political and Financial Papers: Camden Miscellany 33* (Camden Soc. 5th ser., vol. 7), p. 219, fn.24.

¹⁶⁸ John Marsh, *An Argument, or Debate in Law of the question concern- ing the Militia, as it is now settled by Ordinance of Parliament* (Printed by Tho. Paine and M. Simmons, for Tho. Vnderhill, [30 September] 1642) E.119[13], p. 24.

so important to establish the original trust of kingship. Marsh, writing in September 1642, dedicated a significant portion of his work to proving that the King had refused to act for the common good, and hence was not acting in accordance with the 'trust reposed in him'.¹⁶⁹ In these cases, the 'Law will in its own defence ... inable the two Houses of Parliament, to put the Kingdome into a posture of warre'.¹⁷⁰ He listed the breaches, which included denying protection by refusing to settle the militia, refusing to support the laws, not maintaining peace, and denying justice by, among other misdemeanours, harbouring delinquents.¹⁷¹ A few weeks later, Richard Ward's understanding of the militia in *The Vindication of the Parliament* was explicitly based on the Parliament having entrusted the King with the militia 'by a Law ... for the weale of the *Commonwealth*, not the *woe*'.¹⁷² If the King should try to 'enslave us [and] to tyrannize over us', then the '*equitie of the Law*' demonstrated that he was misusing that trust, and so it could be taken off him.¹⁷³ In other words, after the King's rejection of the Militia Bill, the trust was already broken, and Parliament was acting to fix and re-impose that trust. Their interpretation was one that put the King in an impossible position – to invoke the negative voice was to breach the trust, as was to act in a way that did not seem compatible with the law, which of course Parliament would judge. Thus, the debates in the 'paper wars' were over the very core of the constitution, and any form of compromise or conceding of a point could result in significant constitutional changes.

V. THE OBSERVING IMPLIED READER

The Great Council theory had proved to be ineffective because it lacked any imperative for the public to act. Because of this, other legal concepts and understandings of state had been utilised to ensure that Parliament's case was both within Parliament's jurisdiction, and that people were obliged to follow their orders. However, Parliament needed to retain a monopoly on the power to act that currently depended on the King being unable or unwilling to do so. To achieve this, Parliament needed to ensure that the King remained insufficient, and made efforts to widen the definition of what would make him 'absent'. Charles's choice not to abandon his advisors gave Parliament a powerful

¹⁶⁹ *Ibid.*, p. 10.

¹⁷⁰ *Ibid.*, p. 11.

¹⁷¹ *Ibid.*, pp. 21-4.

¹⁷² Ward, *The Vindication of the Parliament*, p. 4.

¹⁷³ *Ibid.*

weapon with which to strike at him, and provided them their defence that justified physical force – the menace of the evil counsellors.

The control of the interpretation of the law had become synonymous with the control of the executive, and Parliament's interpretation left it infallible and unquestionable, ensuring that it could retain power over the Militia. To challenge this, the King proved himself willing to relegate his role in the political system to have at least some influence within the court that was Parliament.

On the face of it, it would seem that the debate had crystallised into different understandings of the limits of legislation, and the powers of the judiciary. Politics in this period was empowered, justified and utilised by reference to precedents, and blurring the distinction between judiciary and legislative powers may not just have been a justificatory tactic, but also a contemporary understanding.¹⁷⁴ However, it seems that in the public debate, the King and Parliament relied on different conceptions of the way that the law should be understood. While consensus may have superficially existed, the pressure of mobilisation and maintaining momentum meant that divisions, however small initially, would be probed by the opponent, and emphasised by propagandists. Fundamentally, then, there was a divergence in the understanding of the law, between whether the law should be left to run its course, or whether the law was in crisis and the Parliament needed to judge what it said. While the King denied Parliament the legitimacy to judge the higher law, he maintained a commitment to written laws and statutes. At the same time, Parliament denied the King the right to judge the law in his person.¹⁷⁵ These pragmatic positions, not intended as models for posterity, were transformed into relatively concrete positions by the process of printing and public

¹⁷⁴ See, for example, David L. Smith, *The Stuart Parliaments, 1603-1689* (London, 1999), p. 38. However, it should be noted that the *Answer to the XIX Propositions* made this divisions clear, and often the Royalist attack line would be based on denying certain elements of Parliament constituted a court of record. See, for example Edward Hyde, *A complaint to the House of Commons, and resolution taken up by the free Protestant subjects of the cities of London and Westminster, and the counties adjacent* (s.n., FD: 02 January 1643); Stephen Marshall, *A copy of a letter written by Mr. Stephen Marshall to a friend of his in the city, for the necessary vindication of himself and his ministry, against that altogether groundlesse, most unjust, and ungodly aspersion cast upon him by certaine malignants in the city, and lately printed at Oxford, in their Mendacium Aulicum, otherwise called Mercurius Aulicus, and sent abroad into other nations to his perpetuall infamy* (Printed for John Rothwell, [18 May] 1643) E.102[10], p. 14.

¹⁷⁵ On this, see Cromartie, *Constitutionalist Revolution*, pp. 260-70.

debate. The disagreement over how the law should be used would be a huge point of contention in the years that followed. The legal framework meant that a clear binary was constructed, but in order for the binary to retain legitimacy, one side or the other had to be declared illegal. Thus, the price of negotiated peace would be significantly higher.

By constructing a positive imperative, the public was being made to choose by Parliament which side was acting legally – the public were empowered to decide whether the King's, or the Parliament's, case was right. In doing so, the pressure for the public to act was not just *de facto*, but also (because the public could decide) was *de jure*. Although both sides would try to restrict the extent to which the public could examine the law, they were both complicit in developing, and failing to establish clear parameters for, this legal role.

II LAW, PUBLICITY AND POLITICS

The constitutional crisis was conducted in front of an audience hungry for news and scandal. While these debates were part of a more general explosion of print, authors also had to deal with specific issues that arose when printing legal debates, and the process of making these legal debates public created meta-discussions which forced theorists, writers and readers alike to re-assess their own understandings of the law, and the place that it should occupy within the constitution. The ongoing debate would also require both authors and the public to question why the law was proving unable to solve the conflict between King and Parliament. By using the law to frame political debates, pamphleteers on both sides found themselves developing problems in the legal framework which needed to be solved.

I. SELF-VALIDATION, AND THE PARLIAMENT IN THE THIRD PERSON

The 'paper wars' were structured as a dialogue between two very distinct sides, the King and the Parliament, conducted in clear public view. Failures to reply to charges, arguments or entire works were at best openings for attack, and at worst admissions of guilt.¹⁷⁶ The pamphlets produced by King and Parliament were each written in a univocal style, which meant that the debate that was presented to the reading public appeared to be a debate between two single voices, rather than many. Each side made attempts to undermine the univocal style of the other. Parliament's works, for example, inherently

¹⁷⁶ See, for example, Husbands (ed.), *An exact collection*, p. 163.

implied that everyone within the Houses had agreed on the published votes, and the power of the King's works relied upon them conveying his voice, rather than those of his councillors. Conversely, the King's declarations took care to blame the 'fiery spirits' that were cajoling and manipulating Parliament, rather than blaming Parliament as a whole. For his part, Charles had to continually defend against the notion that his advisors were penning his declarations for him. This emerged in part because of the legal maxim discussed earlier: that it was constitutionally impossible that the King himself was producing these works to abuse the public's minds, and therefore it must be the handiwork of the scheming councillors that surrounded him.¹⁷⁷ It was an effective solution for Parliament's problem that the King was saying one thing, and the Parliament in its declarations was contradicting him. If the King's input was proved to be in doubt, then it could be shown that evil advisors were 'hindering the proceedings of *Parliament*, by provoking and instigating his Majesty to send severall Papers in the forme of declarations and messages' to perplex the Parliament and make them spend time answering their objections.¹⁷⁸

Eventually, however, the univocal style would prove to be limited, and polyvocal works would make increasingly important interventions. Even though the authorship of works could be brought into question, responses still engaged with the legal arguments that were within the 'falsified' pamphlets – the ideas, it seems, still needed to be pacified. Thus Parliament's charge that advisors (not the King) were penning declarations was planted within much longer defences.¹⁷⁹ In other words, even though the arguments were supposed not to be the words of the King himself, the words and ideas were deemed worthy of a response by the Parliament and its defenders, or at least it was thought unwise to leave them unchallenged. The arguments were dangerous as well as those who were making them.

It was, to some degree, an easier task for the King to strip the parliamentarians of their apparent unity because of the composition of the Houses as a whole – they were two different bodies, yet their authority came from them operating together. He had achieved some success earlier in the year by highlighting the disagreements between the

¹⁷⁷ *Ibid.*; *An appeale to the world in these times of extreame danger* (s.n., [12 July] 1642) E.107[26], p. 2.

¹⁷⁸ *Ibid.*, p. 7.

¹⁷⁹ Husbands (ed.), *An exact collection*, p. 208.

Lords and the Commons, and as James Hart has emphasised, the Houses required unity to continue to operate as a Great Council.¹⁸⁰ In these new contexts and with Parliament's new judicial defence, Charles could take advantage of this and draw attention to times when the Houses had disagreed with each other as part of their now public decisions – for example, he would highlight the Lords' reluctance to pass the Militia Ordinance in February, having 'refused it two or three times'.¹⁸¹ This argument could also work at a more constitutional level. In the *Answer to the XIX Propositions*, the understanding of the three estates allowed clearer divisions to be drawn between the Lords and the Commons: a division that placed the judicial power in the House of Lords, relegating the Commons ('an excellent Conserver of Libertie, but never intended for any share in Government') to be interested in 'Levies of Moneys' and to impeach evil advisors.¹⁸² In other words, Charles suggested if the two Houses were united and acting as a judicature, the Commons was acting beyond its remit.

By June 1642, Parliament's defences had become bound up with the nature of the assembly itself. The process of extended polemical debate, and the proliferation of printed statutes that had accompanied it, had led several Parliamentary declarations to admit that it was acting beyond the precedents set by its predecessors, justifying it by saying that 'we have suffered more than ever they have suffered', and that it believed that no precedent 'can be limits to bound our proceedings'.¹⁸³ The public needed to be persuaded that this power, even though it was already appropriated, should indeed be placed in Parliament's hands, along with the power to judge the law and to defend them and the true Protestant religion. In other words, there came about an urgent need for the Parliament to self-validate in order to legitimate itself.

An argument of this nature would have appeared immodest if it came from Parliament itself – that would be an institution praising itself on its own excellent makeup. Pamphlets authored by a wider range of authors or published anonymously could supply this need – multiple works could simultaneously praise the Parliament, implying

¹⁸⁰ Hart, 'Rhetoric and Reality', p. 91. Mendle, 'Politics', pp. 239-45.

¹⁸¹ Husbands (ed.), *An exact collection*, p. 196.

¹⁸² Charles I., 'His Majesty's Answer to the Nineteen Propositions of Both Houses of Parliament, Tending Towards a Peace.', in John Rushworth (ed.), *Historical Collections of Private Passages of State*, vol. 4, pp. 722-751.

¹⁸³ Husbands (ed.), *An exact collection*, p. 265.

consensus amongst many authors. Indeed, Peacey has shown that politically-motivated printers could release multiple pamphlets with the same message in order to saturate the marketplace, both restricting the choice of reading offered to the reader and creating a narrative favourable to a certain side.¹⁸⁴ At the centre of Peacey's print campaign is Parker's *Observations* of July 1642, which justified an arbitrary power in the Houses of Parliament and entrusted them to protect the laws as they saw it because they were absolutely representative of the country at large. This message was repackaged and repeated throughout the second half of 1642, and operated with the help of the Parliamentary leadership – thus, they were complicit actors in this shift. Since these works did not appear to come from the Parliament itself, the works could justify publication not just as responding to the dialogue with the King, but increasingly the pamphlets could respond to external events.

Parliament was portrayed in supportive pamphlets as a body that was worthy of deference. Lord Willoughby, for example, argued that he had settled the Militia 'according to the Ordinance of Parliament' because the Parliament were more 'versed in the Lawes then myself, passed as a Legall thing'. By citing the combined legal expertise of 'those great Lawyers', Willoughby could present his position as being one of humble submission, and argue that the legal judgement came from Parliament's judgement, rather than his own.¹⁸⁵ Similarly, another reminded the reader that Parliament consisted of 'all the Judges and chiefest Lawyers in the Land.'¹⁸⁶ This deference is reminiscent of the King's objection to the actions of Hotham at Hull, in his charge that Hotham was implicating Parliament rather than taking responsibility for his own actions. This time, however, deference to Parliament was actively encouraged by the pamphlets, because Parliament knew best. Pamphlets could therefore use Parliament's legal expertise as a shield to defend individual actions.

This style of argument builds upon Parliament's successful campaign attacking the King's authority to judge, or even utilise, the law. In May, Charles had allowed his

¹⁸⁴ Peacey, "Fiery Spirits".

¹⁸⁵ Lord Willoughby, *The Lord Willoughby of Parham, his Letter to an Honorable Member of the House of Parliament* (Printed for Joseph Hunscoott, and Iohn Wright, [09 July] 1642) E.150[4], p. 7.

¹⁸⁶ *A plea for the Parliament, or, Considerations for the satisfaction of such, who are apt to be misled by the malignant party against the Parliament, with a palpable and evident declaration of their chiefest designes therein* (s.n., [June] 1642) E.152[11], p. 6.

rhetoric to get the better of him, and had stated that ‘We doe not pretend to understand much Law’.¹⁸⁷ The full sentence was designed to show how clear the laws on treason were, and how Hotham was clearly guilty even to someone who was not trained as a lawyer, but the damage was done, and had sparked a wave of parliamentary responses. Parliament’s case could now be that it was a choice between themselves, or the King’s unknown lawyers. Hence, *A Short Discourse* could argue that while the ‘Commons doe know’ the Parliament, ‘they know not their Persons or names’ of ‘those who expound the Laws to his Majesty’ – it was likely, it speculates, that they were ‘Men of darknesse’. Indeed, another work argued that the King’s view was the misinformation of others.¹⁸⁸

Perhaps the most successful work inspiring deference to the Parliament was that of Parker. His pamphlets were particularly interested in bolstering support and confidence in the body as a whole in order to justify an arbitrary power within Parliament.¹⁸⁹ He did this by appeals to recent memory, showing that the law on its own was insufficient, and there needed to be a body of some sort with the power to judge it to stop the law being a ‘livelesse fond thing’.¹⁹⁰ There had to be, therefore, an arbitrary power because ‘tis necessary’ for a state. This was not something to fear, argued Parker, because Parliament itself was the state and the people, and therefore could not harm itself.¹⁹¹ If power was inherent in the people, it was only logical that they would have some ability to judge who would be best to exercise it. Parker, because he was outside the Parliament, was able to compliment the make-up of the Parliament and thus could argue that they were acting as a legislature.¹⁹² So long as Parliament remained simultaneously both infallible and representative, Parker’s argument was by far the most appealing and complete.

These were not the only ways in which Parliament was presented as being worthy of deference: the quantity and quality of its members, its wisdom and reliability, its history and past successes, and even its proximity to the presses were all offered as points in its favour. Parker’s *Observations* argued that the ‘many eyes of so many choyce Gentlemen

¹⁸⁷ Husbands (ed.), *An exact collection*, p. 166.

¹⁸⁸ *A short discourse*, p. 6; *A plea for the Parliament*, p. 6.

¹⁸⁹ Alan Cromartie, ‘Hobbes, History, and Non-Domination’, *Hobbes Studies*, 22 (2009), p. 175.

¹⁹⁰ Parker, *Observations*, pp. 13-4.

¹⁹¹ *Ibid.*, p. 34.

¹⁹² *Ibid.*, p. 16.

out of all parts, see more then fewer'.¹⁹³ Earlier, Parker had argued that Parliament was both 'more knowing than other privadoes', more responsible and less likely to make an error.¹⁹⁴ They also had history on their side: 'let all Chronicles be searched', asked one work, 'and let one Story be cited of any Parliament, which did tyrannize over King and Subject, or ordain anything to the mischief of both'.¹⁹⁵ Similarly, Thomas May had written that 'no one Prince was ever yet happy without the use of them'.¹⁹⁶ Finally, the pamphleteers argued that as they were based geographically closer to the Parliament, they would be able to work out if it was acting with sinister intent.¹⁹⁷

Pamphlets were also written condemning how some members of the public had seemingly abandoned their Parliament. The anonymous *Reasons why this Kingdome ought to adhere to the Parliament*, for example, lamented that the people 'almost forgot how our Religion, Lawes, liberties, and properties in our estates, lay bleeding almost to death at the feete of a Malignant partie' (the royalists), and continues on to examine why there was such 'inconstancy and ingratitude'.¹⁹⁸ The fault, it seems, was partly because 'we grow weary of Physicke before our Physicians can perfect the cure'.¹⁹⁹ The fear was that people had abandoned Parliament without having considered all the good that it had done. Lists of what had been done by Parliament were created, stressing how important that was, but also how much work was still to be done.²⁰⁰ Secondly, it was explained that when royalists had been unable to disband the Parliament, they had been forced to 'render [it] odious and suspected to the people'.²⁰¹ In a sense, this was a

¹⁹³ *Ibid.*, p. 11.

¹⁹⁴ Henry Parker, *Some Few Observations Upon His Majesties Late Answer to the Declaration, or Remonstrance of the Lords and Commons of the 19. Of May, 1642* (s.n., [May] 1642) E.151[23], p. 5.

¹⁹⁵ *The general resolution of the two kingdoms of England and Scotland, concerning, His Royall Majesty, the prince, and the evill incendiaries which are now about them* (Printed for I. Tompson and A. Coe, FD: 24 June 1642) E.152[9], sig. A2v.

¹⁹⁶ Thomas May, *Observations upon the Effects of Former Parliaments* (s.n., [18 July] 1642) E.107[13], p. 3.

¹⁹⁷ Henry Parker, *A Petition or Declaration, humbly desired to be presented to the view of his Majesties Most Excellent Majestie* (s.n., [17 July] 1642) E.107[29], p. 2.

¹⁹⁸ *Reasons why*, pp. 1-3.

¹⁹⁹ *Ibid.*, p. 3.

²⁰⁰ *The Parliaments lamentation, for the distractions of the kingdome first, vwherein is declared their great sorrow for the Kings absence* (Printed by T. Fawcet, FD: 06 July 1642) E.154[6].

²⁰¹ *Reasons why*, p. 6.

continuation of the Parliament's trope that evil counsellors had tried to turn the people against its Parliament. The difference in this case was that the identification of this came from outside the Parliament, and within the body of the people instead.

Polyvocal legal cases allowed pamphleteers to continue to support Parliament and its defences by proclaiming that it was the most suited to either act as the judicative arbiter, or be the sole body entrusted to protect the law. These were arguments that Parliament, in its various Remonstrances and Declarations, could not make for itself, either because the justifications needed to praise the learned members of Parliament, or because the style of Parliamentary declarations required a single voice. As pamphleteers assumed the role of the people, claiming to speak with the public's voice, they were able to construct the people as giving willing deference to the Parliament, setting the template of behaviour that would be crucial to the parliamentary case. This provided opportunity for new types of works, often anonymous, that reinforced similar themes – legal knowledge and trustworthiness – to flood the market over the summer of 1642.

II. THE OPENING OF THE PRESSES

Although anonymity provided opportunities for Parliament to be praised, it could also prove destructive to the legal arguments that justified resistance against the King. While Parker's works are given importance in the historiography, in-depth analysis of anonymous printing in this period allows greater understanding of the limitations of this type of printing, and the ways that authors and printers attempted to deal with these problems. As Peacey has shown, in the summer of 1642 a press owned by George Bishop and Robert White was producing works that were ideologically coherent, and had the support of, and connections to, the 'fiery spirits' within Parliament.²⁰² During June and July, this press was interested in manipulating the public's perception of the polemic in order to push forward a certain sanctioned constitutional argument, in the process intervening with both the language and the content of the debates. Peacey's work reminds us to consider not just the pamphlets themselves, but also the context of their creation – both the way that printers were able to manipulate the public's reading, and the way that the impact of the production of pamphlets would affect the nature of the debates.

²⁰² Peacey, "Fiery Spirits".

As more printers and authors emerged, so too did tensions within the parliamentary defences printed in June and July. When more presses engaged with the issues, the conformity of the constitutional understanding and its implications was challenged, and the issues that had been so skilfully navigated by Parker were approached by those less skilled in the art of propaganda. As has been argued above, in June and July Parker and the related press campaign were interested in ensuring that there was an arbitrary power to protect the law, and arguing that the body that was best suited to that role was Parliament (being the highest court). The central purpose was to show that Parliament, being the best to defend the law, were in turn the best body to defend the people. This conception of Parliament is the parallel of the idealised maxim that the King could do no wrong. According to this maxim, the concept of infallibility did exist in law, and situations in which the King *did* do wrong could be, and were, explained away by blaming evil advisors. Similarly, as Parker argued, because the two Houses were representative of the Kingdom itself, they could not possibly damage the kingdom. But borrowing this concept also duplicated its central problem: pamphleteers needed to find a way to legitimate Parliament while at the same time conceding that the ‘perfect’ constitution could create imperfect consequences.

This was a prickly issue, and one that threatened to dilute the strength of Parker’s defence. Parker had already gone some way to defend past Parliaments for acting against the public interest when he argued in his *Observations* that ‘Tis denyed, That any King was deposed by a free Parliament fairly elected’.²⁰³ Parliament, then, could theoretically be unfree, and could act in anti-monarchical ways (and thus harm the people), but if the Parliament was fairly elected and free (as this Parliament was assumed to be), then they would not damage the monarchy. Indeed, several works in August were interested in stressing how fairly the Parliamentary elections were run, and efforts were made by some, such as May, to account for and pacify historical anomalies that could be used to undermine the Parliament’s justification.²⁰⁴ By emphasising the distinction between free and unfree Parliaments, and by providing evidence that this current Parliament was both

²⁰³ Parker, *Observations*, p. 46.

²⁰⁴ See, for example, Thomas Morton, *Englands warning-piece: shewing the nature, danger, and ill effects of civill-warre, and of those nations which have bin infested with it, described. Very necessary for these times wherein we are in so great feare and imminent danger of civill dissention* (Printed by T. Favvcet, FD: 05 August 1642) E.109[14], p. 5; May, *Observations upon*, p. 7.

free and fairly elected, the uncomfortable actions of previous unfree Parliaments could be swept under the carpet.

This argument was closely tied to a need to react to the fear that the public would be unwilling to submit themselves to an arbitrary power. *Considerations for the Commons*, for example, argued that ‘There is not any age that can produce a story of a Parliament, freely elected and held, that ever did injure a whole Nation, neither have we ever heard of Prince or people that casting themselves upon this well constituted Assembly that they were ever defrauded or prejudiced by them’.²⁰⁵ The problem for defenders of Parliament’s actions was that they were reliant on the people submitting themselves completely and totally to an arbitrary power in the two Houses of Parliament. As one royalist writer pointed out, ‘was their [the people’s] grant so absolute, and so irrevocable, that they dispossess themselves wholly of taking or exercising that power, [in] their owne proper persons?’²⁰⁶ Parliamentarians were unclear about whether Parliament could actually be a tyrant, or whether this was a hypothetical, and if so whether this made any difference. *The General Resolution* complained that the King does ‘not say that this Parliament tyrannizeth’ and thus ‘pronounces their vote invalid’ but rather states that ‘because Parliaments may tyrannize ... they have no power in their Votes at all, at any time whatsoever’.²⁰⁷ Evidence that could help resolve this question was damning – if Parliament could be shown to have damaged the people as a whole in the past, how then could they be trusted with an arbitrary power? And furthermore, if a Parliament abused their trust, who was to judge them?

One solution to these problems, according to the anonymous *A Discourse upon the Questions in Debate*, was to tackle the issue head on. While the people of the kingdom had never been forsaken by their Parliament, ‘if they [the Parliament] would they cannot, for when they forsake the dutie of their place, and the interest of the Kingdome, the Kingdome will forsake them’.²⁰⁸ The pamphlet never discusses how the ‘Kingdome’

²⁰⁵ *Considerations for the Commons, in this age of distractions* (s.n., [17 August] 1642) E.112[17], sig. A3r.

²⁰⁶ *Animadversions vpon those notes which the late observator hath published upon the seven doctrines and positions which the King by way of recapitulation, he saith, layes open so offensive* (Printed for William Sheares, [09 July] 1642) E.107[22], p. 12.

²⁰⁷ *The general resolution*, sig. A3r.

²⁰⁸ *A discourse upon the questions in debate between the King and Parliament*, (s.n., [15 September] 1642) E.117[8], p. 13.

would be able to 'forsake them', nor exactly what form the 'Kingdome' would take to express its displeasure, but the implicit condition was used for the explicit defence: the trust in Parliament was not necessarily permanent, and could be revoked if the Houses acted incorrectly or betrayed that trust.

Crucial to understanding this development is that at this early stage these problems are not necessarily only being identified by royalist writers though not for want of trying. Rather, they are being created within the Parliamentary defenders' works themselves through a lack of moderation. Parker's theories needed continual restatement and rejuvenation. Because of the anonymous nature of the debate that ran through the summer, when an argument was being put forward, to the reader it may well have been Parker's rhetoric, or the words of Pym.²⁰⁹ The texts had no justification other than their own internal arguments. In a way, the parliamentary case had become a shared cumulative project that was initially started by a few presses, but was eventually adopted by many others, who in turn exposed and attempted to account for the practical implications of their, and previous authors', arguments.

In sum, the experience of the summer of 1642 demonstrates that if there was no moderation, multiple printers could be, and often would be, destructive to an argument. The central concept needed to be absolute for the defence to work – Parliament had to be infallible – and if the notion that it might be fallible was introduced, the defence fell to pieces. The opening of the presses had transformed the parliamentary case, and had brought in multiple inharmonious voices that revealed and widened cracks in Parliament's claims both to legitimacy and to wielding an arbitrary power. By offering the implied reader caveats to make Parliament's argument more palatable, they had diluted and weakened Parliament's case.

Therefore by the end of September there was a need for new defences of Parliament's actions. The defences needed to be comprehensive, and permanent; they should aim to be *the* answer, rather than *an* answer. To this end, potential objections needed to be identified and invalidated, and meticulous references provided. The pamphlets needed to have some form of defence against words or arguments being reused – something that the previous works had lacked. Three particularly striking legal pamphlets were collected by Thomason in late September and early October 1642: Bland's *Resolved upon a*

²⁰⁹ Thankfully, the modern reader has the well-informed Thomason's annotations.

Question, Marsh's *An Argument or Debate in Law*, and Ward's *The Vindication of the Parliament*. These works attempted to present a full justification of Parliament's actions, not just in terms of constitutional theory, but by visible law, which they referenced either in text or in the margins. 'Peter Bland of Grays-Inne Gent' prefaced his argument by explaining to the reader that he intended not to imply that 'Parliament knew not Law sufficient to iustifie their own actions', but rather to 'destroy their wonder whom he hath heard admire that the Parliament did not prove their own acts by visible Law, as well as disprove the Kings'.²¹⁰ Marsh assured the reader that he had 'not used any affected style', but rather had 'invested the law with its owne plainesse and integrity', and Ward explained that '(being no lawyer)' he would not search and interpret cases, but he could still show the 'lawfulnesse of this designe, as farr as the law of Nature, Reason and experience, and my small knowledge in Religion, will dictate unto me'.²¹¹ Thus these works were all protected in some form, and presented the law as both already clear, and definitive. Bland put his name and position on his work; Marsh had his initials of both his name and his position as Chancellor of Lincolns Inn; and Ward dedicated the first portion of his pamphlet to a damning indictment of other authors' writing styles, blaming a 'compendious kind of writing', an 'abtruse, sublime and high style', 'confused' and 'superficial writing', and above all a 'timerous and half handling of case in controversie'.²¹² By distinguishing themselves from the work of other authors, they demonstrated their superior qualifications to judge the situation. By placing themselves and their works as exceptions to the pamphlet debate, Bland, Marsh and Ward attempted to present their own personal legal case, rather than presenting it as part of a wider parliamentary justification – theirs were to be considered exceptional.

In general, however, works from the summer of 1642 were seen as part of a continual argument, rather than each pamphlet being clearly defined. The lack of distinctions between various anonymous works meant that it was unclear what works should be given precedence, and what works should be ignored as potentially useless, or even dangerous. In this sense, anonymity was both a blessing and a curse, with opportunities for the exploitation of the marketplace of print on the one hand, and the risk of theories being watered down on the other.

²¹⁰ Bland, *Resolved upon the question*, p. 4.

²¹¹ Marsh, *An Argument, or Debate in Law*, sig. A2r; Ward, *The Vindication of the Parliament*, p. 2.

²¹² Ward, *The Vindication of the Parliament*, pp. 1-2.

III. THE ROLE AND PURPOSE OF THE IMPLIED READER

The 'paper wars' were an open dialogue between King and Parliament, published for a reading public to consume. However, print was not seen as a refined medium, and authors often still felt the need to justify why they had resorted to the press.²¹³ Justifications for printing in the 'paper wars' emulated the tactics of previous pamphleteers by vilifying earlier obfuscatory pamphlets.²¹⁴ The King, for example, claimed that he strove to 'undeceive [the people] of specious mischievous Infusions which are daily instilled into them', and that while he knew it was 'below the high and Royall dignity to take notice, much more to trouble ourself with answering these many seditious pamphlets and printed papers ... we are contented to let Our Self fall to any Office that may undeceive Our People'.²¹⁵ Similarly, the Parliament claimed they wanted to 'disabuse the people's mindes' in order to 'prevent them from being their own executioners', and to ensure that they understood the case fully before making up their mind.²¹⁶ These actions amounted to a legitimising ritual, in which the excuse to publish more arguments could be justified under the pretence of contradicting opponents' arguments. It was a cyclical process – if the opponent replied, the public's minds would be 'abused' again, and therefore another argument was required. It also meant that the protagonists adopted a position of detachment, and claimed to be debating for the good of the people rather than to further their own ends. In this way, authors used the public to legitimise and justify continued press interventions in the 'paper wars' themselves.

The perceived potential for confusion in the reading public catalysed the continuing developments of the debate so that pamphlets could not simply be imperative calls for action. According to the pamphlets, the literate public were already intrinsically part of the debate because their minds had been abused, and if they failed to engage with it their minds would remain abused. Similarly, pamphlets themselves were necessitated and justified by both the imagined response of the reader and the impact that it would have on the understanding of the law as a whole. The public had to take part, and the ephemeral pamphlets had to be part of this debate.

²¹³ Peacey, *Politicians and Pamphleteers*, pp. 31-91.

²¹⁴ *Ibid.*, p. 39.

²¹⁵ Husbands (ed.), *An exact collection*, pp. 239, 173.

²¹⁶ *Ibid.*, p. 263.

A wide variety of legal concepts were made available to authors, and formulaic sentences had become something of a code which needed to be deciphered by the reader. For example, by early June there was a relatively common distinction between the terms of 'loyalty' and 'obedience'. The county of Cheshire had resolved that they firstly would be 'Loyall to his Majesty', and secondly 'obedient to the Parliament'.²¹⁷ These resolutions are seemingly mutually exclusive, and it is later revealed that by this, they mean that they agree with the Parliament's decision to take control of the militia.²¹⁸ Similarly, in the anonymous *City of Londons resolution*, they decide to maintain their loyalty to the King, but also to 'promise all due and cheerfull Obedience' to the Parliament.²¹⁹ Loyalty was being understood as something passive, whereas obedience was being understood as something active – there was no real contradiction in being both loyal and obedient to the different sides.

Both King and Parliament maintained that the public could not make a legal judgement. The official Parliamentary case was that the reader had no role to play, because Parliament was the highest court and was absolutely representative of the people – thus, Parliament's judgement and adjudication would have been the same as the people's judgement. Similarly, the King's case was that the judges would adjudicate on the law, and that the people were being appealed to in order to demand that justice be done. By publishing these arguments for public consumption, however, both the Parliament and the King were actually already appealing to a restricted implied reader. A passive, compliant and homogenous implied reader was used to confirm retrospectively what the Parliament and the King were doing, and thus the reader was already summonsed by the debate, and required to play a role.

The role of the implied reader in the polemical debate became increasingly explicit by August 1642, and the opening of the presses acted as a catalyst to the process that had begun with the use of the implied reader, and resulted in the passive reader being more and more required to be an active one. The opening of the presses and the flood of

²¹⁷ *A Discourse or dialogue between the two now potent enemies: the Lord Generall Militia, and his illegall opposite Commission of Array* (Printed for Thomas Bates, [07 October] 1642) E.240[28], sig. A2r-A2v.

²¹⁸ *Ibid.*, sig. A3r.

²¹⁹ *The City of Londons resolution, concerning their loyalty to the King, and their love and affection to the Parliament, in laying down their lives, liberties, and goods for the maintenance of the true Protestant religion* (Printed for I. Tompson and A. Coe, FD: 22 June 1642) E.151[21].

anonymous texts pushed the already-summonsed implied reader into the foreground because of the mechanics of the printed debate, pressure to construct convincing yet expandable justifications, and fundamental problems of the legal framework.

A common refrain employed by authors to justify both the necessity of their works, and their justification for going to press, was the idea that only those who had been trained as lawyers could understand the reasoning behind the judgements and arguments presented in the pamphlets.²²⁰ Because the common law was ancient custom, generations of lawyers must have found it ‘ideally suited to the needs of the commonwealth’, or else it would have been changed before.²²¹ However, the common law needed an ‘artificial reason’ to understand its nuances and intricacies, which was ‘an exclusive professional “art”’ – only with extensive ‘training and long study’ could the true ‘rationality and coherence of English law’ be appreciated or understood.²²² The authors argued that those most suited to understand the debates already knew how to respond. Those who were not lawyers needed it explained in more depth – hence the pamphlets.

The premise of many works was that those who had diligently read the various works would understand how they should respond. The problem, according to *A Plea for the Parliament*, was that ‘some people hav[e] seen [the Remonstrances], others but some of them, and others none at all’. Arguments along these lines would often be supplemented with a list of works that they should consult. The King, for example, wrote in May that to be ‘truly informed’, the reader should be familiar with both his and Parliament’s messages on Hull, and his messages explaining why he refused to sign the Militia Bill.²²³ Similarly, one parliamentary defender wrote that readers should examine the Parliament’s Remonstrances and Declarations, ‘those most excellent Observations’, and various other anonymous works.²²⁴ The reader had something of a duty to keep up with the debate to ensure that they were making informed choices. What’s more, these lists also demonstrate that pamphlets were able to retrospectively attribute significance to

²²⁰ Burgess, *Absolute Monarchy*, p. 171.

²²¹ Sommerville, *Royalists and Patriots*, pp. 83-4.

²²² Burgess, *Absolute Monarchy*, p. 171.

²²³ Husbands (ed.), *An exact collection*, p. 182.

²²⁴ *Reasons why*, pp. 2-3.

certain works, and tacitly discredit other ones, editorialising the substantive from the ephemeral.

Other pamphlets feared that the ‘unlearned’ minds of the readers could not possibly hope to understand the various legal theories being presented to them.²²⁵ Worse still, the ‘unlearned’ were being persuaded by arguments that appeared to contemporaries to be blatantly wrong: ‘Some opinions, though in themselves weak enough ... come into the hands of the more ignorant vulgar, who ... are not able to pierce into their falsities, or confute them’ – meaning the ‘vulgars’ did not challenge the arguments in the work.²²⁶ The public readers had not yet developed mechanisms to read and process the phenomenon of political and legal disputes, simply because political and legal argument had not been available to them in such a quantity before thanks to censorship – in short, they had not been armed to deal with propaganda.²²⁷ This in turn generated a fear that the public were being bamboozled by legal terminology – for example, the King repeatedly argued that Parliament was failing to explain what their ‘fundamental law’ meant. This simultaneously acted as an attack on theory, and also highlighted a fear of specific ploys to exploit the public with their Parliamentary language.

In order to justify fresh interventions and apologise for the failures of previous works to provide answers to the conflict, many works argued that it was not that positions had been explained incorrectly, but rather that the reader had failed to understand them. *A Plea* explained that in the ‘late Remonstrances there is sufficient satisfaction given to every judicious and intelligent Reader’; *Reasons Why* argued that if the suggested works were read diligently even the King would be satisfied; and *An Advertisement* concluded that the Parliament had given answers ‘sufficient to satisfie a world of Wisemen’.²²⁸ The solution was clear, these parliamentarian pamphlets argued, and if the public read these works diligently and correctly, they would be able to make logical, informed and

²²⁵ On this, see Anna Bayman, ‘Printing, Learning and the Unlearned’, in Joad Raymond (ed.), *Cheap Print in Britain and Ireland to 1660* (Oxford, 2011), p. 80.

²²⁶ *The right character of a true subiect. Profitably declaring, how every man in this time of danger ought to square all his actions, that he may neither be taxed of disobedience to the Maiesty of the King, nor want of duty to the wisome of the Parliament* (s.n., [10 August] 1642) E.109[36], sig. A1v.

²²⁷ Achinstein, *Milton and the Revolutionary Reader*, pp. 3-4.

²²⁸ *A plea for the Parliament*, p. 3; *Reasons why*, p. 2; *An Advertisement to the whole kingdome of England but more especially to the citie of London speedily to consider their present dangers and prevent their approaching miseries* (Printed by R.O. and G.D., [13 August] 1642) E.111[8], p. 2.

ultimately legally correct choices. This rhetorical trick managed the readers' response, so that they were forced either to admit themselves insufficient, or to agree with the author.

Fortunately for the reader who had failed to keep up with the unprecedented deluge of tracts, these pamphlets would often present a distillation of the debates, with key points taken into consideration. These arguments would be key points of contention between the King and Parliament, providing lengthy arguments on particulars, such as in William Prynne's *Sovereign Antidote*, or the anonymous *Short Discourse*.²²⁹ Of particular sophistication was one of the royalist retorts to Parker's *Observations*, which not only quoted the 'Observer [Parker]', but also translated the quotation into a generalised position which the 'Animadversion' attacked. This aimed to make the radical potential of the rhetoric clear to the reader – while a reader might agree with Parker's words, they might not so readily agree with the distilled legal position behind them.²³⁰ In a sense, this changed what pamphlets were trying to do, and shifted the problem that pamphlets were trying to solve. Rather than the reader being duty bound to examine pamphlets to keep up with debates (even though they still should), anonymous works offered their services and their interpretations of the law to the reader in order to explain what the problem at law was, and what the solution was. These pamphlets provided solutions in themselves, because they could set the parameters for their own debates and they could dictate what problem they were trying to solve.

Naive and unconsidered responses by the reader were feared. Authors, such as the writer of the anonymous *A Plea for Moderation*, warned against the '*ceca obedientia*' (blind obedience) that plagued the nation before the Long Parliament.²³¹ Many defences included the 'ignorant' when compiling lists of those who had seduced the King, and they were defined in one pamphlet as either failing to understand, or even failing to consider what they were doing.²³² In a similar way, the King continually reiterated that he was publishing the law not to persuade people, but rather to ensure that they understood the decision that they were being asked to make, and would not make it

²²⁹ William Prynne, *A Sovereign Antidote to Prevent, Appease and Determine our unnaturall and destructive Civill Warres and dissentions* (s.n., [18 August] 1642) E.239[6]; *A short discourse*.

²³⁰ *Animadversions vpon those notes*.

²³¹ *A plea for moderation*, (s.n., [April] 1642) E.143[7].

²³² *Intelligence from Yorke: relating the unlawfull proceedings of the malignant party there: with some of their propositions* (Printed for H. Blunden, FD: 25 August 1642) E.114[12], p. 4.

rashly. By encouraging the readers to question the authorities of those commanding them, the pamphlet transcended social hierarchies in appealing for mobilisation. At times, this was made more explicit. For example, several pamphlets explained that treason (however defined) in a noble man was a worse crime than if it was committed by a common man. The problem, argued *The Right Character*, was that their crimes were 'more conspicuous', and could be 'examples, whereby the vulgar will be either more confirmed in their allegiance, or pricked forward to a rebellion'.²³³ Deference to social hierarchies was not sufficient, and the subject, 'Be he of what rank so ever' had to make up his own mind, and settle it with both his conscience and his allegiance.²³⁴ This meant that the allegiance of subjects in areas with a partisan lord might still be contestable, and would be particularly important in more rural areas, where hierarchy was less fluid, and county grandees could demonstrate more power. The implied reader could be used to challenge the possibility that social order would determine a subject's allegiance.

While the opening of the presses accelerated the active importance of the implied reader, it can be argued that a lot of the reasons that an implied reader was required at all had their roots in the inherent problems of the legal framework that was being applied to a political problem. Ross has examined printed legal texts, and shows that legal discourse, if left unchallenged, could potentially be understood as 'law'. By printing the law, the author was engaging in two power plays. Firstly, the law itself was being diluted from the centralised forces of either a legal mindset or the *arcana imperii* itself. Secondly, the work that was created claimed authority in its own right, and might be used to create further arguments with potentially dubious legal basis.²³⁵ To print the law was to explicitly challenge previous legal treatises, and to present a new solution and case – this in turn would become part of the collective memory that made up the common law. This relationship between the law and the press would prove to be a dangerous one, as not only were there polemical matters at stake, but also the very definition of what the law actually was.

Throughout the summer of 1642, then, there was a continuous relationship between the author and the implied reader in the pamphlet debates. The reader was simultaneously

²³³ *The Parliaments lamentation*, p. 3.

²³⁴ *The right character*, pp. 3-4.

²³⁵ Ross, 'The Commoning of the Common Law', pp. 432-45.

appealed to, and their responses feared. Readers were expected to be well-versed and engaged with the debates, but simultaneously they were offered strategies to understand and to codify their arguments. Perhaps the most common distinction between the royalist and the parliamentarian case was between the fundamental and the known laws, respectively. The Parliament's fundamental laws referred to the ancient laws that logically must exist for the purposes of the protection of the kingdom. The King's known laws, by contrast, referred to all the statutes and laws understood in the traditional manner, by which he meant without being manipulated by Parliament's equitable readings. These terms acted for each side as constitutional and legal shortcuts – a way to quickly summarise months of prolonged debate, and to describe the significant breach in the way that the law was understood by both sides. However, they also show how language and phrases became laden with legal and constitutional baggage. Words in themselves were divisive and polarised, meaning that the author could be acting in a partisan way even with their choice of vocabulary. Hence, when the anonymous author said that a party in York pretended to maintain '*the knowne lawes of the land*', he was making a legal point about their understanding of the law, as well as attacking them for acting illegally.²³⁶

Pamphleteers used the implied reader not only to persuade people and encourage mobilisation, but also to protect the law and the legal framework, and its failure to solve the conflict. Authors, struggling between two sides that both claimed to be in the legal right, looked to spaces where the binary of the legal framework could be painted as something less definitive. Thus, the implied reader was, in part, introduced as a response to a crisis in the law – when works were unable to use the legal framework to distinguish clearly between two sides, the device of the implied reader was able to prolong the framework's survival by suggesting that these problems still might be solved. The implied reader could be used to paper over some of the cracks in the legal framework, because the authors presented the solution to the conflict as a concluded problem, rather than an ongoing one, but argued that the reader just did not understand it. The polemic was therefore just waiting for the reader to catch up and understand it. This fiction relied on the premise that the law could solve the conflict in order to argue that it had already done so, even though it demonstrably had not.

²³⁶ *Intelligence from Yorke*, p. 3.

IV. THE CULPABLE IMPLIED READER

The legal framework through which the conflict was understood had developed a pervasive binary between 'legal' and 'illegal', but this began to be challenged by the polemic. By the autumn of 1642, there had been a shift away from the positive command of 15 March 1642, where the people *had* to support the actions of Parliament *because* of the 'fundamentall' laws. Increasingly, the public were expected to be able to do two things: first, defend the legality of their side's actions; and secondly, defend their own legal position in support of that side. The public became increasingly responsible for the positions that they, and the side they supported, held – they had become culpable implied readers.

People were being actively involved by the rhetoric of the pamphlets. *The Right Character*, for example, rhetorically asks the reader 'Are we not competent judges?'²³⁷ The pamphlet presents itself as first a mediator and then an arbiter, and uses these devices to engage the reader in the examination of each side's case – suggesting if one side cannot conclusively prove the other wrong, then a third party can look at the facts again and decide who is correct. Rather than remaining a detached spectator of the debates, the reader is invited to take part, and help solve the conflict. Similarly, *A Short Discourse* writes as the whole body of the kingdom, and while at first it laments that both sides profess to want the same thing, concludes that Parliament have done all they can possibly do, and that the duty of 'appealing [of] all differences, and prevention of all dangers, falls upon his Majesty'.²³⁸ These works present themselves as attempts to find solutions to the debates – like a moderator between two extremes. They do later reveal themselves to be partisan, helping to reveal and construct divisions weighted towards one side. But these pamphlets lead the reader through the act of mediation, and while the pamphlet's authors are partisan, they seem equally interested in showing the reader how to process and examine propaganda.²³⁹

Pamphlets were codifying the choices that the public were being asked to make daily as either 'treasonous' or 'loyal', and they were forcing people to place themselves on one side or another of a dichotomy that they themselves were helping to create. This should

²³⁷ *The right character*, p. 2.

²³⁸ *A short discourse*, p. 3.

²³⁹ On this process, see Achinstein, *Milton and the Revolutionary Reader*, especially pp. 3-26; 102-135.

be seen within the context of continual crisis, which was increasing in pressure day by day. Authors wrote almost in disbelief that so many were 'arguing themselves into Civil War', while themselves contributing to the chaos, and it is tempting to believe their sincerity.²⁴⁰ Debates and arguments developed at such speed that to align oneself to the Parliament in June or July could have meant adherence to different set of values and arguments than you would find yourself needing to defend in September or October. Questions of an arbitrary Parliament, the possibility of a public withdrawal of trust, and the origins of kingship would each need to be answered, each time diluting and endangering the original arguments that were relied upon. To this effect, new arguments were constantly required to maintain each side's claim to legality.

By September and October 1642 there was an additional question that parliamentary defences were trying to answer. Of course, they were still interested in persuading the reader that Parliament's actions were legal, but a result of the pressures of the debates in the summer was that there was a need to address the question of people's legal judgement. Marsh distinguishes between the legal case for Parliament's action, and reasons why it would be legal for the public to support Parliament.²⁴¹ Similarly, Ward makes this distinction perfectly explicit when he says that there are two questions: 'Whether it be lawfull for *Parliament* to settle it [the militia] without Royal assent'; and secondly 'Whether it be lawfull for us to obey it, so settled by *Them*'.²⁴² The parliamentary case, due in part to lack of moderation, had buckled to allow the 'people' a degree of autonomy, which meant that theoretically they could withdraw their trust if they believed Parliament was acting against the commonweal. Of course, these arguments were presented to bolster support for the two Houses, not undermine it, and they were accompanied by warnings, such as the threat that the Parliament could 'set little Laud upon your eares again', or that 'This Kingdome hath very seldome relinquesht its representative, elected, intrusted Councill, and when it hath, it hath soon found cause to repent that Treachery, and instability' which had 'proved fatall both to King and kingdom'.²⁴³ But manipulations and warnings aside, this was a remarkable shift from the positive command of 15 March, where the people *had* to support the actions of

²⁴⁰ *A discourse upon the questions*, p. 1.

²⁴¹ Marsh, *An Argument, or Debate in Law*, p. 28.

²⁴² Ward, *The Vindication of the Parliament*, p. 2.

²⁴³ *Reasons why*, p. 13; Parker, *A Petition or Declaration*, p. 1.

Parliament *because* of the ‘fundamentall’ laws. The public were expected to both have their own legal positions, and to be able to justify them, as well as that of their chosen sides. The issue of whether the public would agree something to be legal had become detached from the factual legality itself; the *Observator* was becoming the arbiter.

In response, there was a marked shift in the tone of the discussions. Lists of precedents were created, which discussed at length what actions were legal or not. Works from September 1642 appealed to an older authority, but provided the author or compiler with a tool to construct a contemporary argument while exploiting the reverence that older written works were held in.²⁴⁴ These could then be editorialised, such as *A Collection of the Rights and Priviledges*, which while presenting itself as an impartial list ‘Informing the willing Man’ was in fact highly polemical.²⁴⁵ A reader might approach it for impartial information from ‘Ancient Writers, both Divine and Morral’, but when they reached the end of the work, it would be clear that the work was in favour of the ‘great assembly and wisdom of our State’, the Parliament.²⁴⁶

Much more common were works that were openly partisan. For example, the title page of *Articles and Acts of Parliament*, dated by Thomason in early October promised the reader accounts of ‘*how Traytors have seduced the King by wicked Councell to take him from his Parliament*’, but in reality reproduced one work giving an account of Richard II’s council.²⁴⁷ *A Collection of Records* advertised that it would tell the reader of ‘*great Misfortunes that hath hapned unto Kings that have joyned themselves in a near alliance with forrein Princes*’, and ended its impressive title page with the statement that ‘*the best*

²⁴⁴ On this point, see Adam Fox, ‘Custom, Memory and the Authority of Writing’, in Paul Griffiths, Adam Fox, and Steve Hindle (eds), *The Experience of Authority in Early Modern England* (Basingstoke, 1996), p. 110.

²⁴⁵ William Prynne, *A Collection of the Rights and Priviledges of Parliament* (Printed for Lawrence Chapman, [02 September] 1642) E.239[12], p. 1.

²⁴⁶ *Ibid.*, p. 15.

²⁴⁷ *Articles and acts of Parliament: taken out of the records of the Tower, shewing how traytors have seduced the king by wicked counsell to take him from his Parliament, and to raise warre against them. Ordered by the Lords and Commons in Parliament, that these articles and acts be forthwith printed and published. H. Elsyng Cler. Parl. D. Com. With the Earle of Warwicks taking of great store of armes and ammunition, with money and plate in foure coale-shippes which came from the west countries towards Newcastle to ayde his Majesty against the Parliament* (Printed for Theophilus Bourne, [04 October] 1642) E.119[26].

Support for the Crowne of England, is the two Houses of Parliament'.²⁴⁸ The argument is displayed on the front cover, so that the purchaser already knows the conclusion.

In light of this, certain works might be better considered as resources offered to the already-persuaded reading public, rather than works of persuasion. They were attempting to bolster enthusiasm and maintain opinion, rather than necessarily change it. Indeed, it is often clear from the title page what a certain work is going to argue, as in the case of the royalist *Vindication of the King* or the parliamentary *Commission of Array Arraigned and Condemned*.²⁴⁹ It would have been very possible for a London reader to avoid parliamentary works, for example, and choose pamphlets that resonated more with their own opinion. Pamphlets were offering the reader a way to justify why they had chosen to side with either King or Parliament, not so that they will be persuaded to change allegiances, but rather to ensure that they are able to satisfactorily defend their allegiance. For example, the author of *A Discourse or Dialogue between the two now potent enemies* presented a choice between the Militia Ordinance and the Commission of Array, demonstrating that the conflict could be understood as a choice between two processes, rather than just between two sides, and exposing the mechanics of justifications to the reader.²⁵⁰ The process of choosing a side, or even having chosen a side in the past, was considered as an act that involved making a judgement in law, and that judgement needed to be defended from attack and scrutiny – the implied reader had become culpable for the decisions that they had made. Pamphlets were able to offer themselves as solutions to this dilemma.

Pamphlets, then, could be used as resources, deployed to encourage and bolster pre-formed opinions. For example, one pamphlet imagined a dialogue '*betwixt a Courtier and a Scholler*', and concluded that even though 'you [the Scholler] have persuaded me [the Courtier], I will not be persuaded, although you have convinced me, I will not be

²⁴⁸ *A collection of records of the great misfortunes that hath hapned unto kings that have joyned themselves in a neer allyance with forrein princes, with the happy successe of those that have only held correspondency at home* (Printed for Henry Iackeson, [13 October] 1642) E.122[5].

²⁴⁹ Edmund Waller, *A vindication of the King, with some observations upon the two Houses: by a true son of the Church of England, and a lover of his countries liberty* (s.n., [17 September] 1642) E.118[3]; *The commission of array arraigned and condemned: or, a declaration of the illegalitie of the said commission: shewing, that it is destructive to the late flourishing Kingdome of England, and the subjects, especially the Commons thereof; and to introduce an arbitrary and tyrannicall government* (Printed by T.F. for H.H., [19 September] 1642) E.118[8].

²⁵⁰ *A Discourse or dialogue*, pp. 1-3.

convinced'.²⁵¹ Works may not have seriously believed that anyone would be persuaded at this later stage – the political, financial and military demands on the reader were continuing to increase – but rather that those who had made a choice needed to have access to the best possible defences against potential criticisms and attacks.

III CONCLUSION: ARBITRATION

The period from March to October 1642 had fundamentally changed the relationship that the reader had with the legal polemic. Their projected role in the pamphlets had shifted from being a passive spectator, to an abused and confused agent, and eventually, if they had read and truly understood authoritative works, a principled arbiter. Implied readers were increasingly being expected to justify their own choices, and have access to legal arguments that would defend why they had made that decision. To this end, pamphlets not only served either the King or Parliament, but increasingly offered themselves to the reader as a defence for the reader's own actions. By choosing a side, the public had made a choice between two legal interpretations, and were now being required to defend that choice. The implied reader's subjective reading played a crucial role in solving this crisis, and they were employed to arbitrate which side's case was ultimately right.

The implied reader played this increasingly crucial role in the polemic because pamphlets had to continually justify why they, and the combined legal reasoning and expertise of both sides, were proving unable to solve the crisis. To do this, pamphlets were constructed in ways that helped manage the reader's response. The implied reader was charged with being duped if they disagreed with the author, partisan if they used certain pieces of vocabulary, insufficient if they had failed to keep up with or understand debates, or just plain ignorant. It was the reader not the law that was at fault in this case, argued the pamphlets, justifying both their own failure to resolve the conflict and the continuation of the debate. Thus efforts were made to retain faith in the system that was failing to operate as it had promised to by improving the reader, rather than the framework.

Even before the opening of the presses each side's political positions required flexible legal definitions and concepts with which to work, because no one knew what would

²⁵¹*A dialogue betvixt a courtier and a scholler: Wherein severall passages of state are briefly discuste for the further satisfaction of the common people* (s.n., [13 October] 1642) E.122[7], pp. 7-8.

need to be argued next. Whilst the central legal framework needed to remain intact and recognisable to the reader, this did not mean that Parliament managed to avoid contradictions – for example their two Remonstrances in May were wholly at odds with each other in legal reasoning. However, as the debate became public and works became increasingly anonymous, pamphlets began to be treated as if they were autonomous works, rather than part of a much larger defence. Therefore, contradictions within the parliamentary polemic could be rhetorically excused by pointing out they were written by different authors, or by saying they were written by someone less educated and without full command of all the facts. During this diversification of authors and arguments, readers were exposed to the contradictions and nuances of the law as a political language, and were expected to give weight to certain arguments while simultaneously being told to ignore or reject others. The law was exposed as being something plural and ultimately subjective, dependent on political reasons rather than timeless truths.

The constitutional crisis was developing in ways that meant legal solutions were becoming increasingly out of reach. The legal framework demanded an absolute rhetorical victory – one that both sides would prove unwilling to surrender to. The law demanded a dichotomy of innocent and guilty, right and wrong, legal and illegal, in a way that ran at odds with the continuous exclamations of loyalty to both the King and Parliament in both sides' arguments. With the law developing into new complexities of legality and the polemic multiplying into a plurality of arguments which grew increasingly partisan, the chasm between legal and illegal that constituted the framework appeared increasingly uncompromising and impossible to bridge.

As the law became increasingly complicated, at its heart it retained its impossible simplicity. Similarly, as the polemic became increasingly multivocal and frenzied, it pushed at the fractures caused by the framework's essential contradiction. The law was unable to solve the crisis that faced the state, but for many, to believe that the law was unable to solve the problem would be akin to believing that the problem was unsolvable. The alternative and possibly a much more tempting conclusion was to believe that a true account of the law had not yet been produced. This meant that authors would try to compose it, and readers would try to purchase it.

CHAPTER 2: FROM PARLIAMENTARY SOVEREIGNTY TO THE VOW AND COVENANT, OCTOBER 1642 TO JUNE 1643

How then can the People think the Parliament doth any thing contrary to Law, when they are the Judges of it? This is to make them Arbitrary ; and all their commands Lawes, and to lead the people after them by an implicit faith.

Henry Ferne, *Conscience Satisfied* (April 1643).

This chapter focuses on the first period of real warfare from the end of October 1642 to July 1643. Parliamentarian authors, printers and publishers continued to construct justifications to obtain political, financial and military support in the wake of the increasing demands of mounting an effective war effort. The need for large field armies led to expansive powers of taxation and methods to seize property, which in turn led to concerns over the powers that Parliament were claiming for themselves. Parliament's official case – and that of its close propagandists – made increasingly strenuous demands on the subject, and rhetoric that was used in pre-war posturing began to have demonstrable effects on the subject's liberty and property. Tensions over the extent and nature of Parliamentary sovereignty led to some authors exploring the invocation of the implied reader to empower Parliament to act on the people's behalf. By examining first the theoretical, and later the political, divisions within the parliamentarian case, this chapter argues that there was a struggle between a minority of authors that were willing to place absolute sovereignty in Parliament, and a majority that struggled to construct theories that both enabled Parliament to fight the King yet maintained that obedience could be conditional. Later in the conflict, when parliamentarians looked to this period again for intellectual inspiration, they were attempting to construct the same thing: conditional obedience to the Parliament.

Facing huge financial and administrative challenges, Parliament needed new powers to obtain resources from the City and the counties to pursue the war effectively. War brought sequestrations and compositions, and new taxes were levied on top of each other – assessments, the fifth and twentieth part, and later the excise – using the traditional county machinery to raise revenue. This meant that some areas could see

unprecedented levels of taxation through multiple means.²⁵² Many who were against or neutral to the parliamentary cause could consider such taxation unjust, especially in the case of the fifth and twentieth part, because past behaviour dictated how high future Parliamentary taxation would be, which set an alarming precedent. Not actively helping the Parliament would often be seen as justification for condemnation. War brought unprecedented levels of taxation, and obligations to Parliament that had hitherto only been legal were now becoming financial.²⁵³

Furthermore, actual war made obedience to the Parliament a more literal act. Before the Battle of Edgehill (29 October 1642), Parliament could comfortably use the threat of military action as encouragement for Charles and his supporters to come to the negotiating table, and to argue that they were acting to protect the King's natural body, not attack it. War made this presupposition difficult to sincerely maintain. Haphazard military structures were erected, balancing trained bands and militias against the Earl of Essex's field armies, and complex overlapping jurisdictions had been put in place to ensure that Parliament maintained overall control at some level.²⁵⁴

These political and military escalations were concurrent with efforts to deliver peace, and for many in Parliament the aim was to negotiate with the King from a position of strength – war and peace were not mutually exclusive. The Earl of Essex – the leader of the two parliamentarian field armies – had been in written communication with the royalist Earl of Dorset throughout September on the Parliament's behalf, but formal attempts at negotiation had failed once the King had made clear that he refused to deal with those he believed were traitors.²⁵⁵ Negotiations in the spring of 1643 faltered when Charles refused to compromise with regards to the restoration of expelled MPs, revenues, magazines, forts and ships. Outside these official negotiations there was a continuous pressure for peace. Within London, often taken to be the stronghold of parliamentarianism, the beginning of actual conflict had a profound effect. The

²⁵² John Stephen Morrill, *Revolt in the Provinces: The People of England and the Tragedies of War 1630-1648* (Oxford, 2014), pp. 77-82.

²⁵³ For developments in Parliamentary taxation in this period, see Michael J. Braddick, *Parliamentary Taxation in Seventeenth-Century England: Local Administration and Response* (London, 1994).

²⁵⁴ Morrill, *Revolt in the Provinces*, p. 79.

²⁵⁵ Smith, *Constitutional Royalism*, pp. 109-112.

experience of battle at Edgehill, the sacking at Brentford and London losses took its toll on City morale.²⁵⁶ There was fear in December 1642 amongst Parliament's most committed advocates that those inclined towards peace would 'cut [their] losses' and settle, and Keith Lindley and Julia Merritt have detailed the extent to which peace petitions in the winter of 1642/3 managed to capitalise on the concerns of many in London by offering a return to a normal existence.²⁵⁷

Parliament were adopting increasingly arbitrary measures, which could profitably be compared by royalist propaganda to the 1630s – most notably the assessment of Ship Money.²⁵⁸ Constitutional royalists, most notably Edward Hyde, condemned the previous decade of Charles's rule as unconstitutional, which allowed them to draw direct comparisons between his personal rule on the one hand and Parliament's actions on the other.²⁵⁹ Declarations by Charles promulgated a narrative of victimhood – his declaration of 8 December 1642 charged the 'Disturbers of the publike peace' with wanting to 'pursue, kill and slay Us and all who wish well to us', and requiring subjects to 'supply them with such summes of money as they thinke fit, upon the penalty of being plundered with all extremity of War ... and by such rules of Arbitrary power, as are inconsistent with the least pretence or shadow of that Property it would seem to defend'.²⁶⁰

War and the military effort, then, required administrative and financial innovations, and Parliament were able to use these innovations to solicit obedience. The ideas that justified these measures, however, developed at a much slower pace because of a fundamental disagreement amongst parliamentarians over two interrelated questions: is Parliament arbitrary? And what role (if any) do people's consciences have in the

²⁵⁶ Ian Gentles, 'Parliamentary Politics and the Politics of the Street: The London Peace Campaigns of 1642-3', *Parliamentary History*, 26 (2007), pp. 141-2.

²⁵⁷ Ian Gentles, "'This Confused, Divided and Wretched City': The Struggle for London in 1642-43", *Canadian Journal of History*, 38 (2003), p. 469; Wootton, 'From Rebellion to Revolution', p. 659; Keith Lindley, *Popular Politics and Religion in Civil War London* (Aldershot, 1997), pp. 335-48; Julia F. Merritt, *Westminster 1640-60: A Royal City in a Time of Revolution* (Manchester, 2013), pp. 140-3.

²⁵⁸ Morrill, *Revolt in the Provinces*, pp. 80-1.

²⁵⁹ Robert Ashton, 'From Cavalier to Roundhead Tyranny, 1642-9', in John Stephen Morrill (ed.), *Reactions to the English Civil War 1642-1649* (London, 1982), p. 88.

²⁶⁰ Husbands (ed.) *An exact collection*, p. 768.

constitution? These questions came about because of a dispute within parliamentarianism over the understanding of the constitution – not aided by the fact that for the majority of this period, unlike in the paper wars, Parliament itself contributed very few works to the debate. Rather, Parliament relied on private voices to defend their case, reserving the majority of their declarations for administrative effects, meaning that the parameters of parliamentarianism were not clearly moderated.

The first section of this chapter will examine this tussle over the extent and nature of Parliamentary sovereignty. It will examine how certain writers such as Charles Herle, Parker, and Prynne were much more willing to locate a final sovereignty in Parliament. For them, Parliament was arbitrary and their decision final. However, their theories made up the minority of the pamphlet literature as a whole.²⁶¹ Far more common in the pamphlets were arguments that used conscience, personal legal examination and, in some cases, extra-Parliamentary measures to empower their implied readers to fight for Parliament. These thinkers were able to tally past and present Parliamentary actions with the notions of the three estates and the mixed constitution, and in doing so developed means by which the implied reader could continue to support the Parliament whilst also maintaining that Parliament was not an absolute sovereign. In political thinking, these challenges were critical because they were in fact trying to marry the abstract principles of sovereignty (that absolute obedience was due to a body or ruler for order in society to be maintained) to the practicalities of the case at hand (that this might mean being forced to do something that was unpalatable or against conscience). The complex intellectual question of sovereignty was thus being dealt with in a political moment where it would have immediate literal consequences.

This section also charts the range of acceptable roles that the implied reader could play in the polemic, and examines how ideas of conscience were appealed to in order to enable support of the Parliament. The majority of pamphlets were unwilling to confront the fact that the acts that Parliament was doing, and the pressures of the war itself, meant that Parliament was acting as a sovereign. By relying on the implied reader, these pamphlets were able to empower Parliament to act as sovereign without necessarily bearing the consequences of that sovereignty – suggesting a much wider dissatisfaction

²⁶¹ As Thomas reminds us, this has been recognized since J. W. Allen, *English Political Thought, 1603-1660* (London, 1938), p. 424; Thomas, 'Looking for Liberty', p. 52. For a challenge to this consensus, see Schwoerer, "The Fittest Subject for a King's Quarrel", pp. 46-7.

with Parliamentary absolutism than has been hitherto recognised, but also a desire for a form of conditional obedience. Arguments that were created for expedience rather than posterity would need to be amalgamated into wider parliamentary thought, creating constitutional situations that seemed a far cry from the necessities of March 1642.

The second section focuses on April to June 1643, and examines how events within and surrounding Parliament transformed the polemical debate and the role that the reader was permitted to play. It culminates with an account of the 'Waller plot' in June 1643, a failed attempt to take London covertly for the King. The discovery, once several days old and fully pacified, was used by Commons grandee Pym in the first few weeks of June 1643 to skilfully steer through the Vow and Covenant, which was intended to bind the nation together in a collective oath and help identify those who failed to engage with the parliamentary cause with enough zeal.²⁶² In doing so, the London royalist movement and those that either pushed for peace or refused to admit a Parliamentary absolutism were conflated into a single malignant 'other' that threatened the Parliamentary cause.²⁶³ By manipulating popular and elite fears of a crypto-royalist plot, Pym and his allies managed to shift the political conversation away from the implied reader acting as an arbiter, and back towards their role as readers being simply observers. This shift, rather than being a legitimate solution to the problems in political thought that had been raised by the political thinking of the polemical debate, was rather an abandonment of the legal and constitutional problems raised. The reconstruction of Parliamentary absolutism and the subject's unconditional allegiance, tied to the condemnation of those that found themselves unable to subscribe to this, would mean that those who found themselves unable to support Parliament absolutely in conscience were pushed towards increasingly radical consequences.

I THE NATURE OF PARLIAMENTARY SOVEREIGNTY

I. THE ISSUE OF PARLIAMENTARY ABSOLUTISM

In the autumn of 1642, the royalist Henry Ferne penned his *Resolving of Conscience* and argued that his role as a divine meant that he might consider whether the law the public

²⁶² For the timeline of these events, see Samuel Rawson Gardiner, *History of the Great Civil War*, vol. I (Moreton-in-Marsh, 1991), p. 149; Lindley, *Popular Politics*, pp. 348-55.

²⁶³ On this term, see Thomas Leng, 'The Meanings of "Malignancy": The Language of Enmity and the Construction of the Parliamentary Cause in the English Revolution', *Journal of British Studies*, 53 (2014), p. 848.

had been told by the Parliament had been 'against Gods law', and if so whether he could 'accordingly instruct his people'.²⁶⁴ Since the opening up of the presses in the summer of 1642, pamphlets and political thought more generally had introduced significant concessions in order to make their works more palatable to the reading public. Ferne's work skilfully placed itself in the middle of increasingly fractious parliamentary justifications, and was able to expose rifts in constitutional and legal thought, both in the work itself, and the efforts of parliamentarians to respond to it. Some authors found components of Ferne's argument worthy of retort, others found the entire thing unworthy of consideration.²⁶⁵ It was the fragmentary responses that revealed the wide spectrum of opinion within the parliamentary coalition, and led to parliamentarians coming to rhetorical blows amongst themselves to justify their positions. Ferne's work and the responses to it illuminate a clear divide between factions of political thought within the parliamentary coalition, and their views on the role of the people and their consciences within the polemical debate.

Often credited by historians with being the most important Parliamentary propagandist, Parker had imagined the origins of power to be completely and absolutely from the people, but was keen to ensure that the only way that this power could be legitimately used was through the Parliament, the truly representative body.²⁶⁶ As Mendle reminds us, Parker's justification based on this conception of the constitution was reliant on two factors remaining constant – first, that the emergency threatened the 'very being of the state', and secondly that the Parliament remained the only legitimate power that could protect it.²⁶⁷ By maintaining these two factors, Parker was able to demonstrate that Parliament (because it was representative) could wield an arbitrary power, and that in wielding an essentially quasi-unconstitutional power, it was in fact protecting the

²⁶⁴ Henry Ferne, *The resolving of conscience, upon this question whether upon such a supposition or case, as is now usually made, (The King will not discharge his trust but is bent or seduced to subvert religion, laws, and liberties.), subjects may take arms and resist? and whether that case be now?* (s.n., 1642) Wing F803, p. 1.

²⁶⁵ *Powers to be resisted: or A dialogue arguing the Parliaments lawfull resistance of the powers now in armes against them; and that archbishops, bishops, curates, neuters, all these are to be cut off by the law of God; therefore to be cast out by the law of the land* (Printed for Henry Overton, [28 December] 1643) E.79[15], p. 15; Allen, *English Political Thought, 1603-1660*, p. 478.

²⁶⁶ Sirluck, 'Introduction', pp. 21-2; Foxley, *Levellers*, pp. 21-2.

²⁶⁷ Mendle, 'Great Council', p. 160,

constitution.²⁶⁸ Parker's conception, then, was an arbitrary and fully representative Parliament that could not be questioned or disobeyed by those it represented.²⁶⁹

A similar argument was made by Herle, whose *A Fuller Answer to Ferne* was dated by Thomason in December 1642. Through his flexible understanding of the mixed constitution, Herle argued that the two Houses of Parliament could 'supply' the defect of the third estate (the king) especially when the third estate refused to act for the purpose of the state, the safety of the people.²⁷⁰ Two estates (in this case, the two Houses) could work together to decide when the situation arose where they might need to supply the defect of a third estate (in this case, the King), and therefore had a 'power of last Resolution'. Herle did not shy away from stating that 'as the Government in the forme of qualification of it was, at first an act of will, and so Arbitrary, so it still remaining the same it must remaine some where arbitrary still'.²⁷¹ However, that Parliament was arbitrary was not a concern to Herle because they had interest within the kingdom, and for him, 'Interests are better state security then oaths'.²⁷² While the circumstance was extraordinary, the legitimacy to act was not from 'the cause', but rather 'the constitution of government', a power reserved to ensure that the government was preserved.²⁷³ Later, Herle would remove the pragmatic language of 'supply' to make his point clearer. In his *Answer to Doctor Fernes Reply*, he argued that 'The supremacy consists not in *declaring*

²⁶⁸ Geoff Baldwin, 'Reason of State and English Parliaments, 1610-42', *History of Political Thought*, 25 (2004), pp. 638-41.

²⁶⁹ Parker later the point clearer in his *The contra-replicant, his complaint to His Maiestie* (s.n., [31 January] 1643) E.87[5], pp. 29-30; and in Henry Parker, *Jus populi, or, A discourse wherein clear satisfaction is given as well concerning the right of subjects as the right of princes shewing how both are consistent and where they border one upon the other* (Printed for Robert Bostock, [16 October] 1644) E.12[25], pp. 18-9. A similar reading of Parker is given in Alan Cromartie, 'Parliamentary Sovereignty, Popular Sovereignty, and Henry Parker's Adjudicative Standpoint', in Quentin Skinner and Richard Bourke (eds), *Popular Sovereignty in Historical Perspective* (Cambridge, 2016), p. 157; Cromartie, 'Hobbes, History, and Non-Domination', p. 175.

²⁷⁰ Charles Herle, *A fuller answer to a treatise written by Doctor Ferne, entituled The resolving of conscience upon this question, whether upon this supposition, or case (the King will not defend, but is bent to subvert religion, lawes, and liberties) subjects may with good conscience make resistance* (Printed for John Bartlet, [29 December] 1642) E.244[27], pp. 3, 8-9.

²⁷¹ *Ibid.*, p. 17.

²⁷² *Ibid.*, pp. 12, 7-8; For a similar interpretation of Herle on interest, see Arihiro Fukuda, *Sovereignty and the Sword: Harrington, Hobbes, and Mixed Government in the English Civil Wars* (Oxford, 1997), p. 32.

²⁷³ Herle, *A fuller answer*, p. 25.

law, for every Court hath it in this power' (although, he admits, not to the same extent as Parliament) but rather 'tis the making of law that supremacy especially consists'.²⁷⁴ Herle described a mixed constitution, but one where it was possible for the Commons and Lords to supply the defects of the third estate of the King. Thus, supremacy was mixed, but could be combined against the King if necessary, because 'hee [Ferne] need not buy an Almanack (as he speakes) to reckon by, that one is lesse then three'.²⁷⁵ This power of 'supply', or later supremacy, was to Herle reserved wholly in the Parliament, and 'the people have reserved no power in themselves from themselves in Parliament'.²⁷⁶

While the style of argument differs, the implications of both Herle and Parker were the same: that Parliament had a power to act arbitrarily in this emergency, that this power derived from the constitution, and that there was to be no possibility of appeal against their judgement. This constitutional understanding correlated with the (admittedly sporadic) declarations of Parliament itself in the early war period. In November 1642, for example, Parliament belatedly responded to Charles's reply to their Remonstrance of 26 May 1642, which had thus far only been answered by anonymous authors. In the November Declaration, Parliament argued that their judgement was unquestionable, that it was unbound by precedents, and that the Coronation Oath meant that the King was obligated to pass the laws that attempted to remedy the 'mischiefes and dammages' of the Kingdom.²⁷⁷

In his persuasive study, Lee Morgan has argued that Parliament were able to develop this constitutional account by appropriating the 'fiction' of popular sovereignty from English royals. Morgan argued that the royals had initially used this 'fiction' in order to deny subjects the ability to question government policy, because by arguing that the subjects were represented by Parliament, the subjects had been involved in the decision-making,

²⁷⁴ Charles Herle, *An answer to Doctor Fernes reply, entitled Conscience satisfied: especially to as much of it as concerned that answer to his treatise which went under the name of the Fuller answer* (Printed by Tho. Brudenell for N. A., [17 May] 1643) E.102[3], p. 20, but cf. Judson, *The Crisis of the Constitution*, pp. 401-2, who contests that that Herle ever understood that the legislative power was really supreme, perhaps because she mainly makes use of his first *fuller answer*.

²⁷⁵ Herle, *A fuller answer*, p. 3.

²⁷⁶ *Ibid.*, p. 25.

²⁷⁷ Husbands (ed.), *An exact collection*, p. 714. According to the journals of the Commons and the Lords, it was Pym who negotiated this Remonstrance through the Houses, which is not surprising given recent work on the political thought of Pym by historians such as Peacey and Adamson, below. *CJ*, ii, p. 832; *LJ*, v, p. 431.

and thus had waived their right to object.²⁷⁸ Morgan has argued that Parliament was able to 'invent' the sovereignty of the people in the early 1640s in order to 'claim it for themselves ... to justify their own resistance' against the King.²⁷⁹ By doing so, Parliament could simultaneously legitimate their actions while also restricting the ability of those whom they represented to object to what was being done in their name. Parliament was fully representative, and thus those whom it represented were excluded from participation.²⁸⁰ This was the argument of Herle and Parker – in Herle's words, the people 'have reserved no power in themselves from themselves in Parliament'.²⁸¹

The work of Parker and Herle and those that agreed with them might for ease be called Parliamentary absolutism, though it should be noted that their absolutism came from a conviction that the King's legal power was not separated from the Parliament, and that his legal commands, if he was free from obfuscation to make them, would surely correlate with the suggestions of the Houses anyway.²⁸² Parker, Herle and their adherents saw themselves as defending a constitutionalist position and so upholding the legal principles upon which society depended, and it was impossible that so lawful and representative a body such as Parliament could produce advice that was wrong, or that the King could lawfully ignore it. In this sense, their Parliamentary absolutism was constructed as being the natural outcome of the exceptional case at hand, rather than being an all-encompassing doctrine of absolutism.²⁸³ Their absolutism was thus constitutionalist, and rested upon a principle of protecting the law as they saw it, rather than destroying it.

²⁷⁸ Edmund Sears Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (London, 1989), p. 39.

²⁷⁹ *Ibid.*, pp. 49-50.

²⁸⁰ For the importance of the relationship between the representative and the represented, see Cromartie, 'Parliamentary Sovereignty', pp. 145-50; Lorenzo Sabbadini, 'Popular Sovereignty and Representation in the English Civil War', in Richard Bourke and Quentin Skinner (eds), *Popular Sovereignty in Historical Perspective* (Cambridge, 2016), p. 165.

²⁸¹ Herle, *A fuller answer*, p. 25.

²⁸² For this term, see Michael J. Mendle, 'The Ship Money Case, the Case of Shipmony, and the Development of Henry Parker's Parliamentary Absolutism', *Historical Journal*, 32 (1989); Michael J. Mendle, 'Parliamentary Sovereignty: A Very English Absolutism', in Quentin Skinner and Nicholas Phillipson (eds), *Political Discourse in Early Modern Britain* (Cambridge, 1993).

²⁸³ On this, see Mendle, 'Parliamentary Sovereignty', p. 71.

Historians of political thought have long emphasised the clear differences between the theories of Parker and Herle and other writers such as William Bridge, Jeremiah Burroughs and Philip Hunton, although studies have mainly examined these writers only as a context to later writers such as John Locke or James Harrington, or the Levellers. J. H. Franklin, for example, has argued that Parker, Herle and others were pushed to Parliamentary absolutism by ‘a real theoretical dilemma’ – that they could find no other way to ‘legitimate resistance’.²⁸⁴ Arihiro Fukuda has argued that the *Answer to the XIX Propositions* introduced a Polybian notion of a balanced state into political thinking, and that this description could be exploited by Herle and Parker as it meant that they could claim that Parliament was sovereign because two estates were more than one.²⁸⁵ These studies emphasise that other writers – such as Bridge, Burroughs and Hunton – essentially agreed with Ferne’s description of the constitution, but that the solution that they had come to differed in that the people must have a theoretical right to resist.²⁸⁶

The most important recent intervention in the debates over the nature of Parliamentary sovereignty, however, has been that of Rachel Foxley. Examining the origins of the Levellers’ explicit ‘appeal to the people’ over and above the House of Commons in 1647, Foxley shows that the Levellers drew on two distinct variants in parliamentarian thought – that of Parker and Herle, and that of ‘Presbyterian’ writers such as Hunton, Herbert Palmer and other mixed constitutionalists – to develop their political thought.²⁸⁷ This was an innovation because the act of ‘appealing to the people was fundamentally at odds with Parliamentary sovereignty’, and by combining them the Levellers were able to construct a parliamentary sovereignty that still allowed an appeal to the people. By May 1649, they had developed ‘proposals which sought to provide a halfway house between the sovereignty of the people and that of their representatives in Parliament’.²⁸⁸

Foxley’s account demonstrates the merit of further substantive study of the mixed constitutionalists in the early 1640s, but also makes clear the need to integrate this

²⁸⁴ J. H. Franklin, *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution* (Cambridge, 1978), pp. 23-33, quote at p. 33

²⁸⁵ Fukuda, *Sovereignty and the Sword*, pp. 24-9.

²⁸⁶ *Ibid.*, pp. 33-8; Franklin, *John Locke*, pp. 30-5; See also Foxley, *Levellers*, pp. 60-3.

²⁸⁷ Foxley, *Levellers*, pp. 52-4.

²⁸⁸ *Ibid.*, p. 71.

account into the political history of the civil war, rather than extract it out from the conflict. Historians have generally focused on the Parliamentary absolutists, and have often under-emphasised both how constitutionally radical and restrictive their argument was, to the detriment of examining those who remained committed to a mixed constitution. Indeed, the majority of the pamphlets seem to have used an implied reader to empower the Parliament with a conditional obedience in a way that Parliamentary absolutists would have found abhorrent. We do not yet have a satisfactory account of why the intellectual creativity of 1642 and 1643, especially with regards to the constitution, did not continue into 1644. By more clearly establishing what distinguished Parliamentary absolutist and mixed constitutionalist thought, the theoretical problems that authors were facing, and the mechanical processes by which their arguments were produced, an account of why the political, legal and constitutional conversation changed so dramatically may be sketched.

II. EMPOWERING A NON-SOVEREIGN PARLIAMENT

Mixed constitutionalists – those that did not place a sovereign power in the Parliament, but rather shared it between three estates – were faced with a significant intellectual hurdle. Their works had to get the constitution to work in a way that could answer hypothetical objections and examples from observable practice, and to empower Parliament to act against the King while maintaining that Parliament did not, in whatever circumstances it chose, have the ability to overrule the King. Mixed constitutionalists did this in two ways. Firstly, they appealed to the implied reader's conscience as an arbiter to decide which side's case was lawful, the King's or the Parliament's. Secondly, they argued that Parliament was disobeying the King's unlawful commands, and that because the subject was not obliged to follow unlawful commands the subject's obedience was to the Parliament, whose commands were lawful. In the process of making these two arguments, the mixed constitutionalists again appealed to the implied reader to arbitrate between lawful and unlawful, and this led some to question whether the Parliament itself could make unlawful commands, and whether if Parliament did tyrannise, obedience was still due. By using these techniques, the mixed constitutionalists empowered the Parliament to act while maintaining that it was not an absolute sovereign, and in doing so were legitimising a complex legal and casuistic space where the implied reader ultimately was relied upon to choose a side.

Ferne's *Resolving of Conscience* had drawn on casuistry as a political language in order to bolster his legal and scriptural argument. His work resolved that 'no Conscience ... can find a safe and cleare ground for such resistance', and that 'no man in Conscience can be truly perswaded' that the case for resistance was safe.²⁸⁹ Ferne drew a parallel between his choice to defend the King and those who decided to defend the Parliament, and argued that both had come, ultimately, from a point of conscience. To him, 'all Misse-led People in this land' were 'told, the Gospel and your Liberties and all you have are in most imminent danger, and without taking Arms for the defence, irrevocably lost; and that this is lawfull by the Fundamentalls of the Kingdom', an argument that Ferne believed was being pressed 'upon trust, without an expresse and particular warrant, to rule and secure your Conscience against the expresse words of the Apostle forbidding resistance, Rom. 13.'²⁹⁰ Thus the submission to Parliament's adjudication that was required by the Parliamentary case was, to Ferne, an act of conscience.

Parliamentary absolutists and mixed constitutionalists fundamentally disagreed over the issue of the role of the individual's conscience in the constitution, and to understand the roots of this disagreement, it is instructive to look at the differences between two Parliamentary Declarations in May 1642. While Parliament in its Declarations maintained the veneer of being resolutely united,²⁹¹ these two Declarations reveal that under the surface there were fundamental differences of opinion. On 19 May 1642, Parliament argued that because the courts had to decide which side was lawful, and because Parliament was the highest court, it was not 'in the power of any person or Court to revoke that judgement'.²⁹² Parliament could raise a guard, and the King's protestations could be ignored because Parliament's judgement 'is in the eye of the Law the King's Judgement in his highest court, though the King in his person be neither

²⁸⁹ Ferne, *Resolving of conscience*, title page.

²⁹⁰ *Ibid.*, sig. A1v

²⁹¹ Jason Peacey, 'The Struggle for *Mercurius Britannicus*: Factional Politics and the Parliamentarian Press, 1643-1646', *Huntington Library Quarterly*, 68 (2005); Jason Peacey, 'Perceptions of Parliament: Factions and the "Public"', in John Adamson (ed.), *The English Civil War: Conflict and Contexts, 1640-1649* (Basingstoke, 2009); See also Gary Rivett, 'Peacemaking, Parliament, and the Politics of the Recent Past in the English Civil Wars', *Huntington Library Quarterly*, 76 (2013), pp. 594-5.

²⁹² Husbands (ed.), *An exact collection*, p. 208.

present nor assenting thereunto'.²⁹³ A week later, however, on 26 May 1642, Parliament made a new Declaration that argued a very different case. Parliament had called for 'all men to judge' whether the 'King's verball commands, without any such stampe of his Authority, and against the order of both Houses of Parliament', should be followed.²⁹⁴ Conrad Russell has argued that focusing on the legality of commands and the separation of the King's two bodies meant the Declaration of Parliament could avoid 'the need to argue any case for Parliamentary sovereignty', something that the Declaration of 19 May 1642 had done just a week before.²⁹⁵ In other words, focusing on lawful commands was a way of avoiding attributing sovereignty to Parliament, and could be used to challenge the King while also not granting Parliament an absolute power. Parliamentary Declarations, then, were split over the extent to which the subjects could examine Parliament's arguments, between the arguments of the Declaration of 19 May, which broadly corresponds with Parliamentary absolutism, and the arguments of the Remonstrance of 26 May, which was much more tentative over the issue of parliamentary sovereignty.

Parliamentary absolutists believed that conscience did not play a role in this process because of their conception of the role that Parliament was playing. Cromartie has argued that the 'adjudicative' understanding of parliamentary sovereignty apparent in the Declaration of 19 May 1642 can also be found in Parker, and that his *Observations* should be considered through the lens of Parliament establishing that it could not only interpret the law, but also make it.²⁹⁶ Because Parliament was the highest court, this trend of parliamentarian thought went, it could declare the law, and rather than an investigation of conscience, it was a simple case of accepting the supremacy of the

²⁹³ *Ibid.*, pp. 206-9; Hill's response to the declaration can be found in Willson Havelock Coates, Anna Steele Young, and Vernon F. Snow (eds), *The Private Journals of the Long Parliament*, vol. II (1987), p. 346, where it is detailed that some objected that this made the Parliament the supreme power. Charles replied that this argument was 'of a very new Nature and Learning', and that Parliament was claiming an 'infallibility of a now major part of both Houses'. Husbands (ed.), *An exact collection*, p. 240.

²⁹⁴ *A remonstrance or the declaration of the Lords and Commons, now assembled in Parliament, 26 of May, 1642*, pp. 9-11. According to D'Ewes, the printer, John Frank, was called into Parliament because it was alleged he had printed it with errors. Coates, Young and Snow (eds), *Private Journals*, ii, p. 375.

²⁹⁵ Russell, *Fall*, p. 509; Husbands (ed.), *An exact collection*, pp. 207-9.

²⁹⁶ Cromartie, 'Parliamentary Sovereignty', pp. 155-60.

Parliament over other courts. Herle's case corroborates this, and rather than engaging with Ferne's argument, rejects the premise and argues that Ferne was resolving 'upon a question that never came in question; That no conscience upon such supposition was ever undertaken'.²⁹⁷ Herle's rejection of casuistic methods in his responses means that he is able to focus on natural and constitutional law, and his work concludes as Parker's did, albeit with more focus on a mixed (and unbalanced) constitution. Later in the work, Herle argued that "'tis not the cause, 'tis the constitution' that empowered Parliament to act, and was clear that he believed that the Houses were not disobeying nor actively obeying the King, but rather that they were fulfilling their coordinate role.²⁹⁸ Alongside Parker, Herle and the *Declaration* of 19 May 1642, some later Declarations also conformed to this constitutional understanding. According to a Parliamentary Declaration at the beginning of November 1642, decisions that were taken by Parliament 'ought not afterwards to be questioned by his Majesty, or any of his Subjects', for Parliament were the highest Court of Justice and 'competent Judges thereof', rather than 'the pleasure and interpretation of private persons, or of publick in a private capacity'.²⁹⁹ This argument was parroted a few weeks later by an anonymous work entitled *Truth and Peace Honestly Pleaded*, which argued that Parliament had 'the supreme power to judge and condemn'.³⁰⁰ In sum, Parliamentary absolutists, both in Parliament and in pamphlets believed that conscience had no role to play in the constitution, and because of this, Parliamentary absolutists were unable to be substantially involved in the political conversation.

For many mixed constitutionalists, however, the language of lawful and unlawful commands offered opportunities to avoid the need to declare Parliament sovereign, and

²⁹⁷ Herle, *A fuller answer*, p. 2; On Herle and conscience, see David Martin-Jones, *Conscience and Allegiance in Seventeenth Century England: The Political Significance of Oaths and Engagements* (Rochester, N.Y, 1999), pp. 142-3. On the absence of casuistry in Herle and Parker, see Edward Vallance, 'The Kingdom's Case: The Use of Casuistry as a Political Language 1640-1692', *Albion*, 34 (2002), p. 575 and John Greville Agard Pocock (ed.), *The Political Works of James Harrington* (Cambridge, 1977), p. 24. Sanderson also correlates Herle's arguments with the Declaration from 19 May 1642 in John Sanderson, *'But the People's Creatures': The Philosophical Basis of the English Civil War* (Manchester, 1989), p. 29.

²⁹⁸ Herle, *A fuller answer*, pp. 21-2.

²⁹⁹ Husbands (ed.), *An exact collection*, p. 726.

³⁰⁰ *Trvth and peace honestly pleaded, and rightly sought for, or, A loyall subjects advice vsefvll to confirm, convince, calme, condemne honest ignorant passionate malicious men* (s.n., [26 November] 1642) E.128[14], p. 10.

they instead argued that the men of Parliament, and the readers outside Parliament, were simply investigating what the King said and judging whether it was lawful or not. The language of lawful and unlawful commands offered a stepping-stone to resistance theories, and from these could be drawn justifications for disobeying one magistrate and obeying another.³⁰¹ This, John Goodwin reassured his readers in October 1642, did not mean that all authority was impossible, but rather that ‘An unlawful command from a superior Magistrate’ that was against the rule of God ‘dissolves’, and rather ‘we stand bound to obey the inferiour, that which is lawfull’, even if (as in this case) it contradicted the superior.³⁰² Goodwin reasoned that ‘it is no dishonour to Kings or Rulers to have their commands examined’, and that to fail to do so was ‘to make men equall to God, and to judge them as unerringly, as universally righteous and holy as he, which a man of conscience will hardly forbear to call blasphemy’.³⁰³ Ward, in the same month, argued that ‘I dare not say, that with a blind obedience we should actively obey them in whatsoever they command: for as *Councels in Divinity*, so *Parliaments in Policy*, may erre: and therefore inquisition, disquisition, examination, and conference are not forbidden us in any *Acts or Statutes*’.³⁰⁴ Therefore the reader had an obligation to investigate the demands of both the King and the Parliament to see if they were lawful, and from investigation the Parliament could be empowered at the expense of the King. The next year in February 1643, *Maximes of Mixt Monarchie* argued that ‘For as much as Royall and Politique powers are Supreame, but not infallible, all men must be armed with patience as well to suffer for well doing forbidden as to doe well when it is commanded and so God and the King are alwaies obeyed, when they are contrary or at concord in commands and prohibitions’.³⁰⁵ They were fighting against ‘his personall

³⁰¹ Sommerville, *Royalists and Patriots*, pp. 68-77; John Coffey, *John Goodwin and the Puritan Revolution: Religion and Intellectual Change in Seventeenth-Century England* (Woodbridge, 2006), pp. 86-91.

³⁰² John Goodwin, *Anti-cavalierisme, or, Truth pleading as well the necessity, as the lawfulness of this present war for the suppressing of that butcherly brood of cavaliering incendiaries, who are now hammering England, to make an Ireland of it* (Printed by G.B. and R.W. for Henry Overton, [21 October] 1642) E.123[25], p. 27.

³⁰³ *Ibid.*, pp. 18-20; On this, see also Coffey, *John Goodwin*, pp. 86-7.

³⁰⁴ Ward, *The Vindication of the Parliament*, p. 7. This extract was also reprinted the next year as *A further enquiry for truth, for the better satisfaction of scrupulous consciences* (s.n., [25 March] 1643) E.94[8].

commands, the persuance of them', rather than against the King himself.³⁰⁶ In this trend, the King's actions continued to be described as 'illegal' commands, and those that followed them as following 'personall commands', rather than 'legall' ones.³⁰⁷ Francis Cheynell, in a sermon to the House of Commons, pleaded that it 'Be knowne to all the world that we doe still Reverence both his person, and Authority, and are ready to obey any lawfull Commands which he shall send us in a Legall way'.³⁰⁸ Mixed constitutionalists, then, could rely on the implied reader to adjudicate whether the commands were lawful or not, rather than relying on the judgement of Parliament alone.

This investigation was, in some way, an extension of some of the common law eccentricities that readers were already familiar with, and that helped make sense of the English constitution. For example, Burroughs had argued that a law only existed (and thus commanded obedience) if it was lawful. If, Burroughs wrote, 'one that is in authority command out of his own will, and not by Law, I resist no power, no authority at all, if I neither actively nor passively obey, no I do not so much as resist abused authority'. This, he conceded, 'may seem strange at the first; but if you think of it, you wil beleeve it'.³⁰⁹ A similar point was made by William Bridge, and the anonymous

³⁰⁵ *The Maximes of mixt monarchy to resolve all good consciences by right principles of the royall and righteous power in the person of the King and the Parliament* (s.n., [08 February] 1643) E.88[18], sig. A3v.

³⁰⁶ *Ibid.*, sig. A4r.

³⁰⁷ See, for example, *Knowne lawes. a short examination of the counsells and actions of those that have withdrawne the King from the governement and protection of his people* (s.n., [21 January] 1643) E.85[32], p. 6; *Observations vpon the Earle of New-Castles Declaration* (s.n., FD: 28 February 1643) E.91[10], p. 4; John Price, *A spirituall snapsacke for the Parliament souldiers. Containing cordiall encouragements, effectuall perswasions, and hopefull directions, unto the successefull prosecution of this present cause* (Printed for Henry Overton, [24 May] 1643) E.103[13], p. 8.

³⁰⁸ Francis Cheynell, *Sions memento, and Gods alarum. In a sermon at VVestminster, before the Honorable House of Commons, on the 31. of May 1643. the solemne day of their monethly fast* (Printed for Samuel Gellibrand, [21 June] 1643) E.55[13], p. 37.

³⁰⁹ Jeremiah Burroughs, 'A briefe Answer to Doctor Fernes Booke, tending to resolve Conscience, about the Subjects taking up of Arms' in *The glorious name of God, The Lord of Hosts opened in two sermons, at Michaels Cornhill, London, vindicating the Commission from this Lord of Hosts, to subjects, in some case, to take up arms: with a post-script, briefly answering a late treatise by Henry Ferne, D.D.* (Printed for R. Dawlman, FD: 1642) Wing 732:12, p. 3. Burroughs' answer appears as an appendix to *The glorious name of God*, and the page numbers are not sequential. For ease of use, however, I have used them as they are printed.

author of *Briefe Collections out of Magna Charta*, who argued that ‘a Kings Grant which is either repugnant to Law, Custome, or Statute, is not good nor pleadable in the Law’.³¹⁰

To discuss law and conscience was also to question how obedience was due, and the relationship between passive and active obedience. The distinction was clearly drawn by Hunton in May 1643, who argued that obedience can be ‘Positive and active, when in conscience of an authority we doe the thing commanded’, and ‘Negative and passive, when though we answer not Authority by doing, yet we doe it by contended[ly] undergoing the penalty imposed’. If an absolute monarch commanded something ‘forbidden by Gods Law, then it bindes not to active obedience, because the Apostles rule is true, *it is better to obey God then men*, the law inferior gives way to the superior’.³¹¹ For Burroughs, because the King was acting by his will rather than by law, to disobey his commands was legitimate, and to follow them illegitimate. However, the crucial question was where one drew the line, and thus from the very beginning of the conflict some parliamentarians were willing to investigate and question commands to ensure their legality and to legitimate parliamentary resistance, even when to do so went expressly against the Parliament’s argument.³¹² Although the works in question aimed to secure a practical obedience to the Parliament, the interpretations seem to have genuinely allowed, or at least considered, potentially disobeying a hypothetically tyrannous Parliament.

³¹⁰ William Bridge, *The wounded conscience cured, the vweak one strengthened, and the doubting satisfied. By way of answer to Doctor Fearne: where the maine point is rightly stated, and objections throughly answered, for the good of those who are willing not to be deceived* (Printed for Benjamin Allen, [11 February] 1643) E.89[8], p. 20; *Briefe collections out of Magna Charta: or, the knowne good old lawes of England: Which sheweth; that the law is the highest inheritance the King hath; and that if his charter, grant, or pattent, be repugnant to the said lawes, and statutes, cannot be good, as is instanced in the charter of Bridewell, London, and others. By which it appeares; that the King by his charter may not alter the nature of the law, the forme of a court; nor inheritance lineally to descend; nor that any subject be protected from arrests, suites, &c.* (Printed for George Lindsey, [19 May] 1643) E.102[11], p. 4.

³¹¹ Philip Hunton, *A treatise of monarchie, containing two parts: 1. concerning monarchy in generall. 2. concerning this particular monarchy. Wherein all the maine questions occurrent in both, are stated, disputed, and determined: and in the close, the contention now in being, is moderately debated, and the readiest meanes of reconcilment proposed* (Printed for John Bellamy, and Ralph Smith, [24 May] 1643) E.103[15], pp. 8-10.

³¹² A point made in Foxley, ‘Varieties’, especially pp. 422-3.

As historians have noted, it was royalist writers who found this line of argument particularly concerning.³¹³ John Spelman, a constitutional-royalist writing primarily against Parker, had lamented that other writers ‘made such impressions in the mindes of many as that they will never be perswaded, but that they may disobey and resist Authority, if they ever finde it faulty, or the commands thereof not agreeing with their Conscience’. Through this, ‘they themselves will be the Iudges [of] what commands are lawfull, and what not; what things good, and what evill; and so they make obedience arbitrary, and government (by pretending Conscience) at the discretion of the subject’. This, according to Spelman, was wrong – armed resistance could never be justified.³¹⁴ The anonymous author of *Obedience Passive and Active* agreed with Spelman and argued that power was from God, so therefore God’s servant (the King) had to be obeyed. *The Soveraignes Desire* followed a similar line of reasoning.³¹⁵ A similar distinction was made by the royalist John Bramhall in his *Serpent Salve*: if a king commands something contrary to the ‘Law of God or Nature’, then ‘It is better to obey *God* [rather] *then Men*’, and hence grant active obedience. However, this was to be followed ‘in plain cases onely, where the Law of God, of Nature, or the Land is evident to every mans capacity’. To ‘disobey the King upon Surmise, or probable pretence, or an implicit dependence upon other Mens judgements, is to disobey both God and Man’.³¹⁶ Passive obedience, according to Bramhall, was limited to three methods: ‘cease from sinne’, ‘prayers and tears’ and ‘flight’ to another location within the land.³¹⁷ In this, these writers agreed with Ferne – denying obedience to commands and laws when they were against the law of

³¹³ For their attempts to pacify these arguments, see David L. Smith, *Constitutional Royalism and the Search for Settlement, c.1640-1649* (Cambridge, 1994).

³¹⁴ John Spelman, *Certain considerations vpon the duties both of prince and people* (s.n., [14 January] 1643) E.85[4], p. 15.

³¹⁵ Thomas Swadlin, *The soveraignes desire peace: the subjectes dutie obedience* (s.n., [07 February] 1643) E.88[22], p. 24; *Obedience active and passive due to the supream povver, by the word of God, reason, and the consent of divers moderne and orthodox divines; written not out of faction, but conscience, and with desire to informe the ignorant, and undeceive the seduced* (Printed by Leonard Litchfeild, [24 February] 1643) E.90[19].

³¹⁶ John Bramhall, *The serpent salve, or, A remedie for the biting of an aspe wherein the observators grounds are discussed and plainly discovered to be unsound, seditious, not warranted by the laws of God, of nature, or of nations, and most repugnant to the known laws and customs of this realm : for the reducing of such of His Majesties well-meaning subjects into the right way who have been misled by that ignis fatuus* (s.n., 1643) Wing B4236, pp. 50-1.

³¹⁷ *Ibid.*, pp. 51-3.

God or the land was expected, but the actual raising of arms was another matter, and expressly forbidden by the gospel.³¹⁸

As it became necessary for Parliament to justify their decisions to the public, it became possible for pamphleteers to engage with, defend, or even attack, the judgement that Parliament had reached. Because of this, new demands were made on the implied and actual reader, and some authors required their readers to perform duties of personal casuistry and legal investigation, rather than relying on the form or means by which commands were delivered. There was, in other words, a space in which the people had an ability to question and test the legality of commands from a governor, and in which their own conscience could have some agency. Indeed, some parliamentarians were forced to begin to wrestle with the idea that their own commands could be challenged, and that at some point, they would need to justify why Parliament's commands were unquestionable.³¹⁹ Parliament was unchallengeable from other courts due to its role as the highest judicature, but by explaining why their decisions were correct, they had invited their own actions to be questioned by the people, even though these ideas were designed to empower rather than diminish the Parliament. In other words, their justifications, even if the King's were proved to be wrong and unlawful, were increasingly required to stand up to the private examination and personal conscience of the reader. The debate around conscience was one that Parliamentary absolutists could not be involved in, and thus it was left to the mixed constitutionalists to counter Ferne's claims, often doing so by deferring to an increasingly relied-upon implied reader.

The mixed constitutionalists, then, believed that Parliament had the right to resist the King in this case, but did not believe that Parliament had an absolute power. In order to empower Parliament they used the implied reader either to examine their conscience and declare that Parliament should be supported, or through the individual's scrutinising of commands given by magistrates.

Many of Ferne's objections, and the responses that he received, contested the nature and origins of power. Ferne had separated the 'Power it selfe from the *designing of the Person to beare that power*'.³²⁰ Since this 'power is of God originally and chiefly', as soon as the

³¹⁸ Bland, *Resolved upon the question*, pp. 5-6.

³¹⁹ Foxley, 'Varieties', pp. 422-3.

³²⁰ Ferne, *Resolving of conscience*, p. 12.

power is placed by the people 'they can not reassume it'. As Rom. 13. 1 said, '*The powers are of God*'.³²¹ Ferne's interpretation of the parliamentary justification relied on the idea that the Houses were reassuming the power that the people had invested in the King, and the sting in his work was his theorising that if that was the case, the Houses could therefore be threatened with the people doing the same thing to them.³²² While it is tempting for historians to view Ferne's work as the typical re-assertion of the divine right of Kings, it needs to be acknowledged that *Resolving of Conscience* was particularly politically savvy, and forced parliamentarians to deal with the consequences of justifications that emphasised the people being the origin of political power.³²³

Ferne used the parliamentarians' own legitimisation tactics to create for them further problems in political thought. By challenging parliamentarians to elaborate on their understanding of the constitution in an open debate, Ferne was able to highlight the inconsistencies and contradictions between them in his *Conscience Satisfied* in April 1643.³²⁴ Ferne's pamphlet posed parliamentarians two challenges: his first was that you could not reassume powers that were originally of God, and his second was that if you could reassume power, then the Parliament itself was threatened. To tackle these claims, several mixed constitutionalist writers started by drawing a distinction between the idea

³²¹ *Ibid.*

³²² As some works did – see, for example, Hyde, *A complaint to the House of Commons*; Edward Bowles, *Plaine English: or, A discourse concerning the accommodation, the Armie, the association* (s.n., [12 January] 1643) E.84[42].

³²³ An important point made by Sanderson, 'Answer to the Nineteen Propositions Revisited', Henry Ferne, *A reply unto severall treatises pleading for the armes now taken up by subjects in the pretended defence of religion and liberty by name, unto the reverend and learned divines which pleaded scripture and reason for defensive arms : the author of the Treatise of monarchy : the author of the Fuller answer his reply* (Printed by Leonard Lichfield, [01 November] 1643) E.74[9], pp. 12, that 'It was never my intent ... to plead for absolutenesse of Power in the King, if by absolutenesse of power be meant (as it should be) a power of Arbitrary command, but if by Absolutenesse of Power this Author means (as he doth sometimes) a power not to be resisted or constrained by force of Armes raised by Subject, such a power we plead for'. For assertions that Ferne pushes for the divine right of kings, see, for example, Sirluck, 'Introduction', pp. 30-1; Janelle Greenberg, *The Radical Face of the Ancient Constitution: St. Edward's 'Laws' in Early Modern Political Thought* (Cambridge and New York, 2001), pp. 182-3; Judson, *The Crisis of the Constitution*, pp. 393-5.

³²⁴ Henry Ferne, *Conscience satisfied. That there is no warrant for the armes now taken up by subjects. By way of reply unto severall answers made to a treatise formerly published for the resolving of conscience upon the case* (Printed by Leonard Lichfield, [18 April] 1643) E.97[7].

of authority, and the idea of power itself.³²⁵ Many conceded that at some point, power must have come from God (and the King was thus anointed), but argued that Ferne was oversimplifying the transaction and missing out a key step. For example, Bridge distinguishes between ‘the power abstractively considered from the qualifications of that power, and the designation of a person to that power’, and decides that while the power is from God, the authority was from people.³²⁶ Likewise, Hunton and Goodwin argued that while God had made clear that there should be a government, he did not specify what form it should take, and left it to the people to decide.³²⁷ In other words, even if the power was from God originally, this was not important because it was authority that gave Parliament the legitimacy to act. As Burroughs put it, ‘There is no body here that yet hath attempted to take any power away from the King that Law hath given him’.³²⁸

In arguing against the first challenge – that you could reassume powers that were originally of God – these mixed constitutionalist writers were more confident. Palmer pointed to the case of Hezekiah as proof that it was wrong that ‘there is no power of recalling any thing devoted to God’, as Hezekiah had taken gold ‘from the Doores of the Temple and the Pillars which he had overlaid’ to attempt to pay off the ‘King of Assyria’.³²⁹ Later in the work, Palmer pointed out the practical problems of Ferne’s logic

³²⁵ The need for this distinction is emphasized by Allen, *English Political Thought, 1603-1660*, p. 459; and by Burroughs, ‘A briefe Answer to Doctor Fernes Booke’, pp. 7-8. The last few months in 1642 had seen a public spat over Psalm 105.15, ‘Touch not mine anointed’. According to William Prynne, the Psalm was being misconstrued ‘to cry up the absolute irresistable Prerogative of Kings in all their exorbitant proceedings, and beat down the just liberties of the Subject’, when in reality the text is ‘a direct precept given to Kings themselves, not to oppresse or injure their faithful subjects’ in William Prynne, *A vindication of Psalme 105.15, touch not mine anoynted, and doe my prophets no harme, from some false glosses lately obtruded on it by royallists proving that this divine inhibition was given to kings not subjects: to restraine them from injuring and oppressing Gods servants and their subjects* (s.n., [06 December] 1642 E244[1]) sig. A1v. A Royalist retort argued that the ‘dangerous Tenet’ had been ‘buzzed into the eares of the people, as if they onely were Anointed, none but they’, and that rather the ‘forcible resistance’ against the King meant that they were, in fact, touching an anointed: *The Sovereignty of kings: or An absolute answer and confutation of that groundlesse vindication of Psalme 105. 15*, (s.n., [21 December] 1642) E.244[17], sig. A1v, A4r.

³²⁶ Bridge, *Wounded conscience cured*, p. 52.

³²⁷ Hunton, *A treatise of monarchie*, pp. 3-4; Goodwin, *Anti-cavalierisme*, pp. 7-9; Judson, *The Crisis of the Constitution*, p. 397.

³²⁸ Burroughs, ‘A briefe Answer to Doctor Fernes Booke’, p. 7.

³²⁹ Herbert Palmer, *Scripture and reason pleaded for defensive armes: or The whole controversie about subjects taking up armes. Wherein besides other pamphlets, an answer is punctually directed*

– if all power was originally from God, were the judges who held the power that was, at some point, from God also holders of that power irrevocably?³³⁰ Similarly, Burroughs had argued that if ‘the King gives power to an inferior magistrate, the power that this Magistrate hath is likewise from God, for so the Scripture sayes, *Rom. 13. All power is from God* : may not this power be re-assumed therefore?’ Because it was permissible for the King to take power from lesser magistrates, ‘therefore his [Ferne’s] consequence [was] not good’.³³¹ Even if this was not the issue at hand, power could be reassumed.

In arguing against Ferne’s second challenge – that Parliament itself was under threat if power could be reassumed – more caution was needed. As Foxley has shown, the ‘Presbyterian’ writers Hunton, Palmer et al., and Samuel Rutherford understood sovereignty as shared between three estates, and described the way that none of them could dominate the other.³³² For Foxley, Palmer and the other divines who composed *Scripture and Reason Pleded* maintained a true mixed polity, rather than a ‘parliamentary sovereignty’.³³³ Foxley also highlights the importance of Hunton, whose *Treatise of Monarchie* comprehensively examined various systems of government and attempted to demonstrate that the power of the monarchy was limited and mixed, and hence no one estate should control the others. On the question of arbitration, Hunton felt a need to distance himself from Herle and other ‘Officious Propugners’ who ‘overdoe their worke, and give more to them [the Parliament] whose cause they plead, then they ever intended to assume’, warning against giving ‘power to one of these three to crush and undoe the other at pleasure’.³³⁴ Hunton’s work, then, was targeted not just at Ferne, but also at the Parliamentary absolutists. Rather, arbitration had to come from ‘our Consciencs’ having the ‘evidence of the Truth to guide them’, and although Hunton made it clear that he was supporting Parliament because they ‘in likelihood should see

to *Dr. Fernes booke, entituled, Resolving of conscience, &c.* (Printed for Iohn Bellamy and Ralph Smith, [14 April] 1643) E.247[22], pp. 35-6.

³³⁰ *Ibid.*, p. 36.

³³¹ Burroughs, ‘A briefe Answer to Doctor Fernes Booke’, p. 7.

³³² Foxley, *Levellers*, pp. 60-4.

³³³ *Ibid.*, p. 60.

³³⁴ Hunton, *A treatise of monarchie*, pp. 68-72; Judson, *The Crisis of the Constitution*, pp. 402-5.

most', his constitutional understanding did not allow Parliament to dominate the other estate.³³⁵

The problem faced by parliamentary writers who focused on the mixed constitution, however, was to consolidate their commitment to a mixed constitution without threatening either the authority of the Parliament, or its ability to act against the royalist forces. Many historians, drawing from work by Wootton, have argued that the threat of re-assumption was an explicit threat to Parliament.³³⁶ However, many parliamentary apologists who attempted to have the best of both worlds – a mixed constitution while maintaining the right of Parliament to defend itself against the King – did this by considering the hypothetical (and, they assured their readers, near impossible) situations where trust could be withdrawn from the Parliament. This was an issue that was best approached tentatively. For example, Burroughs challenged Ferne's assertion that the people could re-assume power from the Parliament because if Parliament could grow tyrannical the 'condition of such a State would be very dangerous', and speculated that the 'Law of Nature' might allow the people to 'discharge them of that power they had, and set up some other', but that he would 'leave it to the light of nature to judge'.³³⁷ Palmer argued that 'It is lawfull for the people to resist even the Tyranny of a *Parliament*, when altogether outrageous, (as in our Question) not else'.³³⁸ As we have seen, Hunton was willing to allow the people an active role in deciding where power should lie in cases of dispute. Bridge argued that it was the 'most naturall work in the world for everything to preserve itselfe', and argued that just as it was 'Naturall for a man to preserve himselfe, naturall for a Community', and hence when trust was placed in a ruler, then 'that act of their trust is but by positive law, and therefore cannot destroy the naturall law, which is selfe preservation'.³³⁹ Although he argued that Parliament should be followed, he implicitly maintained that individual self-preservation (which derived from natural law)

³³⁵ Hunton, *A treatise of monarchie*, p. 73.

³³⁶ Wootton, 'From Rebellion to Revolution'. See, for example, Burgess, *British Political Thought*, p. 225; Braddick, 'History, Liberty, Reformation and the Cause', p. 122; Baker, 'Rhetoric, Reality and Varieties of Civil-War Radicalism', p. 208.

³³⁷ Burroughs, 'A briefe Answer to Doctor Fernes Booke', pp. 9-10. He later said that this was 'not properly to resist the power, but to discharge the power, to set the power elsewhere'.

³³⁸ Palmer, *Scripture and reason pleaded*, p. 50.

³³⁹ Bridge, *Wounded conscience cured*, p. 2.

could not possibly be destroyed by a positive law which derived from the community. Rather, what prevented Bridge's community from withdrawing their trust was three-fold – Parliament should be trusted in any case, Parliament were elected to protect the Commonwealth, and to reassume power would 'leave themselves [the community] naked of all authority'.³⁴⁰ Mixed constitutionalist arguments of this nature were presented as contingent and conditional, but by even considering the possibility, they were a marked step away from the arguments of Parliamentary absolutists such as Parker and Herle, who denied that a tyrannical Parliament was possible at all.

Those writers who denied that Parliament was absolutely sovereign seem to have attributed sovereignty to a fictitious body of 'the people', and by doing so they were able to empower Parliament to justify their resistance against the King while simultaneously denying that Parliament was absolute. For them, sovereignty was supra-Parliamentary, but the marks of sovereignty could be found within Parliament. It was a constructive argument that was intended to legitimate obedience while not restricting Parliament's authority, and by appealing above and beyond the Parliament to a fictitious sovereign people these writers were able to have the benefits of a Parliamentary sovereignty without unbalancing the mixed constitution. Therefore, while practically they believed that Parliament could act as sovereign in this case, they stopped short of arguing that Parliament was absolute.

Such a conception of sovereignty has been put forward by scholars such as Richard Tuck, who has argued that Hobbes's discussion of a monarch who was asleep constitutes a clear contradiction of Hugo Grotius's understanding of the marks of sovereignty – a dictator, and thus other rulers, were sovereigns. According to Tuck, Hobbes argued that there was a 'Bodinian distinction between sovereign and government', whereby even though legislation could be passed by a monarch, sovereignty did not necessarily lie with them.³⁴¹ The people, like a sleeping monarch, could remain sovereign even though government was held elsewhere, and thus 'all elective monarchies of Europe were (by implication) really either aristocracies or democracies'.³⁴² The entity that held

³⁴⁰ *Ibid.*, pp. 36-7.

³⁴¹ Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2016), pp. 90-1.

³⁴² *Ibid.*, p. 91.

sovereignty, then, might awaken and restore order or condemn the old regime, but in normal day-to-day activities their presence would go unnoticed. Similarly, Daniel Lee has argued that the people were appealed to in order to avoid actually defining where sovereignty lay. The appeal to popular sovereignty was a 'conceptual placeholder for kingship in the modern mind, by playing the constitutional role of the imagined fictive bearer of a depersonalised sovereignty' – where sovereignty could be denied to kings and placed elsewhere.³⁴³ In other words, it was a practical solution to a theoretical problem, which would allow action by the Parliament while not empowering it to be an absolute sovereign.

There was, then, a clear divide between absolutists and mixed constitutionalists, which meant that parliamentarian defences disagreed over the role the reader and conscience could play in the constitution.³⁴⁴ Although the absolutist argument was often made by the more competent writer, the argument itself was ill-suited to pamphlet form. The crux of the problem was that, given that the argument had been made in its entirety in May and June 1642, and because nothing that the reader could do could make a difference, the absolutist argument did not progress – Parliament was absolute and their power could not be reassumed. The nine months of debate between the autumn of 1642 and the summer of 1643 was a discussion about the mixed constitutionalist problems of conscience and obedience, and they could not get involved with this. Ferne had made every aspect of the parliamentary case – even deferring to the judgement of Parliament – one of conscience, which meant that the implied reader's conscience could be courted and cajoled by pamphleteers. By conceding that Parliament could do wrong and using the implied reader to solve the constitutional fallout, mixed constitutionalists were able to engage with and attempt to counter Ferne's case. By contrast, Parliamentary absolutists, however, could not be involved in this debate because they denied not just the premise of the question – that conscience had to be consulted to follow Parliament – but also the premise of the debate – that it was a case of conscience at all.

IV. CONCLUSION

This unstable constitutional situation had arisen partly because of the pressure of describing perfect constitutions in polemical and military circumstances, but also

³⁴³ Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford, 2016), p. 15.

³⁴⁴ Although historians continually have to reiterate these readings. See, for example, Cromartie, 'Hobbes, History, and Non-Domination', pp. 174-5

because of a genuine disagreement about whether Parliament could be trusted absolutely. There was an increasing strain imposed on the reader as terminology and concepts of the law and the constitution, both of which claimed authority from age and immemorial reasoning, were continually being changed and adapted to suit political needs. According to the Parliament's later Declarations, their verdict as the supreme judicature was unchallengeable,³⁴⁵ but as both the royalist and more moderate parliamentary pamphlets show, it was possible to admit their power as a supreme judicature, yet still object to their actions – you could deny the Commons alone was a Court of Record, or that they had authority to judge on any case they chose.³⁴⁶ Hunton had shown that the unfeasibility of this constitutional fix was that it was impossible for any one body to have a final say on the law without that body becoming an arbitrary power.³⁴⁷ Ultimately, the reader had to rely on 'our Consciences' having 'evidence of Truth to guide them'. The problem was unsolvable, and Hunton, although supporting Parliament because they 'in likelihood should see most', had made this perfectly clear to the reader.³⁴⁸

In part, some of the reason for the impossibility of the problem was because of the nature of Ferne's argument. By tying his argument to conscience, he had allowed himself a distinct understanding of the relationship of the law and the case at hand, and offered the reader a different way of thinking about the conflict itself. By blending maxims of casuistry with legal argument, Ferne was able to argue that, as in cases of conscience, in contested cases of law 'it is better we follow what the known Law commands us to, and that there be a suspension of such a declaring till all that are entrusted for us can

³⁴⁵ See, for example, their declaration of 3 November 1642, in Husbands (ed.), *An Exact Collection*, p. 704.

³⁴⁶ See, for example, Hyde, *A complaint to the House of Commons*. Of course, this argument could be deployed tactically depending on the relationship between the two Houses. For example, the Venetian Secretary Gerolamo Agostini detailed in March 1643 that 'The Lords are moving steadily towards peace', and thus denying that the Commons a voice in the proceedings could play into the King's favour. '239. Gerolamo Agostini, Venetian Secretary in England, to the Doge and Senate' in *CSP Ven*, xxvi, pp. 247-259.

³⁴⁷ Hunton, *A treatise of monarchie*, pp. 68-72; On this, see also Judson, *The Crisis of the Constitution*, pp. 402-5.

³⁴⁸ Hunton, *A treatise of monarchie*, p. 73; Jack H. Hexter, *The Reign of King Pym* (London, 1941), pp. 214-6.

agree'.³⁴⁹ By using the logic of casuistry, Ferne was able to create a narrative that escaped the binary that was inherent in legal argument – that one side is legal, the other illegal. Rather than a choice between these two opposites, Ferne's understanding offered the reader a safer option.

As well as royalists, some parliamentarians felt compelled to use this space. For some, such as Goodwin, it allowed commands to be disobeyed while maintaining a commitment to Parliament, and for others, such as Hunton and Burroughs, it offered a constitutional fix that allowed the Parliament to act as necessary while remaining within a mixed and balanced constitution. However other parliamentarians (such as Herle and Parker) because of their understanding of the constitution, were unable to engage with this space because they denied that it existed.

Ideas that attempted to balance the constitution were often positive ones to enable support of Parliament while maintaining some form of safe-guard. The implied reader, and the public at large, were being informed of new duties that they were expected to fulfil because of the increasing demands of the parliamentary cause. The failure of the law to provide a constitution that was all things to everybody meant that the implied reader was being required to play a vital role in the construction of the constitution, and their subjectivity allowed the Parliament to be both legitimated and limited.

Herle and Parker were evidently very important thinkers, but increasingly their work is seen as exceptional rather than normal in parliamentary thought. By refocusing on those who maintained a conviction in the mixed constitution – those that believed that cause and conscience justified Parliament – it is possible to understand some of the problems that readers would face when attempting to subscribe to Herle and Parker's theories, and why the legal framework came to be unsustainable.

II PARLIAMENTARIAN POLEMIC AND LEGAL PRINCIPLES

Parliamentarian authors used a wide range of tactics in order to justify resistance against the King. The mechanics of pamphlet debate meant that the political conversation continually examined and re-examined the circumstances surrounding the conflict, and pamphlets needed to repeat, reiterate and reapply their legal arguments. This process revealed tensions within parliamentarianism more generally. The legal case that they

³⁴⁹ Ferne, *Conscience satisfied*, p. 35.

needed to construct in order to resist the King threatened to overrule and challenge the very constitution that Parliament endeavoured to protect, and the Parliamentary absolutists in particular struggled to explain exactly why the case they made applied only to the present necessity, rather than to posterity.

I. THE ORIGINAL CONTRACT AND THE FUNDAMENTAL LAWS

Parliamentarian writers were consistently challenged to establish what the original contract that constituted the relationship between the people and the King was. The problem was significant for two reasons. Firstly, there had been increasing pressure on the Parliament's understanding of the origins of government, and parliamentarian writers proved to be unable to describe exactly what powers had originally been invested in Parliament, and what powers had been reserved. Ferne was thus able to emphasise the radical consequences, and with incredulity argue that the suggestion that all the people got together and agreed on a contract was preposterous – did they decide to 'spring on a suddain out of the earth', and what was the 'likelihood they would not so well agree; or to live dispersedly in caves & wood'?³⁵⁰ The parliamentarian defence, in other words, was reliant on knowing something that could not possibly be known and was absent in historical record.³⁵¹

Secondly, Parliament's defence of protecting the 'fundamentall law' was suffering from sustained attacks. For the sympathetic reading public, it maintained a hierarchical supremacy over the written law, yet remained complementary to it, mirroring a judge's verdict setting precedent in the common law. However, Ferne was able to highlight to great effect the disparity between these 'Fundementalls' and the written law. Rather than simply justify action in extreme circumstances, the 'government we see used in this Land, and the written Laws which we reade, must have a correspondency and analogie of reason to these Fundementalls, and they to these', or else they must be considered wrong. For him, they had to be completely compatible, or else the law was written against the fundamentals (and therefore illegal), or the understanding of the fundamentals was wrong.³⁵² Ferne framed his discussion for the reader as a simple choice between unknown and known, and in doing so reflected what he viewed as the

³⁵⁰ *Ibid.*, p. 9.

³⁵¹ Sirluck, 'Introduction', p. 43.

³⁵² Ferne, *Resolving of conscience*, p. 12.

incompatibility of the royalist and the parliamentary cases. He challenged the reader to choose between something codified that gave structure and order to the state, or some imagined laws that 'lie low and unseen by vulgar eyes', and were to be judged only by the remaining members of Parliament.³⁵³ Ferne's argument highlighted the problems of separate but overlapping legal systems coexisting, to the extent that to side with the Houses of Parliament was to agree that all acts of Parliament could potentially be wrong, and to challenge the status of all legislation. Other royalists followed Ferne's lead. The fundamental laws, wrote an anonymous author ventriloquising Sir Henry Garroway, were being used to raise levies without the King's permission in ways that even 'Sir Simon Dewes himself cannot produce one record' for.³⁵⁴

In what has been described by John Sanderson as 'Ascending' politics, parliamentarians undertook an effort to prove that the original form of government, and the original contract as a whole, must have survived in some form because they differed so much from other conquered states.³⁵⁵ Building on various antiquarian works, mixed constitutionalists such as Hunton were able to argue that 'the English libertie existed before the *Norman Invasion*, notwithstanding the Danish interruption'.³⁵⁶ He argued that the conquest that took place was only 'partiall', and that to make it a full conquest the people needed to agree to submit 'to a composition and contract of subjection to the Invader'.³⁵⁷ This contract, he continued, must have kept certain 'fundamentalls of Government, wherein the English freedom still exists', and does so 'till this day'.³⁵⁸ Likewise, Burroughs argued that the 'right comes not from power to conquer, or the act of conquering, but from some agreement, precedent or consequent', which he assumed took place after the fighting had stopped.³⁵⁹ Conversely, Bridge had argued that William

³⁵³ *Ibid.*; See also Ferne, *Conscience satisfied*, pp. 24-5.

³⁵⁴ *A speech made by Alderman Garroway, at a common-hall on Tuesday the 17. of January upon occasion of a speech delivered there the Friday before, by Mr. Pym, at the reading of His Majesties answer to the late petition* (s.n., FD: 17 January 1643) Wing G280, p. 16.

³⁵⁵ Sanderson, *But the People's Creatures*, pp. 15-33. At times, Sanderson's analysis might be too eager to conflate all stripes of parliamentarianism together, rather than emphasise the differences between them.

³⁵⁶ Hunton, *A treatise of monarchie*, p. 35.

³⁵⁷ *Ibid.*, p. 21.

³⁵⁸ *Ibid.*, pp. 37-8.

³⁵⁹ Burroughs, 'A briefe Answer to Doctor Fernes Booke', p. 7.

the Conqueror actually received his crown from Edward the Confessor, and therefore continued, rather than subverted, the liberties enjoyed prior to the 'conflict'.³⁶⁰

Anonymous works such as *A Briefe and Exact Treatise* explained how sheriffs were elected in continuity since Saxon times, and others such as *The Definition of a Parliament* described a continuous history of Parliament from King Alfred to the present King.³⁶¹ The continuity, in other words, was enough to prove that there was a contract before, and therefore that at some level, the contract (regardless of what was said) was a precursor to the monarchy. This meant that the people had been crucial in empowering the King, and thus could have maintained certain liberties and privileges.

While the majority of parliamentarians may have agreed that power came from the people, there were important distinctions between mixed constitutionalists and absolutists about what this meant in practice. The Parliamentary absolutists faced the issue of proving that Parliament could act as sovereign above the King, and that Parliament had done this before in the historical record. For example Herle had shifted the definition of the 'fundamentall' laws from a set of potentially codifiable laws towards the 'original *frame*' of government that was consented to, and agreed to, by the people.³⁶² In doing so, he was able to link the fundamentals with his own understanding of the constitution, allowing him to assert his belief that the Houses were coordinative with the monarchy in acting with supremacy, and that Parliament were able to 'supply' the defects of the King. The fundamental laws that Herle referred to were unchanging because 'a foundation must not be stirr'd while the building stands', and those that pointed to 'superstructive' or 'written Lawes' in order to challenge his understanding were referring to things 'that were not Lawes before written'.³⁶³ In order to continue to justify resistance, Herle's conception blurred the lines between extreme circumstances

³⁶⁰ William Bridge, *The truth of the times vindicated: whereby the lawfulnessse of Parliamentary proceedings in taking up of arms, is justified, Doctor Fernes reply answered, and the case in question more fully resolved* (Printed by T.P. and M.S. for Ben: Allen, [24 July] 1643) E.61[20], p. 13.

³⁶¹ *A briefe and exact treatise declaring how the sheriffs, and all other the great officers of this kingdome have been anciently elected and chosen* (Printed for T.I., [13 December] 1642) E.130[8]; *The definition of a Parliament or, A glosse upon the times*, (Printed for J.F., [21 January] 1643) E.85[33]. See also *Englands prosperity in the priviledges of Parliament, set forth in a briefe collection of their most memorable services for the honour and safety of this kingdome, since the conquest, till these present times* (Printed for Nicholas Iones, [24 November] 1642) E.128[5].

³⁶² Herle, *A fuller answer*, p. 8.

³⁶³ *Ibid.*

justifying resistance in this particular case, and a constitution that empowered the Parliament to act anyway. This argument was made more clearly by an anonymous pamphlet from December 1642, which stated that the misunderstanding was caused by past Parliaments being too polite to emphasise the extent of their supremacy, rather than this current Parliament claiming unprecedented powers.³⁶⁴ The idea of the fundamentals being the original constitution allowed Parliament some extra leeway when it came to overriding written, statutory law.³⁶⁵ They had the authority to act in protection of the original contract, and could disregard the (positive) laws when they hindered or contradicted this understanding, because they were a construct rather than the basis of the state.

As proof of his understanding of the relationship between the Parliament and the King, Herle drew upon the King's Coronation Oath to provide confirmation of what the King's side of the bargain was with the people in the original contract. Herle's *Fuller Answer* argued that the constitution was evident in 'the mutuall *Oathes* the King and people are to take', and that by examining those, it was possible to understand the nature of the relationship between King and people.³⁶⁶ As we have seen, this had been employed by the Parliament earlier in the year to great effect, leading to a public spat over which version of the Coronation Oath had been taken. The main problem with the argument was one that Bland had already struggled with, and Ferne was more than happy to repeat – that 'Our King is King before he comes to the Coronation, which is sooner or later at his plasure'.³⁶⁷ Herle charged that the King had taken 'the same Oath as his predecessours, because it is hereditary Law that gives him the crown', and in doing so 'virtually binds him' and his predecessors before the oath is taken.³⁶⁸ In other words, the trust of kingship and the Oath taken are the same, reflecting the original transfer of

³⁶⁴ *A discourse betweene a resolved, and a doubtfull Englishman*, (s.n., [03 December] 1642) E.128[41], sig. A3v-A4r.

³⁶⁵ On this term, see also Stuart E. Prall, *The Agitation for Law Reform During the Puritan Revolution, 1640-1660* (The Hague, 1966), pp. 15-9.

³⁶⁶ Herle, *A fuller answer*, p. 5.

³⁶⁷ Peter Bland, *The priviledges of the House of Commons in Parliament assembled. Wherein 'tis proved their power is equall with that of the House of Lords, if not greater, though the King joyn with the Lords. However it appears that both the houses have a power above the King, if he vot contrary to them* (Printed for J.R., [31 December] 1642) E.83[39], pp. 7-9; Ferne, *Resolving of Conscience*, p. 15.

³⁶⁸ Herle, *A fuller answer*, p. 5.

power from the people to the King. Because of this, even if the specific version that the King had taken was not the same as the one recorded in the Parliamentary rolls (as, indeed, it was not), it did not matter, because the trust that it represented was the same as the contract of the King's predecessors.

By tying his argument to the constitution, Herle blurred the lines between actions driven by necessity and actions performed in normal circumstances, which meant that arguments along these lines could quickly develop into radical ideas about the nature of the King's power. For example, in *Touching the Fundamentall Lawes*, the anonymous author denies the negative voice by arguing that because the King by his Coronation Oath is bound to grant what the public 'shall chose to be observed, not hath chosen', he cannot reasonably be considered to have one.³⁶⁹ This pamphlet is often quoted as being a radical denial of the negative voice, but when considered alongside the previous nine months of debate it might better be seen as a logical extension of Herle's constitutional understanding. Works had already discussed the extent to which the King could have a negative voice, and it had been established that it was Parliament's opinion that if he rejected a bill that was recommended by the representative body for the public safety, he had already broken his trust. However, the Coronation Oath that they relied on stated that this was not specific to just public safety, but rather any law that the public demanded. If, according to this understanding, it is taken that the Coronation Oath is crucial to the constitution, and that the Oath itself needs to adapt to changes in the needs and wants of the public, then the negative voice would be inherently unconstitutional. *Touching the Fundamentall Lawes* and works such as *Souveraigne Salve* were comfortable in applying a parliamentary justification based on the constitution directly without distinguishing between extraordinary times and ordinary times, because a royal veto would constitute an extraordinary situation.³⁷⁰ According to the author of A

³⁶⁹ *Touching the fundamentall lawes, or politique constitution of this kingdome, the Kings negative voice, and the power of Parliaments. To which is annexed the priviledge and power of the Parliament touching the militia*, (Printed for Thomas Underhill, [24 February] 1643) E.90[21], p. 9.

³⁷⁰ *A soveraigne salve to cure the blind, or, A vindication of the power and priviledges claim'd or executed by the Lords and Commons in Parliament, from the calumny and slanders of men, whose eyes (their conscience being before blinded) ignorance or malice hath hoodwinckt. Wherein the fallacie and falsity of the anti-parliamentary party is discovered, their plots for introducing popery into the church and tyranny into the state are manifested: the pretended fears of danger from seperatists, Brownists, &c. blowne away. And a right way proposed for the advancing the just honour of the King, the due reverence of the clergy, the rights and liberty of the people: and the renewing a golden age* (Printed by T.P. and M.S., [27 April] 1643) E.99[23], p. 20.

Sovereign Salve, 'in such a case as ours by virtue of the legislative power residing in the Parliament it may make new Ordinances, at least for the time, as it sees occasion and judges to be in order to that supreme and immutable Law [the safety of the people]', a point that was proved by the Oath that the 'Kings of England at their Coronation take, or ought to take'.³⁷¹ The point was made most clearly by Prynne, who argued that the 'kingdomes Sovereignty and supreme jurisdiction above the King is most apparent by those Coronation Oathes, which Parliaments and the kingdomes anciently, long before, or at leastwise in King *Edwards* dayes, before and ever since the Conquest, have prescribed to our Kings ere they would accept of them for their Sovereignes', and later concluded that the King 'hath no absolute negative voyce' because of his oath.³⁷² The Oath was not just a sign of royal good will, as royalists might wish to portray it, but rather a contract that needed to be fulfilled by the King, and if necessary protected by Parliament.

Transforming the basis of the Parliamentary justification in such a way left a blurry distinction between what was being done because of necessity, and what was permitted because of the constitution regardless of context. For some writers – particularly those who were Parliamentary absolutists – this described, rather than threatened, the constitution. Following the line of this argument and definition of these fundamental laws, writers could argue that it was impossible to maintain that Parliament could be bound up in statute or written law because it would be 'absurd' to suggest that they could not work towards the *salus populi*.³⁷³ Parliament could not be thought of as an arbitrary power, because in reality they were never expected to follow the law – the 'law was not made betweene Parliament and people, but by the people in Parliament betweene the King and them', and they could call upon the laws of nature, equity and the need for 'public preservation'.³⁷⁴ Similarly, *Remonstrans Redivivus* argued that

³⁷¹ *Ibid.*, pp. 19-20.

³⁷² William Prynne, *The treachery and disloyalty of papists to their sovereigns, in doctrine and practise. Together with an exact parallel of the jurisdiction, power, and priviledges claimed and exercised by our popish Parliaments, prelates, Lords and Commons in former times, with those now claimed and practised by the present Parliament, Lords and Commons, which are here manifested to be farre more loyall, dutifull, moderate; more consistent with, lesse invasive on, and destructive to the Kings pretended sovereign power and prerogative, then those of popish parliaments, and subjects* (Printed for Michael Sparke, Senior., [16 March] 1643) E.248[1], pp. 52, 73-87.

³⁷³ *Touching the fundamentall lawes*, pp. 7-8.

³⁷⁴ *Ibid.*, p. 8.

Parliament could be limited by ‘no Customes, no Presidents, nor Statutes’.³⁷⁵ At times, this understanding threatened to destroy the constitution itself. The parliamentary *Priviledges of the House of Commons*, which explicitly asked whether it was within ‘*the power of a Parliament called by Writ to alter pre-established State-government?*’, concluded that if the ‘diversity of times, and necessity of the State ... so require’, the Parliament has the power to do so.³⁷⁶ These extraordinary arguments grew out of the initial premise of the work of Herle and Parker – that Parliament held the sovereign power, and that there was no right to resist this power.

By confronting questions over whether the constitution had been changed, other parliamentary works attempted to use the framework of the fundamental law to justify Parliament’s position, while maintaining a mixed, rather than Parliament-dominated, constitution. As *Maximes of Mixt Monarchy* made clear, only the law of nature was higher than the fundamentals, and while nature’s laws could absolutely not be changed, the fundamental laws potentially could, although ‘no power ought to change, neither can they be changed without injurie to any Nation’.³⁷⁷ To drive the point home, the work referenced two rulers that had attempted to change the fundamentals: ‘*Antiochus* the Type, and *Antichrist* the Antitype, both changers of Laws and Customes against all right and reason of Nations where they prevailed’.³⁷⁸ For this anonymous author, ‘politically power’ lay within the three estates, who were ‘co-essential, co-equal, co-ordinate, and co-workers’, and the ‘*Co-ordination of the three estates*’ could only occur ‘*in Parliament*’.³⁷⁹ That the King was absent in body did not change the fact that the ‘three Members co-essential continue in power, and may proceed as they are in a Parliamentary

³⁷⁵ *Remonstrans redivivus: or, An accompt of the remonstrance and petition, formerly presented by divers citizens of London, to the view of many; and since honoured by the late conspirators, to be placed under their title of extreame ill designes, with the remonstrance it selfe* (Printed by T.P. and M.S. for John Rothwell and Thomas Vnderhill, FD: 25 July 1643) E.61[21], p. 4.

³⁷⁶ *The priviledges of Parliament, or, A modest ansver to these three questions: I. Whether it be in the power of a Parliament, called by writ, to alter pre-established state-government? II. Whether it be in the power of a Parliament to alter church-government? III. Whether it be in the power of a Parliament (wheu [sic] their right and just priviledges be undermined, and sought to be subverted by private stratagems, or publike warre) to take up armes in defence of themselves and the whole kingdome?* (Printed for Thomas Harrison, [18 February] 1643) E.89[19], p. 3.

³⁷⁷ *Maximes of mixt monarchie*, sig. A2r.

³⁷⁸ *Ibid.*

³⁷⁹ *Ibid.*, sig. A2v-A3r.

way'.³⁸⁰ The fundamentals, then, were to remain constant and untouched, or else the country risked ruin, but could still be used to justify Parliament's position. According to the anonymous author of *A New Plea*, the law was 'all former acts of Parliament never yet reserved, together with the privilege of Parliament', not what Parliament decided was best at the time.³⁸¹ Tensions, then, existed over the extent to which the constitution was being changed, and whether Parliament was able to ignore the laws. As we will see, this was a recurring theme in both royalist propaganda and parliamentary responses.

The idea of the fundamental law was used most simply and effectively when the term – already an established totemic phrase that described their broad difference from the royalists – could be weaponised and used in short pamphlets to confirm the pre-existing suspicions of the reader. For example, one pamphlet in February 1643 argued that Prince Rupert was a danger to the King because of Charles's own understanding of the law. If the King won, the pamphlet reasoned, Rupert would be able to exploit the royalists' own language and demand of the King 'what Written Law He can produce to make him King of England?'³⁸² If, it continued, the King responded that 'the Fundamentall Laws put him in that office', he would be told that his legal position is that 'those Fundamentall Laws must be known Laws, explicit and written, else not to be trusted or urged in Plea'.³⁸³ The King's understanding of the law not only did not make sense, but it also threatened to de-throne him, and left him even more vulnerable to exploitation. A similar argument was made by an anonymous response to a declaration by the Duke of Newcastle.

Newcastle had been accused by Thomas Fairfax of having raised an army 'contrary to the Lawes of the Land', to which Newcastle retorted that Fairfax should 'cease at length telling us of laws in the clouds, or laws written in the Sybylls Books, which no men have heard of but yourselves'.³⁸⁴ The anonymous reply argued that Newcastle was focusing on

³⁸⁰ *Ibid.*, sig. A2v.

³⁸¹ *A new plea for the Parliament: and the reserved man resolved: from the serious consideration of the state of the controversie, betweene the King and the Parliament. Together with severall answers to some common objections about this subject. With advice to those who are yet unsettled in their thoughts hereabout* (Printed for Henry Overton, [05 January] 1642) E.244[38], p. 2.

³⁸² *An item to his Majestie concerning Prince Rupert and his cavaliers* (s.n., [03 February] 1643) E.88[7], p. 4.

³⁸³ *Ibid.*, pp. 4-5.

³⁸⁴ William Cavendish Duke of Newcastle, *A declaration of the Right Honourable the Earle of Newcastle His Excellency, &c in answer of six groundlesse aspersions cast upon him by the Lord*

the *'primae'*, the 'Lawes of Parliament' and *'primis ortae'*, the 'Lawes in Parliament'. The latter, the anonymous author argued, were 'dispensible by ordinance and a fundamentall power', for 'in Parliament a man sits as a Law-maker, out of it, as a Law-observer'. Had Newcastle remained in the Parliament, he too would be a 'Law-maker, whereas now you are a Law-breaker'.³⁸⁵ By confusing the laws of Parliament and the laws in Parliament, Newcastle had confused statute law with a higher law, and assumed that Parliament was subject to the same laws as those it represented. By focusing on the royalist misunderstandings, then, parliamentarians could avoid the need to actually establish what these laws were, but rather could define the laws by what they were not: codified, statutory, restrictive. They could, therefore, condemn the royalist understanding as dangerous.

Thus shifting definitions of the fundamental law could offer parliamentarians some justifications for resistance against the King, and had managed to demonstrate that the King needed to act in a certain way to maintain the trust with his people, but this could also lead to significant problems. Rather than 'just' acting arbitrarily for a short period, there seemed to be no limit on the damage to the constitution that the Houses could cause. Of course, for some writers such as Herle and Parker, and the press campaigns that went with them, this was to be expected. Changing the constitution, or rather shaping the real-world state to the idealised constitution of their conception, need not be feared, because in reality the constitution that was being challenged was a bastardisation of the parliament-sovereign polity that should exist anyway, and had been corrupted by an over-bearing King. For those still tied to the idea of a mixed system, the constitution (or at least, the workings of the state that they were familiar with) had undoubtedly been changed by the actions of the Houses, and the people needed some way to defend themselves. Royalist propaganda was not only having its intended effect, but also parliamentary theories were imploding of their own accord.

III. STATUTES

The constitutional divide in parliamentary thought was exacerbated by an increasingly complex understanding of statute law, and readers were often required to maintain two contradictory understandings of statutes simultaneously: firstly, statutes were infallible

Fairefax, in his late warrant bearing date Feb. 1642 (Printed by Stephen Bulkeley, [02 February] 1643) E.92[17], p. 3. Fairfax's original charge is printed on p. 10.

³⁸⁵ *Observations Vpon the Earle of New-Castles Declaration*, p. 4.

in the correct circumstances and application, and secondly, they could be overruled when required either by necessity or reason of state. Statutes could thus be both a guide and an obstacle, and as such their use to explain the legality of actions often confused rather than clarified matters.

Among the Parliamentary absolutists, nowhere is this contradiction clearer than in Prynne's epic *Sovereign Powers of Parliament*. The work, commissioned by Parliament throughout 1643, consisted of four volumes with citations of precedents which justified Parliament's actions, and condemned the actions of papists.³⁸⁶ The work itself was a retort against both royalist attacks on parliamentarians' understanding of the law, and also those more lukewarm parliamentary defences.³⁸⁷ As such, it supported the idea of statutes indicating how people should act, but maintained simultaneously that 'Old Statute Lawes, yea and the common Law of *England* may be, and oft are repealed and altered by Parliaments, (though above the King and his Prerogative) when they become mischievous or inconvenient'.³⁸⁸ While statutes could be used to determine what action should be taken, it did not mean that they could not be broken, or even that they should be treated with too much reverence. The work as a whole attempted to demonstrate the need for the sovereignty of Parliament, without any possibility of the public appealing their judgement. Above all, Prynne revealed the contradictory political mileage that was possible with arguments based on statutory and precedential law. There appeared to have been a desire to prove, using this style of argument, that Parliament's actions were legal, but increasingly the particulars of the conflict made it difficult to do so.

The impact of this style of argument was striking, especially considering what it was asking the reader to accept about the relationship of the Parliament to the constitution as a whole. As Prynne made clear, Parliament was so supreme that it was above the law itself. However, new understandings of the nature of the fundamental law, and especially the increasing tendency to define these fundamentals as the original constitution rather than an unchangeable fixed series of laws, meant that Parliament was absolutely not

³⁸⁶ It has recently been re-examined by Warwick K. George, 'Lame Jack His Haultings: J. H. Hexter, the 'Middle Group' and William Prynne', *Historical Research*, 89 (2016), pp. 17-23.

³⁸⁷ See, for example, James Howell, *A discourse, or parly, continued betwixt Partricius and Peregrine (upon their landing in France) touching the civill wars of England and Ireland* (s.n., [21 July] 1643) E.61[14], p. 6; Bland, *Resolved upon the question*, pp. 3-4.

³⁸⁸ Prynne, *The treachery and disloyalty*, p. 20.

bound by any written laws. This was normally treated with a certain amount of care, exemplified by Palmer's *Scripture and Reason Pleaded*, where he argued that while '[written] Lawes must flow from those Principles, which are transcendent to all particular Lawes, but not if [Ferne] meant that they must be ever limited by particular Lawes'.³⁸⁹ However, if no laws were fixed, a key touchstone for making sense of society would be lost. For example, Prynne argued, perhaps swept up in his rhetoric, that Parliament had 'an absolute Sovereignty over the Laws themselves (yea, over *Magna Charta*, and all other objected Acts) to repeale, alter, determine and suspend them'.³⁹⁰ This phrase was used in an argument which justified 'Parliaments Right and Jurisdiction to impose Taxes and Contributions on the Subjects' – to defend the liberties and rights of the whole commonweal, individuals may be required to sacrifice their own.³⁹¹ Trust needed to be placed in the Parliament to fulfil what was undoubtedly a new role, and it meant placing an irrevocable trust that could never be withdrawn. If the reader was sure of the intentions of Parliament, of course, this would not be problematic, but this was a big 'if'.³⁹² Never fearful of bold arguments, Prynne had declared that 'Even if [Parliament] was capable of the guilt of treason, it could not be arraigned or judged for it, having no superiour or adedequete Tribunall to arraigne it'.³⁹³

³⁸⁹ Palmer, *Scripture and reason pleaded*, p. 28.

³⁹⁰ William Prynne, *The fourth part of The soveraigne povver of parliaments and kingdomes. Wherein the Parliaments right and interest in ordering the militia, forts, ships, magazins, and great offices of the realme, is manifested by some fresh records in way of supplement: the two Houses imposition of moderate taxes and contributions on the people in cases of extremity, without the Kings assent, (when wilfully denied) for the necessary defence and preservation of the kingdome; and their imprisoning, confining of malignant dangerous persons in times of publicke danger, for the common safety; are vindicated from all calumnies, and proved just* (Printed for Michael Sparke, Senior, [28 August] 1643) E.248[4], p. 15. In making this argument, Prynne was of course contradicting Coke, who believed that the Magna Carta was a fundamental law – see Gough, *Fundamental Law*, p. 41.

³⁹¹ *Ibid.*, p. 14.

³⁹² Especially when, for example, the consideration was the September 1642 discussions about the legality of depositions, which had been reignited by Prynne's work.

³⁹³ William Prynne, *The soveraigne povver of parliaments & kingdomes. Or Second part of the Treachery and disloyalty of papists to their soveraignes. Wherein the Parliaments and kingdomes right and interest in, and power over the militia, ports, forts, navy, ammunition of the realme, ... their right and interest to nominate and elect all needfull commanders, to exercise the militia for the kingdomes safety, and defence: as likewise, to recommend and make choise of the Lord Chancellor, Keeper, Treasurer, Privy Seale, privie counsellors, judges, and sheriffes of the kingdome, when they see just cause: together with the Parliaments late assertion; that the King hath no absolute negative voice in passing publicke bills of right and justice, for the safety, peace, and common benefit of his*

The internal contradiction of Prynne's argument represents the theoretical leaps that the reader was required to make in order to place an arbitrary faith in Parliament. Statutes and laws implied, but did not make explicit, that Parliament had a power above what it claimed in normal circumstances, but simultaneously implied that these statutes and laws could and should be ignored when they contradicted the *salus populi*. Clearly at some point the law had failed to run its normal course – the case of Shipmoney and the Five Knights, still very much in the public memory, had proved that much – but the question posed to the reader was whether that was enough to justify supporting a constitutional revolution. Parker, in his *Contra-Replicant*, argued that 'When the King could set up any taxes he wanted, the fault was not in the laws, it was in the judges'.³⁹⁴ The laws were not wrong, yet subversion had taken place, and therefore, there had to be a way to protect them. Rather than displaying outright hostility to the law, Parker argued against a 'Vaine confidence in the law', and demanded that our laws be 'secured to us' – for Parker, the problem was the way the law had been enforced, rather than the letter of the law.³⁹⁵ The problem was the fact that there was no way to protect the law, or ensure that the law worked the way that it should. Likewise, the anonymous author of *Sovereigne Salve* argued that Prynne in his *Sovereigne Powers of Parliament* had demonstrated that 'Lawes are made on weak assurances', and that 'Kings break them all the time', and therefore Parliament needed to be able to protect the laws as it saw fit.³⁹⁶

To protect the laws, Parliament had to be able to break the visible manifestation of the law. The reader was being asked to believe in an ancient, original constitution, that was 'lost in the mists of time', but unlike earlier in the century, the reader was deprived of the

people, when both houses deeme them necessary and just: are fully vindicated and confirmed (Printed by J.D. for Michael Sparke, Senior, [14 April] 1643) E.248[2], p. 26.

³⁹⁴ Parker, *Contra-replicant*, pp. 6-8. In this argument, Parker makes a similar point to the Parliamentary Declaration in August 1642, where the Parliament argues that 'The Lawes were no defence, nor protection of any mans right', *A declaration of the Lords and Commons assembled in Parliament setting forth the grounds and reasons that necessitate them at this time to take up defensive armes for the preservation of His Majesties person, the maintenance of true religion, the lawes and liberties of this kingdom and the power and priviledges of Parliament* (Printed by Thomas Banks and William Lee, FD: 02 August 1642) E1451, p. 3.

³⁹⁵ Parker, *Contra-replicant*, p. 13.

³⁹⁶ *The kingdomes case: or, The question resolved, whether the kings subjects of this realm of England may or ought to ayd and assist each other, in repressing the persons now assembled together, under the name of the kings army* (Printed for Iohn Wright, FD: 01 May 1643) E.100[9], p. 11; *Sovereigne salve*, p. 6; Prynne, *The soveraigne power of parliaments*, p. 39.

potential to glimpse what ‘had survived in statutes and common law’.³⁹⁷ Rather, the surviving fragments of the statute and common law were challengeable, and thus their glimpse of this ancient constitution and contract had become more fragmentary still. In other words, the reader’s understanding of the constitution and contract were based on sources that they had been trained to question and be willing to discard if necessary.

IV. THE KNOWN LAWS

For royalists, the term the ‘known laws’ offered a suitable alternative for the understanding of the law. Constitutional royalists had refashioned the King as one who would rule by the law, and Charles had used the concept of the ‘known law’ against the Houses of Parliament’s justifications. Royalist pamphleteers used the term to lament how far England had fallen, and the degree to which ‘the known Lawes of this our Nation [are] most strangely, either wrested, misconstrued or impugned’.³⁹⁸ However, it also demonstrated just how far parliamentary and royalist understandings of the law had diverged, and how key phrases and terminology were vital in conveying constitutional subtext to the reader.

Terms such as the ‘known law’ could be used to attack the way that the parliamentary case had been presented, and demand that justifications were presented in more concrete terms. For example, in December 1642, there was a petitioning campaign in London calling for peace which seems to have been remarkably well received that followed a formulaic structure, calling for an adherence to the ‘knowne Law’, and lamenting the ‘decay of trade’, the ‘invasion of the Subjects Liberty’ and the ‘violation of our Religion’.³⁹⁹ The petitions were deemed to pose a threat to Parliament, and that the

³⁹⁷ Philip Hamburger, *Law and Judicial Duty* (Cambridge, Mass., 2008), p. 92.

³⁹⁸ *A speech to the people. Or A briefe and reall discovery of the unhappy estate of these most distracted times. With a necessary caution to all good subjects* (Printed for H.B., [29 October] 1642) E.200[66], p. 3.

³⁹⁹ *The Londoners petition To the Right Honorable the Lords and Commons novv assembled in the high court of Parliament. The humble petition of divers inhabitants of the City of London and the liberties thereof* (Printed for Adam Bell, [23 December] 1642) 669.f.6[95]; *The petition of the most substantiall inhabitants of the citie of London, and the liberties thereof, to the Lords and Commonns for peace. Together with the answer to the same. And the reply of the petitioners* (Printed by Leonard Lichfield, [06 January] 1643) E.244[39]; *A Modest petition for a happy peace offered to all such as have no other intent then union in their petitioning: and do carry peace and the good of the state in their hearts as well as their hands: and if it may be thought fit, may be serviceable to the common-wealth, if it shall be suddenly presented to the high ad honorable court of Parliament by a considerable number of such as are resolved upon such a course* (Printed for Robert Bostock, FD: 13

pamphlets were so clear in their choice of the particular legal terminology of ‘known laws’ implies that there was some dissatisfaction with the way that Parliament’s case had been presented thus far. The peace petitions were widely condemned by defenders of Parliament, and were charged with being ‘drawn up in Oxford’ and indoctrinating many otherwise ‘honest and well meaning Citizens’.⁴⁰⁰ Capitalising on this moment of Parliamentary susceptibility, *A Complaint to the House of Commons*, purporting to be composed by ‘free Protestant subjects’ (although possibly by Hyde), in very similar language called for the ‘known law’ and demanded that Parliament’s case be made in this manner.⁴⁰¹ There seems, then, to have been some tension within London over the way that the parliamentary case was presented, and this tension could be probed. For royalists, reliance on statutes had worked well in the paper wars, and had made Parliament squirm when they attempted to respond to specific statutes that they were blatantly ignoring, and increasingly towards the end of 1642 the King’s declarations ramped up pressure and reliance on known laws.⁴⁰²

For some parliamentarian works, the phrase the ‘known laws’ was itself thought sufficient to identify the malignancy of royalist pamphlets. The premise was that Parliament had already considered the known laws, found them wanting, and had reasoned that further action needed to be taken beyond that which the known laws accounted for. For example, *A Frivolous Paper*, a response to the London Petitions and specifically one that it charged as being particularly frivolous, asked the reader to ‘consider whether the Malignancy of this Petition doth not appeare in many phrases and expressions scattered up and down therein ... such as *The known Law of the Land*’.⁴⁰³ The

December 1642) E.130[5], p. 6; John Hinton, *The humble petition of the peacefull obedient and honest Protestants of this kingdome, presented unto the honourable House of Commons, by the gentlemen of the foure innes of court* [December] 1642) E.181[37].

⁴⁰⁰ Gentles, ‘Politics of the Street’, p. 142; Peacey, *Politicians and Pamphleteers*, p. 256.

⁴⁰¹ Hyde, *A complaint to the House of Commons*. On Hyde’s authorship, see Graham Roebuck, *Clarendon and Cultural Continuity: A Bibliographical Study* (London, 1981); Mendle, *Henry Parker*, p. 115. If Hyde was the propagandist, the work seemed to have been particularly effective – Agonstini wrote that *A Complaint* was ‘generally read and approved by the unprejudiced’. *CSP Ven*, xxvi, pp. 230-1.

⁴⁰² Smith, *Constitutional Royalism*, pp. 179-82.

⁴⁰³ *A frivolous paper, in forme of a petition: framed and composed by a disaffected party in this citie of London, intended by them to be presented to the honourable House of Commons. With certaine considerations propounded by way of advertisement and caution unto those who through*

London Petitions, the work continued, seemed to imply that Parliament was either 'ignorant' of these laws or 'impotent'.⁴⁰⁴ Parker had argued that royalists falsely implied that Parliament 'cannot pierce into these knowne obvious Lawes, yet every Sophister can'.⁴⁰⁵ The preamble to Bland's *Resolved upon a Question*, addressed to John Pym, argued that he wrote to 'satisfie them, that for want of knowledge, lay scandalous imputations, not only upon the honourable House of Parliament in generall whereof you are a member, but especially and in particular upon your upright selfe', and to the reader Bland argued that he wrote 'not as if the Parliament knew not Law sufficient to iustifie their own actions, but to destroy their wonder whom he hath heard admire that the Parliament did not prove their own acts by visible Law, as well as disprove the Kings'.⁴⁰⁶

For Parliament, their justifications were dependent on the notion that while these known laws clearly existed, they were accessible to Parliament alone, rather than to royalists or the public. They needed to keep the reader wary of the term the 'known laws' because they were trying to argue that 'we wil not admit that to be the known Law of the Land, which those men have declared to be so, contrary to the Judgement of both Houses of Parliament'.⁴⁰⁷ However, when polemic and rhetoric demanded, parliamentary authors could be more flexible. The language of the 'known laws' could be appropriated by writers and used against the royalists, especially when arguments could be made in a style to specifically counter certain attacks that used it. When the *Convinc'd Petitioner*, received by Thomason in the wake of December petitions, attempted to defend the Houses of Parliament, it argued that of course if 'legall and just prooffe of these mens malignancy, and breach of the knowne Lawes of the Land' was found to have been committed by the 'persons his Majesty meanes' (supposedly Isaac Pennington, John Ven, Henry Mainwaring and John Fowke), action would be taken by the 'Magistrates of London', but if not they should be considered innocent.⁴⁰⁸ Likewise,

unadvisednesse, are apt to subscribe the same (Printed for Stephen Bowtell, [13 December] 1642) E.130[11], p. 5.

⁴⁰⁴ *Ibid.*, p. 4.

⁴⁰⁵ Parker, *Contra-replicant*, p. 8.

⁴⁰⁶ Bland, *Resolved upon the question*, pp. 3-4.

⁴⁰⁷ Husbands (ed.), *An exact collection*, p. 693.

⁴⁰⁸ *The convinc'd petitioner: from the serious consideration of a late printed answer to the cities petition for peace; presented to His Majesty at Oxford* (s.n., FD: 13 January 1643) E.245[9], p. 6.

the defence of Isaac Pennington made clear that ‘wee have neither practised, or attempted ought, which was not warrantable by the knowne Lawes and constitutions of the Kingdome’.⁴⁰⁹ By appropriating the language of these charges, the works were able to refute the royalist claims using their own legal terminology and logic, while at the same time claiming some ownership over the terms. This could be particularly effective after, on 6 March 1643, Charles repeated his view that none should be imprisoned ‘otherwise than according to the known laws of the land’.⁴¹⁰ By appropriating this terminology, Parliament could claim to be acting legally in Charles’s own terms. In May 1643 the Commons published a work denouncing ‘*John Brooks*’, along with a number of ‘*fellow-Cavaliers, Rebels and Traitors*’, and charged them with seizing estates ‘*contrary to the known Laws of this Kingdome*’.⁴¹¹ The work later continued with this style of argument, arguing that ‘according to the known Laws of the Land, as both Houses of Parliament ... have declared’, no member of either House can be ‘proceeded against without the consent of Parliament’.⁴¹² By contesting these terms, Parliament and their defenders were able to pacify royalist terminology either by demonstrating that Parliament had already considered these laws and decided them false, or by deflecting royalist charges back against the King.

Several press interventions attempted to wrest the legal high ground from the royalists. Two works dated by Thomason on subsequent days in March, for example, were interested in challenging the royalist notion that only they were aware of the known laws. ‘[L]et us examine what hath been done by them either agreeable to the known Law of the land’, *Englands Diurnall* invited, before giving a list of seven charges, each with the supposition ‘By what known Law’, including questions over the legality of Commissions

⁴⁰⁹ *The declaration and vindication of Isaack Pennington, now Lord Mayor of the citie of London, of Colonell Ven, Captain Manwaring and Mr. Fowke. Wherein is set forth their loyaltie to His Majestie, and the integritie of their proceedings in serving the King and Parliament. In answer to sundry scandalous pamphlets, wherein they are charged to be the maine incendiaries of these present troubles in the citie of London* (Printed for Humphrey Johnson, FD: 11 February 1643) E.89[11], pp. 3-4.

⁴¹⁰ Smith, *Constitutional Royalism*, p. 113.

⁴¹¹ *A declaration of the Commons assembled in Parliament, upon two letters sent by Sir John Brooks, (sometimes a Member of the Commons House this parliament* (Printed for Edw. Husbands, FD: 10 May 1643) E.101[13].

⁴¹² *Ibid.*, pp. 5-6.

of Array, arming papists, entertaining Irish rebels, and several others.⁴⁴³ Dated by Thomason the next day, *A Miracle* asked ‘by what *knowne Lawes* hath the adverse party proceeded by in all this law?’, before another list of charges each prefixed with ‘by what *knowne Laws*’, including ‘by what *knowne Laws* his Majesty without the consent of Parliament levied Arms’, and how ‘Delinquents to *known law* have been invited and detained from the Houses power of judgement’ amongst many others accusations.⁴⁴⁴ In another campaign in June, Richard Oulton and Gregory Dexter printed two pamphlets, again dated by Thomason on subsequent days, that also attempted to strip the royalists of the terms the known laws and the ‘*will of the King*’. The royalists, *Will and Law* argued, used the terms ‘*will of the King*, and *the knowne Laws of the Kingdome*’ to ‘deceive the people’; the pamphlet then launched a tirade against the terms and denounced the ability of the reader to understand the laws.⁴⁴⁵ Similarly *The Discovery of Malignants*, dated by Thomason the next day, attempted to demonstrate that ‘the knowne Lawes urged by ignorance against them’ and the ‘will of the King urged with as great error as the former’ were used to abuse the people.⁴⁴⁶

These targeted interventions show that there were calculated efforts to remove this terminology from the royalists, but also hint that this terminology was feared and considered dangerous to the reader by some parliamentary printers. These interventions followed intensifications of terminology and debates by the royalists. For example, the June intervention of *Will and Law* and *The Discovery of Malignants* followed the printing of the King’s declarations which recounted his lamentation that ‘every Subject that would not submit to any new extravagant, extemporary, legislative Declaration, or Order of one or both Houses against the ancient knowne Law of the Land, was become, sent up for, and imprisoned as a Delinquent ... against the known

⁴⁴³ *Englands diurnall, or Passages of state, executed by (and against) the knowne law of the land* (s.n., [04 March] 1643), sig. A3r-A3v.

⁴⁴⁴ *A miracle: an honest broker, or, Reasons urging a more liberall loane towards the maintenance of religion, law, and the kingdomes safety in them both* (s.n., [06 March] 1643) E.246[34], p. 23.

⁴⁴⁵ *Will and law, reason and religion, treason and rebellion, peace and war, payments and punishments, people and Parliament, are words of wonder to weake and wise men, and by them malignants deceive the multitude* (s.n., [13 June] 1643) E.105[30], p. 1.

⁴⁴⁶ *The discovery of malignants. By the known lawes, and will of the King, absurdly urged against the Parliament, by the people, lawyers, judges, jury, divines, and King forced from the truth by willfull error* (s.n., [14 June] 1643) E.106[5], p. 1.

law', and so on.⁴¹⁷ While there was a desire to repair the public's perception and understanding of these terms, this was often done in particular interventions, rather than prolonged campaigns. In doing so, the public were presented with a fragmentary and incomplete understanding, rather than a coherent one.

As a general rule, the royalist argument presented an understanding of the law which remained the same as that presented in the paper wars, focused on what specific statutes said, whereas the parliamentarians were being continually forced to adapt their interpretation. This distinction typified an increasing tension within the law between longstanding interpretations of the constitution and contemporary reinterpretations which were becoming increasingly prevalent in the public legal cases. If the law that was being appealed to was the 'full and perfect Conclusions of reason', as argued by the author of the anonymous *Briefe Collections*,⁴¹⁸ then essentially anything deemed 'reasonable' by whoever controls the judiciary is, *de facto*, the law. The lack of a fixed point of reference when it came to the law was a major point of contention, and one that went to the heart of the polemical debate. The line between describing what the law actually said, and employing some form of judicial review was one that had long been blurred, but it was having a significant impact on the role of individual members of the Parliament. One royalist pamphlet, purporting to be from one MP to another, made the distinction clear. When lamenting the 'decay in the Reputation of both houses', the writer asserts that 'You and I were, both at once, both committed about the Loanes, and put out of the Commission of the Peace for opposing Shipmony', and in those situations the 'Question was not what was best to be Law, but what was Law'.⁴¹⁹ Parliamentarians, this account argued, had shifted from acting judicially towards acting legislatively, and that was the problem at hand. If this was now the case, argued the author of *Certain Materiall Considerations*, and if this shift meant that the judgement of the major part of the House was the judgement of Parliament, and so the unquestionable judgement of

⁴¹⁷ Charles I, *The King's Majesties declaration to all his loving subjects of his kingdome of Scotland with an act of the Lords and His Majesties Privy Councell for the printing and publishing thereof: and a letter of the Lord Chancellour of Scotland and of other Lords and others of His Majesties Privy Councell in that kingdom to His Majesty* (Printed by Leonard Lichfield, [03 June] 1643) Wing C2245A, pp. 2-3.

⁴¹⁸ *Briefe collections out of Magna Charta*, p. 1.

⁴¹⁹ *A letter from a grave gentleman once a member of this House of Commons, to his friend, remaining a member of the same House in London. Concerning his reasons why he left the House, and concerning the late treaty* (s.n., [19 May] 1643) E.102[13], p. 2.

the kingdom, the author would 'resign not my judgement but my obedience to the Parliament'.⁴²⁰ This was partly because he believed the 'Burgesses of my own Town ... [to be] very unfit, and who were chosen against my will', but mainly because they had been elected under the notion of being 'subordinate with the King, and to joyn with the King and the Lords (not without, or against both, or either of them)'.⁴²¹ Parliament thus lacked the mandate to make these changes. Likewise, another author argued in *A Letter from a Private Gentleman* that the Houses of Parliament had either broken their trust by passing the Triennial Act (hence changing the constitution), or had abused their trust by forcing Charles to pass it.⁴²²

Arguments of this type followed the continuing royalist attacks that questioned the validity of a vote in the Houses being interpreted as a law. In essence it challenged the notion that the Houses could act with both executive and legislative power, but was presented as indignant expositions about the various instances where the Houses have voted one way before, and 'upon a second Vote may passe the contrary way', – due, argued the author, to absent MPs.⁴²³ Herle had tried to defeat this argument when he imagined a vote of '200 of one side and 201 of the other', and had argued that even though 'the odde is carried by the *one*, yet the *Vote* by the whole 201', and thus '201 chosen men engaged in the equity and fitnessse of the *Vote*'.⁴²⁴ It was hardly a rousing defence. A challenger had argued that 'If the major part of the Votes of both Houses be only Declarative of the Law, then in reason the first Voting should stand', before citing the Militia case as a prime example of this, because it had been 'first, and twice countenanced by the House of Lords'.⁴²⁵

In challenging the Parliament, royalists could thus attempt to make Parliament admit that they were making law. Continued royalist use of the term the 'known laws' acted as

⁴²⁰ *Certain materiall considerations touching the differences of the present times, collected by a faithfull pursuer of peace and truth* (s.n., [06 February] 1643) E.246[4], p. 5.

⁴²¹ *Ibid.*

⁴²² *A letter sent from a private gentleman to a friend in London, in justification of his owne adhering to His Majestie in these times of distraction: with arguments induceing him thereunto, both from the law of God and man* (Printed for V. N., [28 November] 1642) E.128[24], p. 4.

⁴²³ *Certain materiall considerations*, p. 5.

⁴²⁴ Herle, *A fuller answer*, p. 16.

⁴²⁵ *Certain materiall considerations*, p. 6.

a challenge both to the parliamentary understanding of the legal process, and their respect for the law as a whole. The terminology represented the on-going conflict of the relationship between Parliament and a constitution that was based on customary practices, and the term was able to exploit an increasingly desirable middle ground between a parliament able to judge the law, and a parliament above the law. By appealing to known, written law, writers were demanding that the two Houses maintained reverence for statutory law, at least while it remained on the statute books, and subjected the Houses to the constitution, insofar as that constitution was visible by the laws that had been built upon it.

V. CONCLUSION

In January 1643, the anonymous author of *A New Plea* lamented that both sides had their own lawyers, who would claim their own side's lawfulness. Parliament and the King 'Both affirme the same thing, I am where I was, I cannot judge the heart, what shall I doe?'.⁴²⁶ It was a recognition that the conflict had fractured the law as a political language, and there was an increasing tendency to distinguish between the law and the arguments of professional lawyers.⁴²⁷ Whereas in the first few months of the 'paper wars', Parliament's authority to judge the law was intrinsically linked to their members consisting of the best lawyers in the land,⁴²⁸ pamphlets became more comfortable with referring to lawyers with increasingly hostile tones. *Some Considerations tending to the Undeceiving*, for example, called them 'devouring Locusts, no lesse ravening than the Ægyptrian ones that overspread the Land', and *The Discovery of Malignants* argued that lawyers 'for their Fee feare not to say anything'.⁴²⁹ Indeed, in May, the House of Commons went so far as to argue that the lawyers were 'Inns of Court Sycophants and Flatterers ... the moths of Kings and Kingdoms'.⁴³⁰ The failure of lawyers to have solved

⁴²⁶ *A new plea for the Parliament*, p. 3.

⁴²⁷ Ward, *The Vindication of the Parliament*, pp. 1-3.

⁴²⁸ See, for example, *A plea for the Parliament*, p. 6.

⁴²⁹ William Walwyn, *Some considerations tending to the undeceiving those, whose judgements are misinformed by politique protestations, declarations, &c.* (s.n., [10 November] 1642) E.126[45], p. 2; *The Discovery of Malignants*, p. 4.

⁴³⁰ *A disclaimer and answer of the Commons of England, of and unto a scandalous libell, lately published against the Parliament, and especially the House of Commons and their proceedings: intituled The remonstrance of the Commons of England to the House of Commons assembled in Parliament, and falsely suggested to be preferred to them by the hands of the speaker* (Printed by G. M., [04 May] 1643) E.100[23], p. 15.

the problem was indicative of their untrustworthiness, but there is also a sense in which the problem was that lawyers refused to consistently judge that Parliament was right. For example, *The Grand Case of England* calls for the ‘learned in the law [to] shewe and declare themselves’, before stating that if they decide incorrectly (in this case, against Parliament), the law is defective, and then the representative will ‘supply that defect’.⁴³¹ The problem, perhaps, was not so much lawyers but rather that lawyers might disagree with Parliament.

The political conversation was fast-paced, fuelled by a hunger and desire for legal works. As news and events prompted the creation of new pamphlets, those who argued that Parliament was absolute found themselves with two problems. Firstly, their understanding lacked any clear differentiation between times normal and exceptional, which meant that the application of their past arguments to new circumstances created radical new constitutional outcomes. Arguments were made for expediency, but because absolutism empowered Parliament to act whenever the King disagreed with the Houses, their arguments in posterity threatened anything that went against them. The negative voice, the constitution and the law itself all appeared under threat according to absolutist arguments. Secondly, Parliamentary absolutist polemic suffered because ultimately, it denied the implied reader the ability to make a decision in matters of law, and thus the reader’s approval of Parliament’s action was not actually necessary. While their works could go some way to explain the reasoning behind the judgements of Parliament, ultimately it came down to the fact that Parliament had the authority to resist the King anyway. These arguments, then, did not need to be adjusted to new situations because the constitutional and judicial situation which authors such as Herle and Parker had described remained, in the eyes of the absolutists, truthful.

III APRIL TO JUNE 1643: PEACE, PLOTS AND PAMPHLETS

This chapter has argued thus far that within the first nine months of the conflict there were clear divisions within parliamentarian thought, and that these divisions can be distilled down to a question over the nature and extent of parliamentary sovereignty. It has argued that the polemical debate was dominated by those who remained wedded to a mixed constitution, and that Parliamentary absolutists were restricted in their

⁴³¹ *The grand case of England, so fiercely now disputed by fire and sword, epitomized* [08 February] 1643) E.88[27], p. 7.

engagement with the day-to-day polemical debate because they fundamentally denied that anyone but Parliament could judge supreme matters of law. Those who argued for a mixed constitution increasingly found that they could employ the implied reader as an arbiter in order to solve the constitutional, political and religious problems of parliamentary sovereignty while maintaining the ability to support Parliament and its efforts. Appealing to the implied reader and the people could be – and indeed, may have developed as – a constructive mechanism for obedience, rather than a destructive mechanism for disobedience.

An implicit problem in the history of the political debates of the early 1640s is why, when there was such an explosion in pamphlets that discussed political theory in 1642 and the first half of 1643, arguments with radical potential were discarded and lay abandoned until picked up again by proto-Levellers and those in the political Independent movement in 1645 and 1646.⁴³² Historians have often accounted for this break in political thought by looking closely at the winter of 1642/3, and arguing that this period, when the war looked increasingly lost for Parliament, was crucial in the development of radicalism. For example, Wootton has argued that the threat of peace fuelled increasingly radical pamphlets, which threatened the Parliament if they settled for an unsatisfactory resolution with the King. At the crux of his argument is the anonymous work *Plaine English*, which argued that power could be reassumed by the people in order to protect themselves from the Parliament and the King working against them.⁴³³ The work targeted the prospect of a too-easy peace and, according to Wootton and other historians, would be relied upon for later radical thought.

However, Wootton's thesis needs to be qualified. This chapter has argued that rather than threatening the Parliament, the hypothetical reassumption of power was initially developed to encourage obedience. This suggestion can be substantiated by investigation into the typographical details of *Plaine English*. The printer of the work also printed *A Discourse upon the Questions*, which as we have seen in the previous chapter speculated

⁴³² For such an account, see Foxley, *Levellers*; Sabbadini, 'Popular Sovereignty'. For an important intervention, see Michael J. Braddick, 'History, Liberty, Reformation and the Cause: Parliamentary Military and Ideological Escalation in 1643', in Michael J. Braddick and David L. Smith (eds), *The Experience of Revolution in Stuart Britain and Ireland: Essays for John Morrill* (Cambridge, 2011), who argues that there was revolutionary potential in 1643, and that attention should be paid to how the Parliamentary cause developed.

⁴³³ Wootton, 'From Rebellion to Revolution', pp. 663-4,

that the 'Kingdome will forsake [the Parliament]' if 'they forsake the dutie of their place, and the interest of the Kingdome' in order to encourage obedience to the Parliament.⁴³⁴ While this does not mean that *Plaine English* was an empty threat, it built upon concepts that were also used to *construct* obedience, and in doing so joined a number of works that attempted to turn the mixed constitutionalists' arguments against the Parliament. For example, the anonymous author of *The Remonstrance of the Commons* argued that the people 'are still the true body of the Commons of England; you, but the representative', and that the people had no desire to make 'you perpetuall Dictators' or 'imbark us all in a Civil War'.⁴³⁵ Similarly, Hyde's *Complaint to the House of Commons* argued that unless the war and the parliamentary tyranny stopped, the people would reassume power from them.⁴³⁶ These works built on the potential of the mixed constitutionalists' arguments, and it is exactly because they built upon these arguments, revealing the potential of them, that they were so threatening for Parliamentary absolutists.

While Wootton's influential work might oversimplify the shift that occurred in the political conversation, the changes he describes – a disappearance of mixed constitutionalist ideas by the summer of 1643, in both anonymous pamphlets and in the sporadic Parliamentary publications – seem accurate. In order to account for these changes, this section focuses on explaining why these ideas disappeared, rather than why they emerged. This disappearance occurred for two reasons: a failure of the Oxford negotiations in the spring of 1643 and the subsequent shift in attitudes within Parliament itself; and the conflation of the London peace movements and the royalism that manifested itself in the discovery of the Waller Plot of June 1643.

The Oxford negotiations began on 1 February 1643, but quickly stalled after it became clear that Charles was unwilling to agree to a cessation of arms without being restored

⁴³⁴ *A discourse upon the questions* p. 13. For the typographic evidence, see Chapter Four.

⁴³⁵ Henry Walker, *The Remonstrance of the Commons of England to the House of Commons Assembled in Parliament preferred to them by the hands of the speaker* (s.n., [07 March] 1643) E.92[5], pp. 1-2. The work was slapped down by *A disclaimer and answer of the Commons of England*. This work argued that they were 'absolutely intrusted with our persons and estates, and by law invested with a power to dispose of them, not only by making new laws', pp. 2-3.

⁴³⁶ Hyde, *A complaint to the House of Commons*, p. 23; On *A Complaint*, see Braddick, 'History, Liberty, Reformation and the Cause', pp. 117-21.

his 'own revenue, magazines, towns, forts and ships'.⁴³⁷ Parliament replied that the precondition would be the appointment of 'senior military officials in whom they could confide', and this fundamental disagreement caused the negotiations to stutter to a halt, and eventually be called off on 14 April.⁴³⁸ Concurrent to these negotiations, Parliament had renewed efforts to control the presses, and on 9 March, the Committee for Examinations had been invested with new investigatory powers to search 'any House or Place, where there is just Cause of Suspicion that Presses are kept, and employed in the Printing of scandalous and lying Pamphlets'.⁴³⁹ A week later, Henry Walker was called in front of the Committee, in part for printing *The Remonstrance of the Commons*, in which he distinguished between the people and the House of Commons: the people 'are still the true body of the Commons of England; you, but the representative'.⁴⁴⁰ Parliament thus began to make sincere efforts to limit the plurality of parliamentary pamphlets, especially those that questioned parliamentary sovereignty.

Study into the factions in Parliament in the early period of the conflict has, for the last 50 years, been dominated by Jack Hexter's theory of a 'middle' group led by 'King Pym', which sat between a 'peace' group, led by Holles, who wanted peace no matter the cost, and a 'war' group including members such as Alexander Rigby, Henry Ludlow and Henry Marten who would refuse peace no matter the price.⁴⁴¹ In Hexter's theory, Pym demonstrated immense political skill and transformed the 'war machine' over the winter of 1642/3, and his group aimed to defend the constitutional settlement wrestled from the King in 1641. Work by historians such as Valerie Pearl has extended the life-span of the middle group into the middle of 1644, and has argued that Oliver St. John took over in the summer of 1643 when Pym's health failed him.⁴⁴² Although some such as Mark Kishlansky emphasise the consensus, rather than the conflict, that existed within Parliament in the early 1640s, the theory of the middle group achieved something close

⁴³⁷ Smith, *Constitutional Royalism*, pp. 112-3. Quotation at p. 113.

⁴³⁸ *Ibid.*, pp. 113-114

⁴³⁹ While Peacey reminds us that this was done through the Stationers' Company, he also argues that it was factionalised, especially after 1643. Peacey, *Politicians and Pamphleteers*, pp. 142-50. *CJ*, ii, pp. 996-7.

⁴⁴⁰ Walker, *The remonstrance*, pp. 1-2; *LJ*, v, p. 651; Peacey, *Politicians and Pamphleteers*, p. 144.

⁴⁴¹ Hexter, *The Reign of King Pym*, p. 9.

⁴⁴² Valerie Pearl, 'Oliver St. John and the 'Middle Group' in the Long Parliament: August 1643-May 1644', *English Historical Review*, 81 (1966).

to orthodoxy until work by Adamson on the importance of the relationship between Pym and his 'King-makers' (headed by Lord Saye-and-Sele) in the Lords, and a careful re-evaluation of Pym's role in 1642/3 by Morrill.⁴⁴³ More recently, work by David Scott has described instead two groupings of Saye-Pym and Northumberland-Holles, and has discarded the 'middle' group entirely.⁴⁴⁴

Reconstruction of the political beliefs of Pym and Saye, too, has challenged elements of Hexter's account. Hexter argues that the 'middle' group's constitutional understanding was summed up in Hunton's *Treatise of a Monarchie* of May 1643, although he provided no real evidence for this theory.⁴⁴⁵ Recently, more substantive work on the political affinities of those at the head of the Saye-Pym group have challenged this account. Work by Adamson on a draft declaration by Pym in March 1643 demonstrates that he attempted to stress that as the King's sovereignty lay within Parliament, and that his refusal to agree with them demonstrated the illness that the King must be suffering, and thus Parliament should assume sovereignty.⁴⁴⁶ By comparing Pym's complete text with that which eventually went through the committee, Adamson has argued that Pym's beliefs are revealed to be in correlation with what this thesis terms Parliamentary absolutism.⁴⁴⁷ Such an understanding of Pym's political beliefs correlates with Russell's account of Pym's efforts to pass the Declaration of 19 May 1642 (before the war had truly begun), which argued that because the King was absent, Parliament must be sovereign. The work continued that absence could include 'nonage, natural disability, and captivity', and that Parliament 'needs not the authority of any person or Court to affirme

⁴⁴³ Mark A. Kishlansky, *The Rise of the New Model Army* (Cambridge, 1979). For the extent of the orthodoxy see, for example, Barry Coward, *The Stuart Age: England, 1603-1714* (Harlow, 2012), p. 197 f.n. 52. For the challenges, see John Adamson, 'Parliamentary Management, Men-of-Business and the House of Lords, 1640-1649', in Clyve Jones (ed.), *A Pillar of the Constitution: The House of Lords in British Politics, 1640-1784* (London, 1989), p. 31; John Morrill, 'The Unweariability of Mr Pym: Influence and Eloquence in the Long Parliament', in Mark A. Kishlansky and Susan Dwyer Amussen (eds), *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown* (Manchester, 1995).

⁴⁴⁴ David Scott, *Politics and War in the Three Stuart Kingdoms, 1637-49* (Basingstoke, 2004), pp. 40-2. For an account of the current state of the field, see also George, 'Lame Jack His Haultings'.

⁴⁴⁵ Hexter, *The Reign of King Pym*, pp. 214-16.

⁴⁴⁶ John Adamson, 'Pym as Draftsman: An Unpublished Declaration of March 1643', *Parliamentary History*, 6 (1987), p. 135.

⁴⁴⁷ *Ibid.*, pp. 134-6.

; nor is it in the power of any person or Court to revoke that judgement'.⁴⁴⁸ According to Russell, Pym had spent a good part of a month attempting to get the Declaration through Parliament, and was eventually forced to remove a certain choice phrase which would amount to 'accusing the King of laying a "scandal" on the Parliament'.⁴⁴⁹ Furthermore, Pym's dealings with Parker have been uncovered by Peacey. Looking at the press campaign of Bishop and White, Peacey argues that a coherent constitutional and political message was propagated with help from Pym and Saye.⁴⁵⁰ Their output emphasised the absolutism of Parliament, and consistently argued against peace.⁴⁵¹ Finally, further work by Adamson – this time focusing on Saye – has examined the *Vindiciae Veritatis* (1654) and has argued that the majority of it was composed in 1646 and 1648, and that the main author was Saye, not his son Nathaniel Fiennes as has often been suspected.⁴⁵² From this work, Adamson argues that Saye believed that Parliament, through its role as the high court, was the supreme power and that the King could not be separated from it. Furthermore, Adamson argues that Saye believed that the subject had an 'absolute' duty of obedience to the Parliament, and therefore believed that the people could not recall their trust.⁴⁵³ This account of the political beliefs of Saye and Pym correlates with those of Parker, Herle and Prynne, and recent historiography has emphasised clear – and at times working – relationships between these politicians and authors.⁴⁵⁴ If the Saye-Pym group had a political creed, it argued for a clear parliamentary sovereignty in which the representative was unchallengeable by the represented.

⁴⁴⁸ Husbands (ed.), *An exact collection*, p. 208.

⁴⁴⁹ Russell, *Fall*, pp. 500-1; *CJ*, ii, p. 508.

⁴⁵⁰ Peacey, "Fiery Spirits", pp. 14-5,

⁴⁵¹ *Ibid.*, p. 18.

⁴⁵² John Adamson, 'The *Vindiciae Veritatis* and the Political Creed of Viscount Saye & Sele', *Historical Research*, 60 (1987), pp. 45-53.

⁴⁵³ *Ibid.*, pp. 55-61.

⁴⁵⁴ For friendship of Pym and Parker, see Peacey, "Fiery Spirits"; for Saye and Parker, see Adamson, 'The *Vindiciae Veritatis* and the Political Creed of Viscount Saye & Sele', pp. 60-1; Robert Zaller, 'Henry Parker and the Regiment of True Government', *Proceedings of the American Philosophical Society*, 135 (1991), pp. 255-6; and Michael J. Mendle, *Dangerous Positions: Mixed Government, the Estates of the Realm, and the Making of the "Answer to the Xix Propositions."* (Alabama, 1987), pp. 128-34. For Pym and Prynne, see George, 'Lame Jack His Haultings', p. 315.

Once a vocal minority, the political affinities of Saye and Pym and those writers that argued for a Parliamentary absolutism became increasingly prevalent from April to June 1643 before becoming mainstream parliamentary thought. In a large part, this was down to a transformation of the power dynamic within the Houses of Parliament. The failure of the peace proposals led to a period of 'slim' war party control within the Parliament from April 1643, as members frustrated by the King's refusal to negotiate looked towards other ways to bring about an end to the conflict.⁴⁵⁵ This coincided with a rejuvenation in Parliamentary licensed pamphlets that argued for Parliamentary absolutism, and the production of a series of parliamentary defences printed with authority, each of which focused on a different part of Parliament's case. For example, at the beginning of May 1643 *The Kingdomes Case*, licensed to be printed by the Committee of the House of Commons, argued using statutes that Parliament was 'a Court of Record', it was 'quasi Jurisdiction', and that it could 'dictate the law'.⁴⁵⁶ All were to 'believe and obey the Judgement', and 'none shall be admitted to contradict it, or to say that it is not true ... until it was reversed'; even if the Parliament could do wrong, 'whatsoever they doe therein is lawfull, and [ju]stifiable, and may not be admitted to dispute or question the illegality thereof'.⁴⁵⁷ Later that month, *The Political Catechisme*, again given permission by the Committee of the House of Commons in Parliament concerning printing, used the King's answers to the *XIX Propositions* in order to argue that the advice given by the Houses was never intended to be optional. To have the power to defend against 'Tyrannie', the Parliament must be able to raise arms, to 'Command their judgement to be obeyed', to tax and if necessary raise the 'Power of the whole Kingdome' to move against the 'Delinquents'.⁴⁵⁸ The next month, again with permission of the Committee,

⁴⁵⁵ George, 'Lame Jack His Haultings', pp. 315-6,

⁴⁵⁶ *The kingdomes case*, p. 9. It was given permission by the Committee of the House of Commons concerning Printing on 24 April 1643 to be printed, but it does not appear in the Commons Journals.

⁴⁵⁷ *Ibid.*, pp. 10-1, 3.

⁴⁵⁸ *A political catechism, or, Certain questions concerning the government of this land, answered in His Majesties own words, taken out of his answer to the 19 propositions, Pag. 17, 18, 19, 20. of the first edition; with some brief observations thereupon. Published for the more compleat settling of consciences, particularly of those that have made the late protestation, to maintain the power and priviledges of Parliament, when they shall herein see the Kings own interpretation what that power and priviledges are* (Printed for Samuel Gellibrand, [20 May] 1643) E.104[8], pp. 8-10. As Weston and Greenberg note, this was one of the pamphlets that Henry Vane turned to in order to defend himself after the Restoration, *Subjects and Sovereigns*, pp. 155-6.

came *A Few Propositions*, which made the case using the law of nature and reason. It argued that according to the law of nature 'it is lawful for anyone to defend themselves against any private person that assaults them to take away their lives or puts them in danger', but that the right to do this collectively as a nation rested solely within the Parliament. The Parliament's 'authority reaches throughout the whole kingdom ... to command all inferior officers and magistrates and private persons to do their duties respectively ... for the necessary defence of themselves, neighbours and the whole kingdom'.⁴⁵⁹ Crucially, this work concluded by suggesting that if the reader has 'any desire further to see how this agrees with the particular constitution of government in this nation I shall refer him for that to the *Political catechism* and the *Kingdom's Case*'.⁴⁶⁰ Thus, the parliamentary reader was provided by these three pamphlets with a clear, coherent and sanctioned understanding of the constitution from the House of Commons: one defended Parliament's actions using statutes and cases; the second used the constitution as written by the King himself; and the third used the laws of reason and nature. The House of Commons Committee concerning printing had begun to produce works that clearly defined the extent of Parliamentary absolutism, and the extent to which the subject was obligated to follow the representative Parliament absolutely. These views correlate with the views of Saye and Pym, and the arguments of those advocating Parliamentary absolutism, at a time when the Commons was increasingly leaning towards a more committed pursuit of war.⁴⁶¹

⁴⁵⁹ 'A Fevv Propositions Shewing the Lawfullnesse of Defence against the Injurious Attempts of Outragious Violence', in Andrew Sharp (ed.), *Political Ideas of the English Civil Wars 1641-1649*, pp. 68-72. Quotations at pp. 68, 70-1.

⁴⁶⁰ *Ibid.*, p. 72.

⁴⁶¹ The Committee of the House of Commons concerning printing also produced several other works under authority in April where we might find some more evidence of Saye and Pym's influence. For example, two sermons were printed by John Tombes that described popish plots in Bristol in March, and the discovery of them by Nathaniel Fiennes, Saye's second son. John Tombes, *Fermentvm Pharisaeorvm, or, The leaven of pharisaicall wil-worship declared in a sermon on Matth. 15.9 Novemb. 24, 1641 at Lemster in Herefordshire* (Printed by Richard Cotes for Andrew Crooke, [01 July] 1643) E.56[16]; John Tombes, *Iehovah Iireh, or, Gods providence in delivering the godly opened in two sermons in the citie of Bristoll on the day of publike thanksgiving in that citie March 14, 1642 : for the deliverance of that citie from the invasion without, and the plot of malignants within the city, intended to have been acted the Tuesday night before* (Printed by Rich. Cotes, for Michael Sparkes Senior, FD: 14 March 1643) E.100[31]. For Fiennes, see Marc L. Schwarz, 'Fiennes, Nathaniel (1607/8-1669)', in *ODNB*.

The final nail in the coffin of mixed constitutional arguments was the discovery of the Waller Plot. During the Oxford negotiations in March 1643, Charles had sent commissions to London citizens empowering them to raise the Militia. Edmund Waller, an MP who was broadly in favour of a negotiated peace and with connections to the Great Tew circle, was tasked with capitalising on the growing peace movements in London.⁴⁶² In 1643, the realities of long-term warfare and taxation had settled in, and several military failures, including the Earl of Stamford's defeat at Stratton, meant that the parliamentary morale was low.⁴⁶³

On 31 May 1643, in his typical theatrical fashion, Pym informed MPs on the fast day of a plot to raise forces for the King within London. Speaking at greater length on 8 June 1643 at Common Hall, Pym charged the conspirators with acting 'under pretence of procuring peace', and saying 'they would have made themselves Masters of the City, yea of the whole kingdo[m]', and that while 'the pretences was peace, the truth was blood and violence'.⁴⁶⁴ According to Pym, those who pushed for peace did so to undermine the Parliament, rather than for the good of the kingdom. Normally described either as a botched job half-planned or a stitch-up, Scott has recently argued that the plot explicitly targeted Saye-Pym grandees who 'were to be seized in their beds' and that Northumberland 'was privy to the design', and has suggested that the plot may have been to ensure that the 'Northumberland-Holles' faction had a 'free hand to conclude a soft peace with the King'.⁴⁶⁵ If this is the case, it would fit within the timeline of a decline in the influence of those pushing for peace and an increase in arguments for Parliamentary absolutism.

⁴⁶² For the peace movements, see Gentles, 'Struggle for London'; for Waller, see Geoffrey Smith, *Royalist Agents, Conspirators and Spies: Their Role in the British Civil Wars, 1640-1660* (Farnham, 2011), p. 50.

⁴⁶³ Cicely Veronica Wedgwood, *The King's War, 1641-1647* (London, 1958), p. 183; Ronald Hutton, 'Hopton, Ralph, Baron Hopton (Bap. 1596, D. 1652)', in *ODNB*.

⁴⁶⁴ John Pym, *A discovery of the great plot for the utter ruine of the city of London. And the Parliament* (Printed for Peter Cole, FD: 08 June 1643) E.105[21], sig. A2r, B3r. This built upon criticisms of the December peace petitions – see, for example, *The convinc'd petitioner*, pp. 1-2, which charged the petitions with attempting to 'create division', and Richard Williams, *Peace, and no peace: or, a pleasant dialogue between Phil-Eirenus, a Protestant, a lover of peace. And Philo Polemus, a separatist, an incendiary of War, sutable to the times* (s.n., [05 January] 1643) E.84[18], pp. 1-2.

⁴⁶⁵ Scott, *Politics and War*, pp. 61-2.

While discussing the details of the Waller plot at Common Hall a week after it was first revealed, Pym argued that two Covenants – one for the Parliament, and another suitable to be taken ‘by the Citizens, by the Army, and the rest of the people generally in all places’ – should be enacted, both of which had already passed through the Commons and were being considered by the Lords.⁴⁶⁶ The Vow and Covenant required the subscriber to acknowledge before God belief in the popish plot and to oppose and resist any future efforts against the Parliament, to continue to fight for Parliament against the King’s forces, and help all those who did the same.⁴⁶⁷ Both Houses had been consistently reminded of the plot – Waller himself addressed the House on 4 June 1643, and had declared that ‘you governe in Chiefe’⁴⁶⁸ – and many historians have emphasised the degree to which Pym exploited and exaggerated the danger posed by Waller’s plot to London and the Parliament.⁴⁶⁹ Pym had been attempting to pass a covenant for a long time. Work by Holmes and Vallance has stressed the efforts of Pym and his allies to ape the Scottish Covenant in the English political nation, believing that a ‘firme bond and union’ would bring together the nation, distinguish the devoted from the indifferent, and force the binary choice that was being offered between the King and Parliament, or the King and his counsellors alone.⁴⁷⁰ Efforts to bring the nation together under a clear parliamentary banner had been successful with the Protestation of 1641. The swearer had been required to ‘promise, vow and protest, to maintain and defend, as far as lawfully I may, with my life, power and estate, the true reformed protestant religion, expressed in the doctrine of the Church of England, against all popery and popish innovation within this realm’, to defend ‘his majesty’s royal person, honour and estate’

⁴⁶⁶ Pym, *A discovery of the great plot*, sig. B4r-B4v.

⁴⁶⁷ The text of the Vow and Covenant can be found in C. H. Firth and R. S. Rait (eds), *Acts and Ordinances of the Interregnum, 1642-1660* (London, 1911), pp. 175-176. For an overview of the Vow and Covenant, see Braddick, ‘History, Liberty, Reformation and the Cause’; Vallance, *Revolutionary England*; Edward Vallance, ‘Protestation, Vow, Covenant and Engagement: Swearing Allegiance in the English Civil War’, *Historical Research*, 75 (2002).

⁴⁶⁸ Edmund Waller, *Mr. Wallers speech in the House of Commons, on Tuesday the fourth of July, 1643. Being brought to the Barre, and having leave given him by the speaker, to say what hee could for himselfe, before they proceeded to expell him the House. Iuly 14. 1643* (Printed by G. Dexter, FD: 14 July 1643) E.60[11], p. 2.

⁴⁶⁹ Gentles, ‘Struggle for London’, p. 473; Smith, *Royalist Agents*, p. 53.

⁴⁷⁰ Clive Holmes, *The Eastern Association in the English Civil War* (Cambridge, 1974), p. 63; Edward Vallance, ‘Loyal or Rebellious? Protestant Associations in England 1584-1696’, *Seventeenth Century*, 17 (2002), pp. 5-11. See also Gardiner, *The Great Civil War*, vol. I, p. 257, who argues that Pym had been pushing for a voluntary association since the 1620s.

and the 'power and priviledges of Parliament', the 'lawful rights and liberties of the subject, and every person that maketh this Protestation'.⁴⁷¹ Importantly, the Protestation expanded those who were directly involved in politics – creating a 'collective public engagement' intended to bind together the political nation against a perceived and defined threat.⁴⁷²

Work by Walter has recently argued that the Protestation was a 'call to active citizenship', and that through it 'hitherto marginalised groups could claim membership of an enlarged political nation and, in performing the Protestation, challenge an active role in reforming church and state'.⁴⁷³ However, while shibboleths could be an empowering tool to define allies and enemies, they could also blur these distinctions by offering subscribers the opportunity to empower their own actions, and to read their own views between the lines. If they failed to subscribe fully to either side, subscribers could include caveats to problematic sections of the Protestation to ensure that the Protestation did not threaten their allegiance, or else could use it to justify acts of iconoclasm and push for a further reformation. Indeed, the Protestation aided 'discord and division' by helping to create space in which criticisms could be levelled, and Walter has argued that the Protestation was crucial in promoting the use of conscience in politics in the later 1640s.⁴⁷⁴ Efforts had been made to create a covenant in the late summer of 1642, and by October a Declaration was produced that had emphasised the religious nature of the struggle.⁴⁷⁵ However, attempts to impose it failed, and enthusiasm waned during the winter of 1642/3.⁴⁷⁶

The Vow and Covenant cemented the shift from a parliamentarianism that accepted some form of mixed constitutionalism, towards one that required a belief in an absolute Parliament. In doing so, the cause was lifted out of the now-much contested legal framework, and placed within the hands of those within Parliament. Contemporary

⁴⁷¹ 'The Protestation', in Rushworth (ed.), *Historical Collections of Private Passages of State*, vol. 4, pp. 244-8.

⁴⁷² David Cressy, 'The Protestation Protested, 1641 and 1642', *Historical Journal*, 45 (2002), pp. 262-6.

⁴⁷³ Walter, *Covenanting Citizens*, p. 243.

⁴⁷⁴ Cressy, 'Protestation Protested', pp. 262-6; Walter, *Covenanting Citizens*, pp. 258-9.

⁴⁷⁵ Vallance, 'Loyal or Rebellious?', pp. 7-8,

⁴⁷⁶ *Ibid.*, pp. 10-1.

responses recognised the significance of this development – David Martin-Jones has highlighted that the Venetian Secretary Gerolamo Agostini noted in response to the Vow and Covenant that councilmen were attempting to obtain ‘absolute political power’ and ‘make themselves masters of the goods and lives of all’.⁴⁷⁷ Similarly, Holles argued that it would ‘test the adherence to the parliamentary cause’ and that they phrased it ‘in such a way that it forced moderate men who wished to remain neutral to choose between king and Parliament’.⁴⁷⁸

The shift in acceptable parliamentary theories can also be found in the carefully managed press campaign. Parliamentary committees were tasked with producing vindications of the Covenant, and the renewal of press licensing in June 1643 ensured that the message was clear and unchallenged.⁴⁷⁹ By studying these vindications, it is possible to see just how demanding this Vow, which was to be made ‘in the presence of Almighty God’, actually was, especially to those who had proved reluctant to accept an unbalanced constitution.⁴⁸⁰ The Covenant demanded acknowledgement that there was a ‘wicked and treacherous Design’, and that the oath-taker swore to ‘oppose and resist’ any plots against the Parliament.⁴⁸¹ This was expanded by one commentator, who specified that the plot included ‘the attempt made against the five Members’; ‘the setting up of Masses in *York*, and *Oxford*’; and ‘the granting of so many Commissions for *Array*, which were so destructive to the Subjects Liberty’.⁴⁸² The Vow and Covenant itself was ‘A mixt Covenant’, ‘partly Religious, and partly civill’, in which the oath-taker was engaged ‘both to God and men’.⁴⁸³ The oath-takers were engaged to have a ‘religious and conscientious persuasion, and belief of the lawfulness of the *Parliaments taking up Armes*’, and a ‘reall, and confident perswasion, that the Forces, and Army raised by the King, are raised both against the Parliament, and Protestant Religion, and Lawes, and to destroy and take

⁴⁷⁷ *CSP Ven*, xxvi, p. 287, quoted in Martin-Jones, *Conscience and Allegiance*, p. 119.

⁴⁷⁸ *Ibid.*, p. 120.

⁴⁷⁹ Peacey, *Politicians and Pamphleteers*, p. 147; Braddick, *God's Fury, England's Fire*, p. 294.

⁴⁸⁰ Firth and Rait (eds), *Acts and Ordinances of the Interregnum*, pp. 175-6.

⁴⁸¹ *Ibid.*

⁴⁸² Samuel Clarke, *Englands covenant proved lawfull & necessary also at this time, both by Scripture and reason. Together, with sundry answers to the usuall objections made against it* (Printed for Henry Overton, [13 June] 1643) E.60[5], p. 9.

⁴⁸³ *Ibid.*, p. 5.

away the Liberties of the Subject'.⁴⁸⁴ In sum, not only was the commitment one of an agreed narrative, but it was also one of shared and unshakable belief – a proclamation that the Parliament's actions were legal, they would remain to be, and that the oath-taker would continue to help in their actions. Thus commitment to the cause was irrevocable.

The legal implications of this Vow were made clear when one work listed potential objections, among them, 'What if they [Parliament] doe any unlawfull Act in the persuance of it?' to which the reply from a vindication pamphlet was 'In the persuance thereof doth necessarily imply that it must be done lawfully, and therefore that Word was inserted in the late Protestation, & must be understood here also'.⁴⁸⁵ The pamphlet continued, when the legality of Parliament's current position was questioned, by referring the reader to other published justifications:

This question is so full, and largely discussed, and the thing proved to be lawfull both in case of Law, and Conscience, by Mr *Pryn.* of his third part, and by diverse of our Divines in their Answers to Dr. *Ferne*, that I shall refer the Reader to seeke for satisfaction there, where it may bee had abundantly if they come with unballanced Judgements and shut not their eyes against that light which shineth therein.⁴⁸⁶

It was no longer sufficient to be convinced of the legality of Parliament's case – the subscriber was required to be convinced that anything the Parliament had done, was doing or might do in the future was legal, and to declare so in the eyes of God. The Parliament's actions were *legal*, and the King's were *illegal*. This was an attempt to sweep away the last year of constitutional and legal debate, which had left a cloudy constitution but a jury of readers willing to examine their own consciences and to square justifications against their own internal understanding of the law.

⁴⁸⁴ Richard Ward, *The analysis, explication, and application, of the sacred vow and Covenant, enjoyned by the Lords and Commons assembled in Parliament, to be taken by every man throughout the whole Kingdome. Very usefull and profitable for to be read, observed, and kept by all who take the said Covenant* (Printed by Richard Bishop for Iohn Dallam, [07 July] 1643) E.59[14], pp. 5-6.

⁴⁸⁵ Clarke, *Englands covenant*, p. 16.

⁴⁸⁶ *Ibid.*

IV THE SUMMER OF 1643

For those writers sympathetic to Parliament, the Vow and Covenant shifted the debate in a crucial way. It lifted the ability to judge legality out of the hands of the reader, and required the oath-taker to swear before God that Parliament was acting legally. The legal and constitutional rhetoric, which had been sharpened over the previous year of debate, was therefore stripped from pamphleteers, or became useless to them. At the same time, due to the military defeats over the summer, Parliament desperately needed to maintain momentum and support. Both these factors were represented in the parliamentary pamphlets over the summer. For example, *The Reformed Malignants* imagined a lengthy conversation between a 'Cavalier' and a 'Convert', but the best defence that the 'Convert' could offer was that the Scots were 'in preparation for Comming'; it was a call for parliamentarians to hold on a bit longer in their military effort, rather than any sort of rousing defence of Parliament's actions.⁴⁸⁷ A similar argument was made by the anonymous author of *A Strange and Terrible Sight Forseene*, who manipulated Parker's complaint of January 1643. While Parker called for the writing of Parliament's case to be taken out of the hands of 'Sots', and praised the royalist presses for having the 'pen and the lance ... in the same hand', the later work complained that '*Our pens have beene to busie and our swords too sloe*', and speculated if 'we had taken every occasion to fight as we did to write, the warre (in all probability) would have been put to an end long ere this time'.⁴⁸⁸ The rest of the work encouraged further participation in the war effort, or else the royalists would (among other crimes) enter London and 'Husbands should see your Wives ravished before your faces'.⁴⁸⁹ Without the legal framework, parliamentary arguments were reduced to scaremongering.

The conflict was beginning to be painted in more religious terms – which had previously been conspicuous in their absence.⁴⁹⁰ For example, *Great Britains Misery* promised to vindicate the 'Lawfulnesse and Necessity of Raising Arms by the Parliament, and the

⁴⁸⁷ *The reformed malignants. Or, a discourse vpon the present state of our affaires. Betwixt a cavalier and a convert* (Printed for Laurence Blakelocke, FD: 04 September 1643) E.250[6], p. 5.

⁴⁸⁸ Parker, *Contra-replicant*, p. 2; *A strange and terrible sight forseene in this kingdome, and city of London: together with the countrimans antidote for its prevention*, (Printed for Ed. Blackmore, and Tho. Banks, [09 September] 1643) E.67[2], p. 1.

⁴⁸⁹ *Ibid.*, p. 2.

⁴⁹⁰ Burgess, *British Political Thought*, p. 193.

Kingdom' on the title page, but inside the work argued that 'The efficient and first cause of all misery is God', and that there was a need to investigate personal sin to understand why God had started this war to punish them.⁴⁹¹ Another argued that by embracing Parliament's side and taking up arms, participants would 'Chronicle your names on earth, in Heaven for ever, for fighting valiantly for the Lord of hosts against his enemies'.⁴⁹² These striking and emotive works suggest that pamphleteers lacked the persuasive means to convince their readers.

This development left the reader exposed to royalist challenges without a clear understanding of what measures they were allowed to take to challenge them. The royalist John Jones produced his *Examination of the Observations upon his Majesties Answers* in August and demonstrated that there was still mileage in challenging and opposing Parker's natural law reasoning. Jones extracted Parker's contention that the King was '*singulis major universis minor*' and therefore '*Salus populi Suprema Lex*', and exaggerated its logic to reach the fallacy that 'Wine maketh a man drunk, therefore Wine it selfe is more drunke than man'. By extrapolating Parker's conception of natural law to absurdity to reveal its weakness – the 'inference holdeth not' – Jones was able to challenge the key tenets of Parker's justification for Parliament. Parker's reliance on explainable reason, and Parliament's reliance on Parker's work, opened rhetorical avenues with which royalists could interact (occasionally with flair).⁴⁹³ Thus, the aim of the royalists remained essentially the same: to prove Parliament's case illegal using parliamentary logic against them. Doing this would prove the Vow and Covenant illegal, and therefore justify their objection to it. In addition, royalists found themselves able to attack the way that the Vow and Covenant was commanded to be taken,

⁴⁹¹ *Great Britains misery; with the causes and cure. Described first, as it is from the justice of God the authour, who is now in controversie with the inhabitants of the land for sin: especially for eight capitall crimes, all which are aggravated by sundry circumstances. Secondly, the injustice and malice of the instruments of this misery, Satan and his agents: their main aime, and particular ends, moving them therunto. Vindicating, plainly and fully, (by way of answer to severall objections) the lawfulnessse and necessity of raising arms by the Parliament, and kingdom; for the defence of the King, kingdom, religion, laws, and known rights of the subject: against that viperous generation of papists, atheists, delinquents, and licentious men, who have at once invaded all* (Printed for Laurence Chapman, [21 August] 1643) E.250[4], pp. 1-5.

⁴⁹² *A strange and terrible sight*, pp. 4-5.

⁴⁹³ John Jones, *An examination of the observations upon His Majesties answers. Wherein the absurdities of the observators positions, and inferences are discovered* (s.n., [14 August] 1643) E.65[7], pp. 7-8. He later argued that it was clear that Parliament had the potential to do wrong, as they had in the past, p. 18.

complaining that (amongst other things) it might destroy community cohesion as ministers and churchwardens were forced to 'betray their poore Parishoners and neighbours'.⁴⁹⁴ Their objections were therefore able to follow the same pattern as royalist objections from the previous year – accusing Parliament of being an arbitrary government that was threatening to destroy society, while an ill-treated King was fighting to defend his subjects – but also introduce new evidence to confirm their protests. The disappearance of the legal framework left the parliamentary reader with few resources to counter these newly-strengthened royalist arguments.

The Vow and Covenant was an attempt to solve the polemical products of the legal framework, rather than the legal framework itself, and rather than engaging with the reader, it imposed. The reader was expected to subscribe to the Covenant before God, and therefore the Covenant transcended potential objections that might have existed in the legal framework based on historical precedents and statutes. By attempting to escape these hesitations, the Vow and Covenant failed to acknowledge that the solution it offered – that Parliament must be right, and therefore it could act as an arbitrary power – was exactly the same problem that pamphleteers had been attempting to solve for nearly two years, and had already been considered and rejected by the process of pamphlet debate. Rather than introducing a new debate, the Vow and Covenant reimposed the absolutist case that had proven to be problematic in the polemic, and shut down the potential for a mixed constitutionalist defence of Parliament.

⁴⁹⁴ *Observations upon the instructions for the taking the vovv and covenant throughout England* (Printed by Leonard Lichfield, [07 August] 1643) E.64[9], p. 8.

CHAPTER 3: THE SOLEMN LEAGUE AND COVENANT, SEPTEMBER 1643 TO DECEMBER 1644

We reade of it as a great aggravation of sinne, that men frame iniquity by a Law: This they have done too farre as in them lyes, but not content with this, they have now proceeded farther to frame iniquity by an Oath and Covenant. That as they kill mens bodies on the one side, so they may destroy soules too on the other ; as if they would goe about to confute our Saviour, where he telleth us, that men are able onely to destroy the body, and doe no more, and shew that they can in some sense destroy both body and soule in hell.⁴⁹⁵

A Briefe Discourse, Declaring the Impiety and unlawfulnessse of the new Covenant with the Scots (October 1643).

Over the summer of 1643, the royalists enjoyed a series of victories in the North and the West country. The Duke of Newcastle had defeated Fairfax on Adwalton Moor (30 June), giving the royalists effective control over Yorkshire. Henrietta Maria, having obtained arms for forces raised by Newcastle and unblighted by attempts by the Commons to impeach her for High Treason, was able to march from York to Newark, and from there to Oxford, reuniting with the King in July. William Waller's defeat at Landsdown (5 July) and Roundway Down (13 July) gave an opportunity for Prince Rupert, reinforced with new troops from Oxford, to march and take Bristol at the end of July.⁴⁹⁶ Already in a position of military weakness, Parliament feared that royalist efforts for a cessation in Ireland which had begun earlier in the year would allow Charles to bring back troops that were fighting in Ireland to England.⁴⁹⁷

Substantive and detailed discussions between Parliament and Scottish commissioners began in the summer of 1643, and six months later in January 1644, the Scots crossed the River Tweed. This isolated the Duke of Newcastle in the North and drew him from

⁴⁹⁵ *A Briefe discovrse declaring the impiety and unlawfulnessse of the new covenant with the Scots together with the covenant it selfe* (s.n., [26 October] 1643) E.73[1], pp. 7-8.

⁴⁹⁶ For a more detailed account of the conflict, see P. R. Newman, *Atlas of the English Civil War* (London, 1985), pp. 32-4; Wilfrid Emberton, *The English Civil War Day by Day* (London, 1997), pp. 62-71; Gardiner, *History*, vol. I, pp. 150-73.

⁴⁹⁷ Barry Robertson, *Royalists at War in Scotland and Ireland, 1638-1650* (Farnham, 2014), p. 99.

Yorkshire, where he had been reeling after an ultimately failed attempt to reduce the parliamentary garrison at Hull. The price (aside from the exorbitant cost – some £30,000 a month)⁴⁹⁸ of this invasion was the introduction of the Solemn League and Covenant, a religious, military and political alliance between Parliament and the Scots. According to an ordinance of February 1644, ‘both Nations are engaged in one common Cause, against the Enemies of Religion and Liberties’.⁴⁹⁹ The Committee of Both Kingdoms, in which sat representatives from the Lords, Commons and Scotland, became the dominant executive body, and operated a broad range of functions to harmonise English parliamentary and Scottish military strategy and resources.⁵⁰⁰ What’s more, the Westminster Assembly, having been charged to deliberate on the future nature of religion over the summer (as a demonstration to the Scots of the English commitment to further reformation), began detailed discussions over the future of the church in England.

The Solemn League and Covenant redefined the parliamentary war aims. What bound the Scots and the English was not the desire to protect the fundamental law, or reinstate the true constitution, but rather the pursuit of ‘true’ religion. By replacing the increasingly contested legal framework that had given meaning to the conflict, the parliamentary cause was now grounded instead in the defence of the future of Protestantism.

The Solemn League and Covenant was read to the Commons on 26 August, and was sent to the Westminster Assembly of Divines who were to read it as a ‘grand case of conscience’.⁵⁰¹ The Houses of Parliament had formed the Westminster Assembly the previous year in part to discuss the future of the Church of England, and what form the reforms might take. The Assembly first met on 1 July 1643, and consisted of 121 ministers, a selection of MPs and Peers, and eight invited Scottish commissioners.⁵⁰² Their task was

⁴⁹⁸ Scott, *Politics and War*, p. 66.

⁴⁹⁹ ‘February 1644: An Ordinance for the appointing a Committee of both Houses of Parliament, to join with the Committees and Commissioners of Scotland, for the better managing the Affairs of both Nations, in the common Cause, according to the Ends expressed in the late Covenant and Treaty between the Two Nations of England and Scotland.’, in Firth and Rait (eds), *Acts and Ordinances*, pp. 381-2.

⁵⁰⁰ Morrill, *Revolt in the Provinces*, p. 83.

⁵⁰¹ Vallance, *Revolutionary England*, p. 59.

⁵⁰² Austin Woolrych, *Britain in Revolution, 1625-1660* (Oxford, 2002), p. 270.

to determine a system of church government ‘most agreeable to Gods Holy Word’ to replace the now dismantled Episcopalian system.⁵⁰³ According to the procedural instructions given by the Parliament, ‘What any Man undertakes to prove as necessary, he shall make good out of the Scriptures’.⁵⁰⁴ However, Parliament was keen to stress that the Assembly’s role was advisory rather than binding, and ‘at every point in the ordinance, parliament asserted its governing and determining role in the synod’.⁵⁰⁵ The Assembly’s instructions were coupled with fresh attempts to impose pre-publication controls on printing, and the Assembly was warned not to publish their findings without the express permission of the Houses of Parliament.⁵⁰⁶ Even though the body was tasked with determining a new church according to ‘scriptural authority’, the Assembly’s findings were to remain strictly under the Parliament’s control.⁵⁰⁷

The Westminster Assembly, after some initial reluctance, deemed the Solemn League and Covenant to be both lawful and compatible with the Word of God. On 25 September, a service was held at St. Margaret’s Church, where both members of Parliament and the Assembly signed the Covenant.⁵⁰⁸ It called for (I) the protection of the Church of Scotland and further reformation of the Church of England in line with the ‘Word of God, and the example of the best reformed Churches’; (II) ‘the extirpation of Popery, prelacy ... superstition, heresy, schism, profaneness’; (III) to ‘preserve the rights and privileges of the Parliaments, and liberties of the kingdoms, and to preserve and defend the King’s Majesty’s person and authority’; (IV) to ‘endeavour the discovery of all such as have been or shall be incendiaries, malignants or evil instruments’; (V) to

⁵⁰³ Braddick, ‘History, Liberty, Reformation and the Cause’, p. 130.

⁵⁰⁴ R. S. Paul, *The Assembly of the Lord. Politics and Religion in the Westminster Assembly and the Grand Debate*. (Edinburgh, 1985), pp. 75-6.

⁵⁰⁵ Chad B. van Dixhoorn (ed.), *The Minutes and Papers of the Westminster Assembly, 1643-1652*, vol. I, (Oxford, 2012), p. 9.

⁵⁰⁶ *Ibid.*; Braddick, ‘History, Liberty, Reformation and the Cause’, p. 130.

⁵⁰⁷ Paul, *The Assembly of the Lord*, p. 76.

⁵⁰⁸ *Ibid.*; Dixhoorn (ed.), *Minutes and Papers*, vol. I, p. 150. For speeches by Henderson and Phillip Nye, see *The Covenant: with a narrative of the proceedings and solemn manner of taking it by the Honourable House of Commons, and reverent Assembly of Divines the 25th day of September, at Saint Margarets in Westminster* (Printed for Thomas Vnderhill, [13 October] 1643) E.70[22]. For an in-depth study of the Westminster Assembly examining the Solemn League and Covenant, see Paul, *The Assembly of The Lord*, pp. 87-100.

encourage a 'blessed peace between these [three] kingdoms; and (VI) to 'assist and defend all those that enter into this league and covenant'.⁵⁰⁹

In granting their approval of the Solemn League and Covenant, the Westminster Assembly had performed two practical functions that were interrelated. Firstly, they confirmed that the Solemn League and Covenant was a covenant with God, and therefore that Parliament's efforts were synonymous with God's. Politically, Parliament was legitimated to continue to pursue a war against the King because it was a godly struggle, therefore justifying resistance against the King. It was this political function that would underpin the religious framework upon which much of the pamphlet debate would be based until the end of the civil war, transformed from the legal framework that had been the basis so far. By confirming the Covenant was compatible with the word of God, the Westminster Assembly helped construct a non-contested framework that parliamentarian pamphleteers could use to defend Parliament's past and future actions and bring together the parliamentarian effort.

Secondly, the Solemn League and Covenant had confirmed that religion should be transformed according to the 'Word of God, and the example of the best reformed Churches'.⁵¹⁰ The Covenant walked a fine line between fully endorsing the Scottish Presbyterian system, necessary for the Scots' military and financial support, and keeping open the possibility of an alternative settlement. Robert Baillie, the Scottish divine, wrote that 'the English were for a civill league, we for a religious Covenant'.⁵¹¹ As an act of collaboration, ambiguous language was employed in its writing which allowed a number of different interpretations to be projected onto the document, or different emphases stressed when being advertised to different bodies. For example, when the Covenant was preached to the House of Lords, it was stressed by Thomas Coleman that by 'prelacy' it meant 'not all Episcopacy, but only the form here described'.⁵¹² Likewise, the phrase the 'Word of God' disguised a wide spectrum of various church settlements. Those who wanted to read the Covenant as supporting the Scottish Kirk could conflate the clause to protect the Scottish Kirk with that of the best reformed churches; those who believed

⁵⁰⁹ Vallance, *Revolutionary England*. The text itself can be found in Rushworth (ed.), *Historical Collections of Private Passages of State*, vol 5, 1642-45 (1721), p. 478.

⁵¹⁰ *Ibid.*

⁵¹¹ Baillie, quoted in Paul, *The Assembly of the Lord*, p. 88.

⁵¹² Coleman, quoted in *ibid.*, p. 91.

that a Scottish settlement might be unconscionable could lay more stress on the Word of God.

This chapter begins by examining how the Solemn League and Covenant superseded and replaced the legal framework to create a new framework that could more firmly and simply legitimate the Parliament and their cause. The Solemn League and Covenant was an agreement with God that had been confirmed lawful by the Westminster Assembly of Divines, and that demanded due obedience to Parliament and their efforts not just by law, but by religion too. While the framework had changed the polemic found itself in familiar terrain, and debates raged over the extent to which the implied reader could make their own subjective readings of the Covenant, and how far they should be allowed to examine their own conscience before obeying the commands of a magistrate.

By shifting the framework by which the conflict was understood, the Covenant required readers either to change their understanding of the conflict to conform to the new framework, or risk being excluded from the 'sanctioned' understandings of why the conflict was being fought. The latter half of the chapter examines what impact the Solemn League and Covenant, and its political and religious usage in the polemic, had on the understandings of the law and the constitution. The Solemn League and Covenant acted as a fundamental shift in the way that the parliamentary cause was defined and as pamphlets continued to debate and discuss the impact of these changes, the polemic began to pose uncomfortable questions to Parliament, a body whose authority was legitimated by its judicative, rather than religious, role.

The Solemn League and Covenant was a dramatic shift in the way that the war was understood, which royalist writers attempted to capitalise on. The anonymous author of *A Briefe Discourse*, for example, argued that 'We reade of it as a great aggravation of sinne, that men frame iniquity by a Law: This they have done too as farre as in them lyes, but not content with this, they have now proceeded farther to frame iniquity by an Oath and Covenant'.⁵¹³ With 'not a word of the Law in the whole oath', Parliament had revealed 'how they mean to governe'.⁵¹⁴ This transformation fragmented further the

⁵¹³ *A Briefe discovrse declaring the impiety and unlawfulness of the new covenant*, pp. 7-8.

⁵¹⁴ *Ibid.*

parliamentarian coalition, and would eventually lead to those who found themselves unable to fully subscribe to the Solemn League and Covenant developing new and radical theories with which to support Parliament.

I THE RELIGIOUS FRAMEWORK

I. THE SUBJECTIVITY OF THE SOLEMN LEAGUE AND COVENANT

The Solemn League and Covenant, in replacing the law as the framework with which the conflict was to be understood, empowered the parliamentarians to conflate their cause with that of God. This was because the Covenant was understood as a Godly ordinance, in which God was ‘an active party in a contract containing mutual obligations’.⁵¹⁵ The Solemn League and Covenant was presented by parliamentarians as being equivalent to the word of God, and was therefore to be treated with the same reverence as scriptures were. Smith, for example, wrote that a ‘religious Covenant, is a Divine and sacred Ordinance of God’, and that ‘God himselfe was the author of it’.⁵¹⁶ Elsewhere *The First Search*, when arguing against Common Prayer, listed some twenty-two objections from ‘the word of God, and the late Covenant’, weaving both together without feeling the need to distinguish between the two.⁵¹⁷ As the author of *Powers to be Resisted* put it when challenged that Charles protested that he was fighting to protect religion and liberty, ‘we have enquired of the Lord touching this matter’, ‘and wee have our answer: That the *Lord and King* is very angry’.⁵¹⁸ According to Hezekiah Woodward, it was ‘remarkable... how the *Lord* has forced His *People*, has used a kind of violence to bring up his people to this *Covenanting Work*’.⁵¹⁹ The Lord, he continues, ‘suffered it to be, That His *People* might stir-up themselves’, to protest to God. Eventually, ‘God heard their groans

⁵¹⁵ Vallance, *Revolutionary England*, p. 84.

⁵¹⁶ George Smith, *The three Kingdomes healing-plaister. Or, The solemne covenant of reformation and defence explained. Wherein is shewed the authority, antiquity, and use of an holy covenant: the occasions moving to it, and the ends in doing it, the necessity of it at this time, for diverse reasons herein expressed* (Printed for Francis Coles, [17 October] 1643) E.71[14], p. 3.

⁵¹⁷ *The first search: after one grand cause of the wrath of God yet against his people, in the use of the so much idolized liturgie, or common prayer* (Printed by Robert White, [04 July] 1644) E.50[11], p. 2.

⁵¹⁸ *Powers to be resisted*, p. 21.

⁵¹⁹ Hezekiah Woodward, *Three kingdoms made one, by entring covenant with one God; wherein we have these remarkables, worthy all observation. I. What it is to covenant with God. II. How hardly his people are drawn into it. III. How the Lord has suffered his adversaries from time to time to buffet his people thereinto. IV. The height of this Covenant above former covenants, and reasons why?* (Printed for Christopher Meredith, [23 November] 1643) E.76[23], pp. 2-3.

notwithstanding, pittied His people', and showed that he had respect for their Protestation, and stepped in to help them.⁵²⁰ God, then, had both instigated and authored this Covenant.

The Solemn League and Covenant also empowered parliamentarian authors to underline the approval of the Westminster Assembly for their cause. Their approval was confirmation of the highest authority, and determined that the Covenant was indeed instigated by and contracted with God. For example, *A View of the Solemn League* argued that the authority was from the 'Assembly of learned and godly Divines [who] have, after serious examination, and weighing every setence [sic] and word of it' considered it fit to be taken.⁵²¹ Or, as *The Three Kingdoms Healing-Plaister* could reassure the reader, 'It has also been accepted by the Kingdom of *Scotland*, and the Assemblies of Divines in both Kingdomes, Reverend, Learned, Orthodox, and godly men'.⁵²²

The Solemn League and Covenant was being sold on its impeccable credentials and divine absoluteness. But the nature of the oath, the religiously vague language and potential political ramifications meant that a problematic subjectivity was embedded in the document, which was to cause problems throughout the following decades. The Solemn League and Covenant was published into a reading environment that was attentive to detail and highly interrogatory. The pamphlet debate of the last year and a half had sought to train a population of amateur lawyers who had knowledge enough to challenge arguments based on the law, though not enough to understand the nuances used by qualified common-lawyers to stop the law being openly contradictory. This had led to the breakdown of the legal framework as, in the face of myriad contradictions, authors became increasingly rhetorically dependent on the implied reader. In order for the Solemn League and Covenant to bind the community together against a common enemy, it would have had to close off the opportunities for subjectivity and dependence on an implied reader which had so beleaguered the legal framework in the preceding debates. However, the process of negotiating the Solemn League and Covenant had

⁵²⁰ *Ibid.*, p. 3.

⁵²¹ Thomas Mocket, *A view of the Solemn League and Covenant, for reformation, defence of religion, the honour and happynesse of the King, and the peace, safety and union of the three kingdoms of England, Scotland, and Ireland, to be taken by all sorts, in all the said kingdoms* (Printed for Christopher Meredith, [01 January] 1644) E.80[2], pp. 14-5.

⁵²² Smith, *The three Kingdomes healing-plaister*, pp. 11-2.

meant that this non-subjectivity and the exclusion of the implied reader were only fictional. Henry Vane, Parliament's chief negotiator during discussions of the Solemn League and Covenant, had struggled to ensure that there was a provision for an Independent reformation according to the 'Word of God', and not just towards a Presbyterian church settlement.⁵²³ Vane's success in redrafting the clauses allowed some flexibility and at least the potential for divines to propose a different church system than the Scots' when they concluded their debates. From the very beginning, then, subjectivity was written into the document, and those who subscribed to it could give different weight to certain words and phrases in order to favour their own preferred church settlement. Because the authority of the Covenant was reliant on the fiction that religion could mean one singular thing to all readers, the meaning of the Covenant proved to be ultimately dependent on the reader.

The oath-taker was being asked to swear that the current form of the Church of Scotland would be protected, and this became a major point of contention. Many objections noted that neither the subscriber, nor the people at large, really understood how the Scottish system worked. For example, *The Anti-Confederacie* argued that 'Not one in a thousand, nay of ten thousand, knowes what the *Doctrine, Worship, Discipline ... is*', and in light of that, asked how then could they swear to protect it.⁵²⁴ Going further, *A Letter from A Member of the House of Commons* (referring to the Oxford Parliament) argued, 'No law bindes me to preserve this, and Christian duty forbids me to sweare defence of that which I know not', and that if the people actually understood what they were subscribing to 'they would rather desire to destroy'.⁵²⁵

Defences were thus stunted by the ambiguous language that was employed in the Covenant itself, an attempt towards some degree of flexibility for the future of church government. By extension, this flexibility could be emphasised in order to protect the Covenant. Parliamentarian defences such as Thomas Mocket's *View of the Solemn League and Covenant* argued that they were only being asked to protect the Scottish system as 'it

⁵²³Woolrych, *Britain in Revolution, 1625-1660*, p. 271.

⁵²⁴ *The Anti-confederacie, or, An extract of certaine quaeres concerning the Solemne League and Covenant framed according to those rules of an oath, prescribed by God himselfe : Jerem. 4.2, thou shalt sweare, the Lord liveth in truth, in judgement and in righteousnesse* (s.n., [06 April] 1644) E.40[29], p. 1.

⁵²⁵ *A letter from a Member of the House of Commons, to a gentleman now at London, touching the new Solemne League and Covenant* (Printed by H. Hall, [06 May] 1644) E.45[8], p. 5.

doth or shall appear to us to be according to the Word of God', and 'no further than as it is according to the Word of God'.⁵²⁶ Mocket invited the reader to educate themselves, by writing in his marginalia that 'There are Books of it [descriptions of the Scottish religious system] almost in every Stationers Shop'.⁵²⁷ By engaging with the reader and encouraging them to become more informed, Mocket was able to dismiss the idea that people were bringing their own meaning to the Covenant: the document was not subjective, but rather the responsibility lay with the reader to ensure that their understanding correlated correctly with the Covenant, not vice versa.

These criticisms were connected to a much wider argument about the ability of oaths to bind when they were not completely understood by the oath-taker. The very significant number of pamphlets that accompanied the Solemn League and Covenant, both in the months surrounding its initial composition, and its imposition in the parishes, implies that there was a legitimate fear that the text of the Covenant alone was not enough. Furthermore, there is evidence that there were specific press campaigns to manage the reception of the Covenant.⁵²⁸ Some such as Woodward praised the Solemn League and Covenant for being particularly understandable. He started his pamphlet encouraging the reader to read the Covenant again, and then chastised them for not understanding it, because '*is a very clear Covenant ; indeed it is the clearest that ever man Penned here below*'.⁵²⁹ This was followed by several pages explaining what the '*very clear*' Covenant actually meant. Expediency and lack of 'limits' could spark more potential objections. What would be done, asked one pamphlet, if the Scots decided to change their system of church government? Would England be forced to 'indeavour the contrary'?⁵³⁰ Woodward retorted that you did not need to swear that the Scots' system was perfect, but rather

⁵²⁶ Mocket, *A view of the Solemn League and Covenant*, p. 25.

⁵²⁷ *Ibid.*

⁵²⁸ See below.

⁵²⁹ Hezekiah Woodward, *The Solemne League and Covenant of three kingdomes, cleared to the conscience of every man, who is not willingly blinde, or wilfully obstinate. The antiquity of the Covenant on the Scots-side; the seasonableness of it on the English side; the admirable wisdom of God, in stirring-up the spirits of men on all sides, at such a time as this; all this with other things mightily conducing to, and promoting of the militia of kingdomes, and the posturing every person there, is referred to a place, where it may take up more room* (Printed for Christopher Meredith, [14 October] 1643) E.71[13], sig. A2v.

⁵³⁰ *Anti-confederacie*, p. 2.

only that it was as 'close to perfect as Possibly, their *Light* could bring them'.⁵³¹ That difference, however, did little to stop royalist and Independent scepticism. There was therefore an opportunity for royalist writers to probe the ambiguous terms and phrases in the Covenant, and in doing so reveal some disputes within the otherwise relatively united parliamentary defences.

The Iniquity of the Solemne League explained to the reader that the problem was not just what they understood the Covenant to mean, but 'the known and notorious meaning and intention of them that impose or require it'.⁵³² Even if the reader had good intentions, and had read one of the many explanations, they could not necessarily be sure that they understood the original purpose, and the reader would have to be held responsible by God for being forsworn. There was no way for the reader to ensure that they were not being exploited. This criticism was in part a challenge to the parliamentary equivocation that if the Covenant turned out to be unlawful, it was null and void in the eyes of God: it 'bindes not' – and hence there was little risk in individuals taking it.⁵³³ As *The Iniquity* continues, its purpose becomes clear to the reader – if the reader 'through his owne ignorance, and the cunning of others, has been seduced', by 'threats and Menaces forced, or by any other means brought on to enter this Covenant', then the reader 'is not bound to the performance of the Contents', but rather by having taken it 'contracted their guilt of a greivous sinne'.⁵³⁴ The problem for the author was not so much that the Covenant was unlawful and being forced upon the people, but more that people might think it was not binding, take it without due care, and thus forswear themselves, believing 'If it binds not, then we may take it, and theres no harme done'.⁵³⁵

⁵³¹ Woodward, *Solemne League and Covenant*, p. 4.

⁵³² *The iniquity of the late Solemne League, or Covenant discovered: by way of a letter to a gentleman desiring information upon the poynt. Whereunto is subjoynd the Covenant it selfe* (s.n., [03 March] 1644) E.36[10], p. 2.

⁵³³ Mocket, *A view of the Solemn League and Covenant*, p. 44; See also *The Eqvity of the Solemne League and Covenant ivstified against an infectious and libellous pamphlet intitvled, The iniquity of the late Solemne League and Covenant discovered as it was lately sent from Oxford and intercepted by the way to London* (Printed for Iohn Field, [29 March] 1644) E.39[20]. Of course, as both the Houses of Parliament and the Westminster Assembly had declared it lawful, there was supposed to be no chance of it being unlawful.

⁵³⁴ *The iniquity of the late Solemne League, or Covenant discovered*, p. 2.

⁵³⁵ *Ibid.*, pp. 2-7. For similar uses of caveats for state oaths, see Cressy, 'Protestation Protested'. On the former point of oaths being forced, see Vallance, *Revolutionary England and the National Covenant*, pp. 119-20; Vallance, 'Protestation, Vow, Covenant and Engagement', p. 418.

The Solemn League and Covenant threatened to be not only subjective, but also dangerous in its ambiguity.

These several weaknesses are perhaps why royalists were so willing to engage with a debate surrounding the Covenant, even though they so vehemently denied it was legitimate. For them, they could prosper simply by sowing doubt around the taking of the Covenant. Unlike the legal framework, where there were so many facets that it had proved practically impossible to prove or disprove anything, the Covenant's authority existed in a way that was all-or-nothing: if any component of it was doubtful, the entire authority upon which the document rested would be proved false.

The Solemn League and Covenant was presented as a non-subjective ideal, a continuation of the aims of the Protestation and the oaths of Supremacy and Allegiance that reflected an immemorial attempt to work with God, not against Him. However, from its very inception, the Solemn League and Covenant had to allow room for subjectivity, and gave a space for differing and contrasting convictions – a space which was gleefully exploited by critics of the Covenant who invoked problematic implied readers to erode its certainties. The religious framework used by the Solemn League and Covenant was designed to inscribe the parliamentary case in stone, but was being revealed to be just as porous as the legal framework had been.

II. THE POLEMIC AND THE NEW RELIGIOUS FRAMEWORK

This section focuses on the way that authors were able to use the new religious framework to both defend and attack the Solemn League and Covenant, and the cumulative effect that this conversation had on the parliamentary cause as a whole. The Solemn League and Covenant, like the Vow and Covenant before it, was accompanied by an outburst of pamphlets that explained at length the implications and stressed the legality of the document. These works appeared both in September and October 1643 when it was taken by the Parliament, and in early 1644 when it was introduced in the parishes. Given the enduring nature of the Covenant – it was an oath sworn before God – the effort to defend it was often strikingly fleeting and episodic, meaning that there was a burst of activity one month, and then a scarcity of justifications the next. The political imperative that faced the parliamentarian war effort – to extract money and arms from the Scots – often meant that the implications of the arguments that were made to justify the Covenant created turmoil with their wider case. Ultimately, attempts to defend the

Covenant meant that concepts and language which had been previously contested within parliamentarianism became increasingly intrinsic to the parliamentary case, thus fragmenting further the public audience who were able to fully subscribe to their cause.

The new religious framework gave parliamentarian pamphlet writers much-needed new tools to defend Parliament and its actions. Over the summer of 1643 the parliamentarian pamphleteering effort had suffered because of the stifling of the implied reader – the works were dependent on Parliament declaring their case was right, rather than an explanation of their legal position or an appeal to readers' consciences. The Solemn League and Covenant offered pamphleteers a new and wide range of rhetorical tropes that could empower the Parliament and their effort, and condemn the royalists. Increasingly, this rhetoric could be used in attempts to solve some of the problems that had been unearthed in the process of using the previous framework.

There was increasing confidence amongst parliamentarian justifications in conflating imperative commands from God and lawfulness. The Solemn League and Covenant allowed authors to build upon a fixed notion – the Word of God – while being able to maintain and describe fluidity in practice, because God had constructed and entered a covenant with Parliament in which he had given his approval to their past, present and future actions. In the polemic, to deny Parliament's authority became the same as directly opposing God. In April 1644, for example, *The Souldiers Catechisme* argued that 'surely the high Court of Parliament must needs bee the higher power, which not to obey, is to resist the Ordinance of God', and as *A View of the Solemn League and Covenant* put in January 1644, because the King ordered that which was 'destructive to His Parliament, Laws, People and Religion', it was best to 'obey God [and therefore Parliament], rather than man [the King]'.⁵³⁶ By establishing that Parliament's cause was God's cause, these parliamentarian writers were able to argue that even if the King was the supreme magistrate, God was a higher magistrate still.

While pamphleteers were able to use the Solemn League and Covenant as a confirmation that Parliament was doing God's work, they could also point to military successes as

⁵³⁶ Robert Ram, *The souldiers catechisme: composed for the Parliaments Army: consisting of two parts: wherein are chiefly taught: 1 the iustification 2 the qualification of our souldiers. Written for the incouragement and instruction of all that have taken up armes in this cause of God and his people; especially the common souldiers* (Printed for J. Wright, [08 April] 1644) E.1186[1], p. 5; Mocket, *A view of the Solemn League and Covenant*, p. 37.

further proof. For example, *A Looking-Glasse for Malignants* praised ‘Our good successes ever since the Covenant with Scotland’, and exhaustively listed times that God’s hand could be seen as working against the enemies of the Parliament, and attacking ‘Malignant persons’. The work culminated in the claim that ‘Almighty God declares himselfe a friend to our Party’, and that ‘*Parliaments cause* is unquestionably *Gods cause*’.⁵³⁷ Furthermore, in each of the *Six speeches spoken in the Guild-hall*, the speakers credit God as granting victory to Waller - a striking difference to similar works produced a year earlier.⁵³⁸ This shift, from legality to divine support, was reflected too in salutations that were produced at the beginning of political speeches. Rather than declaring support for the law of the land as had been the norm prior to the summer of 1643, the *Declaration of Commissary Generall Behr* in May 1644 began with ‘By the Law of God and Nature’, demonstrating how quickly new understandings of legal discourse had penetrated ritualistic phrases.⁵³⁹

The Solemn League and Covenant offered pamphleteers opportunities to show that Parliament was accountable to a new authority, and if the Solemn League and Covenant was unquestionably true, anyone or anything that opposed it must be false. As *The Oxonian Antipodes* clarified in February 1644, ‘The Law of God exprest in holy Scripture, is a Law that is written in the conscience of every man, in the conscience of the King so wel as in the conscience of a Subject, which Law the Philosophers called the Law of Nature, and the Lawyers call it the Law of Nations’.⁵⁴⁰ This fed into, and appealed to, a wider trend in legal thought, which reflected the idea that there must be a trickle-down effect of the law: a divine law, which was perfect and complete; a natural law, in which humans glimpsed parts of divine law and attempted to reconstruct it on earth; and a

⁵³⁷ John Vicars, *A looking-glasse for malignants, or, Gods hand against God-haters containing a most terrible yet true relation of the many most fearefull personall examples, in these present times, since the yeere, 1640, of Gods most evident and immediate wrath against our malevolent malignants : together with a caveat for cowards and unworthy, either timorous or treacherous, newters : collected for Gods honour and the ungodlies horreur* (Printed for John Rothwell, [19 February] 1644) E33[18]., pp. 5-10, 12, 31

⁵³⁸ *Six speeches spoken in the Guild-Hall, London, upon Tuesday in the afternoon, Aprill 9 1644 printed in the same order they were spoken one after the other* (Printed by Richard Cotes, for Stephen Bowtel;, [12 April] 1644) E.42[18].

⁵³⁹ Hans Behr, *The declaration of Commissary Generall Behr, against divers slanders and lies spread abroad against him* (s.n., FD: 01 May 1644) 669.f.10[3].

⁵⁴⁰ John Brandon, *The Oxonian antipodes, or, the Oxford anty-Parliament* (Printed for Richard Lounds, [03 February] 1644) E.31[8], p. 2.

statute law, in which this logic was explained and expressed.⁵⁴¹ These laws must, drawing on the works of legal philosophy such as that of Christopher St. German, be compatible upwards, as statute law must be compatible with natural law, but not have the completeness and cohesiveness of natural law.⁵⁴² By conflating these notions into one ideal, the author was making a claim for complete uniformity – for an action, statute or ordinance to be legal, it must directly correlate with the current understanding of religion. As the understanding of religion was no longer fixed, however, in practical terms to be in control of religion was *ipso facto* to control the law, and as understandings of religion changed, so too should the law. For example, one work by Woodward argued that because bishops had been ‘by the *law of God*, cut off from the *earth*; These ought, by the *law of man*, to be Cast-out of the Land’.⁵⁴³ To disagree with this argument, and to continue to support ecclesiastical settlement, was to be a man ‘not satisfied from reason, or Scripture, not from the mouth and command of God’.⁵⁴⁴ Parliament, then, was legitimated by the pursuit of true religion, not the laws of men.

The shift in the relationship of the law and religion meant that pamphleteers no longer needed to be restrained by presenting Parliament as bound by historical precedent or practice, and thus the way that the Houses of Parliament were understood to operate changed. According to Alexander Henderson, the Covenant ‘hath in it a kinde of Sovereignty, and is a Law above all Lawes, and therefore is said to have no Law’ – the Parliament was legitimated by their adherence to the Covenant, rather than their adherence to the law or because of their constitution.⁵⁴⁵ Works like the *Oxonian Antippodes*, after attacking the premise of the Oxford Parliament as a whole, argued that ‘Lawfull Parliaments reforme Kings, and their Lawes, if they be not grounded upon the Law of God, they have power to repeal them, and choose such Lawes as shall be rules

⁵⁴¹ Hamburger, *Law and Judicial Duty*, pp. 25-6.

⁵⁴² On this, see Christopher St. German, *St German's Doctor and Student*, ed. Theodore Plucknett and John Barton (London, 1974).

⁵⁴³ Hezekiah Woodward, *A dialogue, arguing that arch-bishops, bishops, curates, neuters, are to be cut-off by the law of God; therefore all these, with their service, are to be castout by the law of the land. Notwithstanding, the world pleads for their own, why some bishops should be spared; the government maintained; the name had in honour still; but the word of God is cleare against all this, for the casting-of-all-forth* (Printed by T. P. and M. S., [26 February] 1644) E.34[10], p. 1.

⁵⁴⁴ *Ibid.*, p. 3.

⁵⁴⁵ Henderson and Nye, *The Covenant: with a narrative of the proceedings and solemn manner of taking it*, p. 30.

whereby the King shall rule his people according to the revealed will of God'.⁵⁴⁶ Woodward explained that this was possible because the Covenant was a 'willing resigning this government up, and leaving of where it is, and it must be when all is done ... be now called The Lords Kingdom'.⁵⁴⁷ Parliamentary pamphleteers could argue that, as those best placed to determine the policies most coherent with religion, Parliament (with the advice of the Westminster Assembly) must have the authority to reshape the laws to suit those of God.

For many writers, then, the Solemn League and Covenant fundamentally changed the relationship between law and religion and, rather than being established and protected by law, religion became the marker with which to judge all laws and ordinances. This could also be used by parliamentarians to define the acceptable limits of the King's behaviour. For example, Ward's *Analysis, Explication and Application* argued that the best way to preserve the King's person was to defend the true religion, 'so long as he really endeavours the preservation, and defence of the true Religion'.⁵⁴⁸ Allegiance to the King was therefore conditional on his commitment to defend 'true Religion', a concept that was being shifted by both the Parliament and the Westminster Assembly, and for Ward, the Covenant aped the Scottish National Covenant of 1638, where allegiance was dependent on the King's protection of the Scottish church.⁵⁴⁹ If the goalposts of 'true religion' were now in the hands of the parliamentarians, Parliament had control over when and how the King's subjects could be disobliged of their allegiance. Appeals to authorities, precedents and histories lost value because they might be incompatible with this 'true' religion, and this therefore stripped the English religion of its fixed, legal and established form. This was a reversal of the relationship that had been prevalent during the early Stuart period, where the religion was protected by common law – according to Burgess, the 'greatest triumph of the early Stuart common law'.⁵⁵⁰

⁵⁴⁶ Brandon, *Oxonian antipodes*, p. 14.

⁵⁴⁷ Woodward, *Three kingdoms made one*, p. 1.

⁵⁴⁸ Ward, *The analysis, explication, and application*, p. 2.

⁵⁴⁹ On this point, see Vallance, *Revolutionary England*, p. 73.

⁵⁵⁰ Glenn Burgess, 'Was the Civil War a War of Religion? The Evidence of Political Propaganda', *Huntington Library Quarterly*, 61 (1998), p. 198.

By conflating the religious rhetoric afforded by the Solemn League and Covenant with the struggle against the King, parliamentary pamphleteers were able to present Parliament's case as one that absolutely corresponded to a Godly struggle. This meant that recurring problems with the previous framework could appear resolved by appeal to this higher authority – for example, questions over whether Parliament was innovating, or the need to explain to the reader exactly why Parliament was right; both could be avoided by emphasising the closeness of Parliament's judgement to God's word. Instead of a legal framework that was open to intersubjective definition by the implied reader, the Solemn League and Covenant gave a legitimacy to Parliament which was based on the defence of the 'true religion'. This was a useful concept, the meaning of which could be reconfigured in order to reform the understanding and operation of the Parliament as required by new circumstances. In these parliamentary pamphlets it appeared that the Solemn League and Covenant was providing a more solid foundation for the case than the legal framework had done, while also allowing convenient flexibility in parliamentary policy.

III. NEW DEFENCES, NEW ATTACKS

While the Solemn League and Covenant had rejuvenated the parliamentary polemic, it also offered an opportunity for royalists to make their propaganda resonate with those who found themselves either unwilling or unable to subscribe to its contents. To attack the Covenant was to attack the parliamentary case, but being parliamentary and anti-Covenant was not mutually exclusive. Therefore, royalists were able to put pressure on cracks in the parliamentary coalition, and highlight tensions between the idealised civil bond supposed to bring together a Protestant nation, and the realities of a unitary religious covenant.

The Solemn League and Covenant could be used by anti-Covenant pamphleteers to challenge the role that Parliament should play in the constitution. For example, the confirmation that the Presbyterianism system of the Scots was compatible with the Word of God, and that the Church of England needed to be reformed, meant that it was much more difficult to maintain that the Church of England had been compatible with the Word of God. Because of this, royalist pamphleteers were able to put pressure on parliamentary pamphleteers to concede one of two things: either Parliament had erred in believing that episcopacy was legal in the past, or what was acceptable to God had changed, and thus the law had to be changed to match it. Both these options were

problematic for the parliamentary case. The former would mean that the Parliament had erred and had damaged the people, thus undermining the claims for Parliamentary absolutism which rested on the assertion that Parliament was unable to damage those it represented; the latter would mean that religious truth was subject to change. Either way, pamphleteers opposed to the Solemn League and Covenant could forcefully argue that the Covenant should not be trusted. If ‘immediately after the Apostles time, all the Christian Churches universally maintained Episcopall jurisdiction’, how could the parliamentarians be so sure episcopacy was unlawful, asked the royalist *Anti-Confederacie*, and how could a new church system be trusted to be lawful when Parliament had made a mistake in the past?⁵⁵¹ Alternatively, *Anti-Confederacie* continued, what was deemed religiously acceptable had shifted, because the Church of England had previously been compatible with God’s word.⁵⁵²

To defend against such attacks, pamphleteers were forced to weaken the argument of Parliamentary absolutism in order to protect the Covenant. For example, Woodward explained that while it was the law of man that put Bishops on their thrones, ‘man is wiser now’.⁵⁵³ Similarly, Mocket argued that ‘An Oath to things unlawfull, Antichristian, and contrary to the Rule of the Lord Jesus, bindes not, is to be repented of, not observed, and such a thing is Prelacy, or Government by Archbishops, Bishops &c.’. If this was not the case, then ‘all the learned, godly, and reverend Divines of the Assembly are forsworn, and the two Houses of Parliament also, which were wonderfull strange’ – thus, laws only bound the conscience when they were compatible with God’s law, but no longer.⁵⁵⁴ By this reasoning, Parliament had erred in the past, but could now see the errors of their ways – but this still left uneasy questions over how effectively Parliament had protected the souls of the people in the past, which had implications for whether Parliament was best placed to protect the people in the future.

Those defending the Solemn League and Covenant also struggled to demonstrate how it could correlate with previous oaths. Early in the conflict, parliamentarians had printed a number of versions of the Coronation Oath in an effort to pressure the King into passing

⁵⁵¹ *Anti-confederacie*, p. 7.

⁵⁵² *Ibid.*

⁵⁵³ Woodward, *Three kingdoms made one*, p. 10.

⁵⁵⁴ Mocket, *A view of the Solemn League and Covenant*, p. 44.

the laws that Parliament recommended. This was an important parliamentary rhetorical triumph, as it gave a definitive proof that the King's negative voice was conditional on granting the laws that his subjects demanded.⁵⁵⁵ However, a significant number of the King's coronation oaths had included provisions to protect the church, clergy and bishops – how then could Parliament be claiming to protect the King and maintaining their Oath of Allegiance, when they were in fact forcing him to fail his initial oath?⁵⁵⁶ If subjects were sworn to protect the King's natural body, the logic went, they must also be required to protect his spiritual body.

The closeness of the law to God's word could also be used to challenge, or even invalidate, Parliament's role in law-making. If God had demanded a certain course of action be taken and this was clear in scripture, what role did the Parliament have in considering it? Or, as *The First Search* put it in June 1644, if reformation of the church is contested due to it being against the 'Laws of this Kingdome', 'Then it would follow, that it is not lawfull for any man to follow the word and Law of God, till the law of the Magistrate give him leave, and disobliged him'. Rather, it argued, 'all humane lawes receive their equity and authority from their commensuration to the Law of God, and as the powers which are to be obeyed, are from God, so must the lawes be too, or else they are invalid'.⁵⁵⁷ The work aimed to challenge objections based on the unlawfulness of further reformation, but in the process of doing so constructed arguments which, when taken to their logical conclusion, challenged the judicative authority of the Parliament.⁵⁵⁸

The Solemn League and Covenant was defended as both a religious and a civil bond, but anti-Covenant pamphleteers were able to argue that the Covenant was both too strict and yet too impotent to actually help the Parliament. Rumours circulated about people

⁵⁵⁵ Vallance, *Revolutionary England*, pp. 75-81.

⁵⁵⁶ *Anti-confederacie*, pp. 8-9. On this, see Anthony Milton, 'Sacrilege and Compromise: Court Divines and the King's Conscience, 1642-1649' in Michael J. Braddick and David L. Smith (eds), *The Experience of Revolution in Stuart Britain and Ireland: Essays for John Morrill* (Cambridge, 2011).

⁵⁵⁷ *The first search*, p. 5.

⁵⁵⁸ Samuel Rutherford, *The divine right of church-government and excommunication: or a peacable dispute for the perfection of the holy scripture in point of ceremonies and church government* (Printed by John Field for Christopher Meredith, [03 March] 1646) E.326[1]; Johann P. Sommerville, 'Conscience, Law, and Things Indifferent: Arguments on Toleration from the Vestiarian Controversy to Hobbes and Locke', in Harald Braun and Edward Vallance (eds), *Contexts of Conscience in Early Modern Europe, 1500-1700* (Basingstoke, 2004).

taking the Covenant while thinking it unlawful, believing themselves to be absolved of the consequences of forswearing.⁵⁵⁹ As has been mentioned above, the author of *The Iniquity of the Late Solemn League and Covenant* expressed concern for subjects who might too casually take the Covenant, believing that there was no risk in taking it because it was illegal: 'it binds not, then we may take it, and theres no harme done'. The work warned that by taking the unlawful Covenant they were committing a 'grievous sinne ... against God, whose name and Majesty they have abused in taking such a Covenant, and against the King their Sovereigne, to whom they were bound by the oaths of Allegiance and Supremacy'.⁵⁶⁰ Similarly, the anonymous author of *A Letter from a Protestant in Ireland* emphasised that men were being 'compelled to take it, and so absolved from the obligation at the instant they are forced to sweare'. It also warned that it was a poor marker of allegiance because 'you have no reason to expect that they should observe this Oath, who have broken the former' – meaning the oaths of Allegiance and Supremacy.⁵⁶¹ Another concern was that people might be tempted to 'take it with expresse Reservations of their owne framing – for example stating that '*I take this Covenant, so farre forth, as it doth not contrary the Oath of Supremacy and Allegiance*', which was an evasive equivocation rumoured to be in circulation.⁵⁶² Anti-Covenant pamphlets thus charged the Covenant with both failing to distinguish the disloyal from the loyal, but also only commanding the loyalty of those who were now foresworn.

The Solemn League and Covenant also allowed royalists to exploit the new close association of those who had taken it. The Solemn League and Covenant had required the swearer to 'assist and defend all those that enter into' it, which led to debate over whether taking the Covenant was firstly sufficient to act as an effective shibboleth, and secondly whether it meant that those who had nefariously taken the Covenant were also to be assisted. Also since each member was sworn to help each other, any questionable morals of individual parliamentarians could be used as an attack against parliamentarians as a whole. *A Medicine for Malignancy* defended against such charges in

⁵⁵⁹ On this, see Vallance, *Revolutionary England*, p. 120.

⁵⁶⁰ *The iniquity of the late Solemn League and Covenant*, p. 8.

⁵⁶¹ *A Letter from a protestant in Ireland to a member of the House of Commons in England vpon occasion of the treaty in that kingdome* (Printed by Leonard Lichfield, FD: 03 October 1643) E.75[4], pp. 7-8.

⁵⁶² *The iniquity of the late Solemn League and Covenant*, p. 7.

May 1644 that while of course there were 'bad Members as with the King, and as corrupt Souldiers' fighting for the Parliament, firstly 'there are not so many', and secondly they are 'punished as occasion is offered'.⁵⁶³ The Covenant was thus not enough to ensure that individual members would act impeccably, and therefore those that had taken the Covenant needed to examine whether those they were committed to assisting were acting properly. A more refined, but ultimately more problematic, solution to this problem was to exploit the maxim of the King's two bodies, and apply it to Parliament. For example, *Allegiance not Impeached*, dated by Thomason in April 1644, argued that 'there is a naturall and politicall capacity in people': the former being the 'men themselves', and the latter being 'their Laws and Liberties, which are mens constitutions' – the Parliament in general.⁵⁶⁴ Even if some individual cases could be highlighted that did not conform to the wider safety of the people, it was in their political capacity that Parliament could do no wrong. Such an understanding of Parliament threatened to play into royalist hands, especially those eager to defend the legitimacy of the Oxford Parliament, and one author argued that 'The Members at *Westminster* sit, not in a politique, but a naturall capacity onely, and so have no power or authority to act or command any thing'.⁵⁶⁵ To defend against anti-Covenant attacks in which the impropriety of individual parliamentarians could be used against all those who had taken the Covenant, parliamentarians needed to distinguish between the Parliament and the represented – the blurring of which was a key component of claims for Parliamentary absolutism. The civil bond of the Solemn League and Covenant, then, threatened not only the Covenant itself, but also the Parliament as a whole.

⁵⁶³ *A medicine for malignancy: or, Parliament pill, serving to purge out the malignant humours of men dis-affected to the republick. Wherein by way of dialogue or discourse between a Royalist & a Loyalist, the common pleas of the kingdom are out-pleaded. All our vulgar scruples and anti-parliamentary allegations most clearely and fully answered, whether they bee neutrall, malignant; civill, or religious* (Printed for Ralph Smith, [02 May] 1644) E.45[2], pp. 4-6. Ultimately the pamphlet encouraged readers to 'not look so much altogether what the persons are, as what the Cause is, if it be a good cause, we must rather side with it, then to look who are employed in it', pp. 6, 57.

⁵⁶⁴ Robert Austin, *Allegiance not impeached: viz, by the Parliaments taking up of arms (though against the Kings personall commands) for the just defence of the Kings person, crown and dignity, the laws of the land, liberties of the subject: yea, they are bound by the oath of their allegiance, and trust reposed in them, to doe it* (Printed by Rich. Cotes, for Joh. Bellamy, [12 April] 1644) E.42[12], p. 9.

⁵⁶⁵ *An orderly and plaine narration of the beginnings and causes of this warre. Also a conscientious resolution against the warre on the Parliaments side*, (s.n., [08 July] 1644) E.54[3], p. 19.

Therefore, in these several ways the religious framework was significantly less flexible than the law had been, and was creating problems in the parliamentary case. It was one thing to accept that the law could have been wrong in the past – the common law system of thought included artificial reasoning, which gave potential for the law to develop and be improved – but the same logic could not be applied to God’s scriptures and ‘true’ religion with such ease. Furthermore, by binding together the parliamentarians into one group of those who had taken the Covenant, individual parliamentarians threatened the collective whole of the Parliament, and the ability of the Parliament to dictate the law was challenged. The religious framework, then, struggled to clearly refine the parliamentary war effort, and those against the Covenant were able to apply significant pressure on the central tenets of the parliamentary cause – that Parliament could judge the law, and that Parliament was fully representative.

II THE LEGAL-RELIGIOUS FRAMEWORK

IV COMPOUNDED DISSONANCE IN THE LEGAL-RELIGIOUS FRAMEWORK

Even though parliamentarians had a new religious framework with which to legitimate resistance, Parliament’s case still relied on the premise that their case within the legal framework was lawful, and that they were legitimately acting as sovereign. This compound framework combined the legal and the religious frameworks’ problems, meaning that the Covenant could make it more difficult, rather than easier, to subscribe to Parliament’s case.

Parliamentarians needed to demonstrate that the Solemn League and Covenant was not at odds with any of the other oaths that the public had been asked to take. This was a thorny issue, and one that parliamentarian writers had struggled with when justifying the Vow and Covenant.⁵⁶⁶ At its heart, the problem rested upon the issue of the public being required to take yet another oath to demonstrate their loyalty.⁵⁶⁷ Royalist writers asked ‘Whether it be by the Word of God, that you impose Contradictorie Oaths, under gentle tearms of Covenants, upon the Consciences of men’, and pointed out that the taking of this oath was clearly in breach of the ‘Oaths of Allegiance and Supremecy, which bindeth men to observance and preservation of the Kings authority as

⁵⁶⁶ Vallance, *Revolutionary England*, pp. 68-70.

⁵⁶⁷ On this point more generally, see *ibid.*, p. 72.

supreame'.⁵⁶⁸ The challenge posed, therefore, was one that questioned the Solemn League and Covenant's legal and religious relationship with previous oaths and, as *Certain Queres, Not Unfitting to be Read* contended, whether it dispensed with all the oaths that held society together – Allegiance, Supremacy, offices, Protestations, and 'dueties of Loyaltie'.⁵⁶⁹ For some royalist writers, it confirmed once again the fact that Parliament was claiming powers to be sovereign – not just as an expedient in a time of great necessity, but rather they were playing with the souls of the people. By swearing that malignants should be punished by the 'supreme judicatories of both kingdomes respectively', the *Anti-Confederacie* speculated 'whether this branch of the Covenant be not directly contrary to our Oath of Supremacy?' If the work continued, this meant the Lords and Commons 'separated from the King', and if they took an oath that meant they would be 'so considered, [as] the Supreme Judges, and, by consequence, the Supreme Governours of this Realme in all Causes, as well Ecclesiasticall as Civill, and not the King', then surely they were breaking past oaths.⁵⁷⁰ In other words the justifications, still diluted with references to extraordinary circumstances, were juxtaposed with the spiritual timelessness of oaths, meaning that danger could be found in every word and phrase.

Parliamentarians faced this challenge using a variety of arguments. One of the earlier works in September argued that the royalists' reliance on the oaths of Allegiance and Supremacy was futile, because of a misunderstanding about what the oaths were originally for. According to Richard Hollingworth, 'The Oath of Alleagiance [was] intended for Papists', and the 'Oath of Supremacy was intended to thrust out the Pope, and to discover Papists, and not to determine the present difference between the King and Parliament'.⁵⁷¹ Other writers were slightly more restrained when discussing the previous oaths. In the *Three Kingdoms Healing-Plaister*, Smith made clear that he understood the Solemn League and Covenant as an attempt to fix a covenant that had

⁵⁶⁸ *Observations upon the instructions; A Briefe discovrse upon the impiety and unlawfulnessse*, p. 8.

⁵⁶⁹ *Certain queres not vnfitting to be read and taken into serious consideration by all His Majesties subjects in these disloyall times* (Printed by Leonard Lichfield, [19 September] 1643) E.67[23], p. 3.

⁵⁷⁰ *Anti-confederacie*, p. 21.

⁵⁷¹ Richard Hollingworth, *An answer to a certain writing entituled, Certain dovbts and qvaeres upon occasion of the late oath and covenant, with desire of satisfaction for tender conscienced people to whom it may be exhibited* (Printed for Luke Fawne, FD: 11 September 1643) E.67[5], pp. 5-6.

already been broken.⁵⁷² He warned the reader that to refuse to take a covenant was ‘a great sin’, but because they as a nation had already entered into an earlier covenant, to not observe it was a ‘greater sin’.⁵⁷³ The solution was clear: ‘Now when a people have broken Covenant with God, and caused God to part from them, the sureway to find God, is to seeke him by renewing the covenant’.⁵⁷⁴ Hollingworth argued that it was important, as the ‘Jews of old, and Christians of late did often’, to renew their covenants with God, and to reassert their intentions and commitment to Him.⁵⁷⁵ In this case, the kingdom had already undertaken the Covenant – it was nothing new, but rather something that had been forgotten, and the objections misunderstood what the public were being asked to do. To parliamentary writers, the Solemn League and Covenant was complementary rather than contrary to the previous oaths. *The Equity of the Solemne League*, for example, argued that the covenant ‘is so far from crossing the Oathes of Supremacy and Allegiance, that it binds all, and more strongly engageth them to preserve, and defend’ the King, ‘true Religion and Liberties of the Kingdomes’.⁵⁷⁶ Woodward encouraged the reader that it could work with other oaths to make ‘the Kingdom like a wall of *brasse*’.⁵⁷⁷ Responding to royalist criticisms, parliamentarians emphasised that many of the objections against the Covenant could have also been made against the Protestation of May 1641, and that to object to that now would be ridiculous.⁵⁷⁸ By appealing to past practice, parliamentarians were able to defend their Covenant, and argue that they had been effective and safe in the past, and so could be trusted.

To truly swear to the Solemn League and Covenant, the swearer would have to believe that Parliament was acting legally as sovereign. According to the anonymous author of *A Briefe Discourse*, in order for the Parliament to be able to construct the Solemn League and Covenant, Parliament needed to be the supreme sovereign, which was a contention

⁵⁷² Smith, *The three Kingdomes healing-plaister*, pp. 1-2.

⁵⁷³ *Ibid.*, p. 13.

⁵⁷⁴ *Ibid.*, pp. 4-5.

⁵⁷⁵ Hollingworth, *An answer to a certain writing*, sig. B3r.

⁵⁷⁶ *Equity of the Solemne League and Covenant*, p. 11; See also *The Covenanters catechisme, or, A brief and familiar analysis and exposition of the Covenant first delivered in sundry sermons to a particular congregation*, (Printed by John Raworth, [06 August] 1644) E.4[21], pp. 14-5.

⁵⁷⁷ Woodward, *Three kingdoms made one*, p. 1.

⁵⁷⁸ See, for example, Hollingworth, *An answer to a certain writing*, sig. B4r; Smith, *The three Kingdomes healing-plaister*, p. 13.

that parliamentarians were still struggling with.⁵⁷⁹ For this royalist author, the simple matter was that the King had 'supreme authority in the ordering of Religion as in all other things', and thus the Covenant was unlawful and against the 'supreme and absolute authority of God'.⁵⁸⁰ Because the religious and the legal framework worked together, the religious framework presumed that Parliament was absolute and that the legal debate was completed. Mocket in *A View of the Solemn League and Covenant* stressed that 'Parliament which is the Kingdoms representative, is above the Law, hath power of the whole Realm, can question, alter, and repeal any Law, when it sees just cause, and make any new Laws'. He invites the reader to 'See [Prynne's] *Sovereigne Power of Parliament and Kingdoms*' on multiple occasions to confirm statements as fact, which he supposes that 'no rationall man, shall be able to contradict'.⁵⁸¹ For Mocket, Prynne's mammoth work could be presented as the definitive answer on the question of Parliament's supremacy, needing no further clarification. Smith argued in *The Three Kingdomes Healing-Plaister* that the proof that the Covenant was fit to be taken was two-fold: firstly, 'it is Gods command'; and 'Secondly the Parliament, the highest Court of Magistracy, of Sovereigne authority, and the representative body of the Kingdom' who 'doe sweare with us never to forsake us, nor betray the trust we have committed to them' deemed it fit to be taken.⁵⁸² To take the Covenant in good conscience a belief in parliamentary sovereignty was therefore presumed, even though many authors prior to the summer of 1643 seem to have found this unconscionable.

Even though the substantive legal debate had stagnated, royalists were still able to attack the idea that Parliament was sovereign, and by doing so challenge the legitimacy of the Covenant itself. These works mainly emerged a few months into 1644, when Parliament made efforts to ensure the Covenant was taken in the parishes. For the most part, Prynne was the main target, as for at least a year his work was regularly cited as the reference for proof of the full legality of Parliament's case. For example, in March 1644 Peter Heylyn's *The Rebells Catechisme* attacked Prynne for misinterpreting and disregarding the statute of 25 Edw. III because it only referred to the individual committing treason, rather than

⁵⁷⁹ *A Briefe discovrse upon the impiety and unlawfulness*, p. 8.

⁵⁸⁰ *Ibid.*

⁵⁸¹ Mocket, *A view of the Solemn League and Covenant*, pp. 12, 23, 28-9

⁵⁸² Smith, *The three Kingdomes healing-plaister*, pp. 11-2.

the community as a whole.⁵⁸³ According to Heylyn, Prynne had suggested that the ‘Members of the two Houses were not *men* but *gods*’, and hence ‘freed them from the guilt’ of the statute. He concluded that Prynne’s ‘sophistrie and trimme distinctions touching their *qualitie* and *numbers* will but little helpe them’.⁵⁸⁴ Similarly, *The Fallacies of Mr William Prynne*, dated by Thomason a few days before Heylyn’s work, was entirely dedicated to expanding Prynne’s famed marginal notes and demonstrating that his authorities were misquoted, out of context, and proved nothing. In it, the anonymous author demonstrated that even though Prynne was claiming authority from much longer texts, he was constructing new and contradictory arguments from these precedents. Prynne, it charged in an explosive conclusion, ‘saith out of *Bracton*, (and what hee doth thence transcribe, he doth also subscribe to) *The King is Legislator*; and againe, *The King is Fons justitiae*; and againe, *The King is Gods, and Christs Vicar upon earth*.’⁵⁸⁵ In other words, Prynne was exploiting authorities, contradicting himself and constructing a case out of works that argued the opposite. Similarly, Ferne was able to attack Prynne for simultaneously attempting to show the ‘disloyalty of Papists, and yet prove the *Soveraigne power* of Popish Parliaments’, and argued that Prynne’s argument, even if ‘his Records [were] faithfully alleadged’, was ‘inconsequent’ anyway.⁵⁸⁶ By attacking Prynne’s *Soveraigne Power*, both these works were attacking a narrative that was crucial to parliament’s legal position, and thus the legality of Parliament imposing the Covenant.

Although the framework had now shifted from the legal toward the religious, in November 1643 Ferne produced responses to the ‘*severall treatises*’ of Prynne, Hunton, Herle, and Palmer, which had been published the previous spring. However, in contrast to the previous reception of such replies, Ferne’s rebuttal seems strangely detached from the day-to-day political debate. Ferne attacked Hunton’s justification of resistance because if the community had ‘*reserve[d] a power*’ which could be wielded by the Parliament, it would have needed to hold it ‘before Government established’ – Hunton had, in other words, mixed the ‘natural power of private Resistance’ with the ‘power of a

⁵⁸³ Peter Heylyn, *The rebells catechisme composed in an easy and familiar way : to let them see the hainousnesse of their offence, the weaknesse of their strongest subterfuges, and to recall them to their duties, both to God and Man* (s.n., [06 March] 1644) E.35[22], p. 19.

⁵⁸⁴ *Ibid.*

⁵⁸⁵ *The Fallacies of Mr William Prynne discovered and confuted* (s.n., [02 March] 1644 E.253[3] , p. 32.

⁵⁸⁶ Ferne, *A reply unto severall treatises*, p. 49.

community or politique power'.⁵⁸⁷ As the embodiment of the community, the Parliament had 'not Military power', but 'a Legall restraining power', and therefore their power was to prevent attempts to 'change the laws without their consent' rather than start a war.⁵⁸⁸ To Ferne, Hunton's case rested upon the supposition that a community might place powers that they had by natural law into a representative body that was unnatural – whereas the Parliament had 'no more power to withstand the *illegal proceedings of the Monarch*, then as private men by deniall of active obedience'.⁵⁸⁹ Against Palmer, Ferne replied that he was arguing 'a *Resolution of a particular Case*', rather than writing a 'just Tractate of *Resistance*'; against Herle, Ferne argued that the '*Judicatory power*' upon which Parliament's case rested lay in the Lords alone, not the Commons (as had been argued in the *Answer to the XIX Propositions*), and thus '*one is lesse then all three*' – the Commons could not 'supply' in this case.⁵⁹⁰ These debates, which took place outside rather than within the religious framework (Ferne does not mention the Covenant, nor does Hunton in his *Vindication of 1644*), seem in practice to have lost their validity and worth in the polemical debate – the debates seem academic, even irrelevant, whereas before they had been timely, incisive and important. Works such as Rutherford's *Lex, Rex* explicate this new irrelevance. If the new authority was accepted, and along with it also the conflation of rhetoric between Parliament's actions and Godly ordinances, then if the constitution was any point proven to be against the will of God, then it should simply be changed to make it compatible.⁵⁹¹ There was no longer much point in describing constitutional errors, because the Parliament was empowered by the Solemn League and Covenant to fix them. Thus, the debate had moved on.

For some, in order to subscribe to the Solemn League and Covenant, the reader needed to believe that Parliament was acting as the lawful sovereign power, but also that the

⁵⁸⁷ *Ibid.*, pp. 13-4.

⁵⁸⁸ *Ibid.*, pp. 37-9.

⁵⁸⁹ *Ibid.*, pp. 39-40.

⁵⁹⁰ *Ibid.*, pp. 7-8, 52-3.

⁵⁹¹ Samuel Rutherford, *Lex, rex The law and the prince: a dispute for the just prerogative of king and people : containing the reasons and causes of the most necessary defensive wars of the kingdom of Scotland and of their expedition for the ayd and help of their dear brethren of England : in which their innocency is asserted and a full answer is given to a seditious pamphlet intituled Sacro-sancta regum majestas* (Printed for Iohn Field, FD: 07 October 1644) E.11[5]; Edward Vallance, 'Preaching to the Converted: Religious Justifications for the English Civil War', *Huntington Library Quarterly*, 65 (2003), p. 401.

new framework had the power to supersede the legal framework. This meant, for example, that the reader might be required to believe that Magna Carta or the fundamental laws gave certain rights that could not be challenged, but equally that anything that the Houses of Parliament determined should be considered as God's command, even if they later decided to overrule it. For Mocket, 'our Laws, Just Liberties, and Religion' were wholly invested in Parliament's 'Rights and Priviledges', and could not exist outside of Parliament.⁵⁹² Similarly, Richard Austin argued that the 'liberties and priviledges' are the 'politick capacity' of the two bodies of the Parliament, the other being simply the natural body.⁵⁹³ The rights and liberties were not timeless, but rather subject to Parliament's approval. This tension could be exploited by royalists, who were able to demonstrate that to side with the King was to resolve to be 'a loyall Subject to thy Sovereigne, a faithfull Servant of the Parliament, a true *English* Protestant, and a free-born *English*-man', and that the King had long argued to preserve the liberty of the subject, and warned against an arbitrary Parliament.⁵⁹⁴ In doing so, *An Orderly and Plaine Narration* blended previous and present frameworks, and made an anti-Scottish and anti-Covenant appeal towards certain rights that the author deemed were unquestionable. Likewise, the anti-Covenant *An Appeale to Heaven* argued that even if it was accepted that laws that were not consistent with the laws of God should be repealed, there must still be 'a perpetuall Law, and obtained by the blood of many thousands of our ancestors. By which they freed themselves and us from being slaves, and thereby have made us free-borne Subjects'.⁵⁹⁵ In *The Anti-Confederacie* the author attacked the Covenant for referring to the 'Liberties of the Kingdomes', rather than the Subject's liberties themselves.⁵⁹⁶ Because Parliament could be portrayed as arguing that the Solemn League and Covenant empowered them to override all rights and privileges, the Covenant could be characterised as being incompatible with the rights and privileges that Parliament was eager to be seen to be protecting.

⁵⁹² Mocket, *A view of the Solemn League and Covenant*, pp. 23, 17-19.

⁵⁹³ Austin, *Allegiance not impeached*, p. 12.

⁵⁹⁴ *An orderly and plaine narration*, pp. 18, 21.

⁵⁹⁵ *An Appeale to heaven and heavens ministers, the most Reverend Pastors of Gods word, now assembled in the Synode of England and to all the faithfull people of God from all the prisoners, imprisoned for debt, in the severall goals within the Kingdome of England, and principallitie of Wales* (s.n., [10 September] 1644) E.8[23], p. 4.

⁵⁹⁶ *Anti-confederacie*, p. 17.

The ongoing debate, therefore, was cumulative, and wove multiple legal understandings and justifications together. In doing so, however, it risked excluding those who found themselves struggling with parliamentary claims of absolutism, and rather than offering them a new religious framework with which to resolve their consciences, instead the debate made subscribing to Parliament's case even more demanding.

V PARLIAMENT'S LAW, GOD'S LAW AND THE ASSEMBLY'S LAW

Parliament's combined legal-religious structures of legitimisation came under particular stress in the judicial arena. As we have seen, Parliament had found itself adopting stronger claims to sovereignty and with them the ability to repeal and enact legislation, initially according to the fundamental law, then by natural law fuelled by necessity, and finally following the direct ordinances of God. However, Parliament could not continue, as it had done before, to make judgements in its role as highest judicature without running into contradictions resulting from their indebtedness to the religious framework. The two frameworks merged into each other, leaving behind unclear boundaries between God's law and England's law.

For certain practical purposes, parliamentarians were still able to use exclusively legal vocabulary and terminology to make their case. For example, when passing the Ordinance to create a new Great Seal, Parliament did so under the manner of being the supreme judicature, rather than appealing to the Covenant. Hence, they demanded that the Great Seal 'ought to attend the Parliament, being the supream Court of Justice and Judicature within this realme', and that by having the Seal back, they would be able to enforce the law properly.⁵⁹⁷ Likewise, Prynne's *Opening of the Great Seale* detailed lists of precedents that showed that it was extraordinary that it had been taken from the Houses of Parliament.⁵⁹⁸ On a different topic, Prynne chose to rely on legal precedents when developing his prosecution of Fiennes in the winter of 1643. Rather than any religious language, Prynne relied on a single published collection of martial law and explained that the 'Law is very punctuall, and penall; yea so plaine, that it needes no explanation'

⁵⁹⁷ 'Ordinance for making a New Great Seal, and for annulling the King's', in Firth and Rait (eds), *Acts and Ordinances*, pp. 340-2.

⁵⁹⁸ William Prynne, *The opening of the great seale of England. Containing certain brief historicall and legall observations, touching the originall, antiquity, progresse, vse, necessity of the great seal of the kings and kingdoms, of England, in respect of charters, patents, writs, commissions, and other processe* (Printed for Michael Sparke Senior, [09 October] 1643) E.251[2].

when it comes to the case of yielding up towns to the enemy.⁵⁹⁹ Parliament, when it acted as the supreme judicature, was able to use the same tactics and rhetoric of legal legitimacy as it had before the religious framework.

However, the spiralling religious polemic meant that as parliamentary justifications were conflated with Godly commands, Parliament's monopoly on judicative powers could be challenged. Since the Westminster Assembly, not the Parliament, were presumably the most qualified to determine divine sanction, the Assembly could be a second court of appeal to ensure that law conformed with the Word of God, providing pamphleteers multiple jurisdictions with which to interact. Throughout 1644, anonymous pamphleteers increasingly appealed to the Westminster Assembly to exercise God's justice and laws, arguing that the Houses of Parliament had failed to tender sufficient punishment. For example, *Justice's Plea* called on the Assembly so 'that they would be a means to the High and Honourable Court of PARLIAMENT, that Justice may be speedily and severely executed upon all the most disloyall and treacherous enemies', the Catholics.⁶⁰⁰ It was the Assembly's duty, the work continued, to watch 'not only the Soules of men, but the very safety and peaceable and happy condition of the whole Nation and kingdom where in yee live', and to give 'timely and serious warning', especially to 'those superior Magistrates'.⁶⁰¹ The pamphlet was, in essence, calling for the Westminster Assembly to intervene with Parliament, and police their justice. Other works went further still. Anthony Burgess, a Presbyterian member of the Assembly, had argued that 'Punishments are of two kinds'. Firstly, there were those which were 'immediately commanded by the Law of God, or are evidenced by the Law of Nature'. According to Burgess, although these punishments were subject to some debate amongst divines, they should be followed because that 'opinion seemes safest', and to release the

⁵⁹⁹ William Prynne, *The doome of cowardize and treachery or, a looking-glasse for cowardly or corrupt governours, and souldiers, who through pusillanimity or bribery, betray their truths, to the publick prejudice. Containing certaine domestick lawes, heretofore, lately made, and judgements given against such timorous and treacherous persons; fit to be known in these unhappy times of warre* (Printed for Michael Spark Senior, [03 November] 1643) E.251[6], p. 13.

⁶⁰⁰ *Justice's plea, or A serious, seasonable and most submissive motion (back'd with many weighty motives) most humbly tendered by one of the meanest sons of his deare mother England, to the reverend synod, or Assembly of Divines at Westminster, that they would be a means to the high and honourable court of Parliament, that justice may be speedily and severely executed upon all the most disloyall and treacherous enemies of the kingdom, the unnaturall paricides of their mother England* (s.n., [01 August] 1644) E.254[8], p. 1.

⁶⁰¹ *Ibid.*, p. 6.

guilty party from the punishment would be to disobey God. The second kind of punishment was those 'by a meere positive Law', and in these 'much moderation may be used without any guilt upon the Kingdome', for 'humane Lawes are imperfect, and men could not possible foresee all causes and circumstances'.⁶⁰² Meaning was catching up with the rhetoric – and if authority had come from Godly ordinances, then surely those ordinances had to be followed to the letter.

This jurisdictional overlap could thus be exploited by anti-Covenant pamphleteers, and demonstrates the increasingly complex relationship between the Parliament and the Westminster Assembly, created by unclear boundaries of jurisdictions and the dissonance of the present and past frameworks. For example, *An Appeale to Heaven*, produced in September 1644, petitioned the 'most Reverend Pastors of Gods Word, Now assembled in the Synode of England' that 'imprisonment of men for Debt, is contrary to the Law of God: The law of Nations: as also, the fundamentall Lawes of this Kingdome'.⁶⁰³ The author had previously attempted to petition Parliament, but this had fallen on deaf ears, and so they were now appealing to the Westminster Assembly. In doing so, they were intentionally appealing to various jurisdictions to maximise the impact of their case, and in the process demonstrating that although they were appealing to the highest law – God's law – this came with hierarchical implications on earth. Because of the transforming understanding of the law, if Parliament's case proved to be 'contrary to the Law of God', legal reasoning and logic demanded that it would also be against all other earthly laws – they were appealing to the root, not just the branch.

The Solemn League and Covenant, and the religious framework that supported it, meant that Parliament's monopoly on judging the law, which was still vital to their opposition to the King, would prove to be unsustainable. Because of the dissonance and tension between the two frameworks, Parliament was losing control of its own rhetoric, and as judicial and religious language became conflated there emerged multiple jurisdictions that could be appealed to by pamphleteers, and contradictions that could be exploited. As frameworks converged, and as Parliament found itself adopting stronger claims to

⁶⁰² Anthony Burgess, *Judgements removed, vvhare judgement is executed. Or A sermon preached to the Court Marshall in Lawrence Iury, London, the 5th of Septemb. 1644. Being the day of their solemn seeking of the Lord for his blessing upon their proceedings* (Printed by M. Simmons for Thomas Underhill, [26 November] 1644) E.18[15], pp. 10-1.

⁶⁰³ *An Appeale to heaven*, p. 1.

sovereignty, subscribing to the Covenant and the parliamentary cause more generally was becoming more demanding. The Solemn League and Covenant was not binding together the nation, but rather helping to divide it further.

VI PRESBYTERIANS AND INDEPENDENTS –FROM JUNE TO OCTOBER 1644.

The Solemn League and Covenant relied on the authority of the Westminster Assembly to interpret the Word of God, and the idea that the Assembly could be in agreement about what God wanted. This fallacy was perpetuated by the contemporary printed pamphlets, which for the most part avoided discussing matters of the future church settlement, and rather focused their attention on attacking Laudianism. In 1641, a meeting of leading divines at Edmund Calamy's house in Aldermanbury agreed to focus their attacks on popery rather than infighting about the future of church government.⁶⁰⁴ However, the military and political involvement of the Presbyterian Scots had led to the increased chance of a military victory over the King, and forced questions over the future of the church to the fore.

The Scottish invasion from the Northern border had transformed the parliamentary armies' fortunes. Royal forces had been crushed at Marston Moor in early July, and by the end of 1644 the King had lost the North. In the South, Charles had enjoyed some successes – an embarrassing defeat for the parliamentarians at Lostwithiel,⁶⁰⁵ and a victory at Newbury in October – but was unable to challenge the numbers of the newly bolstered parliamentary forces. For parliamentarians, the 'increasing likelihood of a military victory that would force the King to agree a settlement' propelled the issue of church debate into the public domain.⁶⁰⁶ Both the Earls of Manchester and of Essex were slow to capitalise on royalist losses in the middle of 1644, which led some to doubt their commitment to military victory. Within the army, Oliver Cromwell clashed with the Presbyterian Manchester over whether an absolute victory was possible, or even

⁶⁰⁴ Hughes, *Gangraena*, pp. 36-7; Rosemary D. Bradley, 'The Failure of Accommodation: Religious Conflicts between Presbyterians and Independents in the Westminster Assembly 1643-1646', *Journal of Religious History*, 12 (1982), p. 35; Braddick, *God's Fury, England's Fire*, pp. 337-47, but especially pp. 337-8.

⁶⁰⁵ On this, see John Goodwin, *The Grand Imprudence*, which blamed the defeat on the leaders of Parliament, quoted in Sirluck, 'Introduction', p. 112.

⁶⁰⁶ Braddick, *God's Fury, England's Fire*, p. 338.

desirable, and as Woolrych has emphasised, the more likely an Independent settlement was, the more reluctant the Scots became for a potential military victory.⁶⁰⁷

Factions within Westminster itself further stirred this religious struggle between a Presbyterian and an Independent church settlement. Scott has described a faction surrounding Saye and St. John that feared a Scottish Presbyterian settlement, and was eager to remove Essex from military command. In September, Scott argues, they began to act – promoting toleration and pulling away from their close alliance with the Scots.⁶⁰⁸ The same month, Parliament asked its committees in contact with both Scottish commissioners and the Westminster Assembly to consider what church system would be best fitted to God's Word, adding further to Scottish speculation that England was not destined for a Scottish-style settlement.⁶⁰⁹

The pamphlet conversation over church settlement is normally seen to have been ignited by the publication of *An Apologeticall Narration* in the first few days of 1644.⁶¹⁰ In this work, leading London ministers encouraged examination of 'the congregational way', in which local church congregations were independent from central control as had been practised in New England.⁶¹¹ By introducing a genuine discussion about the future of the church, the traditional account goes, the *Apologeticall Narration* legitimised conversation about religion in the pamphlet literature.⁶¹² Increasingly, however, historians have begun to see the publication of *An Apologeticall Narration* not as the beginning of divisions between Independents and Presbyterians, but rather an attempt to 'protect the unity' of 1641, and have emphasised that it received no real condemnation by either the Parliament or the Assembly.⁶¹³ Indeed, the authors of the *Apologeticall*

⁶⁰⁷ Woolrych, *Britain in Revolution, 1625-1660*, pp. 299-300; Braddick, 'War and Politics', pp. 104-5.

⁶⁰⁸ Scott, *Politics and War*, pp. 85-6.

⁶⁰⁹ Woolrych, *Britain in Revolution, 1625-1660*, p. 300.

⁶¹⁰ *Ibid.*; Thomas Goodwin and others, *An Apologeticall Narration, Humbly Submitted to the Honourable Houses of Parliament* (Printed for Robert Dawlman, [January] 1644) E.80[7]; Paul, *The Assembly of the Lord*, pp. 206-10.

⁶¹¹ Woolrych, *Britain in Revolution, 1625-1660*, p. 297.; John Coffey, 'Religious Thought', in Michael J. Braddick (ed.), *Oxford Handbook of the English Revolution* (Oxford, 2015), pp. 450-1.

⁶¹² George Yule, *Puritans in Politics: The Religious Legislation of the Long Parliament* (Sutton Courtney, 1984), pp. 132-3.

⁶¹³ Hunter Powell, *The Crisis of British Protestantism: Church Power in the Puritan Revolution, 1638-44* (Manchester, 2015), pp. 91, 8.

Narration had signed the *Certaine Considerations to Dis-swade Men* which had appeared late in December 1643, which had emphasised the importance of unity.⁶¹⁴

Over the summer of 1644, however, it is undeniable that there was an open discussion about the differing church systems that might be adopted if, or increasingly *when*, Parliament won the war. Thomas Hill identified that there were two ongoing debates by August 1644. Firstly, there was '*controversie ... betwixt congregationall and classically Divines, (who are called Independents, and Presbyterians) in point of Church government*', to which Hill stated that there '*seemes to bee some good hopes of a faire accomodation betwixt them*'.⁶¹⁵ Secondly, however, there was a more complicated meta-argument amongst others '*who vehemently cry down not only the power of Ecclesiasticall Synods, but likewise the Authority of the Civill Magistrate, in matters of Religion*'.⁶¹⁶ On the latter topic, works such as Roger Williams' *The Bloudy Tenet* argued in July that the state held only civil power and were '*not Judges, Governours or Defendours of the Spirituall or Christian slate and Worship*', and the anonymous *M.S to A.S* argued that while Parliament might be able to advise what religion should be followed, it could not enforce it.⁶¹⁷ The prospect of an unsatisfactory church settlement had led some authors to discuss whether the Westminster Assembly or the Parliament could impose a single religion on the nation.

By considering the possibility that Parliament could support a church settlement that went against the author's conscience, pamphlets began once again to appeal to the

⁶¹⁴ *Certaine considerations to dis-swade men from further gathering of churches in this present juncture of time. Subscribed by diverse Divines of the Assembly, hereafter mentioned* (Printed for Ralph Smith, FD: 23 December 1643) E.79[16], p. 5; Sirluck, 'Introduction', p. 71.

⁶¹⁵ Thomas Hill, *The season for Englands selfe-reflection, and advancing temple-vwork: discovered in a sermon preached to the two Houses of Parliament; at Margarets Westminster, Aug. 13. 1644. being an extraordinary day of humiliation* (Printed by Richard Cotes for John Bellamy and Philemon Stephens, [13 August] 1644) E.6[7], sig. A3r.

⁶¹⁶ *Ibid.*

⁶¹⁷ Roger Williams, *The bloudy tenet, of persecution, for cause of conscience, discussed, in a conference betweene truth and peace, who, in all tender affection, present to the high court of Parliament, (as the result of their discourse) these, (amongst other passages) of highest consideration* (s.n., [02 February] 1644) E.32[8]; John Goodwin, *M. S. to A. S. with a plea for libertie of conscience in a church way against the cavils of A. S. and observations on his considerations and annotations upon the apologeticall narration, humbly submitted to the judgements of all rationall and moderate men in the world* (Printed by F. N. for H. Overton, [03 May] 1644) E.45[3], pp. 32-6; Sirluck, 'Introduction', p. 110.

implied reader to have a role in determining whether the Parliament was right. This created a *conditional* obedience to the Parliament in matters of obedience, and empowered an informed, conscientious reader to consider when a parliament might be mistaken.

Indicative of this struggle was the clash between Prynne and Goodwin. Prynne's work, *Twelve Considerable Serious Questions Touching Church Government*, had asked 'Whether, if any Kingdome or Nation shall by a Nationall Councell, Synod and Parliament, upon serious debate, Elect such a publicke Church-Government, Rites, discipline, as they conceive to be most Consonant to Gods Word', all those in the kingdom would be '*actually oblied in point of... Conscience & Christianity, readily to submit thereto, and no wayes to seeke an exeption from it, under paine of being guiltie of Arrogancie, Scisme, Contumacie, and lyable to such penalties as are due to these offences*'.⁶¹⁸ At the end of the work, Prynne became specific, and challenged if the 'Independents can produce any one solid reason, why they ought not (in point of Conscience) willingly to submit to a *Presbyteriall Government*' if it was decided that it would be 'most consonant to Gods word' by the 'General consent of the Synod and Parliament'.⁶¹⁹ Goodwin countered that no-one should be expected to 'yeeld blinde obedience', and if he found the church government against the word of God, then he was forced to 'be a Schismatick, to be guilty of arrogancy' or 'to contradict the Word, to oppose an ordinance of God' – which was surely as bad as popery.⁶²⁰ Later in the work, he pleaded to 'Remember, neither you [Prynne] nor the Synod are infallible, but as subject to errors as others'.⁶²¹ At last, he brilliantly goaded the 'Marginal' Prynne whether he would give himself up to episcopacy if another synod had demanded it, forgoing his

⁶¹⁸ William Prynne, *Twelve considerable serious questions touching church government: sadly propounded (out of a reall desire of vnitie, and tranquillity in church and state) to all sober-minded Christians, cordially affecting a speedy settled reformation, and brotherly christian vnion in all our churches and dominions, now miserably wasted with civill vnnaturall wars, and deplorably lacerated with ecclesiasticall dissentions* (Printed by F.L. for Michael Sparke, Senior, [16 September] 1644) E.257[1], p. 2.

⁶¹⁹ *Ibid.*, p. 6.

⁶²⁰ John Goodwin, *Certain briefe observations and antiquaeries: on Master Prin's Twelve questions about church-government. Wherein is modestly showne, how un-usefull and frivolous they are, how bitter and unchristian in censuring that way; whereas there are no reasons brought to contradict it* (s.n., [04 October] 1644) E.10[33], p. 3.

⁶²¹ *Ibid.*, pp. 12-3.

beloved references and notes.⁶²² Prynne was forced to sheepishly reply that ‘their resolutions could not binde my judgement absolutely, so farre as to subscribe their opinion as undoubted truths, unlesse they could satisfie my arguments and authorities to the contrary’.⁶²³ Prynne, then, defender of Parliamentary absolutism, had conceded that conscience must have a role in the constitution, and that the implied reader must have some form of conditional obedience to the Parliament when it came to religion.

III CONCLUSION

From September 1643 to the end of 1644, the polemical debate used a framework based on the Solemn League and Covenant which transformed the meaning of the conflict. To subscribe to the Covenant, the oath-taker relied on the recommendation of the Westminster Assembly and the Parliament, and the idea that the study of scripture could provide a unitary religious truth. However, royalist and anti-Covenant attacks had begun to apply pressure on this fiction, and the vague and flexible language that had been designed to make the Covenant acceptable to a wide section of society meant that readers were bringing their own meaning to the Covenant, and therefore each reader was swearing to different ends. As the anonymous author of *A Briefe Discourse* argued, in the pursuit of ‘the best Reformed ... Doth not the Independent meane one thing, and the Presbyterian another’?⁶²⁴ By revealing the Covenant to be subjective, those who opposed it could charge it with being unlawful, ineffective, and endangering the souls of those that took it.

The Solemn League and Covenant conflated law and religion, which gave parliamentarian pamphlets rhetorical opportunities, but this conflation at times threatened the parliamentary case as a whole. Arguments over past and present lawful religion had, for example, led to pamphleteers conceding that Parliament had erred in the past, thus weakening the arguments of parliamentary supremacy to protect new religious realities. Dissonance between the legal and religious frameworks meant that

⁶²² *Ibid.*, p. 11.

⁶²³ William Prynne, *A full reply to certaine briefe observations and anti-queries on Master Prynnes twelve questions about church-government: wherein the frivolousnesse, falsenesse, and grosse mistakes of this anonymous answerer (ashamed of his name) and his weak grounds for independency, and separation, are modestly discovered* (Printed by F.L. for Michael Sparke Senior, [19 October] 1644) E.257[7], p. 14.

⁶²⁴ *A Briefe discovrse declaring the impiety and unlawfulness of the new covenant*, p. 11.

Parliament was losing sole authority over the ability to declare the law, as well as its supremacy over religion.

Far from bringing together the political nation, the Solemn League and Covenant acted to crystallise the differences between those who felt able to trust the Parliament absolutely, and those who felt that they could only trust the Parliament conditionally. By making the Solemn League and Covenant discursively cumulative in its legitimating tactics, rather than breaking with the past framework, the Covenant could demand that those who took it believed Parliament absolute, and that anything they did would be legal. The Covenant combined this belief in parliamentary sovereignty with the realities of a religious settlement that looked towards a uniformity of religion. By implying that the Scottish system was compatible with the Word of God, a Presbyterian settlement looked inevitable, and because of Parliamentary absolutism, Parliament could enforce uniformity. The Solemn League and Covenant thus threatened to make secular and religious obedience absolute.

CHAPTER 4: PRINTERS, PUBLISHERS AND THE PRODUCTION OF PAMPHLETS

The previous three chapters have charted the polemic through its authors, whether anonymous or identified, and have focused on climactic moments when the nature of the conversation shifted, or the framework of the discussion was transformed. It has described how some authors used an imagined reader in order to solve problems caused by the polemical debate, and the extent to which this technique came to influence and direct how the argument was conducted. This chapter will focus on the parliamentary publishers and printers who facilitated this public argument, the study of which has often been neglected by historians of political thought and thinking.⁶²⁵ Through examination of the ways that they interacted with and could attempt to influence the political conversation, it becomes apparent that printers and publishers played two crucial roles. Firstly, printers and publishers were the means by which authors, and other political actors, could speak to the reader – they were the gatekeepers by which ideas could be distributed. Secondly, printers and publishers had a number of choices that they could make which had significant impact on the nature of the polemic that was produced. The decision to print or finance a work, or refuse to, was itself a political as well as a business choice, and evidence increasingly suggests that printers and publishers were able to maintain an impressive degree of coherence in their output, either through eagerness to print certain types of works, or remaining silent on issues that they found objectionable. This chapter argues that publishers and printers emerge as key actors in the transformation of abstract principles to concrete positions, and that methodical study of their works reveals them to be important political agents in the early 1640s.

A methodical study of individual publishers and the works on which they put their imprint allows for an examination of the kinds of arguments they had affinities with, and what arguments they had aversions to. For certain publishers in particular, it is possible to see clear and coherent political imprints and biases that shape their output. Printers, too, can be seen to act politically, either through press campaigns or through reluctance

⁶²⁵ This chapter focuses on Parliamentary printing because it is understudied compared to that of royalist printing in Oxford – on this, see Falconer Madan, *Oxford Books: A Bibliography of Printed Works Relating to the University and City of Oxford or Printed or Published There, with Appendixes, Annals and Illustrations* (Oxford, 1912), an exhaustive study of books produced in Oxford, but also containing details of re-productions in London.

to print certain kinds of works. Such a focus offers snapshots of the kinds of demands that were being made on political actors in this period, and the ways that certain publishers and printers responded to them. However, while the studying of publishers through their imprints restricts the material available to historians to material that was given their imprint, the study of printers offer further opportunities. Because of the physical evidence that is left by printers' use of woodcuts, a historian can establish who printed a certain work without any other identificatory evidence. Such analysis allows us to examine in greater detail how political events, ideas and expediencies acted to divide the parliamentary coalition. In this way, this chapter identifies a series of political principles that certain printers and publishers had to face and square themselves with in order to continue to construct meaning in response to the conflict, while remaining committed parliamentarians. It argues that we need to consider printers and publishers as political agents who simultaneously distributed and constructed meaning, rather than just relaters of pre-packaged information.

Historians have only recently begun to truly explore the possibilities that printers themselves were political agents. The most important contribution to this has been Peacey's work on the collaboration between the presses of Bishop and White, the propagandist Parker, and parliamentary grandees, which constituted a radical mouthpiece from within Whitehall.⁶²⁶ David Como has emphasised the importance of the June 1643 'Ordinance for the regulation of printing' as a catalyst for discussion, and described an underground environment where 'new ideas bled into each other'. As 'parliamentary enthusiasts of different ideological shadings rubbed shoulders and debated in an increasingly volatile environment', there was an expansion of the parameters of religious discussion.⁶²⁷ Como's work is particularly important as it emphasises the role that printers played within this escalation. In his study, printers are given agency to make choices about the works they were willing to print, and have the potential at least to be increasingly partisan.⁶²⁸ Similarly, work by Braddick on John Hammond has argued that his imprint had a political identity that he did not deviate

⁶²⁶ Peacey, "Fiery Spirits".

⁶²⁷ David R. Como, 'Print, Censorship, and Ideological Escalation in the English Civil War', *Journal of British Studies*, 51 (2012), p. 823.

⁶²⁸ *Ibid.*, pp. 820-9. For the text of the ordinance, see Firth and Rait (eds), *Acts and Ordinances of the Interregnum*, pp. 184-6.

from, and that he himself was a political agent within the turbulent events of the 1640s.⁶²⁹ Hughes's examination of *Gangraena* delved into and revealed a much wider Presbyterian printing culture, and has encouraged focus to be drawn away from just the 'radical' printers towards a more methodical survey of print.⁶³⁰ Work by McElligott on royalism in the later 1640s attempted to uncover an underground royalist print network, and emphasised that their motivations could be ideological, rather than just financial.⁶³¹ Complementing this work, Tubb examines Independent presses from 1648–9, and argues that the motivation to print often came from the fact that printers believed in what they were printing.⁶³² Rather than impartial and profit-driven, printers are increasingly seen as politically motivated and partisan.

Historians undertaking this kind of study have done so in two ways. The first group of historians attempt to identify and attribute anonymously printed works to printers. Historians such as Como and David Adams examine the proto-Leveller printing movement through ornaments and type, and Peacey uses factotums and printers' marks to identify the printers of pamphlets. The second group of historians use surviving historical evidence – whether detailed imprints or surviving manuscripts – to define their sample of texts, such as Hughes, McElligott and Braddick. Both these approaches have limitations. The former method produces conclusions that are open-ended unless the entire body of surviving works are consulted – more works from the presses of interest might be found, for example, that contradict the conclusions that the historian comes to. Furthermore, working with anonymous works often risks presupposing that printers worked anonymously because they were acting in an actively political way, or that they were acting alone. Anonymity on the part of the publisher does not necessarily mean it was the printer who was acting with agency.

⁶²⁹ Michael J. Braddick, 'John Hammond and the Explosion of Print: Commercial and Political Opportunities', in Jason Peacey and Giles Mandelbrote (eds), *Collecting Revolution: The History and Importance of the Thomason Tracts* (forthcoming).

⁶³⁰ Hughes, *Gangraena*, p. 401; Ann Hughes, 'Approaches to Presbyterian Print Culture: Thomas Edwards's *Gangraena* as Source and Text', in Jennifer Andersen and Elizabeth Sauer (eds), *Books and Readers in Early Modern England: Material Studies* (Philadelphia, 2002), pp. 102–3.

⁶³¹ Jason McElligott, *Royalism, Print and Censorship in Revolutionary England* (Woodbridge, 2007), pp. 127–49.

⁶³² Amos Tubb, 'Independent Presses: The Politics of Print in England During the Late 1640s', *Seventeenth Century*, 27 (2012), p. 300.

The latter method is often reliant on the information that can be found in imprints, and so can be limited to studying works that printers or publishers either chose to put their name to, or decided were not of a nature that they needed to anonymise the title page.⁶³³ In this sense, what a historian is studying may be just a small part of what may have been a much larger printing operation, with a number of works that might contradict these studied. Either approach can, however, produce important results that shine much-needed light onto printing practices in the 1640s, and until a methodical survey has been conducted on the Thomason Tracts using attributed printer's stock to identify which presses produced the anonymous material, it is necessary to accept the limitations that either method brings with it.

The purpose of this chapter is to assess how typographic and bibliographic study can contribute to our understanding of print in the early 1640s. It will do this by using the output of two prolific parliamentarian publishers – Henry Overton and Thomas Underhill – who have been identified as being on either side of the Independent/Presbyterian split.⁶³⁴ These publishers were selected because they were the third and fourth most active publishers from March 1642 to July 1646, coming after Husbands and John Wright (who were frequently employed by Parliament to produce works), and because their output provides a regular number of works throughout the period in question.⁶³⁵ (A similar technique could be used on publishers that produced fewer works, such as Christopher Meredith and Robert Bostock, who were also able to maintain clear identities throughout the period.) By comparing their outputs, this study will identify three points of departure between Overton and Underhill: the nature of parliamentary sovereignty, the Solemn League and Covenant, and the future form of church settlement.

Using Overton and Underhill as a springboard, this chapter will then examine the printers who created the anonymous works which were published around the times when Underhill's and Overton's political and religious positions diverged in order to demonstrate in greater detail how these moments of frantic printing operated, and

⁶³³ This is, of course, to suppose that printers were self-aware enough of their output to consider doing this.

⁶³⁴ Coffey, *John Goodwin*, p. 121; Hughes, *Gangraena*, pp. 374-5.

⁶³⁵ Henry Overton had at least 88 works printed for him, not including those that he collaborated with other publishers on, followed by Thomas Underhill with 84.

investigate which printers were printing anonymously at those times, and what they were arguing. By examining these in greater detail, we can see much wider divisions within printers and publishers, which fed off and into contemporary conversations. Only 15 percent of Thomason's collection of pamphlets, published between March 1642 and July 1646, have both an attributed printer and publisher, and 36 percent do not have information about who the work was either printed for or financed by. 68 percent of Thomason's pamphlets in this period were anonymously printed, but by using bibliographic and typographic methods, it is often possible to ascertain who printed the work, and thus reconstruct in more detail how the printed polemic worked.

I HENRY OVERTON

Overton has been noted by various historians as having been an important Independent publisher.⁶³⁶ However, the extent to which his imprint provided a clear and coherent political identity has been understated. Overton put his name to some 88 works between March 1642 and July 1646. At the beginning of the period he published a number of works on Ireland, detailing the horrors in the aftermath of the Irish Rebellion and encouraging more efforts to raise a proper military force there.⁶³⁷ Over the autumn of 1642 he published several works that detailed the preparations for war in Portsmouth,

⁶³⁶ See, for example, Coffey, *John Goodwin*, p. 121. For a list of works published by Overton, see Appendix 33.

⁶³⁷ See George Goring, *A Relation of the sundry occurrences in Ireland from the fleet of ships set out by the adventurers of the additionall forces by sea. With the names of the ships, and the commanders of them, and their severall burdens, and number of men in every ship* (Printed by E.G. for Hen. Overton, [13 August] 1642) E.239[4]; *Severall passages of the late proceedings in Ireland. Being taken out of certaine letters newly received from thence, which were sent to a merchant here in Colemanstreet London* (Printed for Henry Overtrn [sic], FD: 16 September 1642) E.117[17]; Alexander Forbes, *A true copie of two letters brought by Mr. Peters, this October 11. from my L. Forbes from Ireland* (Printed by L. N. for Henry Overton, [12 October] 1642) E.121[44]. Other works include *A confutation of the Earle of Newcastles reasons for taking under his command and conduct divers popish recusants in the northerne parts; wherein is shewed both the unlawfulness, and danger of arming of papists: being a thing of main consequence for all true Protestants to take present and speciall notice of* (Printed for Henry Overton, [26 January] 1643) E.86[13]; *Speciall nevves from Ireland newly received in a letter from a Gentleman of good worth in Dublin to a Friend in London; shewing the present condition of that poore Kingdome, and the manner of the great victory, which God, most miraculously, hath given to the poore Protestants there* (Printed for Henry Overton, FD: 01 March 1643) E.91[18]; *A full and true relation of the late great victory, obtained by the Protestants against the rebells in Ireland; in which is declared the manner of the fight, with the number of those that are slaine; and the names of such men of ranke and qualitie, that are either slaine or taken prisoners. All which was sent from Dublin in a letter, dated the 5. of this instant moneth of Aprill, and received the 11. of the same, 1643* (Printed for Hen: Overton, and Edward Blackmore, FD: 12 April 1643) E.96[6].

London and Dorchester, as well has a work by Goodwin urging the citizens of London to hold fast as they were the 'great barre' between the malignants and 'their desires', and a great example to the rest of the country.⁶³⁸ In December 1642 he published *Neutrality Condemned*, which attacked the recommendations for pacification from Banbury and warned against an 'unnatural' peace.⁶³⁹

Committed readers of Overton's publications, then, would be well informed about the conflict in Ireland, and have read many works that linked royalists to the rebellion there.⁶⁴⁰ They would have read a number of works that encouraged the continuation of the war, none that contemplated peace, and works that attacked the cavaliers both individually and as a group.⁶⁴¹ From 1643, Overton's readers would have increasingly encountered works that painted the conflict as a godly conflict, between good and evil. This ranged from Goodwin's initial reframing of the conflict as one of supreme religious significance to works that argued that the conflict was 'God's unquestionable cause'.⁶⁴² Overton was a member of Goodwin's church which seems to have impacted many of his publications and his understanding of the conflict – most notably in the anonymously

⁶³⁸ John Goodwin, *The butchers blessing, or The bloody intentions of Romish cavaliers against the city of London above other places, demonstrated by 5. arguments, to the Right Honourable the Lord Major, the sheriffes, and other the religious and worthy inhabitants of the said city* (Printed for Henry Overton, [04 November] 1642) E.242[4], p. 3; *A true relation of the late proceedings of the London Dragooneers, sent down to Oxford, consisting of foure companies under the command of Sir Iohn Seaton* (Printed for Henry Overton, [24 Sep 1642]) E.118[39]; *A relation from Portsmouth, wherein is declared, the manner how the castle was taken on Saturday night last; as it was sent in a letter by one there present* (Printed for Henry Overton, [08 September] 1642) E.116[15]; *An abstract of some letters, sent from Dorchester, to some friends in London, dated the 3. of Septem. 1642* (Printed for Henry Overton, [06 September] 1642) E.115[22].

⁶³⁹ *Neutrality condemned, by declaring the reasons why the deputy-lieutenants, intrusted by the Parliament for Cheshire, cannot agree to the treaty of pacification made by some of that county: at Bunbery, December, 23. 1642. And may serve to prevent the like in other counties* (Printed for Henry Overton, [06 January] 1643) E.244[41].

⁶⁴⁰ As in, for example, *A confutation of the Earle of Newcastle's reasons*.

⁶⁴¹ George Lawrence and Christopher Love, *The debauched cavalier: or the English Midianite. Wherein are compared by way of parallel, the carriage, or rather miscarriage of the cavalleeres, in the present reigne of our King Charles, with the Midianites of old* (Printed by L. N. for Henry Overton, [18 October] 1642) E.240[43]; *Speciall nevves from the army at Warwicke since the fight sent from a Minister of good note, to an alderman here in London* (Printed for Henry Overton, FD: 27 October 1642) E.124[33].

⁶⁴² Goodwin, *Anti-cavalierisme*; Price, *Spirituall snapsacke*; *Powers to be resisted*. On the first work, see Coffey, *John Goodwin*, pp. 85-9. On the third work, see Allen, *English Political Thought, 1603-1660*, pp. 477-81.

authored *Powers to be Resisted*. J. W. Allen is correct to link this pamphlet to Goodwin's work, stating that 'in both there is visible the same belief in a glorious coming reformation and the triumph of the Lord and His saints', but does not make the connection that Overton published both.⁶⁴³ Overton's readers would also have struggled to find references to the Solemn League and Covenant. On the rare occasion that they do mention it, the works he published took the precarious line that it was possible to refuse to take the Covenant and remain trustworthy. For example, *Powers to be Resisted* argued that 'A conscientious man may scruple the Covenant and refuse it', but he could not advise against it and remain honourable.⁶⁴⁴ Similarly, *The Independents Militarie Entertainment* produced the next year argued that just because soldiers refused to accept the Covenant, that did not mean that they wanted to betray the kingdom.⁶⁴⁵

Readers of Overton's output would also have been well informed on the benefits of Independency, even before the *Apollogeticall Narration*. In October 1643, Overton published *Satisfactions concerning Mixt Communions*, which detailed the lack of discipline in many parishes and encouraged congregationalism, and John Coffey has noted that while Goodwin may not have written it, he certainly endorsed it.⁶⁴⁶ Through 1644, Overton's output becomes almost universally about religious toleration and Independency, publishing Richard Mather and William Tompson's *Modest and Brotherly answer to Mr. Charles Herle his book against the Independency of Churches; M.S. to A.S. With a plea for Libertie of Conscience*, which defended the Dissenting Brethren from attacks by Adam Steurt; and John Cotton's *Keyes of the Kingdom*, which in part was written to challenge the authority of synods.⁶⁴⁷ Thomas Weld's *Answer to W.R* defended New England churches from printed attacks; Goodwin's *Theomachia* in the autumn of

⁶⁴³ Allen, *English Political Thought, 1603-1660*, p. 481.

⁶⁴⁴ *Powers to be resisted*.

⁶⁴⁵ *The independants militarie entertainment. Or, Certaine reasons and arguments why independants ought not only to be admitted into the army raised for defence of church and state, but also both by law of God, nature, and nations, are required to put their hands to the plough of the kingdome* (Printed for Henry Overton, [24 April] 1645) E.278[28], pp. 5-6.

⁶⁴⁶ Coffey, *John Goodwin*, p. 104.

⁶⁴⁷ Richard Mather and William Tompson, *A modest & brotherly ansver to Mr. Charles Herle his book, against the independency of churches*, (Printed for Henry Overton, [15 March] 1644) E.37[19]; John Goodwin, *M.S. to A.S. with a plea for libertie of conscience in a church way*; John Cotton, *The keyes of the kingdom of heaven, and power thereof, according to the VVord of God* (Printed by M. Simmons for Henry Overton, [14 June] 1644) E.51[4].

1644 argued that the suppression of some doctrines could threaten ‘*fighting against God*’, and his *Innocencies Triumph* defended his works against attacks from Prynne.⁶⁴⁸ Overton also produced works such as Henry Burton’s *Vindication of Churches commonly called Independent*, and William Dell’s *Power from on High* (which argued that ‘*To preach the Word, that is the true Spirituall and living Word of God*’ and that a minister who could not preach according to his conscience would run a ministry that was ‘*cold and hath no heate in it*’).⁶⁴⁹ His works constituted the bulk of pro-toleration and pro-liberty of conscience works in this period. Overton’s output, however, also had a clear political identity before the polemical split of the Independents and Presbyterians. His products believed that the Parliament were fighting a godly war, and were sceptical about the Covenant, and his output closely mirrored the opinions of Goodwin.

II THOMAS UNDERHILL

Like Overton, Underhill has been identified as a partisan bookseller, in this case broadly for Presbyterianism.⁶⁵⁰ From the beginning of the conflict, his name appears on many key pamphlets such as *The Speech of Denzell Holles* from the summer of 1642, parts of which were rehashed and repeated as part of Bishop and White’s press campaign. This work argued that Parliament ‘creates the Law’ by which society is governed, protecting religion and the subject alike, and this tone was followed in the works to which Underhill put his name as publisher, whether they were theory, poetry or news.⁶⁵¹ After

⁶⁴⁸ Thomas Weld, *Answer to W.R. his narration of the opinions and practises of the churches lately erected in New-England* (Printed by Tho: Paine for H. Overton, [27 July] 1644) E.3[18]; John Goodwin, *Theomachia, or, The grand imprudence of men running the hazard of fighting against God, in suppressing any way, doctrine, or practice, concerning which they know not certainly whether it be from God or no* (Printed for Henry Overton, [07 October] 1644) E.12[1]; John Goodwin, *Innocencies triumph. Or An ansvver to the back-part of a discourse lately published by William Prynne, Esquire, intituled, A full reply, &c.*, (Printed for Henry Overton, [26 October] 1644) E.14[10].

⁶⁴⁹ Henry Burton, *A vindication of churches, commonly called Independent: or A briefe ansvver to two books; the one, intituled, Twelve considerable serious questions, touching church-government: the other, Independency examined, unmasked, refuted, &c.*, (Printed for Henry Overton, [14 November] 1644) E.17[5]; William Dell, *Power from on High, or, The Power of the Holy Ghost Dispersed through the whole body of Christ*, (Printed for Henry Overton, [08 May] 1645) E.282[8].

⁶⁵⁰ Hughes, *Gangraena*, pp. 374-5. For a list of works published by Underhill, see Appendix 34.

⁶⁵¹ Holles, *The Speech of Denzell Holles*, p. 1; Marsh, *An Argument, or Debate in Law; Thanks to the Parliament*, (Printed for Thomas Underhill, FD: June 1642) 669.f.6[30]; *The Rider of the White Horse and His Army Their Late Good Success in York-Shiere, or, a True and Faithfull Relation of That Famous and Wonderfull Victory at Bradford Obtained by the Club-Men There with All the Circumstances Thereof and of the Taking of Leeds and Wakefield by the Same Men under The*

the first few months of conflict, in which Underhill had produced several newspaper pieces and a copy of Henrietta Maria's letter from the Hague, Underhill put his name to a pamphlet entitled *Equitable and Necessary Considerations*, in which it was declared that 'It is apparent to all (who are not naturally stupid, or wilfully blinde) that of late there is risen up (in arms) a combination of boysterous and violent men' aiming to divide the King and Parliament and rip down privileges of the free-born Subjects.⁶⁵² Those who sympathised with the idea of a peaceful settlement threatened 'submitting our necks to an Iron Yoake; No Parliament but such as would establish oppression and tyranny by Statute Law, and (besides other deposed pressures) would restore the Tyrannical Prelacy, High-Commission, and Star-Chamber'.⁶⁵³ A few months later, as the polemical debate questioned whether trust could be reassumed, Underhill published *A Plain Fault in Plain English*, whose author skilfully steered himself and the reader between Ferne and the author of *Plaine English* ('like two ships sailing, one going West and the other East, they must meet together in the wrong end of the world') to the 'moderation' of submitting their judgement to the Parliament.⁶⁵⁴ Later on in that month, Underhill published *Touching the Fundamentall Lawes*, an explosive tract that argued that it would be 'absurd' if the Parliament were bound by written laws.⁶⁵⁵ Building on this premise, the work later argued that because of the powers that Parliament should have, and the newly publicised Coronation Oath, it was difficult to see how the King's negative voice was sustainable.⁶⁵⁶ This theme was continued in later works that Underhill put his name to, including *Remonstrans Redivivus*, which argued that Parliament was limited by 'no Customes, no Presidents, nor Statutes', and 'from whose judgements there is no appeale'.⁶⁵⁷ Dedicated readers of Underhill's publications in 1642 and 1643, then, would

Command of Sir Thomas Fairfax, with the Manner and Circumstances Thereof from Good Hands, (Printed for Thomas Vnderhill, FD: 18 December 1643) E.88[23].

⁶⁵² *Equitable and necessary considerations and resoltions for association of arms throughout the counties of the kingdom of England and principality of Wales against the now professed combination of papists and other enemies of the protestant religion and English rights and liberties* (Printed for Thomas Underhill, FD: 26 December 1642) E.83[20], p. 1.

⁶⁵³ *Ibid.*, p. 3.

⁶⁵⁴ *A Plain favlt in plain-English*, (Printed for T. Vnderhill, [09 February] 1643) E.88[30], p. 3.

⁶⁵⁵ *Touching the fundamentall lawes*, p. 7.

⁶⁵⁶ *Ibid.*, pp. 9-11.

⁶⁵⁷ *Remonstrans redivivus*, p. 4.

have been well versed in arguments that demonstrated the dangers of adherence to statute law alone, and would have been reading a coherent and consistent understanding of the relationship between King and Parliament. For Underhill's readers, Parliament could be trusted to make the right decisions, and the people should not be allowed the ability to reassume power (and would have no reason to anyway). Their news focused on local struggles against Royalism and royalists, especially Prince Rupert and Henrietta Maria.⁶⁵⁸

Underhill's output in 1643 shifted from predominantly anonymous works on the law towards works that were increasingly religious in nature. For example, in February 1643 his imprint appears on Woodward's *The [Cause Use Cure] of Feare*, which encouraged the reader not to judge the events that God had made come to pass as individual horrors, but rather to 'live by faith, and do not make haste, untill GOD hath wrought His whole worke, till we can put *all together*'.⁶⁵⁹ In March of the same year he published

⁶⁵⁸ See, for example, *Remarkable passages from Nottingham, Lichfield, Leicester, and Cambridge declaring what the Kings standard is, and the time and manner of its setting up* (Printed for T. Underhill, FD: 01 September 1642) 669.f.6[75]; John Paulet, *The Latest remarkable truths from Worcester, Chester, Salop, Warwick, Stafford, Somerset, Devon, Yorke and Lincoln counties most of which was sent up poste from judicious men of purpose to be printed : among other things there is a cruell and bloody speech of the Lord Paulets which he spake to his fellow souldiers in Sherbourne the 7 of September wherein he gives them order to kill men, women and children without mercie but to reserve such ministers as they could take that were well-wishers to the Parliament for to be flead alive and such like exquisite torments* (Printed for T. Vnderhill, FD: 17 September 1642) E.119[5]; *A true relation of the late battaile before Worcester, taken on Sunday last, Sept. 25 by a gentleman of the Innes of Court, (now in his Excellences armie) from the mouthes of Master Nathaniel Fynes, and many other commanders who were in the said skirmish, and sent up to Master Pym* (Printed for T. Vnderhill, FD: 30 September 1642) 669.f.6[80]; *The Queens Majesties message and letter from the Hague in Holland, directed to the Kings most excellent Majesty, &c, being sent in that ship which was forced to put in at Yarmouth by reason of a leake which she sprung at sea, and was bound for Newcastle, who had in her fifty commanders, besides other common souldiers, 400. barrels of powder, ten peeces of ordnance, and great store of other armes and ammunition, all which was sent to his Majesty* (Printed for T. Vnderhill, FD: 14 October 1642) E.122[12]; *The Rider of the white horse; The vnfaithfulnesse of the cavaliers and commissioners of array in keeping their covenants* (Printed for Thomas Vnderhill, FD: 11 January 1643) E.84[37]; *Prince Ruperts burning love to england: discovered in Birminghams flames*, (Printed for Thomas Vnderhill, [01 May] 1643) E.100[8].

⁶⁵⁹ Hezekiah Woodward, *The [cause vse cure] of feare. Or, Strong consolations (the consolations of God) cordiall at all times, but most comfortable now in these uncomfortable times, to fixe, quiet, and stablish the heart, though the earth shake, and make it stand stil* (Printed for Thomas Underhill, [25 February] 1643) E.90[23], pp. 66-7; *A staffe of comfort to beare up the spirit under the heaviest outward cases: with some answer from the Lord, to the deserted soule in Hemans case. Whereunto is annexed a speciall preservative against the hurtfull sword, of speciall use in these hard and fierce times, that the sword may doe us no hurt* (Printed for Tho: Underhill, [04 August] 1643) E.1184[2] p. 1.

Woodward's *The Kings Chronicle*, a politicised account of the Kings of Judah and their 'ordering of the Militia'.⁶⁶⁰ In July and August, Underhill's name appears on all of the imprints of the three-part *Englands Alarm to Warre*, which encouraged the war 'by command from heaven' – a mammoth undertaking that pitched Parliament's David against the devil-corrupted Saul, King Charles.⁶⁶¹ While faith in God and the Parliament would see the people through their ordeal, their struggle was a religious one of biblical proportions. After the Vow and Covenant, Underhill had his name on two imprints – *The Harmony of our Oaths*, and *The Late Covenant Asserted*, which worked to reassure their readers' consciences that the Vow was consistent with the word of God.⁶⁶² Furthermore, the *Third Alarm to Warre* made it clear that the Vow was about attacking the 'Evill Spirits', and that standing with the Covenant would make the devil and his children 'mad with rage' as it could 'destroy Satans Kingdome'.⁶⁶³ Consistent readers would have been able to draw parallels with David's struggle against Saul and the contemporary events around which the conflict was increasingly being framed.

From August 1643, Underhill's works take on a pro-Presbyterian angle that was not immediately apparent before. Presbyterian writers such as Burgess, Palmer, Woodward and Simeon Ashe make up a large portion of Underhill's output, and they produced

⁶⁶⁰ Hezekiah Woodward, *The Kings chronicle: in two sections; wherein vve have the acts of the wicked and good kings of Iudah fully declared, with the ordering of their militia, and grave observations thereupon* (Printed by G.M. for George Miller and Thomas Underhill, [08 March] 1643) E.92[16]; Underhill also appears on the imprint on the second version of these series, Hezekiah Woodward, *The Kings chronicle latter section. Wherein the way, the good kings, priest and people have taken for the well-posturing the kingdom, is fully declared, and made glorious before the eye of the beholder by Gods own right hand, for the encouragement of all, who will walk in the same way, observe the same steps and motions there; and fixe their eye upon the same marke, the glory of God; their owne and the peoples safety* (Printed by G.M. for George Miller and Thomas Underhill, [10 April] 1643) E.95[11].

⁶⁶¹ For this reading, see Anne Lake Prescott, 'A Year in the Life of King Saul: 1643', in Kevin Killeen, Helen Smith, and Rachel Willie (eds), *The Oxford Handbook of the Bible in Early Modern England, c. 1530-1700* (Oxford, 2015), p. 418.

⁶⁶² *The Harmony of our Oathes. Shewing, an argument betwixt the Oathes of Supremacie, Allegiance, the freemans oath, protestation and covenant* (Printed by T. Pain, and M. Simonds for Thomas Underhill, [28 July] 1643) E.62[5]; *The Late Covenant Asserted* (Printed for Thomas Vnderhill, [14 August] 1643) E.250[2].

⁶⁶³ *Englands third alarm to vvarre: stirring up the whole land as one man, to help the Lord, and his servant David (all the faithfull in the world) against most bloody adversaries, mighty hunters before the Lord* (Printed for Thomas Vnderhill, [03 August] 1643) E.63[9], p. 3.

works that proclaimed the benefits of the Presbyterian system.⁶⁶⁴ Later, when the informal agreements that restricted open hostility between Independents and Presbyterians broke down, Underhill's output also played a key role in the fight against tolerationist works. For example, his name appears on the imprint of *A Review of a Certain Pamphlet* that defended Prynne and attacked John Lilburne early in 1645, and also appears on the title page of *A Friendly Check to Dr Bastwick*, which argued for a harder line to be taken against the Independents.⁶⁶⁵ In July 1646, a work with Underhill's imprint argued that 'all the Sects in the Kingdom shelter themselves under the wings of Independents', and a work earlier in the year had argued that while Independents pretended to be fighting for toleration, really they wanted to 'binde such a Catalogue upon the Presbyterians'.⁶⁶⁶ Underhill seems to have been committed in both the fight to defend against and condemn Independent attacks, and explain the benefits of the Presbyterian system.

⁶⁶⁴ Anthony Burgess, *The Difficulty of, and the Encouragements to a Reformation. A Sermon Preached before the Honourable House of Commons at the Publike Fast, Septem. 27. 1643* (Printed by R. Bishop for Thomas Vnderhill, FD: 27 September 1643) E.71[2]; Herbert Palmer, *Memorials of Godlinesse and Christianitie* (Printed by G.M. for Tho. Underhill, [03 January] 1644) E.1201[2]; Simeon Ashe and William Goode, *A particular relation of the most remarkable occurrences from the vnitied forces in the north under the command of those three approved and faithfull friends both unto the church and common-wealth Generall Lesly, the Lord Fairefax and the Earle of Manchester* (Printed for Thomas Vnderhill, [14 June] 1644) E.51[3]; Herbert Palmer, *The glasse of Gods providence towards his faithfull ones. Held forth in a sermon preached to the two Houses of Parliament, at Margarets Westminster, Aug. 13. 1644. being an extraordinary day of humiliation* (Printed by G.M. for Th. Underhill, FD: 03 January 1644) E.6[8]; Burgess, *Iudgements Removed*; Anthony Burgess, *The magistrates commission from heaven declared in a sermon preached in Laurencejury, London, the 28. day of Sept., 1644. at the election of the lord major* (Printed by George Miller for Thomas Vnderhill, [30 October] 1644) E.14[18a]; Anthony Burgess, *Romes cruelty & apostacie: declared in a sermon preached on the fifth of November, 1644. Before the Honourable House of Commons* (Printed by George Miller for Tho. Vnderhill, FD: 05 November 1645) E.19[16]; Hezekiah Woodward, *Inquiries into the causes of our miseries, whence they issue-forth upon us: and reasons wherefore they have born us down so low; and are like to carrie us yet lower* (Printed for Tho. Vnderhill, [23 December] 1644) E.22[1]; Herbert Palmer, *The soule of fasting: or Affections requisite in a day of solemne fasting and humiliation. According to the pattern, Neh. 9.5. &c.* (Printed by M. Simmons for Thomas Underhill, [25 January] 1644) E.1182[1]. On these Presbyterians, see Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550-1653* (London, 2003), p. 568.

⁶⁶⁵ *A review of a certain pamphlet under the name of one John Lilburne* (Printed for Thomas Underhill, [14 April] 1645) E.278[4]; *A friendly check to Dr Bastwick: sent unto him in a letter from a Presbyterian friend* (Printed for Tho. Vnderhill, [11 September] 1645) E.300[18].

⁶⁶⁶ *A glasse for vweak ey'd citizens: or a vindication of the pious, prudent and peaceable petition (to the Honorable the Lord Mayor, aldermen and commons in Common-Council assembled) now in agitation, from the false aspersions and calumniation of a seditious pamphlet, intituled, A dialogue, &c.* (Printed for Tho: Underhil, FD: 19 June 1646) E.341[5], pp. 4-5.

Furthermore, Underhill's output was absolutely in favour of the Solemn League and Covenant, from its inception and throughout the time period of the study. Published by Underhill, Palmer wrote in August 1644 that there was a need for a '*more careful observation of our late COVENANT*', and Underhill twice published Philip Nye's defence of the Covenant – that it was solemn, and its end great and honourable – once in 1643 and again in 1646.⁶⁶⁷ The anonymous *A Glasse for Weak Eye'd Citizens*, dated by Thomason in June 1646, argued that there was no danger to fear so long as the Covenant was unbroken.⁶⁶⁸ Importantly, then, nothing in Underhill's output from summer 1643 onwards argued in favour of an Independent settlement, and neither did it move away from supporting the Solemn League and Covenant.

Overton and Underhill were two of the most prolific publishers in the early 1640s, and both had a clear, coherent identity in their output. We can see how their works were made up of broadly similar material from the beginning of the conflict, and became increasingly religious in nature from the spring to the summer of 1643. The key point of departure between Overton and Underhill seems to have been in September of 1643, and concerned support of the Solemn League and Covenant – Overton was clearly not interested in discussing the benefits of the Covenant, whereas Underhill was interested in ensuring that the Covenant was kept. However, while Underhill was able to put his name to several works that argued a clear understanding of the constitution, there is something of a dearth in Overton's output of political texts. By investigating the differences between Underhill's and Overton's output, and that of their preferred printers, it is possible to see an increasing fragmentation within the parliamentary coalition, and how issues of the nature of parliamentary power split parliamentary works in this period.

⁶⁶⁷ Palmer, *The glasse of Gods providence towards his faithfull Ones*; Henderson and Nye, *The Covenant: with a narrative of the proceedings and solemn manner of taking it by the Honourable House of Commons, and reverent Assembly of Divines the 25th Day of September, at Saint Margarets in Westminster*; Philip Nye, *The excellency and lawfulness of the Solemne league and covenant. Set forth in a speech, or exhortation made by Mr. Phillip Nye to the Honorable House of Commons and reverend assembly of ministers at their taking the said Solemne league and covenant* (Printed by W. Wilson, for Tho. Vnderhill, [26 January] 1646) E.318[7].

⁶⁶⁸ *A glasse for vweak Ey'd citizens*, p. 2; *Toichoruca: Or, Independents razing their owvn foundation. By which all (that will not shut their eyes) may see deep iniquities, long veiled under pretence of conscience, clearly discovered* (Printed for Tho. Vnderhill, [19 March] 1646) E.328[23], p. 3.

III PRINTERS AND PARLIAMENTARIANISM

I. THE NATURE AND EXTENT OF PARLIAMENTARY POWER

From 1642, and especially towards 1643, Underhill's output was predominantly in favour of an absolutist Parliament. His publications consistently warned the readers of a tyranny of statute law if the meaning was ignored for the letter. This was presented, especially by the anonymous author of *A Plain Fault in Plain English*, as a fundamental difference in how to understand the power of Parliament. For the anonymous author of *A Plain Fault*, if members of Parliament were required to focus too much on public opinion, then they voted 'like men in chaines, not their owne votes and consciences, but the votes and opinions of others'.⁶⁶⁹ Those such as the anonymous author of *Plaine English* threatened the power of Parliament by suggesting that Parliament needed to directly follow the demands of the people. Parliament, rather, was supreme and their choices irresistible. Underhill's political and constitutional position can be compared to, and at times overlaps with, the press campaign described by Peacey which was run by Bishop and White between May and December 1642. Peacey argues that it was an orchestrated and constitutionally coherent campaign that aimed to encourage reluctant parliamentarians to openly profess that they had the power to justify their actions against the King.⁶⁷⁰ After showing that the presses of Bishop and White produced key works by Parker, Peacey argues that this was done with the support of the very highest of parliamentarian grandees, Pym and Saye, and suggests that several of the works may have been completed at the behest of the Parliament to 'stir up the people'.⁶⁷¹ Alongside this vivid description of a single press campaign, Peacey's network provides an important lesson in early-1640s propaganda: ideas could be repeated, repackaged and reiterated to maximise their persuasiveness.⁶⁷² Peacey's study observed a concentrated and deliberate campaign by two printers in the period, and this chapter aims to extend and also complement Peacey's work by examining the campaigns of other printers which have hitherto been disguised by anonymity.

⁶⁶⁹ *A plain favlt*, p. 6.

⁶⁷⁰ Peacey, "Fiery Spirits".

⁶⁷¹ *Ibid.*, p. 15.

⁶⁷² *Ibid.*, p. 17.

Peacey's account culminates in *A Discourse Betweene a Resolved, and a Doubtfull Englishman*, a work which encouraged those in Parliament to give a 'more open admission of their demands and a clearer statement of Parliament's power'.⁶⁷³ It could be that, after this work, it was thought that the press had completed its task. However, further investigation into Bishop and White, and one of the factotums that Peacey uses to identify their works, shows that their presses also printed the first edition of Herle's *A Fuller Answer* [Appendix 1:4&3] in December 1642.⁶⁷⁴ In addition, the press continued to work with Herle through the next month, producing his *Convinc'd Petitioner* [Appendix 1:11] a few days later.⁶⁷⁵ Parker continued to author works such as the *Contra-Replicant*, although likely under a different printer. The two major works that defended parliamentary absolutism, then, came from the same press which had clear and decisive connections to Pym and Saye, who also seem to have held these views. As was discussed in Chapter Two, parliamentary absolutism had an unsteady relationship with the polemic, and this evidence shows that many of the absolutist works were part of a closely controlled campaign that drip-fed ideas.

The constitutional line promulgated by Bishop and White's press unequivocally placed absolute power in the Parliament. As Peacey acknowledges, this was an extreme position, and was an effort to emphasise that Parliament could (and should) be sovereign. A number of printers, however, proved willing to follow this line of argument and echo the sentiments of Bishop and White's output. Most important of these was Miller, who either benefited from a relationship with Bishop and White, or was willing to print very similar works. For example, early in the printing campaign he printed texts that were then lifted by Bishop and White in order to argue that the Parliament, not the King, was the foundation of the Law.⁶⁷⁶ His press was willing to echo Parker's theories almost word for word, and eventually in early January 1643 printed the second edition of Herle's *A*

⁶⁷³ *Ibid.*, p. 21.

⁶⁷⁴ Herle, *A fuller answer*, sig. A2r, p. 1.

⁶⁷⁵ *The convinc'd petitioner*, p. 1.

⁶⁷⁶ Holles, *The speech of Denzell Holles*, p. 1.

Fuller Answer [Appendix 4:T7&B1], the first of which was produced by Bishop and White.⁶⁷⁷

Quentin Skinner's study of the nature of political liberty in the civil war gives us further evidence of printers and publishers who were willing to give increasing powers to Parliament.⁶⁷⁸ Skinner argues compellingly that in the early 1640s the Parliament was becoming increasingly concerned that the existence of the royal prerogative was incompatible with the classical interpretations of liberty that many in the House were becoming increasingly reliant on. When the King rejected the Militia Bill, the Parliament decided to 'dig in its heels' and attempted to free the nation.⁶⁷⁹ According to Skinner, then, when Parker argued against the negative voice being pivotal to the constitution, he was arguing that the English people were not free, and when Goodwin defined what it was to be free, he was making a specific point about the constitution and its flaws. More generally, Skinner argues that there was 'broad agreement over two elements in the ideas of liberty' amongst parliamentarian writers.⁶⁸⁰ Firstly, that by nature men are 'free from subjection to positive law', and secondly that it was possible to 'live as a free man' even under the 'rule of law', so long as certain conditions were met.⁶⁸¹ The conditions mainly centre around the crucial idea that you could enjoy your liberty without being dependent on another's will. To Skinner, then, the beginning of the civil war was accompanied by extensive discussion about liberty.

From a bibliographic point of view, it is particularly interesting that the vast majority of the works that Skinner references come from just two print houses. The first printing

⁶⁷⁷ Charles Herle, *A Fuller Answer to a Treatise Vvritten by Doctor Ferne, Entituled the Resolving of Conscience Upon This Question, Whether Upon This Supposition, or Case (the King Will Not Defend but Is Bent to Subvert Religion, Lawes and Liberties) Subjects May, with Good Conscience, Make Resistance* (Printed for Iohn Bartlet) Wing H1558, sig. A2r, A3r.

⁶⁷⁸ Quentin Skinner, 'Classical Liberty and the Coming of the English Civil War', in Martin Van Gelderen and Quentin Skinner (eds), *The Values of Republicanism in Early Modern Europe* (Cambridge, 2002); Skinner, 'Rethinking Political Liberty', Skinner does not tackle the question of whether Parliament in this case would be arbitrary. For important rebuttals, see Cromartie, 'Hobbes, History, and Non-Domination'; Thomas, 'Looking for Liberty'; Coffey, 'Quentin Skinner'.

⁶⁷⁹ Skinner, 'Rethinking Political Liberty', p. 166.

⁶⁸⁰ *Ibid.*, p. 157.

⁶⁸¹ *Ibid.*

press was that of Bishop and White, discussed above and by Peacey, and printed Parker's *Observations*, the anonymous *An Honest Broker* [Appendix 1:4]⁶⁸² and Goodwin's *Anti-Cavalierisme*. The second was operated by Thomas Paine and Matthew Simmons, and they printed the *Debate-in-Law* (for Underhill) and *A Sovereign Salve*. If Skinner's debate over political liberty did take place, it did so from presses that were heavily invested in the parliamentary cause, and from presses that were sympathetic to the idea of investing Parliament with increasingly arbitrary powers. Works from Bishop and White's presses have been briefly discussed above, and might benefit from being considered as part of that campaign. The works from the presses of Paine and Simmons which Skinner references seem to be more complex in their nature. Marsh's description of the law sits a little uneasily with the idea of liberty as it bound everyone and their property towards the idea of the commonwealth, which could and would mean that personal liberty was sacrificed to the idea of a commonwealth that was wholly controlled and judged by Parliament.⁶⁸³ A similar message was given by *Truth and Peace Honestly Pleaded* (discussed above), anonymously printed by Paine and Simmons [Appendix 5:M1],⁶⁸⁴ and by *The Subject of Supremacie*, which was also anonymously printed by their partnership [Appendix 5:I1].⁶⁸⁵ Furthermore, the *Sovereign Salve* that was published the next year argued that Parliament should not be bound to the laws that existed, but rather had the power to create new laws whenever they wanted, with little to no protection of the people from it.⁶⁸⁶ A similar point is made by *Remonstrans Redivivus*, also printed by Paine and Simmons and with Underhill on the imprint, which argues that there may be no appeal from Parliament's decisions.⁶⁸⁷

Multiple anonymous works on similar themes can indicate a wider debate, but they can also be signs of a campaign to manipulate the print market and their readers. Indeed, Skinner's campaign overlaps with Bishop and White's to the extent that it is possible that

⁶⁸² *A miracle: an honest broker, or, Reasons urging a more liberall loane*, sig. A2r.

⁶⁸³ Marsh, *An Argument, or Debate in Law*, p. 13.

⁶⁸⁴ *Trvth and peace*, p. 1.

⁶⁸⁵ *The Subject of Supremacie: The Right of Caesar*, (Printed for Ben. Allen, [15 June] 1643) E.106[1], p. 41; On this work, see Allen, *English Political Thought, 1603-1660*, pp. 468-9.

⁶⁸⁶ *Sovereign salve*, p. 9.

⁶⁸⁷ *Remonstrans redivivus*.

Skinner is attributing a higher purpose to works that have been shown to be political interventions. The presses that created these works were not neutral – rather, they were partisan presses that were actively participating in the contemporary politics of the time, and which maintained a clear absolutist message. Because of this, they may have been willing to ignore the consequences of their arguments in order to score political points. In other words, rather than describing a general debate, it is possible that Skinner is actually describing the output of two highly politicised presses, both of whom believed that Parliament should claim increased powers.

Overton's preferred printers, Oulton and Dexter, might be studied to identify another way of understanding power and Parliament. Like the other printers discussed, they were committed parliamentarians and published accordingly, but did so in a way that distanced them from Parkerian arbitrariness. This might be seen most clearly in their response to the peace petitions of the winter of 1642/3. The aftermath of the Battle of Edgehill and the sack of Brentford had a significant impact on the morale of London, and peace petitions in December called for adherence to the 'knowne law' and lamented the 'decay of trade', the 'invasion of the Subjects Liberty' and the 'violation of our Religion'.⁶⁸⁸ Retorts to these peace petitions speculated that they originated in Oxford, and Thomason made a note that one text purporting to be by sincere peace petitioners was actually devised by the royalist Chillingworth.⁶⁸⁹ Anonymous responses came quickly from multiple print houses without bibliographical information provided on title pages. Bishop and White printed *An Answer to the London Petition* [Appendix 1:3],⁶⁹⁰ and

⁶⁸⁸ *The Londoners Petition*; John Hinton, *The humble petition of the peacefull obedient and honest protestants of this kingdome, presented unto the honourable House of Commons, by the gentlemen of the foure innes of court* (s.n., [December] 1642) E.181[35]; *A Modest Petition for a Happy Peace Offered; To the Right Honorable Assembly of Knights, Citizens, and Burgesses of the House of Commons the Humble Petition of the Inhabitants of the Citie and Libertie of Westminster*, (Printed for Thomas Purslow, FD: 15 December 1642) 669.f.6[96].

⁶⁸⁹ Thomason's annotation is on a pamphlet which collected a petition, a parliamentary reply and a further retort from the petitioners. The note suggests that Chillingworth was the author of the latter. The pamphlet is *The petition of the most substantiall inhabitants of the citie of London, and the liberties thereof, to the Lords and Commonns for peace. Together with the answer to the same. And the reply of the petitioners. Also a letter from a country gentleman to a member of the House of Commons, concerning the taking of Marlborough* (Printed by Leonard Lichfield, [06 January] 1643) E.244[39]; Peacey, *Politicians and Pamphleteers*, p. 256.

⁶⁹⁰ *An Answer to the London Petition*, (s.n., [14 December] 1642) E.130[18], p. 1. On the former work, see Peacey, "Fiery Spirits", pp. 19, where it is argued that Parker received and responded to the peace petition before it reached Parliament.

Richard Cotes printed *An Exact and True Relation* [Appendix 24:15]⁶⁹¹ a few days later.⁶⁹² However, the retort that seems to have had the most impact was *A Frivolous Paper* [Appendix 10:T7&A3] from the presses of Oulton and Dexter.⁶⁹³ Much more so than the other responses, this work focused on the terminology and content of the petition, rather than the act of petitioning at all. *A Frivolous Paper* claimed that ‘Malignant nature’ of the work could be uncovered by the suggestion that Parliament was ignoring the known laws, and that they thought that their predecessors could have been at fault.⁶⁹⁴ The work concluded that by watching out for ‘phrases and expressions’ such as the known laws, the reader could protect themselves from malignant interference.⁶⁹⁵

Royalists were able to use the term the ‘known laws’ in order to appeal to a legal certainty, which both emphasised the justness of their own cause, and the unprecedented nature of Parliament’s actions. Indeed, throughout the latter half of 1642, the language of royalism seems to have shifted towards focusing on the known laws rather than the language of the three estates, and Charles’s proclamations increasingly defer to the ‘knowne lawes’, perhaps thanks to the influence of Hyde.⁶⁹⁶ The term also acted as bait – to admit that Parliament could disregard the ‘knowne lawes’ sounded a lot

⁶⁹¹ *An exact and true relation of that tumultuous behaviour of divers citizens and others at Guild-Hall, December the 12. 1642. vvherein is related the businesse they pretend, their conference with my lord Major and court of common counsell, their cruelty to the souldiers, their breach of peace, and shamefull abuse to the citizens, with other remarkeable things* (Printed for B. A. & R. D., FD: 13 December 1642) E.130[15], sig. A2r.

⁶⁹² *An Answer to the London Petition; An Exact and True Relation of That Tumultuous Behaviour of Divers Citizens and Others at Guild-Hall.*

⁶⁹³ *A frivolous paper*, pp. 2,3. In many works that followed, the petition was also referred to as the ‘Frivolous Petition’, and Thomason annotated many of the pamphlets that referred to the peace petitions using similar terminology. *The Convinc’d Petitioner*; For Thomason’s annotations, see *An Exact and True Relation of That Tumultuous Behaviour of Divers Citizens and Others at Guild-Hall; The Londoners Petition.*

⁶⁹⁴ *A frivolous paper*, pp. 3-4.

⁶⁹⁵ *Ibid.*, p. 7.

⁶⁹⁶ This is unsurprising, given that, as Herle emphasised, two was more than one. For a similar argument, see Weston and Greenberg, *Subjects and Sovereigns*, p. 101. They argue that Ferne came to ‘correct’ the King’s language in the *XIX Propositions* away from the language of the mixed constitution. See also Ashton, who has highlighted a transition in the language of Royalism towards the condemnation of Parliament for relying on arguments based on necessity, in ‘From Cavalier to Roundhead Tyranny, 1642-1649’, pp. 186-7.

like they could disregard the laws in general. The term acted as a catalyst, and forced Parliament sympathisers to define exactly what the relationship between these laws and the three estates was in increasingly extreme ways.

For absolutist parliamentarians, this posed little challenge. Parker attacked the way that the law had been enforced, and argued that it needed to be enforced by a better body (by which he meant not judges, who in his eyes had failed to stop the King arbitrarily taxing, but rather the Parliament).⁶⁹⁷ Arguments along these lines – which focus on the judicial process rather than the legislative – may have been misinterpreted by many historians as an aversion to the law, but can (and arguably should) be read in a constitutional way.⁶⁹⁸ Replying to *A Complaint's* charge that Parliament was ignoring laws, a parliamentarian forgery argued that 'God will strengthen you to make precedents for posterity on better grounds of reason and law than your predecessors have made for you', and another argued that in order to 'maintaine and defend' the 'Lawes and Liberties', it was sometimes necessary for 'suspention' of these laws and liberties 'if occasion shall require'.⁶⁹⁹ For Parliamentary absolutists, Parliament could do what it wanted without redress because it could not betray the people.

However, the works printed by Oulton and Dexter demonstrate how Parliament could be obeyed yet not given absolute powers. According to works printed from their printing press, the peace petitions were 'frivolous' because they charged the Parliament with 'ignoring the known laws, as if they were ignorant ... or impotent', and this implied that the current Parliament might 'accuse the past Parliaments of folly'.⁷⁰⁰ In *A New Plea* the argument became clearer – the law was 'all former acts of Parliament never yet reserved [sic], together with the privilege of Parliament' – rather than whatever the Parliament

⁶⁹⁷ Parker, *Contra-Replicant*, p. 6.

⁶⁹⁸ Mendle, *Henry Parker*, ch. 6.

⁶⁹⁹ Hyde, *A complaint to the House of Commons* (Printed by Leonard Lichfield, [12 Jan] 1643) E.245[5], pp. 3-4; *A Ivst complaint or lovd crie of all the vvell-affected subiects in England against that false and scandalous pamphlet intituled, A complaint to the House of Commons and resolution taken up by the free Protestant subjects of the cities of London and Westminster and the counties adjacent* (s.n., [31 January] 1643) E.245[27] p. 3. The forgery duplicated the title page, supposedly to dupe potential customers of the genuine pamphlet into purchasing a parliamentarian retort.

⁷⁰⁰ *A frivolous paper*, p. 4.

believed to be so at the time.⁷⁰¹ *Knowne Lawes* [Appendix 10:S2],⁷⁰² produced later in the month, argued that the term was used to ‘amuse and abuse the simple with new epithets and ambiguous words’, and emphasised the need for the study of the law to understand it.⁷⁰³ *Knowne Lawes* had argued that ‘It is a knowne truth that the principles of Arts and Sciences are knowne only to those that by great industry and study search after them’, and its arguments were repeated twice almost word for word in July in *Will and Law* [Appendix 10:T1]⁷⁰⁴ and *The Discovery of Malignants* [Appendix 11:S1].⁷⁰⁵

The works in Oulton and Dexter’s output seem unwilling to shed the fiction that Parliament was simply judging the law, rather than acting as the executive, and saw the royalist invocation of the ‘known lawes’ to be the main threat to this fiction. By challenging the terminology, they could avoid discussing the real implications of the parliamentary case – that it was acting as sovereign. Their reluctance to grant Parliament absolute sovereignty may reflect a broader affinity to a notion that people might conscientiously object to actions taken by an estate on their behalf. For example, *A New Plea* argued that ‘the law of God, Nature, and Nations doth not bind me to beleve anything against experience’, and *Maximes of Mixt Monarchie* [Appendix 10:T1]⁷⁰⁶ argued that ‘For as much as *Royall* and *Politique* powers are Supreame, but not infallible, all men must bee armed with patience as well to suffer for well doing forbidden as to doe well when it is commanded’.⁷⁰⁷ Both these arguments borrowed heavily from Goodwin’s reiteration of active and passive obedience, which gave space for personal conscience

⁷⁰¹ *A new plea for the Parliament*. For attribution to Oulton and Dexter, compare the ornament on p. 1 with that in *A triall of the English lyturgie. Wherein all the materiall objections raised in defence hereof are fully cleared and answered* (Printed for Ben. Allen, [21 April] 1643) E.99[8], p. 1. Both woodcuts, on the title page and p. 1, can be found in Oulton and Dexter’s pamphlets [Appendix 10:Woodcut 1&Woodcut2].

⁷⁰² *Knowne lawes*, p. 1.

⁷⁰³ *Ibid.*

⁷⁰⁴ *Will and law*, sig. A1r.

⁷⁰⁵ *The discovery of malignants. By the known lawes, and will of the King*, sig. A1r. For example, *The Discovery* argued that ‘The truth is that the knowledge of the Lawes is removed from common capacities, and they are as principles of Arts and Sciences’ *ibid.*, p. 2; *Knowne lawes*, p. 1. See also *A new plea for the Parliament*, p. 4, which argued that royalists wanted to discourage learning.

⁷⁰⁶ *Maximes of mixt monarchie*, sig. A1r.

⁷⁰⁷ *A new plea for the Parliament*, p. 8; *Maximes of mixt monarchie*, sig. A3v.

when making these decisions (although for these decisions to be correct, the reader should side with Parliament).⁷⁰⁸ Their printing consistently stressed the importance of the mixed constitution. For example, in July 1642, they reprinted John Ponet's *A Short Discourse of Politique Power*,⁷⁰⁹ which emphasised the importance of the 'mixed state', with a preface that explained that while the 'Printer is not sure whether the Author be gone to God already ... or yet still in this life', the printer 'is pleased to put forth the worke, to the intent the travell of the doer be not lost, neither true English hearts frustrate at so worthy an instruction, unlesse they will willingly neglect their owne safegard, the state of their Countrey, and the preservation of their posterity'.⁷¹⁰ Their most important printing, of course, came towards the summer of 1643 after this groundwork had been laid. Hunton's *Treatise of Monarchy* refused to put an arbitrary power in Parliament, but rather argued that at some point, people had to choose in their own conscience whether what Parliament was doing was right, rather than simply be forced to go along with them.⁷¹¹

By refusing an arbitrary power in Parliament but acknowledging that they had the power to act the way that they did, Oulton and Dexter's output invested the people with an important autonomy to judge the Parliament's actions. This autonomy could be used to condemn previous parliaments (those that deposed monarchs, or those that condoned popery), but also protect against a hypothetical parliament that could tyrannise. Margaret Judson's reading of Hunton describes him as writing 'constitutionally', not just 'politically' like Parker and Herle, and if so, it might be that we need to consider Oulton and Dexter's output in a similar, if anachronistic, category.⁷¹²

⁷⁰⁸ The reader is directed to Goodwin and Burroughs in *A new plea for the Parliament*, p. 11. On challenging commands, see Goodwin, *Anti-cavalierisme*, pp. 18-9.

⁷⁰⁹ John Ponet, *A short treatise of politique povver; and of the true obedience which subjects owe to Kings, and other civill governours* (s.n., [July] 1642) E.154[36] For attribution, compare ornament on p. 3 with that in *A new plea for the parliament*, p. 1, and see fn. 702 for evidence that this was owned by Oulton and Dexter.

⁷¹⁰ Preface to Ponet, *A short treatise of politique povver*. On the original reception of this work, see Burgess, *British Political Thought*, pp. 60-6; Robert M. Kingdon, 'Calvinism and Resistance Theory, 1550-1580', in J. H. Burns and Mark Goldie (eds), *The Cambridge History of Political Thought 1450-1700* (Cambridge, 1991), pp. 194-200.

⁷¹¹ Hunton, *A treatise of monarchie*.

⁷¹² Judson, *The Crisis of the Constitution*, p. 405.

This affinity to mixed constitutionalism might be understood a little more when we consider the next work to come out of the Oulton/Dexter collaboration in February 1643, *A Short Discourse* [Appendix 10:13].⁷¹³ This work has been briefly examined by Sirluck and Wootton, but without the knowledge of who the printers were, it was impossible to properly compare its arguments with Oulton and Dexter's other constitutional works.⁷¹⁴ For the anonymous author, the differing spiritual interests of the country might not be so easily resolved because individuals had to settle with their conscience. As the work continued, 'We may safely conclude, that ... true Religion is a supernaturall thing, and a meere gift of God, not possible to be forced into mens soules'.⁷¹⁵ Sirluck argues that this was both the first 'serious' demand for toleration, but also a clear recognition that without it, settlement might be impossible.⁷¹⁶ While their constitutional and political affinities might have been derived from their religious pragmatism – which Dexter certainly had in abundance –⁷¹⁷ it is also possible that their output reflected a reluctance to grant to an estate an infallible power due to the parallel problems that some parliamentarian writers were already struggling with.⁷¹⁸ In other words, it is possible that Oulton and Dexter's output was aware that Parliamentary absolutism could be incompatible with religious toleration.

Oulton and Dexter, then, seem to have had a distinct and coherent understanding of the conflict and constitution, and were willing to make constitutional, political and religious interventions. Their work balanced fervent parliamentarianism with reluctance to invest an irrevocable power in Parliament. This manifested itself in their output attacking the royalist language that could (and eventually would) drive a wedge between their constitutional and legal understanding and that of parliamentarianism.

⁷¹³ *A Short discourse, touching the cause of the present unhappy distractions; and distempers in this Kingdome, and the ready meanes to compose, and quiet them* (s.n., [08 February] 1643) E.88[28], sig. A1r.

⁷¹⁴ Sirluck, 'Introduction', p. 80; Wootton, 'From Rebellion to Revolution', p. 655,

⁷¹⁵ *A Short discourse, touching the cause of the present unhappy distractions*.

⁷¹⁶ Sirluck, 'Introduction', pp. 79-81.

⁷¹⁷ For Dexter after July 1643, see Como, 'Print, Censorship, and Ideological Escalation'.

⁷¹⁸ See for example, the struggles of Peter Bland in *Resolved upon a question* and *A royall position*, where his legal argument was interpreted as justifying a regicide.

This constitutional faultline was tackled by other important interventions by both authors and printers. The printer Felix Kingston printed multiple works that took Parker's theories and attempted to make them palatable to the reading public, and in doing so introduced fail-safes and caveats to their absolute power. In September 1642, his press went further than other contemporaries in a debate around a hypothetical tyrannical parliament, and printed *A Discourse upon the Questions in Debate* [Appendix 23:Woodcut 1] which argued that the people must be able to forsake if it tyrannised.⁷¹⁹ Kingston's press also produced the much-examined later work *Plaine English* in January 1643, using the same ornamental letter as *A Discourse*.⁷²⁰ This pamphlet argued a similar point as *A Discourse*, and has been seen by some historians such as Wootton and Mendle to have been created to pressure the Parliament against vying for a too-easy peace settlement.⁷²¹ That these two works each relied upon the same understanding of the relationship between Parliament and the people, and came from the same anonymous press, seems to suggest that the choice to print these works was in itself a political act. Furthermore, it demonstrates that discussions of Parliament being arbitrary may have taken place before the possibility of an undesirable peace.

Other authors, such as Burroughs, faced head on Ferne's challenge to define what would happen if Parliament were to tyrannise. He supposed that the 'light of nature' would have to judge, but that it must be possible if the constitution was to be whole.⁷²² Burroughs was published by Robert Dawlman, who lent his imprint to several important interventions that might be categorised as 'conservative Independent' while working with the printers William Ellis and John Grismond, including *An Apologeticall Narration*⁷²³ and several works by Thomas Goodwin and Bridge.⁷²⁴

⁷¹⁹ *A discourse upon the questions*, pp. 1, 13.

⁷²⁰ Bowles, *Plaine English*, p. 2.

⁷²¹ *Ibid.*; For attribution, see Wootton, 'From Rebellion to Revolution', p. 655.

⁷²² Burroughs, 'A briefe Answer to Doctor Fernes Booke', p. 10.

⁷²³ Although there is no direct evidence, the woodcut on the title page is identical to that found on E.79[11], which on sig. A2r has an ornament that can be directly connected to William Ellis and John Grismond [Appendix 9:A1].

The positions of Oulton and Texter, Kingston and Burroughs make up part of a tradition of utilising the premise of an appeal to the people in order to justify siding with the Parliament without abandoning the ability to disagree with their past or potential future judgements. Until the Vow and Covenant of June 1643, printers, publishers and authors could have it both ways – Parliament could obtain their support, and an appeal to the people meant that a hypothetical but impossible tyranny could not lead to the slavery of the people at large. These theories could be used to support, not discredit, the Parliament. Looking at these works has further suggested that coherent constitutional and legal beliefs could be maintained in the first year of the conflict. Without investigating these anonymous printers, these connections are not apparent, and uncovering the interconnectedness of publications changes our picture of the political polemic.

II. THE SOLEMN LEAGUE AND COVENANT

The most visible rift between Underhill's and Overton's output is their differing responses to the Solemn League and Covenant, and this split mirrored the wider responses to the Covenant. Like the Vow and Covenant a few months before, the Solemn League and Covenant was accompanied by a press campaign that attempted to alleviate concerns about its contents, and persuade readers that divines and laypeople alike found it suitable to their consciences. When we consider the polemic alone, the shift in the framework of the debate seems to be seamless – there are a trickle of works discussing the Solemn League and Covenant and its benefits over the following few months, and the parliamentary polemic seems to have embraced the Solemn League and Covenant wholeheartedly.⁷²⁵ John Saltmarsh's *Solemn Discourse* argued that the Covenant was 'the last resort of the godly and wise Christian', and that within it there were 'such maxims as will make a kingdome holy and happy'.⁷²⁶ Ward's *Analysis, Explication and Application of*

⁷²⁴ William Ellis and John Grismond seem to have been willing to print most things – they have been studied by McElligott as part of a royalist network in the late 1640s. See McElligott, *Royalism, Print, and Censorship*, pp. 127-149.

⁷²⁵ Thomas Case, *The quarrell of the covenant, with the pacification of the quarrell* (Printed for Luke Fawne, [08 December] 1643) E.78[4]; John Saltmarsh, *A solemn discourse upon the grand covenant, opening the divinity and policy of it* (Printed for Laurence Blaiklock, [12 October] 1643) E.1208[1]; Smith, *The three Kingdomes healing-plaister*; Ward, *The Analysis, Explication, and Application*; Woodward, *Solemne League and Covenant*; Woodward, *Three kingdoms made one*.

⁷²⁶ Saltmarsh, *A solemn discourse upon the grand covenant, opening the divinity and policy of it*, pp. 9-10, 23.

the sacred and Solemn League and Covenant emphasised three main points: that it was possible to defend the King by protecting religion and liberty; that reluctance towards Reformation or attempting to divide the kingdoms were signs of malignancy; and the importance of remaining with the Scots.⁷²⁷ *The Three Kingdomes Healing-Plaister* focused much more on England than the other works, and emphasised again that attempts to divide subjects or fight against Reformation were signs of malignancy, although it allowed that ‘Kingdomes should not in every particular agree in government; that is no breach of the Covenant’.⁷²⁸ Woodward’s *Solemn League and Covenant* begins by chastising the reader for not understanding the Covenant before constructing a dialogue that attempted to persuade readers that they were not being urged to swear that the Scottish church system was perfect, ‘but it is as perfect as Possibly, their *Light* could bring them’.⁷²⁹ Woodward’s later work, *Three Kingdomes Made One*, was more conciliatory, and argued that the Covenant would make ‘the Kingdom like a wall of *brasse*’, engaging all men together as one.⁷³⁰

Curiously, however, none of the works that Thomason collected in these few months which explicitly defended the Solemn League and Covenant attributed a printer on their title pages, though all had publishers – John Dallam, Lawrence Blaiklock, Meredith, Francis Coles and Luke Fawne. But examination and comparison of the printer’s stock used for these pamphlets reveals concealed connections, and this is perhaps the reason behind the anonymity. At least two of the pamphlets – *A Solemn League* [Appendix 26:I1&T2]⁷³¹ and *Quarrell of the Covenant* [Appendix 26:T2&T3]⁷³² – have woodcuts that can be identified as being John Raworth’s, and another (*Ward’s Analysis* [Appendix 24:I5]⁷³³) uses one owned by Cotes. Furthermore, an ornament on *Three Kingdoms Made*

⁷²⁷ Ward, *The Analysis, Explication, and Application*, pp. 2-4.

⁷²⁸ Smith, *The three Kingdomes healing-plaister*, p. 9.

⁷²⁹ Woodward, *Solemne League and Covenant*, pp. 1, 4.

⁷³⁰ Woodward, *Three kingdoms made one*, p. 1.

⁷³¹ Woodward, *Solemne League and Covenant*, sig. A2r, p. 1.

⁷³² Case, *The quarrell of the covenant, with the pacification of the quarrell*, sig. A1r, A3v.

⁷³³ Ward, *The Analysis, Explication, and Application*, sig. A1v.

One [Appendix 25:l1]⁷³⁴ was used in a printing collaboration between Raworth and Cotes in November 1643, while the *Three Kingdoms Healing-Plaister* [Appendix 31:l1]⁷³⁵ was printed by Hammond. Cotes, with the assistance of Raworth, was producing a large number of works for both the City Common Council and the Parliament in October and November 1643, producing multiple works that bear his imprint (although without any attributed publisher). It was not usual for Cotes nor Raworth to print anonymously, and a comprehensive study by Braddick has suggested a similar conclusion about Hammond.⁷³⁶

The Solemn League and Covenant should not at this time have been a controversial topic to print discussion of – especially as efforts by Vane had given flexibility to the possibility, at least, of a non-Presbyterian church settlement – and therefore should not have required anonymous printing. Parliament were quick to endorse the Covenant and use it to justify their resistance in various declarations. As such, the decision to anonymously print these works looks to have been a tactic to imply a greater sense of consensus surrounding the Solemn League and Covenant than really existed.

The pamphlets – all visually distinct from each other, and often with separate publishers – would have been difficult to connect without knowledge of the ornamental stock of printers, and so would have effectively given the appearance of widely distributed and independent consensus. Furthermore, other individual or collaborating printers that had been adept at press campaigns seem to have been reluctant to help defend Parliament's new Covenant, suggesting that there was a void which pro-Covenant printers felt the need to fill. The reception of the Solemn League and Covenant was crucial to the parliamentary war effort – the Vow and Covenant had stripped polemicists and readers alike of the ability to use the law to justify their choices, and the summer of 1643 had

⁷³⁴ Woodward, *Three kingdoms made one*, p. 1.

⁷³⁵ Smith, *The Three Kingdoms healing-plaister*, p. 1. It should be noted that this ornament was previously owned by Richard Oulton [Appendix 10:l2], before Oulton left the print trade in June 1643 and sold his press.

⁷³⁶ Braddick, 'John Hammond'.

seen a dearth in the production of pamphlets.⁷³⁷ It can be concluded that the endorsement of the Solemn League and Covenant in the polemic, then, was mainly managed by a few presses with clear City and Parliament workloads, and may have been purposefully anonymised in order to appear to be the product of many presses, rather than just a few.

The absence of activity from other presses suggests an ideological discord to the direction that parliamentary justifications were going, and a further fragmentation of the parliamentary war effort. There were very few works – other than ones identifiably from Oxford – that openly attacked the Solemn League and Covenant. Indeed, we can make some sense of why certain printers proved reluctant to be forthright about the Solemn League and Covenant's importance when we consider (albeit relying on a teleological point of view) the later trajectories of the printers that had up to this point been crucial in defending Parliament: Como has focused on Dexter after June 1643 who was willing to print heterodox works, and the print careers of Paine and Simmons have received much attention especially from scholars of Milton.⁷³⁸ It would be surprising to see printers that have later been identified as having 'Independent' leanings defending a work that, despite the efforts of Vane, seems to have at least favoured a Presbyterian settlement.⁷³⁹

The silence of some presses, combined with the anonymization tactics of others, both worked to disguise the extent of dissatisfaction and discord in the parliamentary cause. Interestingly, printers and publishers who objected to the Solemn League and Covenant seem to have been able to refuse to print works that openly supported it, and could do this without openly undermining the overall parliamentary war effort. This subtle but deliberate identity might be thought of as a politics of silence – by refusing to engage with a point, their readers were stripped of the ability to comprehend it, and therefore would either have to go elsewhere for information, or join the printer and publisher in their position. Picking either option changed the shape of the political conversation, or

⁷³⁷ Thomason collected only 63 pamphlets in August, and 71 in September of 1643. By contrast, he had collected over 80 pamphlets for each the previous few months, and before then his monthly collections were over 100.

⁷³⁸ Como, 'Print, Censorship, and Ideological Escalation'; Sharon Achinstein and Benjamin Burton, 'Who Printed Milton's *Tetrachordon* (1645)?', *The Library*, 14 (2013).

⁷³⁹ On this, see Coffey, *John Goodwin*, p. 121.

restricted the ability of political actors to get their message through the presses, thereby influencing the way that these actors were able to act and present their case. What is crucial, however, is the speed at which certain printers were able to establish their own political position on this subject, which suggests that certain printers had a clearer political identity that they are sometimes allowed, and that their sense of it was developing before the Solemn League and Covenant. The responses (or lack of responses) that had been triggered by political events were the manifestation of the ideals of printers and publishers, not vice versa.

III. CHURCH SETTLEMENT

By January 1644, the relationship between Presbyterians and Independents, and their agreement that polemic should focus on popery rather than settlement, came to a catastrophic collapse with the printing of *An Apologeticall Narration*. Modern scholarship has suggested that within the Westminster Assembly there might not have been the animosity that the dichotomy of the polemic suggests, and Hunter Powell has emphasised in his recent monograph based on minutes from the Assembly the lengths that the clergymen were willing to go to find compromise and accommodate differing opinion.⁷⁴⁰ This understanding of the religious debate significantly contrasts with the furious battle taking place in pamphlets. Outside of the assembly, the polemic may have been written by partisan authors, financed by partisan booksellers and printed by partisan printers. Much of their business was predicated on these struggles, and these religious debates could have been as much constructed and sustained because of these warring printers and publishers as because of open warfare between two opposing 'sides'. The publication of *An Apologeticall Narration*, and other polemical pamphlets like it, meant that the friendliness and accord of the Assembly was never represented in the polemic, and so soon came to an end.

That printers and publishers should be thought of as partisan is most clearly demonstrated by their religious views, and by examining works with 'similar' views on religious settlement, it is revealed that certain publishers were particularly interested in certain outcomes. For example, we can see various publishing collaborations between Bostock, Meredith and Gellibrand. Their religious output might be categorised within

⁷⁴⁰ van Dixhoorn (ed.), *Minutes and Papers*, vol. I, p. 82; Powell, *The Crisis of British Protestantism*, p. 243. A similar account might be found in Sirluck, 'Introduction', pp. 65-72.

Coffey's 'Presbyterians', or Jordan's 'irreconcilable orthodox Presbyterians'.⁷⁴¹ The focus of this exercise is not to argue that there are problems with these categories, but rather to emphasise that publishers could have clear allegiances that were visible to their readers.

Those that read the works imprinted with Bostock's name, for example, would have read works that pushed for an increasingly Scottish religious settlement, and a reluctance to engage with any negotiation or watering down of their system. Bostock began his publishing interest in Scottish affairs from early on in the conflict, producing works such as *The Scots Declaration to the Lords and Commons* which suggested that Parliament's problems might be solved if they 'bestir themselves in the best way for a Reformation of Religion'.⁷⁴² Later on in the year, he published *Letters of Consequence from Scotland*, which stressed the importance and godliness of the Scottish commissioners, and emphasised how well the Covenant was received in Scotland.⁷⁴³ So began a series of works that kept English readers up to date with the Scots' impending move into England – *The Readinesse of the Scots to advance into England; Scotlands Alarmie, or, Some Considerations tending to demonstrate the necessitie of our speedie marching*; and finally in January 1644, *The Scots Army Advanced into England* – and news of this type was a staple for Bostock throughout the period.⁷⁴⁴ Readers could expect to be kept up to date with developments in Scotland, be that preparations for war or Scottish opinion on the

⁷⁴¹ John Coffey, 'The Toleration Controversy During the English Revolution', in Christopher Durston and Judith Maltby (eds), *Religion in Revolutionary England* (Manchester, 2006), pp. 45-8; Wilbur Kitchener Jordan, *From the Convention of the Long Parliament to the Restoration (1640-1660)* (London, 1938), pp. 274-304.

⁷⁴² *The Scots declaration to the Lords and Commons in Parliament*, (Printed for Robert Bostock, FD: 20 May 1643) E.103[4]; Sirluck, 'Introduction', p. 58.

⁷⁴³ *Letters of consequence from Scotland, the first from the Commissioners of the Generall Assembly there, to the Scots Commissioners here in England* (Printed for Robert Bostock, [30 October] 1643) E.74[5].

⁷⁴⁴ See, for example, *The readinesse of the Scots to advance into England. The policie and practise of the French agent there to hinder it. Express in three propositions* (Printed for Robert Bostock, [25 November] 1643) E.77[1]; *Scotlands alarme. Or, Some considerations tending to demonstrate the necessitie of our speedie marching to the assistance of our brethren in England, notwithstanding all difficulties and necessities, reall or pretended* (Printed for Robert Bostock, [11 December] 1643) E.77[5]; *The Scots army advanced into England certified in a letter dated from Addarston* (Printed for Robert Bostock, FD: 24 January 1644) E.30[16].

proceedings of England, as well as Declarations made by the Parliament thanking the Scots.⁷⁴⁵

Not only was Bostock's news predominantly focused on the Scots, but so too were the arguments on religion that he published. The works adamantly defended an orthodox, Scottish Presbyterian settlement, either against the dissenting brethren or against English Presbyterians who were flirting with the idea of toleration.⁷⁴⁶ Crucially, any form of dissension should be suppressed, and the use of civil powers to enforce uniformity was not only necessary, but was a good thing.⁷⁴⁷ Toleration, no matter how mild, would lead to increased sectarianism, a point proven by the fact that while some 'will not own the name of Independency yet if we speak or preach against Independency, they [the 'chief Authors, and abettors'] will tell us we preach against them'.⁷⁴⁸ There needed to be a commitment that the Scottish Church was right in the eyes of God, as informed by the Covenant.⁷⁴⁹ Bostock's output, therefore, was marketed to those who favoured a Scottish

⁷⁴⁵ See, for example, *An act and ordinance of the Convention of Estates of the kingdom of Scotland, for the speedy raising of moneys by way of excise, for supplying the forces raised in this kingdom, for defence of religion, crowne, and kingdoms, and payment of the debts for which the publike faith shall be engaged to that end* (Printed for Robert Bostock, [01 March] 1643) E.35[5]; *Die Veneris 2 Feb. 1643: It Is This Day Ordered That Publike Thankes Be Given Unto God in All the Churches of London, Westminster, Suburbs, and within the Bills of Mortality, Upon the Next Lords Day*, (Printed for Robert Bostock, FD: 02 February 1644) 669.f.7[62].

⁷⁴⁶ For the general point about Scottish Presbyterians encouraging English Presbyterians to a more orthodox position, see Sirluck, 'Introduction', pp. 92-106. For attacks against the brethren specifically, see *Reformation of church-government in Scotland, cleered from some mistakes and prejudices, by the Commissioners of the Generall Assembly of the Church of Scotland, now at London* (Printed for Robert Bostock, [24 January] 1644) E.30[5]; Alexander Forbes, *An anatomy of independency, or, A briefe commentary, and moderate discourse upon the apologeticall narration of Mr Thomas Goodwin, and Mr Philip Nye, &c. By argument, laying naked the dangers of their positions; and from experience, discovering their spirits and wayes* (Printed for Robert Bostock, [14 June] 1644) E.50[36], pp. 1-3; William Prynne, *Faces about. Or, A recrimination charged upon Mr. John Goodwin, in the point of fighting against God, and opposing the way of Christ* (Printed for Robert Bostock, [21 October] 1644) E.13[17]. For works that push against English Presbyterians, see Henderson, *A sermon preached*; Forbes, *An Anatomy of Independency*. Alexander Henderson, *A sermon preached before the Right Honorable the Lords and Commons assembled in Parliament: at Margarets Church in Westminster, upon Thursday the 18. day of July, 1644* (Printed for Robert Bostock, FD: 18 July 1644) E.3[2].

⁷⁴⁷ See *Reformation of church-government in Scotland*, pp. 21-4; George Gillespie, *A late dialogue betwixt a civilian and a divine, concerning the present condition of the Church of England* (Printed for Robert Bostock, [30 October] 1644) E.14[17], pp. 25-9.

⁷⁴⁸ Forbes, *An anatomy of independency*, p. 2.

⁷⁴⁹ *Reformation of church-government in Scotland*, p. 7; George Gillespie, *A sermon preached before the Honourable House of Commons at their late solemne fast Wednesday March 27. 1644* (1644), p.

Presbyterian system, and with the aim of pushing English Presbyterians to an increasing orthodoxy. Indeed, on Thomason's copy of *Faces About*, printed for Bostock, above the cryptic publisher's credit line Thomason made the insertion 'Published by [a Scots: man] Authority'.⁷⁵⁰

If Bostock's focus was on Scotland, Meredith's was on England. The works that he printed which have been attributed authors were mainly by Englishmen who were similarly committed to an orthodox Presbyterian settlement.⁷⁵¹ When he printed it, his news was focused on England, although his main interest was in printing sermons.⁷⁵²

41; John Robinson, *The peoples plea: fully vindicating the povver and proceedings of the Parliament. Occasioned by a defence of the covenant* (Printed for Robert Bostock, [13 March] 1645) E.328[3].

⁷⁵⁰ Prynne, *Faces about*. When Bostock died in 1656, his copyrights were transferred to Thomason according to Henry Robert Plomer, *A Dictionary of the Booksellers and Printers Who Were at Work in England, Scotland, and Ireland, 1641-1667* (1907), p. 28.

⁷⁵¹ Woodward, *Solemne League and Covenant*; Arthur Salwey, *Halting stigmatiz'd in a sermon preached to the Honorable House of Commons on the monethly fast day, Octob. 25. 1643. at Margarets Westminster* (Printed for Christopher Meredith, FD: 25 October 1643) E.77[13]; William Mewe, *The robbing and spoiling of Jacob and Israel: considered and bewailed, in a sermon preached at Westminster before the Honourable House of Commons, at the late solemn fast, Nov. 29. 1643* (Printed for Christopher Meredith, [26 December] 1643) E.79[10]; Mocket, *A view of the Solemn League and Covenant*; Thomas Hooker, *The faithful covenanter. A sermon preached at the lecture in Dedham in Essex* (Printed for Christopher Meredith, [10 January] 1644) E.81[18]; Constantin Jessop, *The angel of the Church of Ephesus no Bishop of Ephesus, distinguished in order from, and superior in power to a presbyter. as it was lately delivered in a collation before the Reverend Assembly of divines* (Printed by G. M. for Christopher Meredith, [13 April] 1644) E.42[22]; Edmund Staunton, *Rupes Israelis: The rock of Israel. A little part of its glory laid forth in a sermon preached at Margarets in Westminster before the honorable House of Commons, at their monthly fast, Apr. 24. 1644* (Printed for Christopher Meredith, FD: 24 April 1644) E.48[6]; Humphrey Hardwick, *The difficvly of sions deliverance and reformation: together with the activitie which her friends should manifest during the time that her cause is in agitation. Delivered in a Sermon at Margarets Westminster, before the Honourable House of Commons on Wednesday Morning, the Twenty-Sixt Day of Iune. 1644* (Printed by I. L. for Christopher Meredith, FD: 26 June 1644) E.2[9]; Matthew Newcomen, *Jerusalems vvatch-men, the Lords remembrancers: a sermon preached at the Abbie at VWestminster, before both Houses of Parliament, and the Assembly of Divines, upon their solemn fast, Iuly 7. 1643* (Printed by M. F. for Christopher Meredith, [23 August] 1643) E.63[7]; George Gipps, *A sermon preached (before God, and from him) to the Honourable House of Commons. At a publike fast, Novemb. 27* (Printed for Christopher Meredith, [27 November] 1644) E.23[3]; Edmund Calamy, *Englands antidote, against the plague of civil vvarre. Presented in a sermon before the Honorable House of Commons, on their late extraordinary solemn fast, October 22. 1644* (Printed by I.L. for Christopher Meredith, FD: 22 October 1645) E.17[17]; Thomas Coleman, *Gods unusuall answer to a solemn fast. Or, some observations upon the late sad successe in the west, upon the day immediately following our publique humiliation* (Printed for Christopher Meredith, FD: 12 September 1644) E.16[2].

⁷⁵² *A true and exact relation of the kings entertainment in the city of Chester. With the recorders speech at his entring the city. Sent from a citizen of note in Chester, on purpose to be printed, to*

Gellibrand was between the two – he mainly printed works that focused on England, but was also the publisher to Baillie, the Scottish minister based in London.⁷⁵³ Gellibrand and Meredith's works also focused on an orthodox Presbyterian position, and they had been some of the first to produce works to encourage the taking of the Covenant.⁷⁵⁴ Their works remained faithful to the Covenant, encouraging both that it be taken and that it be used as the basis of church settlement.⁷⁵⁵ Towards 1646, their output increasingly concerned an Erastian settlement, and argued that Parliament's flirtation with lay control was delaying further Reformation.⁷⁵⁶ According to their output, Independency

prevent false copies (Printed for C. M., FD: 23 September 1642) E.119[25]. *A true and full relation of the manner of the taking of the towne and castle of Shrewsbury* (Printed by J.R. for Christopher Meredith, [04 March] 1644) E.271[2]; *An exact relation of the bloody and barbarous massacre at Bolton in the moors in Lancashire*, (Printed by R. W. for Christopher Meredith, FD: 22 August 1644) E.7[1].

⁷⁵³ See, for example Robert Baillie, *Errours and induration are the great sins and the great judgements of the time preached in a sermon before the Right Honourable House of Peers, in the Abbey-Church at Westminster, July 30, 1645, the day of the monethly fast* (Printed by R. Raworth, for Samuel Gellibrand, FD: 30 July 1645) E.294[12]; Robert Baillie, *A dissuasive from the errours of the time wherein the tenets of the principall sects, especially of the independents, are drawn together in one map, for the most part in the words of their own authours, and their maine principles are examined by the touch-stone of the Holy Scriptures* (Printed for Samuel Gellibrand, [22 January] 1646) E.317[5].

⁷⁵⁴ Woodward, *Solemne League and Covenant; The second part of the un-deceiver: tending to the discovery of some prelatiack and antinomian errovr; and the clearing of that part of the late covenant of the three kingdoms which concerns both* (Printed for Samuel Gellibrand, [26 October] 1643) E.72[8]; Woodward, *Three kingdoms made one*; Mocket, *A view of the Solemn League and Covenant*.

⁷⁵⁵ See Hooker, *The faithful covenanter*; Edmund Calamy, *The great danger of covenant-refusing, and covenant-breaking. Presented in a sermon preached before the Right Honourable Thomas Adams Lord Mayor, and the Right Worshipfull the sheriffes, and the aldermen his brethren, and the rest of the Common-councell of the famous City of London, Jan. 14. 1645* (Printed by M.F. for Christopher Meredith, FD: 14 January 1646) E.327[6]; Robinson, *The peoples plea*.

⁷⁵⁶ James Nalton, *Delay of reformation provoking Gods further indignation represented in a sermon preached at Westminster to the honourable House of Commons assembled in Parliament at their late solemn monethly fast, April 29, 1646* (Printed for Samuel Gellibrand, FD: 29 April 1646) E.334[14]; Jordan, *From the Convention of the Long Parliament to the Restoration (1640-1660)*, p. 291; Baillie, *Errours and induration*; Baillie, *A dissuasive from the errours of the time*. For Meredith, see Rutherford, *The divine right of church-government*; Henry Wilkinson, *Miranda, Stupenda. Or, the wonderfull and astonishing mercies which the Lord hath wrought for England, in subduing and captivating the pride, power and policy of his enemies* (Printed by T.B. for Christopher Meredith and Samuel Gellibrand, FD: 21 July 1646) E.345[7].

was a schism, and attempts to reconcile with Independents would only lead to further error.⁷⁵⁷

Occasionally Bostock, Meredith and Gellibrand openly worked together, and there are times when their collaboration might be seen as part of a wider campaign. A prime example is the printing of several sermons within a few days of each other in June 1643, when four preachers (Stephen Marshall, Calamy, Obadiah Sedgewick and Herle) over two days encouraged greater commitment to the godly cause, and encouraged further reformation.⁷⁵⁸ Furthermore, they frequently used the same printers, either legally or illegally. Thomas Badger, Raworth, George Bishop, Richard Bishop and White were used at various times by all of the publishers, as were Miller, John Legate, Cotes and Miles Flesher. Even if the printers were not themselves partisan, a large portion of their business relied upon a willingness to produce these works.

These three publishers all had a consistent religious line – an orthodox Presbyterian settlement – and as there are no surviving works produced with these imprints that deviate from this religious line, a reader could probably assume that any work with their name on would defend a certain religious position. As such, Bostock, Meredith and Gellibrand might be thought of as having curated works as well as financing and selling them. This position should not necessarily be surprising – Meredith and Gellibrand were committed Presbyterians within London, the former acting on City committees, and the latter signing various petitions against parliamentary moves to prevent eldership control.⁷⁵⁹

On the opposite side of the settlement question, Dawlman might be considered the most important of the conservative independents, as he had consistently openly intervened in the debate over church settlement. He had published the important intervention the

⁷⁵⁷ *A letter of the ministers of the city of London, presented the first of Ian. 1645. to the reverend Assembly of Divines sitting at Westminster by authority of Parliament, against toleration* (Printed for Samuel Gellibrand, [02 January] 1646) E.314[8], p. 3; Coffey, 'The Toleration Controversy During the English Revolution', p. 46; Obadiah Sedgewick, *An arke against a deluge: or, Safety in dangerous times. Discovered in a sermon before the honourable House of Commons, at their late extraordinary fast, October 22. 1644* (Printed by J. Raworth, for Samuel Gellibrand, FD: 22 October 1644) E.17[18], p. 29.

⁷⁵⁸ Sirluck, 'Introduction', p. 59.

⁷⁵⁹ Michael Mahoney, 'Presbyterianism in the City of London, 1645-1647', *Historical Journal*, 22 (1979), pp. 103-6; Brenner, *Merchants and Revolution*, p. 482.

Apologeticall Narration in January 1644, and continued through this period to publish works by the *Brethren* Bridge, Burroughs, and Thomas Goodwin.⁷⁶⁰ He worked both legally and illegally with Ellis and Grismond, and Flesher, and his interventions played an important role in the construction of a tolerationalist case. Dawlman's works were, however, separate from what we might call more radical Independents, and there does not seem to be any crossover.

In addition to these publishers, we might also look to the printers Miller, John Field, John Macock and Francis Leach. Miller had a history of helping to produce Presbyterian-sympathetic works, such as Thomas Edward's *Antapologia*, Burgess' *Romes Cruelty and Apostacie* and Thomas Shephard's *New Englands Lamentation*.⁷⁶¹ He also, with Field, helped to print the first edition of Edward's *Gangraena* [Appendix 4:11&N2, 17:2].⁷⁶² Miller was a regular printer of parliamentary sermons, and proved willing to print the sermons even when their tone shifted towards accommodation between Presbyterians

⁷⁶⁰ See Jeremiah Burroughs, *An exposition of the prophesie of Hosea begun in divers lectvres vpon the first three chapters at Michaels Cornhill, London* (Printed by W.E. and J.G. for R. Dawlman, 1643) E.98[1]; William Bridge, *A sermon preached before the Honourable House of Commons, at their publique fast, Novemb. 29. 1643* (Printed for R. Dawlman, FD: 29 November 1643) E.79[11]; Thomas Goodwin, *A childe of light vwalking in darkness, or, A treatise shewing the causes by which, the cases wherein, the ends for which God leaves his children to distresse of conscience together with directions how to walke so as to come forth of such a condition* (Printed by M. F. for R. Dawlman, FD: 1643) E.57[1]; Thomas Goodwin, *The tryall of a Christians growth in mortification, purging out corruption. Or vivification, bringing forth more fruit. A treatise handling this case, how to discerne our growth in grace: affording some helps rightly to judge thereof, by resolving some tentations, clearing some mistakes, answering some questions, about spirituall growth* (Printed for R. Dawlman, FD: 1643) E.58[1]; Thomas Goodwin, *The vanity of thoughts discovered: with their danger and cure* (Printed for R. Dawlman, FD: 1643) E.57[4]; Goodwin and others, *An apologeticall narration*; Thomas Goodwin, *Encouragements to faith Drawn from severall engagements both of Gods Christs Heart to receive pardon sinners* (Printed for R. Dawlman, [28 October] 1645) E.307[18]; Thomas Goodwin, *The great interest of states & kingdomes. A sermon preached before the Honorable House of Commons, at their late solemne fast, Feb. 25. 1645* (Printed for R. Dawlman, FD: 25 February 1646) E.325[4]. For the moderate independents, see Coffey, 'The Toleration Controversy During the English Revolution', pp. 48-52.

⁷⁶¹ Thomas Edwards, *Antapologia: or, A full answer to the apologeticall narration of Mr Goodwin, Mr Nye, Mr Sympson, Mr Burroughs, Mr Bridge, members of the Assembly of Divines* (Printed by G.M. for Ralph Smith, [13 July] 1644) E.1[1]; Burgess, *Romes cruelty & apostacie*. Thomas Shepard, *New Englands lamentation for old Englands present errors, and divisions, and their feared future desolations if not timely prevented. Occasioned by the increase of Anabaptists, rigid separatists, antinomians and familists* (Printed by George Miller, [22 March] 1645) E.274[18].

⁷⁶² Thomas Edwards, *Gangraena: or a catalogue and discovery of many of the errors, heresies, blasphemies and pernicious practices of the sectaries of this time* (Printed for Ralph Smith, [26 February] 1646) E.323[2], sig. A2r, p. 113. Although Hughes does not tell us the printers, she does confirm that it was printed by two different houses in *Gangraena*, pp. 223-230.

and conservative Independents in 1646.⁷⁶³ Field also produced works encouraging a Presbyterian settlement, including Steuart's *Second Part of the Duply to M.S* [Appendix 17:11], John Brinsley's *Araignment of the Present Schism*, Richard Byfield's *Temple-defilers Defiled* and the anonymous *Anti-Toleration*.⁷⁶⁴ John Macock mainly worked with the publishing father-and-son duo the Sparks Senior and Junior. His press printed John Vicars' less-than-generous *Picture of Independency* and both parts of Bastwick's *Independency not Gods Ordinance*.⁷⁶⁵ Later in the year, Macock's press printed several

⁷⁶³ On this, see John Frederick Wilson, *Pulpit in Parliament: Puritanism During the English Civil Wars, 1640-8* (Princeton, 1969), pp. 86-97; See, for example, Miller's printing of Joseph Caryl, *Englands plus ultra, both of hoped mercies, and of required duties: shewed in a sermon preached to the Honourable Houses of Parliament, the Lord Major, Court of Aldermen, and Common-councill of London; together with the Assembly of Divines, at Christ-Church, April 2* (Printed by G.M. for John Rothwell and Giles Calvert, FD: 02 April 1646) E.330[12]; John Owen, *A vision of vnchangeable free mercy, in sending the means of grace to undeserved sinners: wherein gods uncontrollable eternall purpose, in sending, and continuing the gospel unto this nation, in the midst of oppositions and contingencies, is discovered: his distinguishing mercy, in this great work, exalted, asserted, against opposers, repiners: in a sermon preached before the Honourable House of Commons, April. 29. being the day of publike humiliation* (Printed by G.M. for Philemon Stephens, FD: 29 April 1646) E.334[15]. For the significance of Owen's sermon see Tim Cooper, *John Owen, Richard Baxter and the Formation of Nonconformity* (Farnham, 2011), pp. 34-5.

⁷⁶⁴ Adam Steuart, *The second part of the duply to M.S. alias two brethren wherein are maintained the Kings, Parliaments and all civil magistrates authority about the church, subordination of ecclesiasticall judicatories : are refuted the independency of particular congregations, licentiousnesse of wicked conscience and toleration of all sorts of most detestable schismes, heresies and religions, as, idolatry, paganisme, turcisme, Judaisme, arrianisme, brownisme, anabaptisme, &c.* (Printed for Iohn Field, [04 December] 1644) E.20[7] sig. A2r; John Brinsley, *The araignment of the present schism of new separation in old England. Together vvith a serious recommendation of church-unity and uniformity. As it was lately presented to the church of God at great Yarmouth* (Printed by John Field for Ralph Smith, [04 May] 1646) E.335[10] ; Richard Byfield, *Temple-defilers defiled, vwherein a true visible Church of Christ is described. The evils and pernicious errors, especially appertaining to schisme, anabaptisme, and libertinisme, that infest our Church, are discovered* (Printed by John Field for Ralph Smith, [22 April] 1645) E.278[20]; *Anti-toleration, or A modest defence of the letter of the London ministers to the reverend Assembly of Divines* (Printed by John Field for Ralph Smith, [16 April] 1646) E.333[12].

⁷⁶⁵ John Vicars, *The picture of independency lively (yet lovingly) delineated* (Printed by John Macock, [15 March] 1645) E.273[11]; John Bastwick, *Independency not Gods ordinance: or A treatise concerning church-government, occasioned by the distractions of these times. Wherein is evidently proved, that the Presbyterian government dependent is Gods ordinance, and not the Presbyterian government independent* (Printed by John Macock, for Michael Spark junior, [21 May] 1645) E.285[2]; John Bastwick, *The second part of that book call'd Independency not Gods ordinance: or the post-script, discovering the uncharitable dealing of the Independents towards their Christian brethren, with the jugglings of many of their pastors and ministers, to the misleading of the poor people to the detriment of their own souls, and the hurt both of church and state, with the danger of novelties in religion; proving that Independency, is one of the most dangerous sects, that ever appeared in the world, since mortality inhabited the earth* (Printed by John Macock, for Michael Spark junior, [10 June] 1645) E.287[9].

works by Prynne, including both parts of *A Fresh Discovery of some prodigious new Wandering Blasing-Stars*, encouraging the Parliament to arrest the ‘furious Ringleaders of these Independent Sectaries’, and *A Vindication of Foure Serious Questiones Concerning Ex-communication*.⁷⁶⁶ Macock’s press also produced works that annotated and catechised its longer works, such as John Bernard’s *The Independents Catechisme*, which argued that Christ ordained a church ‘by a Common-Councell of Presbyters’.⁷⁶⁷ The Sparks had previously worked with Leach, who had printed several other works by Prynne, including *Twelve Considerable Serious Questions Touching Church Government* and *Independency Examined, Unmasked, Refuted*.⁷⁶⁸

‘Radical Independent’ publishers and printers have received the most attention by historians, especially the printer Overton. However, other printers acting legally and semi-legally are also of importance. As we have seen, Overton laid important groundwork for ideas about Independency to be spread in his output, which could be built upon by printers. For example, Jane Coe took over her husband’s press between June and July 1644. Andrew Coe had printed the *Perfect Occurrences*, and Jane and their son – also Andrew – continued to print this after his death. Towards the end of his life, Andrew Coe (senior) had printed a number of works that defended Independency, such

⁷⁶⁶ William Prynne, *A fresh discovery of some prodigious new wandring-blasing-stars, & firebrands, stiling themselves nevv-lights, firing our church and state into new combustions. Divided into ten sections, comprising severall most libellous, scandalous, seditious, insolent, uncharitable, (and some blasphemous) passages; published in late unlicensed printed pamphlets, against the ecclesiasticall jurisdiction and power of parliaments, councels, synods, Christian kings and magistrates, in generall* (Printed by John Macock, for Michael Spark senior, [24 July] 1645) E.261[5], p. [3]; William Prynne, *A vindication of foure serious questions of grand importance, concerning excommunication and suspention from the sacrament of the Lords Supper, from some misprisions and unjust exceptions lately taken against them; both in the pulpit, by a reverend brother of Scotland, in a sermon at Margarets Church in Westminster, before the Honourable House of Commons, at a publike fast there held for Scotland, on the 5th of September last* (Printed by John Macock, for Michael Spark senior, [03 October] 1645) E.265[5].

⁷⁶⁷ John Bernard, *The Independents catechisme. Or Some observations gathered out of Doctor Bastwicke his religious and learned treatise entituled Independency not Gods ordinance. For the use of all poor ignorant, wavering, and seduced independents* (Printed by John Macock, [05 August] 1645) E.1186[5] pp. 9-11.

⁷⁶⁸ Prynne, *Twelve considerable serious questions*; William Prynne, *Independency examined, vnmasked, refuted, by twelve new particular interrogatories: detecting both the manifold absurdities, inconveniences that must necessarily attend it, to the great disturbance of church, state, the diminution, subversion of the lawfull undoubted power of all christian magistrates, parliaments, synods: and shaking the chiefe pillars, wherwith its patrons would support it* (Printed by F.L. for Michael Sparke Senior, [26 September] 1644) E.257[3].

as *The Saints Apologie*, and Jane Coe seems to have continued this trend throughout the later years of the civil war. For example, she printed Lawrence Clarkson's *Truth Released from Prison*, which emphasised the benefits of lay preaching and condemns denying liberty of conscience. Coe printed multiple works by Hanserd Knollys in February 1646, having previously printed his *Moderate Answer unto Dr. Bastwicks book* the previous year, and Thomas Webb's *Mr. Edwards pen no slander*, a work that highlighted the errors in *Gangraena*.⁷⁶⁹ In January 1646, Coe also seems to have anonymously printed William Walwyn's *Toleration Justified*, which brings her tantalisingly close to Como's 'propaganda collective' of Overton, Walwyn and Lilburne.⁷⁷⁰ A further link might be found with Coe's copy of *Uniformity examined*, printed for Overton, which was also printed by Simmons. Her market, then, was producing works that defended Independency and liberty of conscience, continuing the work of her late husband.⁷⁷¹ Her choice of output was mirrored by a number of increasingly Independent printers, including Simmons (producing works such as Goodwin's *12 Considerable and Serious Cautions*) and Paine (printing many works by Walwyn, as well as works such as Weld's *Answer to W.R.*). More importantly, their presses did not produce works that encouraged a Presbyterian settlement.

The collaborations of publishers such as Bostock, Meredith and Gellibrand, along with examinations into Overton and Underhill, demonstrate the interconnected web of print relationships. An individual printer might be employed by multiple publishers, each with their own slightly distinct political and religious line, but which all together would make up the printer's broad identity. Miller, for example, worked for multiple Presbyterian publishers – Meredith, Underhill, Philemon Stephons, John Bellamy – which reflected a

⁷⁶⁹ Hanserd Knollys, *The shining of a flaming-fire in Zion. Or, A clear answer unto 13. exceptions, against the grounds of new baptism; (so called) in Mr. Saltmarsh his book; intituled, The smoke in the temple, p. 15, &c.* (Printed by Jane Coe, [11 February] 1646) E.322[16]; Hanserd Knollys, *Christ exalted: a lost sinner sought, and saved by Christ: Gods people are an holy people* (Printed by Jane Coe, [18 February 1645]) E.322[33]; Thomas Webbe, *Mr. Edwards pen no slander: or, The Gangraena once more searched: which being found very full of corrupt matter, that part of his foul mouth is seringed, and washed with a moderate answer, given by Tho: Web, to that part of his book, wherein Mr. Edwards chargeth him for delivering severall Antinomian doctrines. In which answer is proved, that many things wherewith Mr. Edwards chargeth him, is false* (Printed by Jane Coe for Henry Overton, [21 May] 1646) E.337[34].

⁷⁷⁰ David R. Como, 'An Unattributed Pamphlet by William Walwyn: New Light on the Prehistory of the Leveller Movement', *Huntington Library Quarterly*, 69 (2006), p. 371.

⁷⁷¹ On the relationship between Simmons and Paine, who collaborated often in the early 1640s, see Achinstein and Burton, 'Who Printed Milton's Tetrachordon (1645)?', pp. 20-22.

wide coalition of Presbyterian thought. His business and his politics were intimately connected, and his paid work was dependent on his willingness to be identified as a Presbyterian printer.

Because printers and publishers were political agents in their own right, and had their own political views which would dictate the works that they would either print or finance, they acted alongside authors in constructing meaning and division. While authors had personal understandings about what the meaning of the conflict was, and could express this in their writing, the output of printers and publishers grouped works by filtering out those opinions that they objected to, creating a wider community of thought that was broadly constitutionally, legally or religiously coherent. By thinking of publishers and printers as political agents, the relationship between them, authors and other political actors might be seen more as a negotiation – a manuscript needed to be steered through the affinities and reluctances of both printers and publishers before it could be purchased at a bookstall. Certain printers would be willing to print certain types of works, while others would refuse them. Some works might be published illegally by one press, while another press would be willing to proudly display their imprint upon the title page. However, printers and publishers could also encourage certain works, as the example of Bishop and White's press demonstrates, and be integral in actively constructing and disseminating certain views.

IV CONCLUSION

Printers and publishers were fundamental not just in making authors' ideas available to readers, but also in helping to shape and influence the nature of the pamphlet conversation through which events were understood. This relationship between printers, publishers and authors also had an effect on the way that the reader experienced pamphlets. By relying on a single bookstall, publisher or printer, a reader could find themselves reading only the works that had been curated by partisan members of the production cycle. On the one hand, this might have been something that the reader actively sought out, and Adams has suggested that readers might examine title pages for specific patterns of woodcuts to find the illegally printed works that would confirm their pre-formulated views.⁷⁷² On the other hand, readers might find themselves isolated from

⁷⁷² David R. Adams, 'The Secret Printing and Publishing Career of Richard Overton the Leveller, 1644-46', *The Library*, 11 (2010), pp. 7-9.

access to the arguments that had become the parliamentary mainstream – such as discussions of the Solemn League and Covenant – and they might find themselves needing to branch out to different bookstalls where they could access the kind of arguments that they wanted to read, or change their preferred publisher as and when their own persuasions differed from them. In this way, at times a reader might have had to actively choose to search for new ideas, rather than passively receiving them. Printers and publishers could construct spaces where certain affinities were marketed to, or were left unchallenged.

By adding barriers to the public, printers and publishers acted as restrictors as well as enablers, meaning that political actions had to be publicised through a divided press as well as a divided kingdom, and the fragmentation of the parliamentary cause was catalysed by a fragmented press, as well as political disagreements. Because of this, the ability of politicians to get their message across might have been stymied. For example, the reception of the Solemn League and Covenant had to be managed precisely because of the increasingly openly partisan presses, and the reporting of religious and theological debate in the Westminster Assembly was twisted and contorted in the polemical debate by committed advocates.

Thinking bibliographically and typographically also means we can start contextualising some of the episodic pamphlets that have so captivated historians, and understand how readers might have responded to these works. For example, *Touching the Fundamentall Lawes* and *Remonstrans Redivivus*, which both argue constitutionally similar points concerning the powers of Parliament, can be connected together with reference to Underhill, and from there to a number of other works that hold the same opinion. Rather than being transient interventions that argued the unthinkable (as historians have often treated them), they can be seen either as part of press ‘campaigns’ that reiterated ideas and understandings, or as part and parcel of the everyday actions of the presses, trying to help their readers comprehend the conflict that had embroiled the nation. Far from detracting from the importance of these pamphlets, bibliographic and typographic contextualisation re-emphasises the importance and potential of these works; rather than being sporadic and fleeting sparks of intellectual creativity, the ideas were part of a wider pool of texts that offered readers coherent ideas and theories in serial. Readers who were well-versed in particular publishers’ outputs would not necessarily be overtly challenged, as is suggested by some historians who have examined

these works, but would rather use them to bolster a more detailed and nuanced partisan view on the nature of the constitution and the law, which may have been more refined than it is often given credit for. Rather than having to deal with excessive contradictions, in other words, the selective reading material offered by certain publishers could offer a curated experience that still offered the justifications that were needed for consciences to be settled but without internal contradictions.

Throughout the early 1640s, the tumultuous events were accompanied by conversations that were shaped and understood through the lens of print, which was collectively influenced by authors, publishers and printers, and readers. Printers and publishers had their own political and religious understandings of the conflict, and could shape their output to match these in order to influence the debate as a whole – either through the production of works that presented the conflict in a particular way, or by refusing to engage with conversations that did not conform to their understanding. Equally, they provided a way for the reader to consistently access a particular method of parsing the conflict, changing the way that the war was understood. Pamphlets could be tools with which readers could justify prejudicial views, and partisan printers and publishers aided this process. Authors, too, could exploit partisan printers and publishers, so that certain works could be published anonymously and with the support of a network of similarly-minded pamphlet producers. Ultimately, partisan printers and publishers could create distinct spaces where the debate was curated, packaged and, to a certain degree, constructed for a prejudiced reader. In these circumstances, with printers and publishers holding religious and political partisan religious views, and readers who could seek out confirmation of views they already held and avoid those they found distasteful, no wonder a settlement could not be found.

CHAPTER 5: THE SEEDS OF FAILURE, JANUARY 1645 TO JULY 1646

The King, it seemes, must keep himself to Lawes, because that splendid dignity of breaking Lawes by force is the Priviledge of both Houses.⁷⁷³

A Letter, in which the Arguments of the Annotator ... are Examined and Answered
(August 1645).

... and yet I still side with the Parliament? I confesse I doe, but not as I did before; Before I did it sincerely; now I do it politickly.⁷⁷⁴

Thomas Swadlin, *A letter of an Independent, To his honoured Friend, Mr Glyn*
(January 1646).

The formation of the New Model Army over the last few months of 1644, and the political machinations that came with it, was a turning point in the parliamentary war effort. The New Model Army enabled London to pour money into an amalgamation of the three parliamentary armies, and as such was an administrative and financial innovation as much as a military one.⁷⁷⁵ The Battle of Naseby (June 1645) saw the King trounced, helped in part by Prince Rupert's overenthusiastic cavalry manoeuvres.⁷⁷⁶ Through victory, the hopes of the Presbyterian alliance in Parliament – that the New Model Army might fail, and that a negotiated settlement could be back on the cards – were dashed.⁷⁷⁷ By defeating the King, the New Model Army became the dominant military strength of the kingdom, and their actions were imbued with divine significance.

⁷⁷³ *A letter, in which the arguments of the Annotator, and three other speeches vpon their Majesties letters published at London, are examined and answered* (s.n., [12 August] 1645) E.296[15], p. 11.

⁷⁷⁴ Thomas Swadlin, *A letter of an Independent, To his Honoured Friend Mr Glyn, Recorder of London* ([Printed by Leonard Lichfield], [08 January] 1646) E.315[1], pp. 6-7.

⁷⁷⁵ Ian Gentles, 'The Impact of the New Model Army', in John Stephen Morrill (ed.), *The Impact of the English Civil War* (London, 1991), pp. 84-7.

⁷⁷⁶ *Ibid.*, p. 87; Samuel Rawson Gardiner, *History of the Great Civil War*, vol. II (Moreton-in-Marsh, 1991), pp. 247-51.

⁷⁷⁷ Scott, *Politics and War*, p. 86.

The increasing possibility of military victory gave a new urgency to the conversation over what settlement could be based upon, and what exactly the purpose of the war was anyway. Parliamentary printers and publishers were increasingly fractured, mirroring the internal politics of Parliament itself, which was more than ever 'a body split into rival groups' rather than a 'united whole'.⁷⁷⁸ The political Independents and the political Presbyterians had developed out of the war and peace parties respectively, and although they had been crystallised by the ongoing debate in the Westminster Assembly over different church settlements, the 'crucial division' was the extent to which constitutional settlement was to be imposed on the King – the political Presbyterians favouring a negotiated settlement, and the political Independents arguing for a forced one.⁷⁷⁹

In May 1646, Charles surrendered to the Scottish Covenanters, having escaped Oxford before it was besieged by the New Model Army. The peace proposals sent to him at Newcastle in July 1646 made demands of him that were broadly similar to the previous attempts to create peace: a time-limited restriction upon control of the militia to restrain the King himself, rather than his office; the taking of the Solemn League and Covenant; and mechanisms to ensure that the church settlement decided by Parliament would be enacted.⁷⁸⁰ But it did so in the wake of increasingly contradictory and complex polemical circumstances. Until settlement was made, dissatisfaction with the Parliament could manifest itself in pamphlet works that utilised and exploited the frameworks which justified the parliamentary war effort, and threatened to undermine them.

Before the legal-constitutional framework shift of the summer of 1643, contemporaries had demonstrated the benefit of creating a form of conditional obedience to the Parliament using an implied reader. The Vow and Covenant, and later the Solemn League and Covenant, had made it more difficult, but not impossible, for readers to bring their own meanings to texts. Parliamentary military successes and partisan publishers and printers propelled into the open a discussion about the powers of a civil magistrate in matters of religion, and what form church settlement might take. This was to clash with parliamentarianism and the vocabulary of allegiance that went with it, which remained wedded to an absolute commitment to the parliamentarian cause and

⁷⁷⁸ On this, see Peacey, 'John Lilburne', pp. 265-7,

⁷⁷⁹ Scott, *Politics and War*, pp. 89-91.

⁷⁸⁰ David L. Smith, 'The Impact on Government', in John Stephen Morrill (ed.), *The Impact of the English Civil War* (London, 1991).

Parliament's chosen church settlement. Not to agree absolutely with the Parliament was a slippery slope in parliamentary thought towards radical consequences, and individuals who were forced to resort to some form of conditional obedience found themselves excluded from the use of justifications which defined the cause they were fighting for. The need for a form of conditional obedience acted as a catalyst for political thinking, leading to periods of intense redefinition and reinterpretation of politics and the constitution, driven by a need for meaning. The shared political languages relied again on a binary – loyal or malignant – that could exclude many from parliamentarianism, and could not adequately describe the increasingly complex and fractious nature of parliamentary politics.

This chapter examines the several crises, or endgames, which faced the legal and the religious frameworks by the conclusion of the conflict, in part caused by the frameworks themselves, and exacerbated by the polemic. By July 1646, these frameworks, and the shared political languages that operated within them, had become not only problematic in isolation, but increasingly contradictory of each other. The mixture of frameworks and their respective authorities and obligations helped to make the parliamentary position incoherent and unsustainable.

The first section examines the legal framework, and argues that the political vocabulary of parliamentary allegiance pushed those who found themselves unable to support Parliament absolutely towards radical consequences. The sovereign power that Parliament wanted to claim clashed with arguments over control of conscience, the application of communal solutions to individual issues around cases, and shifting understandings of the law. The second section examines the religious framework, and looks at the way that religious settlement prevented the Covenant from meaning all things to all people as it had been supposed to do, and transmuted it into being a definitive statement of intent that contradicted the advice of the Westminster Assembly and the Scottish Covenanters.

Internal problems in these two frameworks and compounded dissonance between them meant that the parliamentary case became fragmented into ever more complex and contradictory polemical positions. The chapter concludes by looking at attempts to abolish episcopacy as indicative of the way in which the two frameworks blurred into each other and exacerbated their internal inconsistencies, and then at an attempt to solve some problems with the parliamentary case using appeals to 'the people' – a

rhetorical invocation which drew on the mixed constitutionalist arguments of 1642–3. Because the frameworks were entwined and cumulative, contradictions within one also threatened the other. While the polemic of the war years required justifications, no matter the constitutional cost, a successful peace settlement needed certainties – and these proved to be in short supply.

I ENDGAMES

I. THE CREATION OF ‘RADICALISM’

At the beginning of his *Truth Triumphant*, Prynne warned his readers that ‘the *Anti-parliamentary Soules*’, formerly ‘*defunct Prelates*’, were revived in a new form:

*New-Generation of men... common[ly] known by the Name of INDEPENDENTS; who, though for the most part really cordiall in their Affections, Actions to Parliament and Church of England, (for which, and for their piety they are to bee highly honoured,) yet some of them are of late become extremely derogatory, and destructive unto both, in their Anarchicall and Anti-Parliamentary Positions.*⁷⁸¹

With all their ‘*Industry, Policy, Power*’ they were setting up New ‘*Independent Congregations in every corner*’, and arguing in pen and pulpit that they were subject to ‘*NO OTHER JURISDICTION*, then that of Christ, his word and Spirit’. They wrote:

That neither KINGS, NOR PARLIAMENTS, NOR SYNODS, have any Authority to prescribe Lawes or Rules for the Churches Government, to order the affaires of Christs Kingdome, or institute the Government of his Churches, or to make coactive Lawes, in any Ecclesiasticall matters, to bind the conscience of any Church or Christian to outward conformity.⁷⁸²

For Prynne, this alone was bad enough, but he feared that stripping Parliament’s authority over ecclesiastical power was ‘destructive to the very fundamentall Power and Being of *Parliaments*’. To his horror, their ‘*Anti-Parliamentall, Anti-Synodicall, and Anti-Monarchicall Paradoxes ... have not onely dropped from the Lips, but Pens of sundry*

⁷⁸¹ William Prynne, *Truth triumphing over falshood, antiquity over novelty. Or, The first part of a just and seasonable vindication of the undoubted ecclesiasticall iurisdiction, right, legislative, coercive power of Christian emperors, kings, magistrates, parliaments, in all matters of religion, church-government, discipline, ceremonies, manners: summoning of, presiding, moderating in councells, synods; and ratifying their canons, determinations, decrees: as likewise of lay-mens right both to sit and vote in councells* (Printed by John Dawson for Michael Sparke, Senior, [02 January] 1645) E.259[1], sig. A2r.

⁷⁸² *Ibid.*, sig. A3r.

Independents, who have avowed them publicly in Print, with their Names affixed to their Bookes, even before the face of Your right Honourable *Parliamentary Assembly*'.⁷⁸³

Prynne's argument is surprisingly generous to those who were unable to surrender their conscience to the Parliament, even though his judgement was damning, and this reveals the fundamental problem with the parliamentary religious framework after the Solemn League and Covenant: for Parliament's justifications to work, obedience had to be absolute. If readers' obedience became conditional, they became part of a wider problem that parliamentarianism lacked the terminology to categorise. That these arguments could not be made in a moderate space, in other words, meant that attempts to create conditional obedience inevitably became radical.

Because there was no space for anything other than Parliamentary absolutism, those who favoured conditional obedience were pushed to the fringe. This shift was characterised by Thomas Swadlin, a royalist writing as an Independent, as moving from believing in Parliament 'sincerely' to believing in them 'politickly'.⁷⁸⁴ The prospect of church settlement had played a crucial role in this shift from sincerity to pragmatism, and indeed, many of the works that immediately responded to Prynne's *Truth Triumphant* were keen to stress that they were denying Parliament's authority over conscience, not over anything else. Walwyn, replying in February 1645, said that 'all agree, that in all Civill and Military causes and affaires, [Parliament] have absolute supreme power', but 'Who can live where he hath not the freedome of his minde, and exercise of his conscience?'⁷⁸⁵ Lilburne had argued the previous month that '*no Parliament, Councell, Synod, Emperour, King, nor Magistrate hath any spirituall Authority, or jurisdiction over this Kingdome, or the Subjects thereof*'.⁷⁸⁶ Similarly, Henry Robinson's reply to Prynne charged him with having 'done as much as in you lyes to divide the Independents from the Parliament' by placing the 'undoubted legislative and coercive power in all matters of

⁷⁸³ *Ibid.*, sig. A2v.

⁷⁸⁴ Swadlin, *A letter of an Independent*, pp. 6-7.

⁷⁸⁵ William Walwyn, *A helpe to the right understanding of a discourse concerning independency. Lately published by William Pryn of Lincolnes Inne, Esquire* (s.n., [06 February] 1645) E.259[2], p. 6.

⁷⁸⁶ John Lilburne, *A copie of a letter, written by John Lilburne Leut. Collonell. To Mr. William Prinne Esq. (Upon the coming out of his last booke, intituled Truth triumphing over falshood, antiquity over novelty) in which he laies down five propositions, which he desires to discusse with the said Mr. Prinne* (s.n., [15 January] 1644) E.24[22], pp. 3-4.

Religion' in Parliament. While Robinson could concede that Parliament was supreme in all other matters, Parliament could not be supreme in religion.⁷⁸⁷

To follow Prynne's argument to its conclusion, the demand for liberty of conscience had led otherwise potentially loyal parliamentarians to question and undermine the supremacy of Parliament. In a sense, what Prynne is describing can be applied not just to those concerned about the liberty of conscience, but more generally to those who felt the need to attach conditions to their obedience to Parliament, of which the battle for toleration was just the most recent iteration. Positions which could not easily be abandoned were forcibly transformed into radical political consequences by the purist nature of the parliamentary position.

The main way in which this squeeze towards radicalism played out was in discussions around absolutism and conscience. The understandings of the extent of parliamentary sovereignty, and the degree to which Parliament could act as an arbitrary power, continued to be placed under significant scrutiny towards the end of the war. John Taylor, writing as the 'most oppressed, distressed commons of England', complained of the '*Tyranny of the perpetuall Parliament at Westminster*' and reasoned:

we are the body of the Kingdome represented; now as a thing representative is but a derivative from that which is represented, so is your power derived from us, and from us who are but men full of infirmities and errors; though our voyces had power to give you power, to be a house of Commons in Parliament; yet from those voyces and folly of ours, we had not power to infuse infallible and inerrable wisdom in you.⁷⁸⁸

According to Taylor, because Parliament's power derived from the people, Parliament could not claim to be infallible, and therefore there had to be some form of protection against parliamentary fallibility for the 'distressed commons'. Chapter Three described

⁷⁸⁷ Henry Robinson, *The falsehood of Mr. VWilliam Pryn's Truth triumphing, in the antiquity of popish princes and Parliaments. To which, he attributes a sole, sovereigne, legislative, coercive power in all matters of religion; discovered to be full of absurdities, contradictions, sacrilege, and to make more in favour of Rome and Antichrist, than all the bookes and pamphlets which were ever published, whether by papall or episcopall prelates, or parasites, since the reformation* (s.n., [08 May] 1645) E.282[11], pp. 1-3, 16.

⁷⁸⁸ John Taylor, *The generall complaint of the most oppressed, distressed commons of England. Complaining to, and crying out upon the tyranny of the perpetuall Parliament at Westminster* ([Printed by Leonard Lichfield], [10 September] 1645) E.300[15], p. 3.

the stirrings of a disagreement around the issue of Parliament's claim to authority over matters to do with conscience, and the ways in which anxiety around these issues began to show in the polemic. But in January 1645 it became clearer in the polemic that Parliamentary absolutism and personal conscience were seen as incompatible. This was a new explicit awareness of the fundamental contradiction that had lurked, unacknowledged, in foregoing discussions.

Robinson challenged Prynne: 'Whether have not Parliaments and Synods of England in times past established Popery? And whether they not possibly do so again hereafter?' Unless the people were able to 'reserve in our own hands a Prerogative of yielding, or denying obedience thereunto', the Parliament would be forcing its people to sin – surely a power that no institution could rightfully hold. Thus, the Independents asked for the power to 'disobey your Councillors, Synods, Parliaments when they actually erre, and are apparently repugnant to Scripture'.⁷⁸⁹ A similar point was made by the anonymous author of *An Antidote Against Foure Dangerous Quaeries*, who stated that the proof that Parliament should not have authority over conscience was that popery had previously been advocated by the body.⁷⁹⁰ Overton had claimed that 'Persecution for Consciences is Inconsistent with the Sovereignty of Kingdomes, for it divideth their Powers one against another' – it took power from Parliament and put it in the hands of a 'Pontificall Clergie'.⁷⁹¹ Finally, Lilburne argued that the question was not why 'Kings, Councells, Synods and States have for so many hundred years medled with matters of Religion', or why they got it wrong, but rather asked 'by what Right, or by what Authority out of the word of God they have done so?'⁷⁹² This new directness over the matter of conscience can be linked to Prynne's capitulation in *A Full Reply* where he had admitted that

⁷⁸⁹ Robinson, *The falsehood*, pp. 26-7, 3.

⁷⁹⁰ *An antidote against foure dangerous quaeries, pretended to be propounded to the reverend Assemblie of Divines, touching suspension from the Sacrament*, (Printed for Nathaniell Webb, [02 September] 1645) E.265[3], p. 3.

⁷⁹¹ Richard Overton, *The araignement of Mr. Persecution: presented to the consideration of the House of Commons, and to all the common people of England wherein he is indicted, araigned, convicted, and condemned of enmity against God, and all goodnesse, of treasons, rebellion, bloodshed, &c. and sent to the place of execution* (Printed by Martin Claw Clergie [Richard Overton], [08 April] 1645) E.276[23], p. 4.

⁷⁹² Lilburne, *A copie of a letter*, p. 4.

Parliament must have erred rather than relinquishing Parliament's control of conscience.⁷⁹³

This newly explicit aversion to an arbitrary power might have manifested itself in attempts to redefine the way that parliaments were thought of. For example, the author of *A Character of an Antimalignant, or Right Parliamentier* argued that he was not 'so great a soother of the Parliament' that he would deny that there was 'some *Judassess* amongst them' – it was inevitable as they had been 'inforc'd to trust so many in all places of the Kingdome'. Parliament, then, contained some untrustworthy members, but could be trusted at this time because their 'cause is undoubtedly good'.⁷⁹⁴ Similarly, William Ball writing in June 1646, argued that he knew 'not any Nation, State, or Parliament that is infallible', and although this did not mean that any action by the Parliament whatsoever could be disobeyed, it meant that any action by Parliament could theoretically be wrong.⁷⁹⁵

Parliamentarians who denied a role for individual conscience in the constitution ultimately had to concede that Parliament had erred in advocating episcopacy in the past. Given that Parliament had made a mistake, it therefore followed that Parliament could harm the people, and thus they could not be absolutely representative of the people. The political debate thus forced one of three conclusions: either Parliament was not in charge of conscience, Parliament could not be supported, or the debate could not be engaged with. Many who believed in some form of toleration came to the first conclusion, and came to support Parliament on terms that parliamentarianism stated were impossible – by using conscience in the constitution. In this sense, if their arguments were radical, then this radicalism was also constitutionalist, and their arguments developed from trying to get the constitution to conform to their religious beliefs, rather than trying to overthrow it. Failing this, the second conclusion was that it was impossible to support Parliament. Taking the third alternative, Prynne stopped engaging with the debate, and denied the conclusions of these arguments. Thus the legal

⁷⁹³ Prynne, *A full reply*; Sirluck, 'Introduction', pp. 121-4.

⁷⁹⁴ *A character of an antimalignant, or right Parliamentier; expressing plainly his opinion concerning King and Parliament* (Printed by F.N. for Robert Bostock, [28 July] 1645) E.294[1], pp. 1-2.

⁷⁹⁵ William Ball, *Constitutio liberi populi. Or, the rule of a free-born people* (s.n., [18 June] 1646) E.341[1], p. 4.

framework and the constitutional debate had produced only contradictions, rather than solutions.

II. PRISON WRITING AND PARLIAMENTARY TYRANNY

That theories of parliamentarianism had begun to encounter impossible dead ends, and find the cause logically indefensible without resorting to a conscience-crushing absolutism, was also evidenced in the prison literature of the time. The published writings of imprisoned parliamentarians furnish a microcosmic example of how personal issues were now offering an insurmountable challenge to political resolution. The framework shift of the Solemn League and Covenant in 1643 had stripped authors of the ability to discuss wider constitutional issues, but legal debate could still take place within prison literature, and imprisoned authors could utilise established judicial spaces and tools of redress and petition to present their case outside of the courtroom.⁷⁹⁶ This interplay between the individual and community experience was crucial in assessing, challenging and refining the political theories by which the polity was understood, leading to tangible effects on the nature of the political debate, and criticisms of Parliament's constitutional understandings.

Imprisoned writers applied Parliament's and parliamentarians' cases *in reductio*, and could demonstrate the supposed fallacies which had led to the writer's own imprisonment. Ian Gentles has emphasised a huge expansion in the prison population of London, and de Groot has argued that these prisons – especially the Fleet and Newgate – allowed a burgeoning and complex intellectual atmosphere with which prisoners could interact and exploit in their writings.⁷⁹⁷ Rather than focus on a wider community issue, prison literature focused on the individual's struggle. For example, the anonymous authors of *An Appeale to Heaven* in September 1644 complained that their imprisonment was 'quite contrary to the Contents of *Magna Carta*, and the *Petition of Right*', and that *Magna Carta* represented a 'perpetuall Law' that was obtained by the 'bloud of many thousands of our ancestors'.⁷⁹⁸ The work selectively quoted from *Magna Carta* that '*no freeborne Subject shall be detained in prison for Debt*', and emphasised that any attempts

⁷⁹⁶ On this, see Jerome de Groot, 'Prison Writing, Writing Prison During the 1640s and 1650s', *Huntington Library Quarterly*, 72 (2009).

⁷⁹⁷ Gentles, 'Politics of the Street', p. 145; Groot, 'Prison Writing, Writing Prison During the 1640s and 1650s', pp. 204-5.

⁷⁹⁸ *An appeale to heaven*, pp. 2-4.

to retract anything whatsoever from Magna Carta was 'voyd by the Statute of the 42 Ed.3. chap. I.'.⁷⁹⁹

The struggles detailed in prison literature took the arguments that were usually reserved for wider community issues, and applied them to individual cases. For example, James Freize, writing in November 1645, argued that his and his companion's imprisonment was 'contrary to the law of God, the lawes of all other nations, and (as is conceived) against the contents of Magna Charta'.⁸⁰⁰ By invoking communal solutions, the individual experience could be compared and discrepancies could be pointed out. The power of statutes or concepts was that they could be offered as steadfast rules, but in practice the polemic had revealed that their use was not quite so simple and universal as sometimes pretended.⁸⁰¹

Perhaps the most famous examples of this are the writings of Lilburne, a prolific prisoner of whatever government he found himself subject to, who detailed his own suffering in self-promotional pamphlets. His struggle was presented as one of martyrdom – one man suffering thanks to successive arbitrary powers who were out to get him. Key to the impact of his work and those that discussed his situation, however, was relating his personal suffering with the communal experience. Works such as *England's Miserie, and Remedie* emphasised the particulars of Lilburne's case, and argued that although some could argue that 'the Great Charter is but suspended as to [the case of] *Lilburne*, but not abrogated; and that the duty of the Parliament is to provide for generalities, but it is not at leysure to attend particular grievances; these answeres satisfie none but Ideots, or

⁷⁹⁹ *Ibid.*, p. 4. The complainants continued with reasons, admittedly less rhetorically striking but still described as '*Infallible*', including the abuses of the jailors, the unfairness of the fees being levied by the jailors themselves and the restriction of justice. *Ibid.*, pp. 4-5.

⁸⁰⁰ James Freize, *A declaration and appeale to all the freeborne people of this kingdome in generall and to all the truly noble, pyous and well affected patriots and people of God, within the cities of London and Westminster in particular, humbly craving their assistance and furtherance of this just request unto the high court of Parliament* (s.n., [November] 1645) 669.f.10[40].

⁸⁰¹ See, for example, John Lilburne, *England's birth-right justified against all arbitrary usurpation, whether regall or parliamentary, or under what vizer soever. With divers queries, observations and grievances of the people, declaring this Parliaments present proceedings to be directly contrary to those fundamentall principles, whereby their actions at first were justifyable against the King, in their present illegall dealings with those that have been their best friends, advancers and preservers* (s.n., [10 October] 1645) E.304[17].

those that suck profit under their command'.⁸⁰² To this author, to deny Magna Carta to Lilburne was to deny it to everyone, and the author spends the remainder of the pamphlet describing the abuses and loss of liberties that the people have suffered. In another work coming to Lilburne's defence, Walwyn wrote that 'this worthy gentle mans case is mine, and every mans', and that Lilburne 'hath singly adventured himselfe a Champion for his abused country men'.⁸⁰³

This process – individual suffering being contrasted with the communal experience – was not limited just to Lilburne. A similar process happened in the case of William Larner, printer of some of Lilburne's works. Following his arrest in March 1646, a number of pamphlets were produced that emphasised that 'no breach of any law [was] ever proved against him', and that '*hee desired the Liberty of a Free-man, not to answer to Interrogatories, whereby to insnare himself or others*'.⁸⁰⁴ On the same day as the collection of petitions in defence of Larner was dated by Thomason, another anonymous author produced *Every Mans Case*, a broadsheet that emphasised the injustice that Larner had faced, and praised his composure. Towards the end of the work, the author argues:

there is the same equity for their trying and Imprisoning mee, and so of every man, as for their trying and imprisoning you ; So that your case in this particular, *Is every mans Case*, though generally, men are so sottish, as to be sensible of the lash, then, only when it falls upon their own backs, not considering, That they may suffer to morrow that misery and calamity, which to day their Brother groanes under.⁸⁰⁵

Freize, campaigning against imprisonment for debt, penned in June 1646 a similarly named work called *Every Mans Right*, in which he argued that 'the miseries happening to

⁸⁰² *England's miserie, and remedie in a judicious letter from an utter-barrister to his speciall friend, concerning Leiutenant Col. Lilburn's imprisonment in Newgate, Sept: 1645* (s.n., [19 September] 1645) E.302[5], p. 5.

⁸⁰³ William Walwyn, *The ivst man in bonds. Or Lievt. Col. John Lilburne close prisoner in Newgate, by order of the Hovse of Lords* (s.n., [29 June] 1646) E.342[2], p. 1.

⁸⁰⁴ *A true relation of all the remarkable passages, and illegall proceedings of some sathanicall or Doeg-like accusers of their brethren, against William Larner, a free-man of England, and one of the merchant-tailers company of London, for selling eight printed sheets of paper (all of one matter,) intituled, Londons last warning; as also against John Larner, and Jane Hales his servants* (s.n., [02 May] 1646) E.335[7], pp. 4, 10; Philip Baker, 'Larner, William (d. 1672?)' in ODNB.

⁸⁰⁵ *Every mans case or, A brotherly support to Mr. Larner, prisoner in the new prison in Mayden-lane* (s.n., [02 May] 1646) 669.f.10[52].

one man, at one time, may rebound to another man the next'.⁸⁰⁶ Printed personal experience, motivated by exceptional cases outside the norm of everyday experience, could be extrapolated to represent communal suffering. Indeed, the mechanisms of these arguments are reminiscent of Charles's early declarations in 1642, wherein he argued that his own experience under the hands of Parliament was only the beginning, and his subjects could expect to suffer next.⁸⁰⁷ Using the same tactics as Charles had employed at the beginning of the conflict, prison literature acted as a prism through which the injustice and arbitrary nature of the Parliament could be seen, and the reader was encouraged to apply the lessons of the suffering detailed to their own understanding of the intentions of Parliament.

The legal space in which debate could take place had been significantly reduced from the summer of 1643. Because of this, prison literature became an important space in which interaction with law and the constitution could take place. This had several effects on the nature of the political debate. Prison literature was almost invariably written by those with a grievance against the imprisoner and therefore would inevitably be concerned with exceptional cases, which would challenge the commitment of institutions to the law and liberty. The extrapolation from the personal to the communal meant that the claims and declarations of parliamentarians and royalists – who were still broadly professing to want the same end – could be tested in specific cases and experiences. These two factors had a destabilising effect on both the ability to define and protect Parliament's statements of intent, but also on the way that the constitution was understood. In most parliamentary theory, authority had come from the extrapolation of the singular natural right of self-protection to the larger representative body. Under this model, it was somewhat inevitable that eventually the individual and the representative would come to blows, and readers would have to decide whether self-protection had been wholly abandoned or just partly, and whether individuals should be made to suffer in order for a common good.

⁸⁰⁶ Freize, *A declaration and appeale*, pp. 8-9.

⁸⁰⁷ See, for example, Charles I, *His Majesties Answer, by way of Declaration to a printed paper, entitled A Declaration of both Houses of Parliament* (Printed by Robert Barker, FD: 23 May 1642) E.150[29], pp. 8-10. On this point more generally, see Ashton, 'From Cavalier to Roundhead Tyranny', pp. 198-201, and Alan Cromartie, 'Persistence of Royalism', in Michael J. Braddick (ed.), *The Oxford Handbook of the English Revolution* (Oxford, 2015).

The fact that prison polemic and constitution could not be reconciled meant that readers needed to make practical concessions. To believe that Parliament could do wrong was to reintroduce the question of whether and how they might be ignored on matters of conscience. The possibility of imperfect and erring political institutions brought with it unanswered questions, especially when considered alongside the natural law. Power was given solely for the benefit of the people, and as they were empowered by their natural laws to protect themselves, authors and readers might have concluded that they must have a way to challenge Parliament if it acted in a tyrannical fashion. In a similar way, statements of Parliament's intent were increasingly challenged by individuals who provided case studies within which general principles could be tested.

Combined with the uneasy position put forth in the Solemn League and Covenant – that the Parliament was acting according to the law even when it was demonstrably not, and no legal investigation could take place on the part of the reader – those who wrote found themselves in need of arguments to justify why they could disagree with the Parliament and hold them to account. This they could find in arguments over the mixed constitution in 1642–3, and the invocation of the implied reader.

III. THE IDEALISED AND INADEQUATE LAW

After several years of pamphleteers on both sides invoking and construing legal details to support their cause, towards the war's end discussions of the law tended to either elevate it to a utopian ideal, or complain of its unfair judgements (as, for example, in the prison literature). This apparent contradiction was actually perfectly coherent, but it resulted in the determined maintenance of faith in the possibility of a legal solution and also in the impossibility of the same. On the one hand, there was a renewed conviction that the perfect law – whether religious or secular – could be found, and that it would be able to solve the conflict. By discovering the perfect law, and ensuring that it was implemented correctly, the conflict would be resolved and peace restored. On the other hand, at the same time there was renewed dissatisfaction with the understanding in practice of the laws when they were applied to specific situations. It was believed that the failures of the law so far had been down to either misunderstanding or implementation, meaning that faith in the law as a whole remained while simultaneously examples could be pointed to that demonstrated its misapplication. Both these factors meant that the law was still being looked to as a non-subjective ideal, and faith was still put in its potential to solve the conflict.

There was still a belief that truth could be found in the laws and word of God. Lilburne, in early 1645, argued that there were ‘perfect and complete Lawes, which are unalterable and unchangeable’ that could be found in the ‘last Will and Testament’ of Jesus Christ.⁸⁰⁸ Likewise, in the first few days of 1646, a group of ministers pushing for Presbyterianism proclaimed: ‘Have we not a touchstone of truth, the good word of God?’⁸⁰⁹ Both pamphlets, however, failed to give their own interpretation of what God’s law said, and this was picked up by pamphlet replies, often to score the political point. Lilburne was challenged by the author of *A Review of a Certain Pamphlet*; ‘when you tell us of compleat and perfect Lawes: Where are they to be found’, and in a strikingly similar objection, Walwyn attacked the Presbyterian ministers by agreeing that there is truth in the word of God, but asking, ‘But now who shall be the examiners, must needs be the question’.⁸¹⁰ That the laws existed but were seemingly inaccessible created questions from pamphleteers about where, exactly, these perfect laws could be found. Francis Cornwell, a parliamentary pamphleteer, concluded that these laws could not be taken from the Bible, and in his short publishing career in the 1640s he used a published copy of Foxe’s *Book of Martyrs*, to show that there could not be a straightforward relationship between scripture and law. In *King Jesus*, Cornwell argued that there needed to be a working relationship between the two, rather than the ‘confound[ing] together’ of law and gospel which are ‘in nature so divers and contrary one from another’. By teaching the people that ‘whatsoever the Law saith, the Gospel confirmeth, and whatsoever the Gospel saith, the same is agreeable to Law’, papists failed to distinguish between the two, and implied that both are eternal and perfect which could not possibly be true.⁸¹¹ For Cornwell, while the gospel remained the same, the laws must constantly change to reflect new understandings and practices.

⁸⁰⁸ Lilburne, *A copie of a letter*, p. 3.

⁸⁰⁹ *A letter of the ministers of the city of London*, p. 1.

⁸¹⁰ *A review of a certain pamphlet*, p. 3; William Walwyn, *Tolleration iustified, and persecution condemn'd. In an answer or examination, of the London-ministers letter whereof, many of them are of the synod, and yet framed this letter at Sion-Colledge; to be sent among others, to themselves at the Assembly: in behalf of reformation and church-government, 2 Corinth. II. vers. 14. 15. And no marvel, for Sathan himself is transformed into an angell of light* (s.n., [29 January] 1646) E.319[15], p. 8.

⁸¹¹ Francis Cornwell, *King Jesvs is the beleevers prince, priest, and law-giver, in things appertaining to the conscience, Isai. 55.4. Heb. 7.17. Jam. 4. 12. Or, The loyall spouse of Christ hath no head, nor husband, but royall King Jesvs* (Printed by J. Dawson, [02 April] 1645) E.1179[2], p. 1.

For certain issues, it did prove possible to translate a 'perfect and complete lawe' from the Bible into an applicable legal statute, but again this could lead to polemical problems when put into practice. In theatrical speeches given at Common Hall, it was emphasised that Charles planned to reduce the penal laws on Catholics, which was seen as demonstrating his infatuation with papists.⁸¹² In response, the royalist author of *A Letter* reassured its readers that 'it was One thing to sinne in it selfe, Another to consider [it's] punishment'. If the King was to 'passe a Law Popery were no sinne ... I might then thinke him sinfull', but if he is just changing the judicial punishment of the sin, then he is conforming to the precedents of Christian rule.⁸¹³ Solomon, the work emphasises, changed God's 'Judiciall Law' by not making a thief pay seven-fold, but rather punishing him 'either with a wheele or the gallowes', and Justinian lessened the punishment of adultery, which 'in the Mosaick Law was punish't by death'.⁸¹⁴ The King was not trying to make being a papist less of a sin, but rather making the secular punishments less primitive. Such translations of the legal from the scriptural would have maintained the belief that the perfect law to resolve the conflict would be found from God's word.

Therefore there could be belief in the law as a high concept, but not in the way that it had been executed so far. As such, the legal injustices that were observable were a symptom of an imperfect law, rather than an indication that legal perfection was impossible – the implementation was to blame, not belief in the law itself – an equivocation which enabled the persistence of hope for a perfect reconciliatory legal solution. For example, Walwyn attacked Prynne for concerning himself 'in matters of Religion', when really 'were he truly conscientious for the good of the whole Nation, as he pretendeth, he would have laid open to the Parliament, how improper it is that our Laws should be written in unknowne language, that a plaine man cannot understand so much as a Writ without the helpe of Councill'.⁸¹⁵ The confusing terminology

⁸¹² For the printed versions, see John Lisle et al., *Three speeches spoken at a common-hall, Thursday the 3. of Iuly, 1645* (Printed for Peter Cole, [14 July] 1645) E.292[29]; For the royalist replies, see *A letter, in which the arguments of the Annotator; Some Observations Upon Occasion of the Publishing Their Majesties Letters*, (Printed by Leonard Lichfield, [08 August] 1645) E.296[2].

⁸¹³ *A letter, in which the arguments of the Annotator*, pp. 8-9.

⁸¹⁴ *Ibid.*

⁸¹⁵ Walwyn, *A helpe to the right understanding*, pp. 1-3; Lilburne, *England's birth-right justified*, p. 8; On the Leveller writers and laws more generally, see A. Houston, 'A Way of Settlement': The Levellers, Monopolies and the Public Interest', *History of Political Thought*, 14 (1993), pp. 402-9.

surrounding the law led to nothing but ‘vexation of the people, and enriching of Lawyers’.⁸¹⁶ It was suggested that if the law was clearer, and lawyers refrained from complicating the law in order to turn a profit, a solution might be found. The anonymous author of *Peace Broken* had argued that ‘It is not ... the nature of positive Lawes to bind where they are not known or publisht’. While the pamphleteer admitted that even though it was Adam who had eaten the apple the sin resonated down the human line, this was the exception, not the rule – it was ‘by a peculiar will’ that God decided ‘to wrap up all men in one *Adam*’.⁸¹⁷ In normal practice, ‘if *Cain* had eaten the forbidden fruit, *Enoch* his son had not therefore been borne a sinner’.⁸¹⁸ Later, Lilburne used *Husbands’ Exact Collection* which included the 1642 work *A Question Answered* to state that while ‘all rationall men’ agreed ‘that the *Parliament* hath a power to annul a Law, and to make a new Law, and to declare a Law, but known Laws in force and unrepealed by them, are a rule as long as they so remain’. Therefore, ‘no free man of *England* is to take notice (or can he) of what they intend till they declare it ... For where there is no Law declared, there can be no transgression’.⁸¹⁹ Laws, according to Lilburne and others, needed to be known by the population in order to bind the population.

The same logic could be applied to the issue of parliamentary privilege, and it was often presented as part of the same problem. From August 1645, a key component of Lilburne’s letters was that he had no idea why he was being imprisoned. ‘*I have by Authority of the House of Commons, been three times imprisoned*’, Lilburne wrote, ‘*before ever I knew mine accuser, or mine accusation*’, and this, along with the refusal to let him defend himself, ‘*is contrary to Magna Carta*’.⁸²⁰ The author of *England’s Miserie* wrote that it was better to

⁸¹⁶ Walwyn, *A helpe to the right understanding*, pp. 1-3.

⁸¹⁷ *Peace broken, or, Blessings become snares and cursings* (s.n., [05 February] 1645) E.268[3], pp. 5-6.

⁸¹⁸ *Ibid.*

⁸¹⁹ John Lilburne, ‘On the 150th Page’: An Untitled Broadsheet of August 1645’, in Andrew Sharp (ed.), *The English Levellers* (Cambridge, 1998); See also Lilburne, *England’s Birth-Right Justified*, pp. 2-3.

⁸²⁰ Lilburne, *A copie of a letter*, p. 3; Of course Walwyn later chastises Lilburne for his use of Magna Carta in William Walwyn, *Englands lamentable slaverie, proceeding from the arbitrarie will, severitie, and injustnes of kings, negligence, corruption, and unfaithfulnesse of parliaments, coveteousnesse, ambition. and variableness of priests, and simplicitie, carelesnesse, and cowardlinesse of people. Which slaverie, with the remedie may be easily observed. By the scope of a modest & smooth letter, written by a true lover of his countrey and a faithfull friend to that worthy*

‘live under a rigorous and unjust Law, then an Arbitrary government though just’, because under the former ‘he is at certainty’, whereas the latter ‘leaves him uncertaine and so in danger’.⁸²¹ Lilburne later argued at much greater length in his *England’s Birth-Right* that ‘it is very requisite, that the *Parliament* would declare their Priviledges to the whole *Commons of England*, that so no man may through ignorance (by the *Parliaments* default) run causeless into the hazard of the losse of their lives, liberties, or estates’. He continued that ‘unknown Priviledges are as dangerous, as unlimited Prerogatives, being both of them secret snares, especially for the best people’.⁸²² While the polemical context of these works – imprisonment, loss of liberty and political Independent and Presbyterian squabbles – is important, they demonstrate an underlying belief that it was possible for these laws to be declared and clear. Crucially for Lilburne, Walwyn and the anonymous author of *England’s Miserie*, Parliament seem to have been refusing to declare what their privileges were and what the laws were, rather than being simply unable to do so.

The similarities of tone, if not terminology, with royalist propaganda are striking. The language of royalism in 1642 had provided the certainty and fixity that some were calling for in 1645–46. For example, in March 1645 the Clubmen had appealed to the ‘knowne Laws of the Kingdome’ as the antithesis of arbitrary government and innovation, and in September Clubmen in Sussex had argued that they had suffered an arbitrary power ‘contrary to all our ancient known laws, or ordinances of Parliament’.⁸²³ Charles in August 1645 responded to the ‘pretended’ *Propositions for Peace* in the Clubmen’s petition, and after his familiar protestations for ‘true Reformed Protestant Religion, the just and inseperable right of the Crowne, the just power and priviledges of Parliament, and the lawfull rights and liberties of the Subject’, he argued that his subjects could identify who truly fought for their interests by ‘making the knowne Lawes of the Land (which cannot deceive) the measure of each particular’.⁸²⁴ For both, the ‘knowne Lawes’

instrument of Englands freedome, Lievten. Collonell Lilburn, now unjustlie imprisoned in Newgate (s.n., [11 October] 1645) E.304[19], p. 3.

⁸²¹ *England’s miserie*, p. 3.

⁸²² Lilburne, *England’s birth-right justified*, p. 3.

⁸²³ *Observations concerning the late treaty*, p. 2; Ashton, ‘From Cavalier to Roundhead Tyranny’, pp. 200–1.

⁸²⁴ Charles I, *The Kings ansver to the propositions for peace, as was pretended in the Club-mens petition to his Majestie. With the copie of a letter from Sir Lewis Dives, and another from Colonell*

could distinguish between innovation and truth, and could provide the stability in the law that was lacking.

Similarly, arguing against the political Independent desire for a forced settlement, another author argued that if 'by new and unknown Lawes they must maintaine an unknowne, and unheard of Government, the want of the Scepter must be supplied by the Sword, and that which was the Mother of so great a change and innovation of Church and State, must of necessity be the Nurse to violence and Warre, so this will be an alteration, not an end of the Warre'.⁸²⁵ Writing as Miles Corbet, Taylor argued that the common law had been 'transform'd and metamorphs'd ... into the Lands common calamity', and rather than benefiting 'all men in generall, we have perverted those lawes to the private profit of our selves and some other persons'. Continuing, he argued that by using the '*Vox Populi*', the Parliament had 'unlawfully erected martiall law, club-law, *Staffords* law, and such lawlesse lawes as make most for Treason, Rebellion, Murder, Sacrilige, Ruine, and plunder'.⁸²⁶ By appealing to the idealised past, some royalists were able to promise the clear and untainted system of law that much of the pamphlet debate aspired towards.

Both parliamentarians and royalists suggested that there were immaculate and hitherto undefined laws, which would distinguish between innovation and truth, and provide the stability that the law currently lacked. These faultless laws were never more than a mirage, but the belief that a perfect set of laws existed meant that authors kept on trying to find them, and were therefore unwilling to compromise when the laws were proven to be imperfect. The high reverence in which the law was held meant that there was a continued conviction that the law could bring order to the political dispute, but if the legal concepts failed to work in all circumstances, they were deemed unsuitable in a particular rather than a general sense, and in need of specific refinement or correction. Because of the belief in the existence of a perfect set of laws, any settlement that was

Butler governour of Wareham sent to them, and read in their quarters (Printed by R.A. and I.C., [11 August] 1645) E.296[12], p. 4.

⁸²⁵ *No peace 'till the King prosper* (Printed by Leonard Lichfield, [25 August] 1645) E.298[7], p. 2.

⁸²⁶ John Taylor, *A most learned and eloquent speech, spoken (or delivered in the Honourable House of Commons at VVestminster,) by the most learned lawyer Miles Corbet Esquire* (s.n., [25 August] 1645) E.298[3], p. 4. John Taylor is listed as having 'revised' the work on the title page.

based on legal concepts or the law would inevitably be found wanting when it was not sufficient to codify the complex, troubled times.

In order to construct a peace on the foundation of the law, in other words, there would have needed to have been a fundamental shift in the understanding of the law – a regression from the open debate that so far the 1640s had enjoyed, back towards the *arcana imperii* and artificial (and private) legal reasoning – for the only proven way that an appearance of smooth perfection could be obtained was through reticence and impenetrability. The open debate and public airing of legal principles in the polemic had backed the legal system into a corner, where the only two options were to keep making corrections towards the pipe dream of a perfect legal solution, or to draw the shutters and exclude the public from the legal processes they had become accustomed to observing and arbitrating. Neither of these was a viable solution, and so legal settlement remained impossible.

IV. THE SOLEMN LEAGUE AND COVENANT

The legal framework was thus incapacitated by the triple issues of radicalisation, constitutional contradiction and restrictive idealism – and in this it had a counterpart in the religious framework that had been established by the Solemn League and Covenant, which was similarly beset with issues of internal contradiction. The Covenant had bound those who had taken it into an ill-defined commitment to unclear religious ends, and so even when isolated from the wider legal-constitutional problems, the religious framework had become contested and incoherent. Inside the religious framework, the Solemn League and Covenant underwent two crucial changes before the end of the war. Firstly, the Covenant's meaning had shifted from being potentially determined by the Westminster Assembly and (to a certain degree) the reader, towards being determined by Parliament alone. This desacralisation meant that Parliament could claim to control the consciences of those who had sworn to the Covenant, and that their settlement was binding for those who had taken the Covenant. Secondly, the cause of the Parliament and the cause of the Covenant had become synonymous, fragmenting further the parliamentarian coalition. As details of the potential church settlement came to light, and as Charles continued to refuse to consider taking the Covenant, to avoid forswearing the community Parliament needed to balance the consciences of those who had sworn to the Covenant on one hand, and a King who was refusing to abandon episcopacy on the other. These factors combined with partisan presses and publishers helping to force a

wide-ranging debate about church settlement into the public conversation, which made the conversations surrounding the prospect of peace and rebuilding the church ever more frantic. The religious framework that had been established by the Solemn League and Covenant had thus become both a precursor to the peace, and a major hurdle to settlement.

The Solemn League and Covenant was buckling under the issue of church settlement and, as the conflict came to a close, pressure mounted on Parliament to describe the form that they would settle on. The Covenant's vague promise to examine the best reformed churches meant that diametrically opposed readings could be made. Vallance has argued that the heresiographer Thomas Edwards's 'reading of the Covenant as a document committing England to a Presbyterian church was as much a careful literary construct as his depiction of the radical sects'.⁸²⁷ This meant that, for some, Parliament needed to demonstrate new vigour in pursuit of these (supposed) ends. For example, in August 1645 Prynne argued that the Solemn League and Covenant meant that the '*Seditious Sectaries*' and those that ignored the Parliament's religious ordinances were libelling the Parliament, and therefore must be brought to heel. To fail to do so would, according to Prynne, shame all those who had sworn to the Covenant, and 'so render your selves, with your Proceedings, contemptible to all the world : which God forbid'.⁸²⁸ A contradictory, but similarly reasonable interpretation might make liberal use of the efforts of Vane to include the provision that the reformation that the Covenant demanded would be according to the 'Word of God', not necessarily closer towards the Scots' Presbyterianism system.⁸²⁹ For example, Saltmarsh argued in April 1646 that the Covenant did not call for uniformity of belief amongst the kingdoms, but for 'religious unity', with each nation 'free to reform itself according to the word of God'.⁸³⁰ A *Moderate Reply to the Citie Remonstrance* similarly argued that the Covenant does 'not tie us to a Presbyteriall government and that 'here is no positive determination of any

⁸²⁷ Vallance, *Revolutionary England*, pp. 136-8.

⁸²⁸ Prynne, *A fresh discovery*, sig. A2v-A3r.

⁸²⁹ See for example Woolrych, *Britain in Revolution, 1625-1660*, p. 271.

⁸³⁰ John Saltmarsh, *The divine right of Presbyterie, asserted by the present Assembly, and petitioned for accordingly to the Honourable House of Commons in Parliament* (Printed for G. Calvert, [07 April] 1646) E.330[29], p. 10; Vallance, *Revolutionary England*, p. 136.

thing; but an engagement into an inquisition after the best'.⁸³¹ Therefore the Covenant could, in theory, divinely prescribe a wide number of church settlements that could be opposed to each other, the acceptance of which would threaten to make the oath-taker forsworn.

Those who denied that the Covenant could bind consciences – perhaps because of their support of Independency, for example – could question whether the Covenant was lawful at all. For example, Walwyn had dedicated his *Word More* to arguing that the Covenant was against the 'whole scope of the New Testament', while Overton in his *Arraignment of Mr. Persecution* corroborated that covenants were only used with 'Old Man, before the coming of Christ', and therefore was out of line with Protestantism.⁸³² Overton went further and saw the Covenant as part of a much wider conspiracy. In his work *The Arraignment of Mr. Persecution*, 'Justice Reason' revealed that there had been a design to 'settle and establish bloody *Persecution by Covenant* over the *Consciences* of honest and faithfull men unto the State, under the speacious and godly pretence of *Reformation*'.⁸³³ 'Sir Symon Synod' had arrogated 'an *infallability*, and a *supremacy* over Us, and the people, condemning PERSECUTION, when they were persecuted, but commending and approving it, if they may persecute.' 'The Judge' continues and states that 'We blesse God, that hath put it into the hearts of those honest godly people, (though publicly despised and hated) those faithfull friends and lovers of *Parliament* and *Kingdome*, whome you *nicke-name Anabaptists, Brownists, Independents, &c.* to discover and detect unto us the *Jesuisticall* and *Trayterous* Designes of the *Synod*', for if they had not discovered them, 'We should have been kept ignorant through their zealous pretences'.⁸³⁴ For Overton, then, Symon Synod and the Solemn League and Covenant had claimed infallibility in order to promulgate popish designs which had been dressed

⁸³¹ John Price, *A moderate reply to the citie-remonstrance; presented to the High Court of Parliament the 26 of May, 1646. Containing severall reasons why many well affected citizens cannot assent thereunto* (Printed for Matthew Simmons and Henry Overton, [12 June] 1646) E.340[20], sig. A3r-A3v. The same work argued that it was 'as cleare as the Sunne' that the Covenant had been made to make 'more plaine discovery of the Parliaments enemies, and not for a snare to the Parliaments friends', sig. A3v.

⁸³² William Walwyn, *A vvord more to Mr. Thomas Edwards minister, by William VValwyn marchant. Concerning the nationall covenant* (Printed by Thomas Paine, [19 March] 1646) E.328[20], p. 2; Overton, *The Araignment of Mr. Persecution*, p. 24.

⁸³³ Overton, *The araignement of Mr. Persecution*, pp. 34-5.

⁸³⁴ *Ibid.*, pp. 36-8.

up as Presbyterianism – to deny freedom of conscience, and to tie the people by blind faith to that which they did not understand. While Overton and Walwyn were extreme examples, when the meaning of the Covenant became incompatible with religious preferences logic dictated that it was unlawful. Because there was next-to-no provision for conditional obedience to the Covenant, denying the Covenant even partially could lead to radical consequences.

On 14 March 1646, Parliament made clear that it looked to establish a Presbyterian church under Parliamentary control.⁸³⁵ While the Westminster Assembly may have preferred orthodox Presbyterianism, the Parliament had overturned this as, according to Baillie, ‘most of the House of Commons [were] downright Erastians’.⁸³⁶ When the Assembly appealed in April 1646, it was told that its objection was against parliamentary privilege.⁸³⁷ Parliament’s flexing of Erastian muscles also manifested itself in the polemic, and transformed the way that the Covenant was to be understood. Rather than individuals bringing their own meanings to the document, its meaning was to be confirmed by Parliament, and this was repeated in polemic. For example, in June 1646 the anonymous author of *The Interest of England Maintained* argued that ‘it ever was, and necessarily must be the Priviledge and Prerogative of all States, to be the Interpreters, as of their owne Lawes and Statutes, so much more of their owne Protestations and Covenants’. If people could ‘DISPUTE’ rather than ‘receive the CONSTRUCTION and INTERPRETATION [that] the *Parliament* shall give thereof’, it threatened to ‘erect a *Power* within the State, of greater Authority then the Parliament’.⁸³⁸ The Protestations and Covenants, then, were created *by* Parliament, not

⁸³⁵ 'March 1646: An Ordinance for Keeping of Scandalous persons from the Sacrament of the Lord's Supper, the enabling of Congregations for the choice of Elders and Supplying of Defects in former Ordinances and Directions of Parliament concerning Church Government.', in Firth and Rait (eds), *Acts and Ordinances of the Interregnum*, pp. 833-8.

⁸³⁶ Baillie, quoted in Lamont, *Marginal Prynne*, pp. 149-50. Lamont makes clear that Prynne's Erastianism was the product of the inability of the Presbyterian divines to control discipline, *Ibid.*, p. 169.

⁸³⁷ Ashton, *English Civil War*, p. 242.

⁸³⁸ *The interest of England maintained: the honour of the Parliament vindicated; the malignants plott upon the Presbyters, to make them doe their worke discovered. The designe to destroy common freedome, and all just government, is under the specious pretence of rooting out sectaries, and hereticks, evidenced: in certaine observations upon a dangerous remonstrance lately presented by the Lord Major, and Common Counsell of London, to the Honourable, the Commons of England, in Parliament assembled* (s.n., FD: 08 June 1646) E.340[5], pp. 11-3.

for Parliament by God. Because Parliament had to be supreme, the logic went, only Parliament could judge what the Covenant meant. Similarly, *A Moderate Reply to the Citie Remonstrance* made clear that it was Parliament who had made the Covenant, rather than it having been written by God, and therefore their sole ability to judge it was justified by Parliament's supremacy. 'Is it not most absurd', the work argued, 'that they shall compose and enjoyn the Covenant, and others shall put their sense upon it'.⁸³⁹ Parliament, not the divines gathered in the Assembly, and much less the people, would be the ones to judge what the Covenant bound the subscribers to. In this way, the Covenant as well as the church came to be Erastian.

While the Covenant came to be under the power of Parliament, this did not diminish the role that it played in the definition of the parliamentary cause. For example, in April 1646, the Houses of Parliament produced *A Declaration to the Commons of England*, in which they declared that some 'false constructions' had been put upon them by 'spirits stirring' that they were swerving from their first 'Aymes and Principles in the undertaking of this War, and to recede from the solemn League and Covenant'.⁸⁴⁰ The Solemn League and Covenant remained central to the negotiations with the King, and in speeches following the Uxbridge negotiations in early 1645, Lord Lowden argued that the Solemn League and Covenant would ensure 'uniformity of Gods Worship, and Church Government be established in all his Majesties Dominions', but that his councillors 'would not so much as advise his Majesty to looke upon it'.⁸⁴¹ In July 1646 the Newcastle Propositions included several provisions that the King and his followers should take the Covenant, and in letters following the discussions the Duke of Newcastle emphasised that in order for the King to even be able to 'adhere to the Parliament and settle peace' he would have to take the Covenant, but 'He could not'.⁸⁴² The Covenant, then, was

⁸³⁹ Price, *A moderate reply to the citie-remonstrance*, sig. A3r-A3v.

⁸⁴⁰ *A declaration of the Commons of England assembled in Parliament, of their true intentions concerning the ancient and fundamental government of the kingdom, the government of the church, the present peace; securing the people against all arbitrary government, and maintaining a right understanding between the two kingdoms of England and Scotland, according to the covenant and treaties* (Printed for Edward Husband, FD: 18 April 1646) E.333[19], pp. 3-4.

⁸⁴¹ Lisle et al., *Three Speeches*, p. 3.

⁸⁴² *The propositions of the Lords and Commons assembled in Parliament. For a safe and well grounded peace* (Printed for Iohn Wright, FD: 17 July 1646) E.344[25], pp. 2-3, 23; *A letter from*
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crucial to settle peace because of the fact that many of Charles's subjects had taken it, and for Charles to not take it would estrange him from both them and his Parliament. When Charles refused to take the Covenant, he had called Parliament's bluff.

The strength of the religious framework had been that the public could bring their own meaning to the Solemn League and Covenant, and therefore feel themselves represented and willingly subscribe to the parliamentary cause. However as Parliament brought the Covenant fully under their control in 1646, and clarified the exact terms of the church settlement which they intended, this openness to interpretation was stripped away.

Those who had taken the Solemn League and Covenant had subscribed their consciences to a church settlement which was now revealed to be increasingly at odds with the advice of the Westminster Assembly. Those subscribers who found an Erastian form of settlement distasteful were forced either to continue following their own understanding of the Covenant in defiance of Parliament, or to follow the Westminster Assembly's recommendation against Parliament, or to change their own beliefs to match Parliament's.

Thus the Covenant, instead of binding the nation together behind Parliament, eventually came to crystallise the differences between the various religious tendencies of the kingdom – dividing them further – and to thin the numbers of those who could subscribe wholeheartedly to the parliamentary cause.

II EPISCOPACY

The legal and the religious frameworks both had internal contradictions and impediments which would have made attempts to reach a peace settlement under either framework difficult. Each had increased the deference that was required to Parliament by the reader, while at the same time the religious and political conversation had become even more fractured. However, as well as sticking points within each framework, the two frameworks had grown to be increasingly incompatible with each other. For the parliamentary case to succeed, both frameworks had to be reconciled for a peace settlement, but this required the correlation of legal, religious and political obligations and languages that were increasingly fragmented and contradictory. Indicative of these

Newcastle, shewing that the Generall Assembly of the Church of Scotland have sent divers ministers to the King, to preach to him, and advise him to take the covenant, which if he shall refuse, to let him know what the church censure is (Printed for Thomas Hewer, [08 July] 1646) E.344[2], pp. 1-2.

problems, and how the two frameworks and the various languages bled into each other, was the struggle over episcopacy towards the end of the conflict.

For many, it was vital that episcopacy was abolished in the peace settlement, because Parliament had declared it against the law, and the Solemn League and Covenant had confirmed that the Church of England needed further reformation. According to the royalist pamphleteer John Gauden in his *Certaine Scruples and Doubts of Conscience* in January 1645, the problem was as follows. While Gauden conceded that the Parliament could decide what the law said, and even go against the explicit church government of episcopacy, it could only do so in exceptional times. When the war ended and the King returned to his Parliament, as would surely happen, the temporary ordinance would be void and the law would revert back to the original legislation (even though this had been deemed unlawful in the interim), until such a point when Charles assented to a bill from the Parliament. This, Gauden argued, went against the Covenant, which he interpreted to be a commitment to oppose episcopacy indefinitely.⁸⁴³ In other words, the reader needed to obey the ordinance, and swear against episcopacy, but equally when the King stopped being 'absent' or was in a position where he could sign the bill, the law itself would be superfluous because there had already been a vow to abolish it. Thus, for Gauden, the indefinite Covenant went against the finite Ordinance.

The need to abolish episcopacy also created complex problems for Charles that parliamentary writers were forced to consider. In May 1645, Constantine described the King's Coronation Oath, in which the King swore 'to maintaine the *Bishops*, and Churches committed to their charge in all Canonical Priviledges', and 'at the same time swore to maintaine the Lawes established'.⁸⁴⁴ Charles, and his supporters in the press, had argued that it was impossible for the King to abolish episcopacy, because to do so would be to break his Oath, which would be against both the laws of God and Nature. However, Constantine argued that when a human law (as he understood episcopacy to

⁸⁴³ John Gauden, *Certaine scruples and doubts of conscience about taking the Solemn League and Covenant* (s.n., [20 January] 1645) E.25[11], p. 10.

⁸⁴⁴ William Constantine, *The second part of the interest of England Considered as it relates to the government of the church. In three divisions: wherein is demonstrated, 1. How church-government by the hierarchy of bishops is destructive to the interest of this kingdome. 2. How the Presbyteriall discipline will conduce to the interest thereof. 3. Of tender consciences, what sort may and ought to bee permitted, what not* (Printed by Richard Bishop for Lawrence Blaiklock, [01 May] 1646) E.281[1], pp. 30-1.

be) was repealed, 'both his Majesty and his Subjects are disobliged from further observation', and that 'Oaths bind then to obey Lawes no longer then they are Lawes'.⁸⁴⁵ Similarly, John Gere in June 1646 argued that when the Oath to protect the privileges of the clergy was originally made, there was a distinction between the clergy and the laity. Now, however, the 'Laity and Clergie are now one body Politick, and under the same power and Rule', and because of this the Oath had ceased to have an effect – they are 'Both subject to regular alteration'.⁸⁴⁶ In addition, Gere had previously argued that because the laws change throughout the King's reign, the King's Oath to protect these laws must also change.⁸⁴⁷ Because the understanding of the law had changed, the King should be able to sign a bill abolishing episcopacy, and therefore divest himself of the obligation to preserve it.

These arguments, however, relied on the premise that the law had changed, and this remained a contested subject. Certainly, Parliament had used its role as the supreme judicature to declare that the understanding of the law had changed, and thus the church government according to law must change. However, episcopacy was still the church government in law; while ordinances had abolished bishops in the House of Lords, the ordinances remained only acts of expediency until the King was present again. Even though the Houses of Parliament with the assistance of the Westminster Assembly had confirmed that episcopacy was indeed repugnant to scripture, and had therefore declared it unlawful, the act itself still existed, and could only be abolished with the cooperation with the King. In other words, Parliament needed the King to act first, and then he could be disobliged from his Oath later.

The abolition of episcopacy was, as Gere argues, crucial for settlement – there was 'no hope of the Kings or the Kingdomes safety without a union with Scotland; and that such a union is impossible unless the King condescend in the point of Episcopacy'.⁸⁴⁸ Unfortunately for the Parliament, Charles seemed resolutely steadfast in his commitment to episcopacy. Northumberland, after the peace discussions at Uxbridge in

⁸⁴⁵ *Ibid.*, p. 31.

⁸⁴⁶ John Gere, *A case of conscience resolved. Wherein it is cleared, that the King may without impeachment to his oath, touching the clergy at coronation, consent to the abrogation of episcopacy* (Printed by Matthew Simmons for John Bartlet, [19 June] 1646) E.341[4], pp. 2-3.

⁸⁴⁷ *Ibid.*, p. 2.

⁸⁴⁸ *Ibid.*, p. 1.

1645, stated that they had asked for ‘the passing of the Bill abolishing Episcopacy, the Directory for the Worship of God, which are both of them past the two Houses of Parliament’, but ‘those were all denied’.⁸⁴⁹ Furthermore, in the publication of the *Kings Cabinet Opened* after the capture of the King’s baggage train after the Battle of Naseby in June 1645, it could be seen that Charles had time and time again asserted his support for the bishops. For example, in a letter from January 1644, Charles had begged Henrietta Maria to ‘*bee confident, that I will never quit Episcopacy, nor that sword which God hath given into my hands*’.⁸⁵⁰ A year later, he asked her to be ‘*confident, that in making peace, I shall ever shew my constancy in adhering to the Bishops*’.⁸⁵¹ In a series of speeches held at Common Hall following the printing of the *Kings Cabinet Opened*, John Lisle had said that ‘We all did hope, that the end of a Treaty was to settle Church-government according to the Protestation, the Solemn Vow and Covenant which we have all taken; But you see by the Kings Letter, that He avows it to the Queen that He will never quit Episcopacy’.⁸⁵²

The King’s refusal to consider abolishing episcopacy was when he demonstrated that the power of settlement was in his hands. Parliament’s ordinances were dependent on the idea that they would eventually become laws, and over the course of the conflict the battle against episcopacy had intertwined law, conscience and scripture to make the abolition of episcopacy absolutely necessary. To have taken the Covenant yet to conform to episcopacy once more was to break the oath that they had made with God, and by acting as a roadblock in Parliament’s efforts to abolish episcopacy, Charles demonstrated that he was the only solution to their entwined and contradictory polemic. This, then, was another impossible endgame for parliamentarianism, where the two frameworks had collided and depended on each other, and had created new problems.

III REVISITING AN APPEAL TO ‘THE PEOPLE’

This chapter has argued that by the end of the conflict, the legal constitution and the religious frameworks had become both internally inconsistent and contradictory when considered together. The realities of discussing the conflict in a marketplace controlled

⁸⁴⁹ Lisle et al., *Three Speeches*, p. 3.

⁸⁵⁰ Charles I, *The Kings answer to the propositions for peace*, p. 1.

⁸⁵¹ *Ibid.*, p. 7.

⁸⁵² Lisle et al., *Three Speeches*, p. 6.

by partisan publishers/printers, and of a church settlement that could never please all of those who had to subscribe to it, had played a crucial role in highlighting the increasing ineffectiveness of the two frameworks as a legitimising tool for Parliament. This section will examine the attempts of some of the more radical parliamentarian pamphleteers to reconcile these problems in the frameworks by invoking the rhetorical figure of 'the people', and thus returning to the arguments of the mixed constitution of 1642/3, and attempts to make obedience conditional on terms that Parliament found unacceptable.

This thesis has shown that the implied reader had been appealed to as an arbiter early in the conflict in order to empower the Parliament to continue the war effort against the King while resisting full parliamentary sovereignty. It has argued that while some historians have seen this appeal to the community in the form of an implied reader as being destructive to parliamentary power, its use was more predominantly a constructive one, to empower obedience rather than threaten disobedience. These arguments were halted because of the uncovering of the Waller Plot, the Vow and Covenant, and the conflation of royalist plots and arguments of the mixed constitution. However, as Parliamentary absolutism clashed with an eventual church settlement, many of those who were the driving force in emphasising Parliament's power found themselves increasingly unable to do so.⁸⁵³ Excluded by the current vocabulary of parliamentarianism, these authors turned to reconsideration of the arguments over the mixed constitution, and the ways in which expedient powers could be given to Parliament without the community sacrificing its ability to protect itself.

The author of *England's Miserie, and Remedie* argued that the reader needed to understand that there were 'two Bodies of the people' – 'the representative and the represented' – and that the body representative's power 'is not lent them for the ruine and destruction of our Lawes and Liberties ... but for the edification and strengthening of the same in particular, as well as generall'.⁸⁵⁴ 'The people' were to play a role in ensuring that the condition of the trust under which they surrendered their power – for the good of the commonwealth – was maintained. If this was not the case, then 'the multitude'

⁸⁵³ See, for example, William Walwyn's journey from being involved in the production of *Remonstrans Redivivus*, which argued that there was 'no appeale' from the judgements of Parliament, to being open to an appeal to the people: *Remonstrans redivivus*, p. 4; Foxley, *The Levellers*, pp. 56-7; Leng, 'Citizens at the Door', pp. 13-14.

⁸⁵⁴ *England's miserie*, pp. 1-3.

could 'be easily perswaded to shake off all Bonds of obedience, so necessary to the Magistrate ; and to cast the blame of their sufferings upon the Authors, either as false to their Trust, or *unable of the great weight of Authority* committed unto them'.⁸⁵⁵ Power could be reassumed if the magistrate was shown to be 'false to their Trust' by being 'regardlesse of their Lawes and Liberties, or negligent of the means of their Subsistance, Livelihood, and Safety'.⁸⁵⁶ This, the author argued, was what Lilburne's imprisonment had proved. Although Lilburne was a 'singular' he was 'three times imprisoned without shewing cause by a Parliament professing reformation, and defence of our Lawes and Liberties'.⁸⁵⁷

Similarly, Ball in October 1645 attempted to define the King's prerogative power and the power of Parliament. While some believed the King's power 'vast, and unknowne', and others believed the Parliament's power to be 'like the *Great Sea* ... enter[ing] into all the creeks and harbors'; he did not 'thinke the Kings *Terra Australis Incognita* of Prerogative power, or the Parliaments *Great Sea of Judiciall power* to be so unlimited or boundless', and argued that there must be something that belonged to the people.⁸⁵⁸ When writing on the powers of the King and Parliament, he imagined that 'the King and Parliament should make an act that they would & might dispose of all the Subjects estates in England', and asked 'what remedy might the Subject have'. While he conceded to the reader that was 'almost impossible that the King and Parliament should doe such a thing', he thought the 'kind of *impossible possibility*' worth answering.⁸⁵⁹ In such cases, the 'Counties, Cities, and Townes corporate might and ought first to petition', then '*declare and protest*', and then 'they might defend themselves by Armes; for if the *Representative Body* of the Kingdome, may in the behalfe of the Kingdome, raise Arms for the defence of themselves and the Kingdome, may not the *essential?*'⁸⁶⁰ For Ball, the point where power could be reassumed was tied explicitly to the laws of Nature, or else 'men will become, or be made slaves, and lose the *right of Nature*'. There were, he

⁸⁵⁵ *Ibid.*, p. 6.

⁸⁵⁶ *Ibid.*

⁸⁵⁷ *Ibid.*, pp. 5-6.

⁸⁵⁸ William Ball, *Tractatvs de iure regnandi, & regni: or, The sphere of government, according to the law of God, nature, and nations* (s.n., [25 October] 1645) E.309[36], pp. 1-2.

⁸⁵⁹ *England's miserie*, pp. 12-3.

⁸⁶⁰ *Ibid.*, p. 13.

argued, certain things that are '*indisputable*, such as is the generall and fundamentall liberty and propriety of the Subject grounded upon the Law of Nature, &c. concerning their lives and estates'.⁸⁶¹

The similarities – both theoretical and rhetorical – to Burroughs's postscript to the 1642 work *The glorious name of God* are striking. Burroughs had asked, '*if Parliaments should degenerate and grow tyrannicall, what meanes of safety could there be for a State?*', in answer to which he speculated 'whether a Law of Nature would not allow a standing up to defend our selves, yea to re-assume the power given to them, to discharge them of that power they had, and set up some other, I leave it to the light of nature to judge'.

Although Burroughs argued that it was 'hard to conceive it possible that a Parliament can so degenerate, as to make our condition more grievous by unjust acts', there might be 'power in a Kingdome' to 'returne to the law of nature from whence at first it rose'.⁸⁶²

Like Burroughs, Ball believed that 'the people' could be relied upon to temper both extremes of the prerogatives of the King and the privileges of the Parliament. While this remained an extra-constitutional power, it was one that was conceived to be integral to the constitution as a whole – that is to say, the conception of the constitution could not be considered perfect without the ability of the people to protect themselves. In June 1646 in *Constitutio Liberi Populi*, he made this even clearer, when he argued that 'the English Nation, or People never gave, or voluntarily assented, that their Kings, or Parliaments, or Both, should have an absolute Domineering, or Arbitrary power over them'. The 'free Nations, or people' can only reassume power when 'the fundamental frame of their Efficient Power, and their Liberties, and Properties are destroyed, or violated ... if otherwise they doe it, they are meere Rebels and Anarchists'.⁸⁶³ These pamphleteers, and others too, suggested once more that 'the people' might be legitimated to utilise their power on the occasion that a trust was betrayed.

These pamphleteers found themselves still trying to solve the same problem as had been faced in 1642–3: how to trust Parliament absolutely – although this question had now been further complicated by the events of the intervening years. The inability of parliamentarianism to create categories of obedience that were anything other than

⁸⁶¹ *Ibid.*, pp. 13-5.

⁸⁶² Burroughs, 'A briefe Answer to Doctor Fernes Booke', pp. 9-10.

⁸⁶³ Ball, *Constitutio liberi populi*, pp. 8, 15.

absolute had created layers of obligation that many found themselves unable to comply with. And so just as in 1642–3, when the polemic had appealed to the implied reader to lend their conditional support to the Parliament in order to legitimate its actions against the King without granting it absolute sovereignty, now at the end of the war the radical fringes of the polemic were once again using the idea of ‘the people’ as a check on Parliament’s potential tyranny.

As has been shown in the preceding sections of this chapter, both frameworks ultimately came under the absolute control of Parliament and had therefore reached argumentative dead ends. It was due to these impasses that those pamphleteers who still wished to resist an absolutist Parliament found themselves turning back again to the rhetoric of the mixed constitution and a safeguarding sovereign people which had been tried at the start of the war, in an attempt to find a solution to the contradictions and dissonances of the combined frameworks.

IV CONCLUSION

The Parliament’s case was reliant on absolute obedience, and as the realities of the reformed church came into focus, dissatisfaction with the direction of reformation threatened to undermine parliamentary sovereignty. Furthermore, application of communal legal solutions to individual cases had demonstrated that the law could be haphazard and context-specific, rather than timeless and perfect, even though belief in an as-yet uncodified ‘perfect law’ perpetuated the search for a legal solution. The Solemn League and Covenant had relied upon ill-defined best practice in order to appeal to as wide a population as possible, but ultimately it transpired that control of religion, and the Covenant, were to remain under the control of Parliament, even when Parliament contradicted the Westminster Assembly – and so the ‘true’ religion as a justification for Parliament’s actions had become an unsustainable and divisive foundation.

Settlement was impossible because there remained a conviction that the problems which these frameworks had come up against, and the issues on which they had faltered, could ultimately be fixed by absolute parliamentary obedience. By failing to acknowledge that there might not have been perfect laws that could solve the problems, or that one kind of church settlement could settle all consciences, and by refusing to allow space for the implied reader to bring their own subjective meaning to obedience, Parliament had

created a situation where no compromises could be sought and fewer people could wholeheartedly support their cause.

All these endpoints were reached in part because of the impact of print. On the issue of church settlement especially, the polemic was driven by partisan presses and publishers, each with an identity and many with a clear preference. The vicious and sustained debate that took place in the presses had helped to construct clear totems onto which the reader's church preferences could be marked and differentiated from possible other systems, and could then be extrapolated to demonstrate that certain political or religious settlements were unconscionable. While accounts of the discussions in the Westminster Assembly emphasise the efforts to build consensus, this partisan print helped construct division.

The catastrophic failure of negotiation between the Parliament and King was caused because the official frameworks could no longer contain the polemic. Because the frameworks were cumulative, by 1646 to disagree with an aspect of either framework was to be excluded from both, and in the process, the frameworks that had been used to defend Parliament had created legal, political and religious problems that were more than the sum of their parts. For those who found themselves unable to support Parliament absolutely, the intellectual strain of describing the political system while simultaneously allowing flexibility for increased parliamentary power and personal disobedience had opened constitutional fault lines that were particularly difficult to solve, and would prove to be politically convenient for those wanting to influence Westminster from the outside in coming years.

CONCLUSION

Law with his strength, sting and curse, must needs cease and have an end⁸⁶⁴

Francis Cornwell, *King Jesvs is the beleevers prince, priest, and law-giver, in things appertaining to the conscience* (April 1645)

Throughout the first civil war, the law was manipulated and diluted through its publication in the public polemic. Traditional authorities that had acted to protect the law – the Inns of Court, and the court system more generally – had lost their cultural dominance in the judgement of the law, and their control of spaces where arbitration could be obtained. As authors and readers found themselves empowered to discuss legal principles in print, the law had become something that authors and readers could question, negotiate and eventually contest, without the formal training that many deemed was necessary to understand the law.

In October 1642, Richard Ward stated that he would ‘not trouble my selfe to search *Record*, not presume to expound, and interpret *Lawes*, (being no Lawyer)’, but would examine the *lawfulnessse* of [the Parliament’s] *Designe*, as farre as the *law of Nature*, the *light of humane Reason*, and *experience*, and my small *knowledge in Religion*, will dictate unto me’.⁸⁶⁵ Though Ward would not delve into ‘*Records*’, he felt qualified to examine the laws of both God and man in order to bring vindication to the Parliament.

Parliamentarian pamphleteers consistently struggled to come to terms with the lack of clear legal judgment, and that even with all the legal evidence presented, there were still those who believed that the King’s case was legally correct. This, to Ward, was the fault of either pernicious lawyers, or ‘Naturall [or] mischevous, malicious, and affected *ignorance*’.⁸⁶⁶ Even though public debate had demonstrated that the legal and constitutional framework was unable to solve the crisis, there persisted the belief that if the ‘true’ law was discovered, the conflict could be solved. The focus remained on repairing rather than reinventing the law, and protecting it against malicious influence. That the law still remained worthy of respect, and continued to play a dominant role in

⁸⁶⁴ Francis Cornwell, *King Jesvs is the beleevers prince*, p. 1.

⁸⁶⁵ Ward, *The Vindication of the Parliament*, p. 2.

⁸⁶⁶ *Ibid.*, p. 14.

politics and governance,⁸⁶⁷ even after it had been publicly debated and contested with such force, is a testament to the enduring belief that the law was perfect, even if the manifestations of legal power might not be.

Throughout the first civil war, the law was used as an enabler, rather than a guide, in the pamphlet debate. Legal and constitutional arguments were appealed to retrospectively, rather than proactively, in an attempt to justify the resistance against the King and measures that had already been taken. However, attempts to legitimise the parliamentary efforts in such an ephemeral medium as pamphlets were often at the mercy of fast-changing events and circumstances. Positions designed to justify a relatively minor issue in the constitution could be extrapolated to challenge a major issue using the same legal reasoning. In this way, while these legal pamphlets were often written as expediencies, they could be read outside their immediate context, and their conclusions applied to new circumstances. Eventually, this could lead to circumstances of constitutional change which might not be controlled.

The law remained a crucial way to discuss the urgent issues of the time, but through this discussion, its unity and integrity became increasingly contested as its workings were exposed by a contradictory and partisan polemic, and absorbed by an enthusiastic reading public.

These conversations took place in political environments, and the arguments that were made were time- and context-specific. The debate was always moving, either to keep up with events or to keep abreast of retorts and replies, and thus pamphlets needed to answer new problems with each iteration. While approaching these discussions with a focus on the history of ideas can shine new light onto the way that arguments were constructed, it can also distort the conversations in several ways. Firstly, it can gloss over the conversation's changes of focus, and the way that ideas disappeared and reappeared. Secondly, it can place too much value on the pamphlets' own claims to be constructed on intellectual foundations, which can mean that parliamentary thought is overvalued; parliamentary writers drew their reasoning from a myriad of intellectual languages and combined them to construct haphazard justifications. Great learning can create works that dazzle readers, even if the argument behind them is simply conjecture, and this may have been part of the reason that these works were created. For example, when dealing

⁸⁶⁷ See, for example, Hart, *The Rule of Law*, pp. 301-2.

with Prynne's *Sovereign Power of Parliaments*, Allen argued that the 'book is full of confusions and ambiguities, of repetition, digression and empty verbiage', and exhibits knowledge 'extensive[ly] to singularly little purpose'.⁸⁶⁸ Prynne's *Sovereign Power* was 'largely derived not from reasoning but from conviction', and although at times Prynne's use of sources is questionable, 'it is probable that he believed every word he said'.⁸⁶⁹ Often, pamphlets offered themselves as tools to maintain conviction for prejudiced readers rather than works of persuasion. They offered examples and justifications to defend acts that were already committed, rather than proactively defending actions that were yet to be made. Rather than intellectual works, they should be thought of as political expedients and tools of mobilisation. This is not to say that they were not dealing with intellectual problems, but rather that these problems came second to the political context – on the most part, events dictated the course of the pamphlet debate, rather than ideas.

Thinking about pamphlets and their ideas as political, and stressing the importance of context, means that we can investigate in greater detail the moments where the debate and conversation changed. For example, the Vow and Covenant and the discovery of the Waller Plot in the summer of 1643 fundamentally shifted the polemical debate in a seismic change that was political, not intellectual, despite the great efforts of writers such as Hunton, whose *Treatise of Monarchie* a few weeks before had extensively and persuasively demonstrated that siding with Parliament was an act of conscience. Similarly, the need to obtain the military support of the Scots led to the transformation of the parliamentary cause, shifting the framework from one based on the law to one that was based on the pursuit of 'true religion'. The shifting of the debate following these developments demonstrates that these debates accompanied, rather than dictated, the politics.

By tracing the debate through the civil war, this thesis has pointed to several key moments where the debate was transformed. In the autumn of 1642, when the debate developed from the 'paper wars' where the implied reader acted as an observer of the legal discussion, the higher-stakes prospect of conflict and the need to mobilise support led some parliamentarian writers to invoke the implied reader as an arbiter of the legal

⁸⁶⁸ Allen, *English Political Thought, 1603-1660*, p. 436.

⁸⁶⁹ *Ibid.*, p. 437.

discussion. The implied reader was empowered to determine who was acting correctly, and this enabled the reader to support the Parliament while still maintaining that Parliament's power was not absolute. Disagreements over whether the implied reader could act as an arbiter would divide the parliamentary coalition, but were swept under the carpet by the Vow and Covenant, and later the Solemn League and Covenant. The Solemn League and Covenant rested the parliamentary cause on the pursuit of true religion, which acted to legitimise not only the invocation of extensive religious rhetoric to support Parliament's claims, but also public discussion of the types of church settlement that might be made. These discussions threatened to undermine the collective Covenant that was intended to bring together the nation, because it became clear that a single fundamental religious truth could not be drawn from the scripture.⁸⁷⁰ By July 1646, the parliamentarian position had become visibly rigid and inflexible. Concerns about both church and peace settlements frustrated the debate, and meant that Parliament's demand for absolute obedience in both conscience and law was cripplingly demanding on the parliamentarian reader.

The way that these developments affected the evolving patterns of polemic demonstrates the importance of close attention to immediate contexts. By approaching these problems chronologically, we can follow the way that the debate developed more closely, and identify points where the conversation changed. Doing so not only creates a more complete picture of the polemic, but also demonstrates the flexibility that its readers had to maintain in accessing these legitimising languages. Readers were forced to frequently adapt to the new causes and justifications, or else they would lack the ability to justify their own actions, and those of their chosen side.

Throughout the civil war, attempts to invoke the implied reader were explicitly tied to the pressures of mobilisation. The moments when the implied reader was used often occur when the debate was faltering, and polemical problems needed to be solved. For example, the implied reader was invoked to empower Parliament without granting them absolute sovereignty in 1642–3, or when a wide range of religious views needed to be brought together in a collective oath in 1643–4. At key moments in the conflict, politicians attempted to take the initiative and construct shibboleths that would demand allegiance and obedience, and separate the sheep from the goats. In response to this

⁸⁷⁰ John Morrill, 'The Puritan Revolution', in John Coffey and Paul C. H. Lim (eds), *The Cambridge Companion to Puritanism* (Cambridge, 2008), p. 72.

effort to confirm clear dichotomies – the lawful versus the unlawful, the righteous versus the corrupt – the implied reader was appealed to by pamphleteers in order to break out of these binaries and develop conditions of conformity. Authors used the implied reader to answer impossible hypotheticals and grant extra-parliamentary validation to the cause without fundamentally changing the constitution. Thus the implied reader was used to get results in particular political circumstances. In this sense, the appeal to the reader was limited to the moment, and occurred in micro-contexts; the implied reader was invoked to enable readers to justify decisions that they had made, and were going to make, at a particular political or religious moment, rather than for posterity – not immaculately reasoned, but immediately expedient.

The work done in this thesis that focuses on attributing religious and political beliefs to printers and publishers is exploratory rather than comprehensive, but it does suggest that there is much more potential hiding within the colophons and ornamental woodcuts. The brief survey demonstrates that printers and publishers could have coherent and partisan identities, and could act as political actors, although a methodical study of the Thomason Tracts would allow us to understand in greater detail how the politics of print works. Printers and publishers could construct debates, manipulating the market of print to present the conflict in certain ways, while using strategies of anonymity to give the appearance of ideas independently conforming with each other or evolving in tandem. This should not act to diminish the importance of ideas – indeed, it suggests that there was a more concerted effort to give these ideas traction than just launching them into the ether. However, it is necessary to be aware of the tactics involved – if comparable or compatible ideas were being perpetuated by a certain press, then it needs to be understood more as a press campaign attempting to manipulate the pamphlet market, than as demonstrative of wider political or religious shifts. By failing to consider the origins of the printed text, the techniques that were employed by printers and publishers who worked anonymously can continue to operate to this day. Indeed, it is testament to the skill of the printers and publishers that their interventions can continue to go unnoticed, despite the best efforts of contemporaries and historians since.

By considering printers and publishers as political actors, we can begin to make more sense of anonymously printed and produced ephemera. Rather than being just white noise, there is the opportunity to group pamphlets into large corpuses, examination of which may suggest more legal and religious consistency than has been previous

suggested. Accounts of cheap print in the period have often portrayed the polemic as being carried by occasional and exceptional radical works, but attending to strategies of anonymity, as this thesis has attempted, suggests instead that these were sustained acts of political thinking. Producers were engaged in active processes of corroboration, reiteration and repackaging, in line with their often consistent political and religious leanings. Thus, political ideas could be read in serial, and presses and publishers could constantly reapply core principles to new circumstances and events.

The political debate in the civil war was based on frameworks that had been introduced to make sense of the conflict, but both the legal and the religious framework proved unable to solve the conflict, and had in fact created new problems that threatened to undermine the cause. Pamphlets that were written for mobilisation had created incoherencies and contradictions within the polemic which eroded the legitimising vocabulary of the frameworks. To disagree with Parliament was to be excluded from both the legal and religious frameworks and thus excluded from a justification of the conflict. Those who found that these shared languages did not correlate with personal expectations or convictions were pushed either to conform to Parliament on its strict terms, or attempt to develop new radical understandings to construct conditional obedience to the parliamentary cause.

Thus, alongside political events and intellectual pressures the political debate was also shaped by the mechanics of making the arguments that constituted the debate. Because the polemic forced authors to produce justifications and defences at pace and in response to rapidly evolving circumstances, the process of arguing itself helped shape the argument, acting as a creative force which could trap individuals within polemical dead ends, or create new problems and contradictions against which individuals had to weigh their principles and beliefs. Because the official frameworks were unable to contain the polemic, the mechanics of print thus propelled ideas into spaces that ultimately could not be controlled.

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- The First Search: After One Grand Cause of the Wrath of God yet against His People, in the Use of the So Much Idolized Liturgie, or Common Prayer* (Printed by Robert White, [04 July] 1644) E.50[11].
- A Friendly Check to Dr Bastwick: Sent Unto Him in a Letter from a Presbyterian Friend* (Printed for Tho. Vnderhill, [11 September] 1645) E.300[18].
- A Frivolous Paper, in Forme of a Petition: Framed and Composed by a Disaffected Party in This Citie of London, Intended by Them to Be Presented to the Honourable House of Commons. With Certaine Considerations Propounded by Way of Advertisement and Caution Unto Those Who through Unadvisednesse, Are Apt to Subscribe the Same* (Printed for Stephen Bowtell, [13 December] 1642) E.130[11].
- A Full and True Relation of the Late Great Victory, Obtained by the Protestants against the Rebels in Ireland; in Which Is Declared the Manner of the Fight, with the Number of Those That Are Slaine; and the Names of Such Men of Ranke and Qualitie, That Are Either Slaine or Taken Prisoners. All Which Was Sent from Dublin in a Letter,*

- Dated the 5. Of This Instant Moneth of Aprill, and Received the 11. Of the Same, 1643* (Printed for Hen: Overton, and Edward Blackmore, FD: 12 April 1643) E.96[6].
- A further enquiry for truth, for the better satisfaction of scrupulous consciences* (s.n., [25 March] 1643) E.94[8].
- The General Resolution of the Two Kingdoms of England and Scotland, Concerning, His Royall Majesty, the Prince, and the Evill Incendiaries Which Are Now About Them* (Printed for I. Tompson and A. Coe, FD: 24 June 1642) E.152[9].
- A Glasse for Vveak Ey'd Citizens: Or a Vindication of the Pious, Prudent and Peaceable Petition (to the Honorable the Lord Mayor, Aldermen and Commons in Common-Council Assembled) Now in Agitation, from the False Aspersion and Calumniation of a Seditious Pamphlet, Intituled, a Dialogue, &C.* (Printed for Tho: Underhil, FD: 19 June 1646) E.341[5].
- The Grand Case of England, So Fiercely Now Disputed by Fire and Svword, Epitomized* (Printed for J. Partridge, [08 February] 1643) E.88[27].
- Great Britains Misery; with the Causes and Cure. Described First, as It Is from the Justice of God the Authour, Who Is Now in Controversie with the Inhabitants of the Land for Sin: Especially for Eight Capitall Crimes, All Which Are Aggravated by Sundry Circumstances. Secondly, the Injustice and Malice of the Instruments of This Misery, Satan and His Agents: Their Main Aime, and Particular Ends, Moving Them Therunto. Vindicating, Plainly and Fully (by Way of Answer to Severall Objections) the Lawfulness and Necessity of Raising Arms by the Parliament, and Kingdom; for the Defence of the King, Kingdom, Religion, Laws, and Known Rights of the Subject: Against That Viperous Generation of Papists, Atheists, Delinquents, and Licentious Men, Who Have at Once Invaded All* (Printed for Laurence Chapman, [21 August] 1643) E.250[4].
- The Harmony of our Oathes. Shewing, an argument betwixt the Oathes of Supremacie, Allegiance, the freemans oath, protestation and covenant* (Printed by T. Pain, and M. Simonds for Thomas Underhill, [28 July] 1643) E.62[5].
- The Independants Militarie Entertainment. Or, Certaine Reasons and Arguments Why Independants Ought Not Only to Be Admitted into the Army Raised for Defence of Church and State, but Also Both by Law of God, Nature, and Nations, Are Required to Put Their Hands to the Plough of the Kingdome* (Printed for Henry Overton, [24 April] 1645) E.278[28].
- The Iniquity of the Late Solemne League, or Covenant Discovered: By Way of a Letter to a Gentleman Desiring Information Upon the Poynt. Whereunto Is Subjoynd the Covenant It Selfe* (s.n., [03 March] 1644) E.36[10].
- Intelligence from Yorke: Relating the Unlawfull Proceedings of the Malignant Party There: With Some of Their Propositions* (Printed for H. Blunden, FD: 25 August 1642) E.114[12].
- The Interest of England Maintained: The Honour of the Parliament Vindicated; the Malignants Plott Upon the Presbyters, to Make Them Doe Their Worke Discovered. The Designe to Destroy Common Freedome, and All Just Government, Is under the Specious Pretence of Rooting out Sectaries, and Hereticks, Evidenced: In Certaine Observations Upon a Dangerous Remonstrance Lately Presented by the Lord Major, and Common Counsell of London, to the Honourable, the Commons of England, in Parliament Assembled* (s.n., FD: 08 June 1646) E.340[5].
- An Item to His Majestie Concerning Prince Rupert and His Cavaliers* (s.n., [03 February] 1643) E.88[7].
- A Ivst Complaint or Lovd Crie of All the Vvell-Affected Subiects in England against That False and Scandalous Pamphlet Intituled, a Complaint to the House of Commons*

- and Resolution Taken up by the Free Protestant Subjects of the Cities of London and Westminster and the Counties Adjacent* (s.n., [31 January] 1643) E.245[27].
- Justice's Plea, or a Serious, Seasonable and Most Submissive Motion (Back'd with Many Weighty Motives) Most Humbly Tendered by One of the Meanest Sons of His Deare Mother England, to the Reverend Synod, or Assembly of Divines at Westminster, That They Would Be a Means to the High and Honourable Court of Parliament, That Justice May Be Speedily and Severely Executed Upon All the Most Disloyall and Treacherous Enemies of the Kingdom, the Unnaturall Paricides of Their Mother England* (s.n., [01 August] 1644) E.254[8].
- The Kingdomes Case: Or, the Question Resolved, Whether the Kings Subjects of This Realm of England May or Ought to Ayd and Assist Each Other, in Reprising the Persons Now Assembled Together, under the Name of the Kings Army. Pro Lege Rege Grege Adillam Propugnandum. Informandum. Conservandum* (Printed for Iohn Wright, FD: 01 May 1643) E.100[9].
- Knowne Lawes. A Short Examination of the Counsells and Actions of Those That Have Withdrawne the King from the Governement and Protection of His People* (s.n., [21 January] 1643) E.85[32].
- The Late Covenant Asserted* (Printed for Thomas Vnderhill, [14 August] 1643) E.250[2].
- A Letter from a Grave Gentleman Once a Member of This House of Commons, to His Friend, Remaining a Member of the Same House in London. Concerning His Reasons Why He Left the House, and Concerning the Late Treaty* (s.n., [19 May] 1643) E.102[13].
- A Letter from a Member of the House of Commons, to a Gentleman Now at London, Touching the New Solemne League and Covenant* (Printed by H. Hall, [06 May] 1644) E.45[8].
- A Letter from a Protestant in Ireland to a Member of the House of Commons in England Vpon Occasion of the Treaty in That Kingdome* (Printed by Leonard Lichfield, FD: 03 October 1643) E.75[4].
- A Letter from Newcastle, Shewing That the Generall Assembly of the Church of Scotland Have Sent Divers Ministers to the King, to Preach to Him, and Advise Him to Take the Covenant, Which If He Shall Refuse, to Let Him Know What the Church Censure Is* (Printed for Thomas Hewer, [08 July] 1646) E.344[2].
- A Letter of the Ministers of the City of London, Presented the First of Ian. 1645. To the Reverend Assembly of Divines Sitting at Westminster by Authority of Parliament, against Toleration* (Printed for Samuel Gellibrand, [02 January] 1646) E.314[8].
- A Letter Sent from a Private Gentleman to a Friend in London, in Justification of His Owne Adhereing to His Majestie in These Times of Distraction: With Arguments Induceing Him Thereunto, Both from the Law of God and Man* (Printed for V. N., [28 November] 1642) E.128[24].
- A Letter, in Which the Arguments of the Annotator, and Three Other Speeches Vpon Their Majesties Letters Published at London, Are Examined and Answered* (s.n., [12 August] 1645) E.296[15].
- Letters of Consequence from Scotland, the First from the Commissioners of the Generall Assembly There, to the Scots Commissioners Here in England* (Printed for Robert Bostock, [30 October] 1643) E.74[5].
- The Londoners Petition to the Right Honorable the Lords and Commons Now Assembled in the High Court of Parliament. The Humble Petition of Divers Inhabitants of the City of London and the Liberties Thereof* (Printed for Adam Bell, [23 December] 1642) 669.f.6[95].

- The Maximes of Mixt Monarchy to Resolve All Good Consciences by Right Principles of the Royall and Righteous Power in the Person of the King and the Parliament* (s.n., [08 February] 1643) E.88[18].
- A Medicine for Malignancy: Or, Parliament Pill, Serving to Purge out the Malignant Humours of Men Dis-Affected to the Republick. Wherein by Way of Dialogue or Discourse between a Royalist & a Loyalist, the Common Pleas of the Kingdom Are out-Pleaded. All Our Vulgar Scruples and Anti-Parliamentary Allegations Most Clearly and Fully Answered, Whether They Bee Neutrall, Malignant; Civill, or Religious* (Printed for Ralph Smith, [02 May] 1644) E.45[2].
- A Miracle: An Honest Broker, or, Reasons Urging a More Liberall Loane Towards the Maintenance of Religion, Law, and the Kingdomes Safety in Them Both* (s.n., [06 March] 1643) E.246[34].
- A Modest Petition for a Happy Peace Offered to All Such as Have No Other Intent Then Union in Their Petitioning: And Do Carry Peace and the Good of the State in Their Hearts as Well as Their Hands: And If It May Be Thought Fit, May Be Serviceable to the Common-Wealth, If It Shall Be Suddenly Presented to the High Ad Honorable Court of Parliament by a Considerable Number of Such as Are Resolved Upon Such a Course* (Printed for Robert Bostock, FD: 13 December 1642) E.130[5].
- Neutrality Condemned, by Declaring the Reasons Vvhy the Deputy-Lieutenants, Intrusted by the Parliament for Cheshire, Cannot Agree to the Treaty of Pacification Made by Some of That County: At Bunbery, December, 23. 1642. And May Serve to Prevent the Like in Other Counties* (Printed for Henry Overton, [06 January] 1643) E.244[41].
- A New Plea for the Parliament: And the Reserved Man Resolved: From the Serious Consideration of the State of the Controversie, Betweene the King and the Parliament. Together with Severall Answers to Some Common Objections About This Subject. With Advice to Those Who Are yet Unsettled in Their Thoughts Hereabout* (Printed for Henry Overton, [05 January] 1642) E.244[38].
- No Peace 'Till the King Prosper* (Printed by Leonard Lichfield, [25 August] 1645) E.298[7].
- Obedience Active and Passive Due to the Supream Povver, by the Word of God, Reason, and the Consent of Divers Moderne and Orthodox Divines; Written Not out of Faction, but Conscience, and with Desire to Informe the Ignorant, and Undeceive the Seduced* (Printed by Leonard Litchfeild, [24 February] 1643) E.90[19].
- Observations Upon the Instructions for the Taking the Vovv and Covenant Throughout England* (Printed by Leonard Lichfield, [07 August] 1643) E.64[9].
- Observations Vpon the Earle of New-Castles Declaration* (s.n., FD: 28 February 1643) E.91[10].
- An Orderly and Plaine Narration of the Beginnings and Causes of This Warre. Also a Conscientious Resolution against the Warre on the Parliaments Side* (s.n., [08 July] 1644) E.54[3].
- The Parliaments Lamentation, for the Distractions of the Kingdome First, Vvherein Is Declared Their Great Sorrow for the Kings Absence* (Printed by T. Fawcet, FD: 06 July 1642) E.154[6].
- Peace Broken, or, Blessings Become Snares and Cursings* (s.n., [05 February] 1645) E.268[3].
- The Petition of the Most Substantiall Inhabitants of the Citie of London, and the Liberties Thereof, to the Lords and Commonns [Sic] for Peace. Together with the Answer to the Same. And the Reply of the Petitioners. Also a Letter from a Country Gentleman to a Member of the House of Commons, Concerning the Taking of Marlborough* (Printed by Leonard Lichfield, [06 January] 1643) E.244[39].

- The Petition of the Most Svbstantiall Inhabitants of the Citie of London and the Liberties Thereof to the Lords and Commonns for Peace Together with the Answer to the Same: And the Reply of the Petitioners* (Printed by Leonard Lichfield, [06 January] 1643) E.244[39].
- A Plain Favlt in Plain-English* (Printed for T. Vnderhill, [09 February] 1643) E.88[30].
- A Plea for Moderation* (s.n., [April] 1642) E.143[7].
- A Plea for Peace: Shewing the Dignitie of Princes, against the Many Railings of the Rabble, the Invectives of the Ignorant, and Murmurs of the Malicious* (Printed for Francis Coles, [22 September] 1642) E.118[23].
- A Plea for the Parliament, or, Considerations for the Satisfaction of Such, Who Are Apt to Be Mis-Led by the Malignant Party against the Parliament, with a Palpable and Evident Declaration of Their Chiefest Designes Therein* (s.n., [June] 1642) E.152[11].
- A Political Catechism, or, Certain Questions Concerning the Government of This Land, Answered in His Majesties Own Words, Taken out of His Answer to the 19 Propositions, Pag. 17, 18, 19, 20. Of the First Edition; with Some Brief Observations Thereupon. Published for the More Compleat Setling of Consciencs, Particularly of Those That Have Made the Late Protestation, to Maintain the Power and Priviledges of Parliament, When They Shall Herein See the Kings Own Interpretation What That Power and Priviledges Are* (Printed for Samuel Gellibrand, [20 May] 1643) E.104[8].
- Powers to Be Resisted: Or a Dialogue Arguing the Parliaments Lawfull Resistance of the Powers Now in Armes against Them; and That Archbishops, Bishops, Curates, Neuters, All These Are to Be Cut Off by the Law of God; Therefore to Be Cast out by the Law of the Land. Very Necessary and Usefull for the Information of the Ignorant, Confirmation of the Weake, Stablishing of the Strong, Convincing of the Froward, in the Clearing, Resolving, and Stating the Legality of the Covenant, and This Present Warre. Also an Answer to This Quere, How Farre Religion May Be Defended by the Law of Armes? Being a Thing Much Questioned by Some. Here Is Also a Fit Answer to Dr Ferns Late Answer, Such as God Hath Commanded to Be Given Unto Him, Who (in the Title and Close of His Book) Hath Exalted His Folly, and His Wickednesse before the Face of All the Christian World* (Printed for Henry Overton, [28 December] 1643) E.79[15].
- Prince Ruperts Burning Love to England: Discovered in Birminghams Flames* (Printed for Thomas Vnderhill, [01 May] 1643) E.100[8].
- The Priviledges of Parliament, or, a Modest Ansver to These Three Questions: I. Whether It Be in the Power of a Parliament, Called by Writ, to Alter Pre-Established State-Government? Ii. Whether It Be in the Power of a Parliament to Alter Church-Government? Iii. Whether It Be in the Power of a Parliament (Wheu [Sic] Their Right and Just Priviledges Be Undermined, and Sought to Be Subverted by Private Stratagem, or Publike Warre) to Take up Armes in Defence of Themselves and the Whole Kingdome?* (Printed for Thomas Harrison, [18 February] 1643) E.89[19].
- The Propositions of the Lords and Commons Assembled in Parliament. For a Safe and Well Grounded Peace* (Printed for Iohn Wright, FD: 17 July 1646) E.344[25].
- The Queens Majesties Message and Letter from the Hague in Holland, Directed to the Kings Most Excellent Majesty, &C, Being Sent in That Ship Which Was Forced to Put in at Yarmouth by Reason of a Leake Which She Sprung at Sea, and Was Bound for Newcastle, Who Had in Her Fifty Commanders, Besides Other Common Souldiers, 400. Barrells of Powder, Ten Peeeces of Ordnance, and Great Store of Other Armes and Ammunition, All Which Was Sent to His Majesty* (Printed for T. Vnderhill, FD: 14 October 1642) E.122[12].

The Readinesse of the Scots to Advance into England. The Policie and Practise of the French Agent There to Hinder It. Exprest in Three Propositions (Printed for Robert Bostock, [25 November] 1643) E.77[1].

Reasons Why This Kingdome Ought to Adhere to the Parliament (s.n., [01 August] 1642) E.108[30].

Reformation of Church-Government in Scotland, Cleered from Some Mistakes and Prejudices, by the Commissioners of the Generall Assembly of the Church of Scotland, Now at London (Printed for Robert Bostock, [24 January] 1644) E.30[5].

The Reformed Malignants. Or, a Discourse Vpon the Present State of Our Affaires. Betwixt a Cavalier and a Convert (Printed for Laurence Blakelocke, FD: 04 September 1643) E.250[6].

A Relation from Portsmouth, Vvherein Is Declared, the Manner How the Castle Was Taken on Saturday Night Last; as It Was Sent in a Letter by One There Present (Printed for Henry Overton, [08 September] 1642) E.116[15].

Remarkable Passages from Nottingham, Lichfield, Leicester, and Cambridge Declaring What the Kings Standard Is, and the Time and Manner of Its Setting Up (Printed for T. Underhill, FD: 01 September 1642) 669.f.6[75].

A Remonstrance or the Declaration of the Lords and Commons, Now Assembled in Parliament, 26 of May, 1642 in Answer to a Declaration under His Majesties Name Concerning the Businesse of Hull, Sent in a Message to Both Houses the 21 of May, 1642 (Printed for Iohn Franke, FD: 26 May 1642) E.148[23].

Remonstrans Redivivus: Or, an Accompt of the Remonstrance and Petition, Formerly Presented by Divers Citizens of London, to the View of Many; and since Honoured by the Late Conspirators, to Be Placed under Their Title of Extreame Ill Designes, with the Remonstrance It Selfe (Printed by T.P. and M.S. for John Rothwell and Thomas Vnderhill, FD: 25 July 1643) E.61[21].

A Review of a Certain Pamphlet under the Name of One John Lilburne (Printed for Thomas Underhill, [14 April] 1645) E.278[4].

The Rider of the White Horse and His Army Their Late Good Success in York-Shiere, or, a True and Faithfull Relation of That Famous and Wonderfull Victory at Bradford Obtained by the Club-Men There with All the Circumstances Thereof and of the Taking of Leeds and Wakefield by the Same Men under Te Command of Sir Thomas Fairfax, with the Manner and Circumstances Thereof from Good Hands (Printed for Thomas Vnderhill, FD: 18 December 1643) E.88[23].

The Right Character of a True Subiect. Profitably Declaring, How Every Man in This Time of Danger Ought to Square All His Actions, That He May Neither Be Taxed of Disobedience to the Maiesty of the King, nor Want of Duty to the Wisome of the Parliament (s.n., [10 August] 1642) E.109[36].

Scotlands Alarme. Or, Some Considerations Tending to Demonstrate the Necessitie of Our Speedie Marching to the Assistance of Our Brethren in England, Notwithstanding All Difficulties and Necessities, Reall or Pretended (Printed for Robert Bostock, [11 December] 1643) E.77[5].

The Scots Army Advanced into England Certified in a Letter, Dated from Addarston, the 24 of January: From His Excellencies the Lord Generall Lesley's Quarters (Printed for Robert Bostock, FD: 24 January 1644) E.30[16].

The Scots Declaration to the Lords and Commons in Parliament (Printed for Robert Bostock, FD: 20 May 1643) E.103[4].

The Second Part of the Un-Deceiver: Tending to the Discovery of Some Prelaticall and Antinomian Errovrns; and the Clearing of That Part of the Late Covenant of the Three Kingdoms Which Concerns Both (Printed for Samuel Gellibrand, [26 October] 1643) E.72[8].

- Severall Passages of the Late Proceedings in Ireland. Being Taken out of Certain Letters Newly Received from Thence, Which Were Sent to a Merchant Here in Colemanstreet London* (Printed for Henry Overtrn [sic], FD: 16 September 1642) E.117[17].
- A Short Discourse, Tending to the Pacification of All Unhappy Differences, between His Majesty and His Parliament Shewing the Meanes Whereby the Same May Speedily Be Done, and That It Rests in His Maiesties Sole Power to Effect It* (s.n., [08 July] 1642) E.107[21].
- A Short Discourse, Tovching the Cause of the Present Unhappy Distractions; and Distempers in This Kingdome, and the Ready Meanes to Compose, and Quiet Them* (s.n., [08 February] 1643) E.88[28].
- Six Speeches Spoken in the Guild-Hall, London, Upon Tuesday in the Afternoon, Aprill 9 1644 Printed in the Same Order They Were Spoken One after the Other* (Printed by Richard Cotes, for Stephen Bowtel;, [12 April] 1644) E.42[18].
- Some Observations Upon Occasion of the Publishing Their Majesties Letters* (Printed by Leonard Lichfield, [08 August] 1645) E.296[2].
- A Sovereigne Salve to Cure the Blind, or, a Vindication of the Power and Priviledges Claim'd or Executed by the Lords and Commons in Parliament, from the Calumny and Slanders of Men, Whose Eyes (Their Conscience Being before Blinded) Ignorance or Malice Hath Hoodwinckt. Wherein the Fallacie and Falsity of the Anti-Parliamentary Party Is Discovered, Their Plots for Introducing Popery into the Church and Tyranny into the State Are Manifested: The Pretended Fears of Danger from Seperatists, Brownists, &C. Blowne Away. And a Right Way Proposed for the Advancing the Just Honour of the King, the Due Reverence of the Clergy, the Rights and Liberty of the People: And the Renewing a Golden Age* (Printed by T.P. and M.S., [27 April] 1643) E.99[23].
- The Sovereignty of Kings: Or an Absolute Answer and Confutation of That Groundlesse Vindication of Psalme 105. 15* (s.n., [21 December] 1642) E.244[17].
- Speciall Nevves from Ireland Newly Received in a Letter from a Gentleman of Good Worth in Dublin to a Friend in London ; Shewing the Present Condition of That Poore Kingdome, and the Manner of the Great Victory, Which God, Most Miraculously, Hath Given to the Poore Protestants There* (Printed for Henry Overton, FD: 01 March 1643) E.91[18].
- Speciall Nevves from the Army at Warwicke since the Fight: Sent from a Minister of Good Note, to an Alderman Here in London: Wherein Is Related the Names of Such That Are Slain and Taken Prisoners of Both Sides* (Printed for Henry Overton, FD: 27 October 1642) E.124[33].
- A Speech Made by Alderman Garroway, at a Common-Hall on Tuesday the 17. Of January Upon Occasion of a Speech Delivered There the Friday before, by Mr. Pym, at the Reading of His Majesties Answer to the Late Petition* (s.n., FD: 17 January 1643) Wing G280.
- A Speech to the People. Or a Briefe and Reall Discovery of the Unhappy Estate of These Most Distracted Times. With a Necessary Caution to All Good Subjects* (Printed for H.B., [29 October] 1642) E.200[66].
- A Staffe of Comfort to Beare up the Spirit under the Heaviest Outward Cases: With Some Answer from the Lord, to the Deserted Soule in Hemans Case. Whereunto Is Annexed a Speciall Preservative against the Hurtfull Sword, of Speciall Use in These Hard and Fierce Times, That the Sword May Doe Us No Hurt.* (Printed for Tho: Underhill, [04 August] 1643) E.1184[2].

- A Strange and Terrible Sight Forseene in This Kingdome, and City of London: Together with the Countrimans Antidote for Its Prevention* (Printed for Ed. Blackmore, and Tho. Banks, [09 September] 1643) E.67[2].
- The Subject of Supremacie: The Right of Caesar* (Printed for Ben. Allen, [15 June] 1643) E.106[1].
- Thanks to the Parliament* (Printed for Thomas Underhill, FD: June 1642) 669.f.6[30].
- To the Right Honorable Assembly of Knights, Citizens, and Burgesses of the House of Commons the Humble Petition of the Inhabitants of the Citie and Libertie of Westminster* (Printed for Thomas Purslow, FD: 15 December 1642) 669.f.6[96].
- Toichoructa: Or, Independents Razing Their Ovn Foundation. By Which All (That Will Not Shut Their Eyes) May See Deep Iniquities, Long Veiled under Pretence of Conscience, Clearly Discovered* (Printed for Tho. Vnderhill, [19 March] 1646) E.328[23].
- Touching the Fundamentall Lawes, or Politique Constitution of This Kingdome, the Kings Negative Voice, and the Power of Parliaments. To Which Is Annexed the Priviledge and Power of the Parliament Touching the Militia* (Printed for Thomas Underhill, [24 February] 1643) E.90[21].
- A Triall of the English Lyturgie. Wherein All the Materiall Objections Raised in Defence Hereof Are Fully Cleared and Answered* (Printed for Ben. Allen, [21 April] 1643) E.99[8].
- A True and Exact Relation of the Kings Entertainment in the City of Chester. With the Recorders Speech at His Entring the City. Sent from a Citizen of Note in Chester, on Purpose to Be Printed, to Prevent False Copies* (Printed for C. M., FD: 23 September 1642) E.119[25].
- A True and Full Relation of the Manner of the Taking of the Towne and Castle of Shrewsbury* (Printed by J.R. for Christopher Meredith, [04 March] 1644) E.271[2].
- A true relation of all the remarkable passages, and illegall proceedings of some sathanicall or Doeg-like accusers of their brethren, against William Larner, a free-man of England, and one of the merchant-tailers company of London, for selling eight printed sheets of paper (all of one matter,) intituled, Londons last warning; as also against John Larner, and Jane Hales his servants* (s.n., [02 May] 1646) E.335[7].
- A True Relation of Some Remarkeable Passages Concerning Nottingham-Shire Petition, and His Majesties Answer. Also the Ill Usage of the Linconshire Gentlmen at York, Who Delivered Their Petition. Written from an Esquire of Nottingham-Shire (Being One of the Gentlemen Who Presented Their Petition at York) and Sent to His Brother, Dwelling in London. Report This from Me to Be a True Copey of Our Answer There, I. W. Whereunto Is Added His Majesties Message, Sent to the Parliament Aprill 8. 1642. Concerning His Resolution to Go into Ireland* (Printed for R.H., FD: 08 April 1642) E.143[8].
- A True Relation of the Late Battaile before Worcester, Taken on Sunday Last, Sept. 25 by a Gentleman of the Innes of Court (Now in His Excellences Armie) from the Mouthes of Master Nathaniel Fynes, and Many Other Commanders Who Were in the Said Skirmish, and Sent up to Master Pym* (Printed for T. Vnderhill, FD: 30 September 1642) 669.f.6[80].
- A True Relation of the Late Proceedings of the London Dragoneers, Sent Down to Oxford, Consisting of Foure Companies under the Command of Sir Iohn Seaton* (Printed for Henry Overton, [24 Sep 1642]) E.118[39].
- Trvth and Peace Honestly Pleaded, and Rightly Sought for, or, a Loyall Subjects Advice Vsefyll to Confirm, Convince, Calme, Condemne Honest Ignorant Passionate Malicious Men* (s.n., [26 November] 1642) E.128[14].

The Vnfaithfulnesse of the Cavaliers and Commissioners of Array in Keeping Their Covenants (Printed for Thomas Vnderhill, FD: 11 January 1643) E.84[37].
What Kinde of Parliament Will Please the King; and How Well He Is Affected to This Present Parliament (s.n., [July] 1642) E.155[12].
Will and Law, Reason and Religion, Treason and Rebellion, Peace and War, Payments and Punishments, People and Parliament, Are Words of Wonder to Weake and Wise Men, and by Them Malignants Deceive the Multitude (s.n., [13 June] 1643) E.105[30].

II ATTRIBUTED WORKS PRINTED BEFORE 1700

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APPENDICES

NOTES ON APPENDICES

The attributed printer's stock that follows was obtained by extracting the initials from the electronic copy on *EEBO* when there was an attributed printer listed, either on *ESTC* or in the secondary literature, for the works printed between 1640 and July 1646. The printers included are the ones used to write Chapter Four, and that of their partners. Occasionally there are duplicates – this can be caused by woodcuts being sold as one printer went out of business (as in the case of Richard Oulton in June 1643) – however there remains the possibility that the woodcut was either incorrectly attributed on the imprint, lent to another printing house, or owned by the author rather than the printer. When available, other examples of the ornaments have also been listed, which allows greater comparison, and to minimise attributions being incorrectly made due to ink distribution or lack of pressure in specific productions.

The images are reproduced to scale, but not to actual size – each image has been reduced to 35% that of the electronic copy. These appendices should therefore be used as a reference guide rather than be used in direct comparison. Of course, when possible, the originals should be compared manually. It is hoped, however, that these appendices might aid others to know where to start looking.

NOTE FOR ELECTRONIC COPY

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KEY TO APPENDICES 33 AND 34

| | |
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| PB | Printed by |
| APF | Also printed for |
| EG | Edward Griffin |
| FN | Francis Neile |
| GB | George Bishop |
| GB&RW | George Bishop and Robert White |
| GD | Gregory Dexter |
| GM | George Miller |
| JC | Jane Coe |
| JD | John Dawson |
| JY | James Young |
| LN | Luke Norton |
| MS | Matthew Simmons |
| RO&GD | Richard Oulton and Gregory Dexter |
| RW | Robert White |
| TP&MS | Thomas Paine and Matthew Simmons |
| TP | Thomas Paine |
| WE&JG | William Ellis and John Grismond |
| WW | William Wilson |

These bibliographies were compiled using Fortescue's *Catalogue* and cross-referenced with the *ESTC*. When possible, the printer has been uncovered using the previous appendices.

APPENDIX 33: WORKS PRINTED FOR HENRY OVERTON

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| 1 | <i>Further intelligence from Ireland, declared in a letter sent from Captaine Muschampe, Captaine of the castle of Corke, to an especiall friend of his in this city of London: with some other newes from other parts of the said kingdome (PB RO&GD, FD: 11 March 1642) E.140[24].</i> |
| 2 | <i>A list of the names of the severall colonells, and their colours, with the leutenant colonells, serieant maiors, and capt. and lieutenants appointed by the committee, for the ordering of the militia of this honourable city of London ([April] 1642) 669.f.6[8].</i> |
| 3 | John Cotton, <i>The powring out of the seven vials: or An exposition, of the 16. chapter of the Revelation, with an application of it to our times (PB JD [Appendix 18:C1], [April] 1642) E. 145[1]. APF R.S.</i> |
| 4 | <i>The petition of the kingdome of Scotland, to the Lords of His Maiesties most Honourable Privy Councell of that kingdome declaring their loyalty to His Majesty, and sincere affection and love to their brethren of England, and the Parliament now assembled (PB EG, FD: 31 May 1642) 669.f.6.[27] .</i> |
| 5 | Hugh Peters, <i>A true relation of the passages of Gods providence in a voyage for Ireland. With the additionall forces sent for reducing of that kingdome by His Maiesie, and Paliament (PB LN, FD: 29 June 1642) E.242[15].</i> |
| 6 | <i>Two petitions. The one to the Kings most Excellent Majesty, the humble petition of the grand-jury attending His Majesties service at the assizes in the county of Southampton. The other to the right worshipfull the justices of the peace now assembled at the assizes holden at Bury St. Edmonds for the county of Suffolk (PB EG, FD: 30 July 1642) E.112[9].</i> |
| 7 | <i>August 3. 1642. The copie of a letter sent from a speciall friend in Coventry wherein is related the several passages betweene the Right Honourable the Lord Brook and the Earle of Northampton, three miles beyond Banbury, upon the conduct of certaine peeces of ordnance to VVarwick-Castle (FD: 30 July 1643) 669.f.6.[58].</i> |
| 8 | John Cotton, <i>A modest and cleare answer to Mr. Balls discourse of set formes of prayer. Set forth in a most seasonable time, when this kingdome is now in consultation about matters of that nature, and so many godly long after the resolution in that point. (PB RO&GD, FD: 03 August 1642) E. 108[41].</i> |
| 9 | George Goring, <i>A Relation of the sundry occurrences in Ireland from the fleet of ships set out by the adventurers of the additionall forces by sea. With the names of the ships, and the commanders of them, and their severall burdens, and number of men in every ship (PB EG, [13 August] 1642) E. 239[4].</i> |
| 10 | <i>An abstract of some letters sent from Dorchester, to some friends in London, dated the 3. of Septem. 1642. Containing a true relation of the late proceedings of Marquesse Hartford and the cavaliers, at Sherbon Castle, with the opposition of that and other adjacent counties to those proceedings (PB RO&GD [Appendix 10:T1], FD: 03 September 1642) E. 115[22].</i> |

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| 11 | <i>A relation from Portsmouth, vvherein is declared, the manner how the castle was taken on Saturday night last; as it was sent in a letter by one there present. Sep. 6, 1642. Likewise sixteen propositions, presented at the generall meeting of the gentry of the city of Gloucester, the 25. and 26. of August, 1642 (PB RO&GD [Appendix 10:T7], FD: 04 September 1642) E. 116[15].</i> |
| 12 | <i>A true relation of the late proceedings of the London Dragoneers, sent down to Oxford, consisting of foure companies under the command of Sir Iohn Seaton. The captaines of which companies that were appointed in the said expedition, were as followeth, viz. Serjeant Major Lee. Captaine Stackhouse. Captaine Wilson. Captaine Mason (FD: 08 September 1642) E.118[39].</i> |
| 13 | <i>Instructions agreed upon by the Lords and Commons in Parliament, for the deputy lieutenants for the county of (PB RO&GD, [15 September] 1642) E.117[5].</i> |
| 14 | <i>September 16. 1642. Severall passages of the late proceedings in Ireland. Being taken out of certaine letters newly received from thence, which were sent to a merchant here in Colemanstreet London (FD: 16 September 1642) E.117[17].</i> |
| 15 | <i>Alexander Forbes, A true copie of two letters brought by Mr. Peters, this October 11. from my L. Forbes from Ireland (PB LN, FD: 27 September 1642) E. 121[44].</i> |
| 16 | <i>Joyfull newes of the Kings most certaine resolution and purpose to come to London with his army, that he may at a neere distance send some propositions to the Parliament to comply with them, and settle a much desired peace in this kingdome. Which is to be embraced by all well-affected persons, hoping that his royall approach will prove very happy and prosperous to this city (FD: 12 October 1642) E. 121[35].</i> |
| 17 | <i>George Lawrence and Christopher Love, The debauched cavalleer: or the English Midianite. Wherein are compared by way of parallel, the carriage, or rather miscarriage of the cavalleeres, in the present reigne of our King Charles, with the Midianites of old. Setting forth their diabolicall, and hyperdiabolicall blaspemies, execrations, rebellions, cruelties, rapes, and robberies (PB LN, [18 October] 1642) E. 240[43].</i> |
| 18 | <i>John Goodwin, Anti-Cavalierisme, or, Truth pleading as well the necessity, as the lawfulness of this present vvar, for the suppressing of that butcherly brood of cavaliering incendiaries, who are now hammering England, to make an Ireland of it: wherein all the materiall objections against the lawfulness of this undertaking, are fully cleered and answered, and all men that either love God, themselves, or good men, exhorted to contribute all manner of assistance hereunto (PB GB&RW, [21 October] 1642) E. 123[25].</i> |
| 19 | <i>Speciall newes from the army at Warwicke since the fight: sent from a minister of good note, to an alderman here in London: wherein is related the names of such that are slain and taken prisoners of both sides (PB GB&RW [Appendix 1:3], FD: 27 October 1642) E. 124[33].</i> |
| 20 | <i>John Goodwin, The Butchers Blessing, or the Bloody Intentions of Romish Cavaliers against the City of London above Other Places, Demonstrated by 5. Arguments, to the Right Honourable the Lord Major, the Sheriffes, and Other</i> |

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| | <i>the Religious and Worthy Inhabitants of the Said City</i> (PB RO&GD [Appendix 10:T1], [04 November] 1642) E.242[4]. |
| 21 | William Stewart, <i>Speciall good news from Ireland, being a true relation of a late and great victory obtained against the rebels in the north of Ireland</i> (FD: 01 December 1642) E.86[21]. |
| 22 | <i>Remarable passages newly received of the great overthrow of Sir Ralph Hopton and his eorces; at Madburie, 12. miles from Plimouth</i> (PB GB&RW [Appendix 1:2], [07 December] 1642) E.130[16]. |
| 23 | <i>Neutrality condemned, by declaring the reasons vwhy the deputy-lieutenants, intrusted by the Parliament for Cheshire, cannot agree to the treaty of pacification made by some of that county</i> (FD: 23 December 1642) E.244[41]. |
| 24 | <i>An ordinance by the Lords and Commons assembled in Parliament; for the preservation of the vvesterne parts of the Kingdome. John Brown Cleric. Parliamentorum</i> (PB RO&GD, FD: 24 December 1642) E.83[29]. |
| 25 | <i>To the Kings most Excellent Maiestie. The humble petition of the commissioners of the Generall Assembly of the Kirke of Scotland, met at Edinborough, January, 4th. 1642. And now lately presented to His Majestie, at Oxford</i> (FD: 04 January 1643) E. 246[21]. |
| 26 | <i>A declaration of the Lords and Commons assembled in Parliament, with instrvctions for the lords lieutenants, committees of Parliament, and other officers and commanders in the counties of Warwick and Stafford, and cities and counties of Coventry and Lichfield</i> ([04 January] 1643) E. 84[11]. |
| 27 | <i>Tvvo petitions, lately presented by noblemen, barons, gentlemen, burgesses and ministers, of the kingdome of Scotland. To the right honourable the commissioners for the conservation of peace beewene the two kingdomes</i> (PB RO&GD [Appendix, [24 January] 1643) E. 86[6]. |
| 28 | <i>A confutation of the Earle of Newcastles reasons for taking under his command and conduct divers popish recusants in the northerne parts; wherein is shewed both the unlawfulnessse, and danger of arming of papists: being a thing of main consequence for all true Protestants to take present and speciall notice of</i> (PB GB&RW [Appendix 1:3], [26 January] 1643) E.86.[13]. |
| 29 | Samuel Turner, <i>A True Relation of a late skirmish at Henley upon Thames, wherein a great defeat was given to the Redding Cavaliers. A letter from Capt. Samuel Turner. Printed for Henry Overton. A true relation of a late skirmish at Henley upon Thames: wherein a great defeat was given to the Redding Cavaliers, lately assaulting the aforesaid towne of Henley. Being the true copy of a letter sent from one Captaine Samuel Turner, then in the said service, to his brother in London</i> (FD: 26 January 1643) E. 86[15]. |
| 30 | <i>Nevv Englands first fruits; in respect, first of the conversion of some, conviction of divers, preparation of sundry of the Indians. 2. Of the progresse of learning, in the colledge at Cambridge in Massacusetts Bay. With divers other speciall matters concerning the countrey</i> (PB RO&GD, [31 January] 1643) E. 87[2]. |
| 31 | <i>The true character of such as are malignants in the kingdome of Scotland. By way of information and direction to the ministry of that kingdome. Also the</i> |

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| | <i>indiction of a publike fast the third Sunday of Febuary next, and the Thursday following. By the commissioners of the generall Assembly of the Church of Scotland. Wherein is shewed their zeale to the glory of God, and the fellow-feeling they have of their brethren, the members of Christs body. Lastly, lamenting the present distraction of the Church, and Kingdome of England</i> (PB RO&GD [Appendix 10:Woodcut 3], [07 February] 1643) E. 246[7]. |
| 32 | <i>Speciall newves from Ireland. Newly received in a letter from a gentleman of good worth in Dublin to a friend in London. Shewing the present condition of that poore kingdome, and the manner of the great victory, which God (most miraculously) hath given to the poore Protestants there</i> (FD: 15 February 1643) E. 91[18]. |
| 33 | <i>A true copie of a letter of speciall consequence from Rotetrdam [sic] in Holland subscribed by severall credible hands; and sent to a citizen of good note in London; being very considerable to be taken notice of by all the well-affected throughout the whole kingdom; but especially by the Citie of London</i> (FD: 20 February 1643) 669.f.6.[110]. |
| 34 | <i>A full and true relation of the late great victory, obtained by the Protestants against the rebells in Ireland; in which is declared the manner of the fight, with the number of those that are slaine; and the names of such men of ranke and qualitie, that are either slaine or taken prisoners. All which was sent from Dublin in a letter, dated the 5. of this instant moneth of Aprill, and received the 11. of the same, 1643</i> (PB TP [Appendix 6:14], FD: 18 March 1643) E.96.[6]. APF Edward Blakemore. |
| 35 | <i>The saints travell from Babylon into their owne countrey: or, Considerations touching the reformation of the Church, in the time of this present working Parliament: From those words in the 51. of Jeremiah and the 9. verse.</i> (PB GB&RW [Appendix 1:3&4], [25 March] 1643) E.94[5]. |
| 36 | <i>John Goodwin, Os ossorianvm, or A bone for a bishop to pick: being a vindication of some passages in a treatise lately published, called Anti-cavalierisme, from the impertinent and importune exceptions of Gr: Williams, the author of the Grand rebellion: calling himselfe by the name of the L. Bishop of Ossory</i> (PB RO&GD [Appendix 10:T1], [11 April] 1643) E.96[1]. |
| 37 | <i>John Price A spirituall snapsacke for the Parliament souldiers. Containing cordiall encouragements, effectuall perswasions, and hopefull directions, unto the successefull prosecution of this present cause</i> ([24 May] 1643) E.103[13] . |
| 38 | <i>More plots found out, and plotters apprehended. A true relation of the discovery of a most desperate and dangerous plot, for the delivering up, and surprisall of the townes of Hull, and Beverly. With the manner of the apprehension of Sir John Hotham, Sir Edward Rhodes, and Captaine Hotham: who are now bringing up to the Parliament. With the present securing of the thirtie thousand pounds already found out. And other particulars, being sent in a letter from Hull, dated the first of this instant moneth of Iuly, 1643</i> (PB RO&GD [Appendix 10:Woodcut 3], FD: 01 July 1643) E.59[2]. |

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| 39 | Samuel Clarke, <i>Englands covenant proved lawfull & necessary also at this time, both by Scripture and reason. Together, with sundry answers to the usuall objections made against it</i> (PB RO&GD [Appendix 10:T1&Woodcut 3], [13 July] 1643) E.60[5]. |
| 40 | Nathaniel Fiennes, <i>A copie of the articles agreed upon at the surrender of the city of Bristol betweene Colonell Nathaniel Fiennes, governour of the said city, on the one party, and Colonell Charles Gerrard, and Captaine William Teringham for and on the behalfe of Prince Rupert, on the other party, the 26. of Iuly, 1643. With a letter hereunto added, in which this copie of articles was inclosed: wherein is manifested how well those perfidious cavaliers have kept the said articles; and may serve as a warning to the whole kingdome, how to trust againe the faith of such cavaliers</i> (PB RO&GD [Appendix 10:T1], FD: 26 July 1643) E.63[15] . |
| 41 | <i>The answer of the Generall Assembly in Scotland, to the letter of some of their reverend brethren of the ministry in England, sent by Mr Marshall, and Mr Nye to the said Assembly</i> (FD: 16 September 1643) E.67[17]. |
| 42 | <i>Satisfaction concerning mixt communions unsatisfactory: or, Some short animadversions upon the most materiall passages of a late booke, entituled, Satisfaction concerning mixt communions</i> ([18 October] 1643) E.71[16]. |
| 43 | <i>A True and exact relation of the most sad condition of Ireland, since the cessation, exprest in a letter from Dublin, received the 16th of Novemb. 1643. Worthy to be taken notice of by all who have any true Protestant blood running in their veines</i> (PB GD, FD: 21 October 1643) E.76[4]. |
| 44 | <i>Powers to be resisted: or A dialogue arguing the Parliaments lawfull resistance of the powers now in armes against them; and that archbishops, bishops, curates, neuters, all these are to be cut off by the law of God; therefore to be cast out by the law of the land. Very necessary and usefull for the information of the ignorant, confirmation of the weake, stablishing of the strong, convincing of the froward, in the clearing, resolving, and stating the legality of the Covenant, and this present warre</i> (PB GD [Appendix 11:12], [28 December] 1643) E.79[15]. |
| 45 | Peter Murford, <i>Nevves from Southampton, or The copie of a letter to Captain Thomas Harrison in London from Mr. Peter Murford, Serjeant Major to Colonell Norton, discovering a late plot of the cavaleering hoptonians against the said towne of Southampton: but by the mercy of God (and the fidelity of the said major) prevented</i> ([05 February] 1644) E.33[1]. |
| 46 | Richard Mather and William Tompson, <i>A modest & brotherly ansvver to Mr. Charles Herle his book, against the independency of churches. Wherein his foure arguments for the government of synods over particular congregations, are friendly examined, and clearly answered. Together, with Christian and loving animadversions upon sundry other observable passages in the said booke. All tending to declare the true use of synods, and the power of congregationall churches in the points of electing and ordaining their owne officers, and censuring their offenders</i> (PB GD [Appendix 11:T1], [15 March] |

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| | 1644) E.37[19]. |
| 47 | John Strickland, <i>A discovery of peace: or, The thoughts of the Almighty for the ending of his peoples calamities. Intimated in a sermon at Christ-church London, before the Right Honourable, the Lord Mayor, the right worshipfull the Aldermen; together with the worshipfull companies of the said city, upon the 24th of April, 1644. Being the solemn day of their publike Humiliation and monethly fast. By John Strickland, B.D. pastor of the church at St. Edmunds, in the city of New Sarum; a member of the Assembly of Divines</i> (PB MS, FD: 24 April 1644) E.48[5]. |
| 48 | John Goodwin, <i>M.S. to A.S. with a plea for libertie of conscience in a church way, against the cavils of A.S. and observations on his considerations, and annotations upon the apologeticall narration, humbly submitted to the judgements of all rationall, and moderate men in the world; with some modest, and innocent touches on the letter from Zealand, and Mr. Parker's from New-England</i> (PB FN, [03 May] 1644) E.45[3]. |
| 49 | Thomas Parker, <i>A reply of two of the brethren to A.S. wherein you have observations on his considerations, annotations, &c. Upon the apologeticall narration. With a plea for libertie of conscience for the apologists church way; against the cavils of the said A. S. formerly called M. S. to A. S. Humbly submitted to the judgements of all rationall, and moderate men in the world. With a short survey of W. R. his Grave confutation of the separation, and some modest, and innocent touches on the letter from Zeland, and Mr. Parker's from New-England</i> (PB MS, FD: 03 May 1644) E.54[18]. |
| 50 | John Price, <i>Honey out of the rock, or, Gods method in giving the sweetest comforts in sharpest combates. Chiefly intended, as spirituall plunder for plundered beleevvers</i> (PB FN, [10 May] 1644) E.46[14]. |
| 51 | <i>The keyes of the kingdom of heaven, and power thereof, according to the VVord of God</i> (PB MS, [14 June] 1644) E.51[4]. |
| 52 | Lion Watson, <i>A more exact relation of the late battell neer York; fought by the English and Scotch forces, against Prince Rupert and the Marquess of Newcastle. Wherein the passages thereof are more particularly set down, presented to the view of those who desire better satisfaction therein</i> (PB MS, FD: 02 July 1644) E.2[14]. |
| 53 | Thomas Weld, <i>An answer to W.R. his narration of the opinions and practises of the churches lately erected in Nevv-England. Vindicating those Godly and orthodoxall churches, from more then an hundred imputations fathered on them and their church way, by the said W.R. in his booke</i> (PB TP, FD: 27 July 1644) E.3[18]. |
| 54 | John Goodwin, <i>Theomachia; or The grand imprudence of men running the hazard of fighting against God, in suppressing any way, doctrine, or practice, concerning which they know not certainly whether it be from God or no. Being the substance of two sermons, preached in Colemanstreet, upon occasion of the late disaster sustain'd in the west. With some necessary enlargements thereunto</i> (PB MS [Appendix 7:W2], FD: 02 September 1644) E.12[1]. |

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| 55 | John Goodwin, <i>Innocencies triumph. Or An answer to the back-part of a discourse lately published by William Prynne, Esquire, intituled, A full reply, &c. The said back-part beginning at the foot of pag. 17. with this superscription; certaine briefe animadversions on Mr. John Goodvins Theomachia, &c.</i> (PB MS [Appendix 7:C2], [26 October] 1644) E.14[10]. |
| 56 | John Strickland, <i>Immanuel, or The church triumphing in God with us. A sermon preached before the right honorable House of Lords, in the Abbey of Westminster; at their publique thanksgiving, November 5th 1644</i> (PB MS, FD: 05 November 1644) E.19[15]. |
| 57 | Henry Burton, <i>A vindication of churches, commonly called Independent: or A briefe ansvver to two books; the one, intituled, Twelve considerable serious questions, touching church-government: the other, Independency examined, unmasked, refuted, &c. Both lately published by William Prinne, of Lincolnes-Inne, Esquire</i> (PB MS [Appendix 7:Y1], [14 November] 1644) E.17[5]. |
| 58 | Roger Williams, <i>A paraenetick or Humble addresse to the Parliament and assembly for (not loose, but) Christian libertie</i> (PB MS, [30 November] 1644) E.19[10]. |
| 59 | Joseph Caryl, <i>An exposition with practical observations upon the three first chapters of the book of Iob delivered in XXI lectures at Magnus neare the bridge, London</i> (PB GM, FD: 1644) C754. |
| 60 | Samuel Slater, <i>The two covenants from Sinai, and Sion, drawn up catechetically, and plainly. Together with a briefe appendix, directing about the use of the new covenant in a practicall way</i> (PB MS, FD: 1644) E.1185[1]. |
| 61 | Ephraim Huit, <i>The whole prophecie of Daniel explained, by a paraphrase, analysis and briefe comment: wherein the severall visions shewed to the prophet, are clearly interpreted, and the application thereof vindicated against dissenting opinions</i> (FD: 1644) E.15[10]. |
| 62 | Joshua Hoyle, <i>Jehoadahs justice against Mattan, Baals priest: or The covenanters justice against idolaters. A sermon preacht upon occasion of a speech utter'd upon Tower-Hill. Wherein you may finde his likenesse to Mattan rather then to Christ. His place in John 11.48. charg'd upon himself. The weaknesse of the choice of his text. How great cause wee have to give thanks</i> (PB MS, [10 January] 1645) E.25[15] . |
| 63 | John Goodwin, <i>Calumny arraign'd and cast. Or A briefe answer to some extravagant and rank passages, lately fallen from the pen of William Prynne, Esquire, in a late discourse, intituled, Truth triumphing over falshood, &c. against Mr John Goodwin, Minister of the Gospel. Wherein the loyall, unfeigned and unstained affection of the said John Goodwin to the Parliament, and civill magistracie, is irrefragably and fully vindicated and asserted against those broad and unchristian imputations, most untruly suggested in the said discourse against him</i> (PB MS, [31 January] 1645) E.26[18]. |
| 64 | <i>The independants militarie entertainment. Or, Certaine reasons and arguments why independants ought not only to be admitted into the army raised for defence of church and state, but also both by law of God, nature, and nations,</i> |

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| | <i>are required to put their hands to the plough of the kingdome. Together with the answering of such grand objections as tend to the contrary</i> ([24 April] 1645) E.278[28]. |
| 65 | William Dell, <i>Power from on high, or, The power of the Holy Ghost dispersed through the whole body of Christ, and communicated to each member according to its place and use in that body</i> (PB JC [Appendix 21:4], [08 May] 1645) E.282[8]. |
| 66 | Francis Rous, <i>The ancient bounds, or Liberty of conscience tenderly stated, modestly asserted, and mildly vindicated</i> (PB MS, [10 June] 1645) E.287[3]. |
| 67 | George Philips, <i>A reply to a confutation of some grounds for infants baptisme: as also, concerning the form of a church, put forth against mee by one Thomas Lamb. Hereunto is added, a discourse of the verity and validity of infants baptisme, wherein I endeavour to clear it in it self: as also in the ministry administrating it, and the manner of administration, by sprinkling, and not dipping; with sundry other particulars handled herein</i> (PB MS, [10 June] 1645) E.287[4]. |
| 68 | Simonds D'Ewes, <i>The primitive practise for preserving truth. Or An historicall narration, shewing what course the primitive church anciently, and the best reformed churches since have taken to suppress heresie and schisme. And occasionally also by way of opposition discovering the papall and prelaticall courses to destroy and roote out the same truth; and the judgements of God which have ensued upon persecuting princes and prelates</i> (PB MS, [28 June] 1645) E.290[9]. |
| 69 | John Blackwell, <i>A more exact relation of the great defeat given to Gorings army in the west; by the victorious Sr. Thomas Fairfax</i> (FD: 10 July 1645) E.293[8]. |
| 70 | <i>The glorious excellencie of the spirit of adoption; or, Of the spirit of the sonne of God, derived to the sonnes of God. Wherein are many precious truths held forth, which are presented to all the children of truth, who are and shall be sanctified through the truth</i> (PB JC, [21 July] 1645) E.1175[1]. |
| 71 | <i>Independency accused by nine severall arguments written by a godly learned minister, to a member of Mr. John Goodwins congregation, and acquitted by severall replies to the said arguments by a member of the same church. In both which, sweetnesse of spirit, and soundnesse of arguments have been endeavoured</i> (PB MS [Appendix 7:Y1], [12 August] 1645) E.296[16]. |
| 72 | <i>A true and exact Relation of the severall Informations, Examinations and Confessions of the late Witches who were arraigned and condemned at the late Sessions, holden at Chelmesford</i> (PB MS, [19 August] 1645) E.296[35]. APF Benjamin Allen. |
| 73 | <i>A true and exact relation of the severall informations, examinations, and confessions of the late witches, arraigned and executed in the county of Essex. Who were arraigned and condemned at the late sessions, holden at Chelmesford before the Right Honorable Robert, Earle of Warwicke, and severall of his Majesties justices of peace, the 29 of July, 1645</i> (PB MS, FD: 29 October 1645) E.307[21]. |

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| 74 | Samuel Eaton and Timothy Taylor, <i>A defence of sundry positions, and Scriptures alledged to justifie the Congregationall-way; charged at first to be weak therein, impertinent, and insufficient; by R.H. M. A. of Magd. Col. Cambr. in his examination of them; but upon further examination, cleerly manifested to be sufficient, pertinent, and full of power</i> (PB MS, [08 November] 1645) E.308[27]. |
| 75 | Peter Sterry, <i>The spirits conviction of sinne. Opened in a sermon before the Honorable House of Commons, assembled in Parliament upon the solemne day of their monethly fast, Novemb. 26, 1645</i> (PB MS, FD: 26 November 1645) E.310[4]. APF Benjamin Allen. |
| 76 | William Dell, <i>Vniformity examined, whether it may be found in the gospel, or, in the practice of the churches of Christ</i> (PB MS, [11 February] 1646) E.322[12]. |
| 77 | John Goodwin, <i>Twelve considerable Cautions very necessary, to be observed in and about a Reformation</i> (PB MS, [17 February] 1646) E.322[31]. |
| 78 | Phillipe de Mornay, <i>The soules own evidence, for its own immortality In a very pleasant and learned discourse, selected out of that excellent treatise entituled, The trunesse of Christian religion, against atheists, epicures, &c. First compiled in French by famous Phillip Mornay, Lord of Plessie Marlie, afterward turned into English by eloquent Sir Phillip Sydney, and his assistant, Master Arthur Golden, anno Domini M D LXXX VII. And now re-published</i> (PB MS, [20 February] 1646) E.324[3]. |
| 79 | John Goodwin, <i>Cretensis: or A briefe answer to an ulcerous treatise, lately published by Mr Thomas Edvwards, intituled Gangraena: calculated for the meridian of such passages in the said treatise, which relate to Mr. John Goodwin; but may without any sensible error indifferently serve for the whole tract. Wherein some of the best means for the cure of the said dangerous ulcer, called gangraena, and to prevent the spreading of it to the danger of the precious soules of men, are clearly opened, and effectually applied</i> (PB MS, [19 March] 1646) E.328[22]. |
| 80 | John Cotton, <i>Milk for babes. Drawn out of the breasts of both Testaments. Chiefly, for the spirituall nourishment of Boston babes in either England: but may be of like use for any children</i> (PB JC, [09 April] 1646) E.1186[9]. |
| 81 | James Pope, <i>The unveiling of Antichrist. Or, Antichrist stript naked out of all his Scripture-attyre, by which he hath deceived the Christian world; so that we may the more cleerly see the very bottome-root, from whence he sprang, and the very basis and foundation upon which he hath erected, and set up his kingdome</i> (PB JC, [08 May] 1646) E.337[2]. |
| 82 | <i>The humble acknowledgement, and petition of divers inhabitants, in and about the citie of London. Presented to the Honourable the Commons of England in Parliament assembled the second of June. 1646. VVhereunto is added, the answer returned by the said Honorable House of Commons</i> (PB MS, FD: 02 June 1646) E.339[12]. |

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| 83 | John Price, <i>A moderate reply to the citie-remonstrance; presented to the High Court of Parliament the 26 of May, 1646. Containing severall reasons why many well affected citizens cannot assent thereunto</i> (PB MS [Appendix 7:T3], [12 June] 1646) E.340[20]. |
| 84 | Thomas Edwards, <i>To the High Court of Parliament. A dilemma, from a parallel. Humbly presented</i> (PB MS, [22 June] 1646) E.341[10]. |
| 85 | Edward Bowles, <i>Manifest truths, or An inversion of truths manifest. Containing a narration of the proceedings of the Scottish army, and a vindication of the Parliament and kingdome of England from the false and injurious aspersions cast on them by the author of the said manifest</i> (PB MS, [04 July] 1646) E.343[1]. APF Giles Calvert. |
| 86 | Jeremiah Burroughs, <i>A vindication of Mr Burroughes, against Mr Edwards his foule aspersions, in his spreading Gangraena, and his angry Antiapologia. Concluding with a briefe declaration what the Independents would have</i> ([23 July] 1646) E.345[14]. |
| 87 | John Price, <i>The city-remonstrance remonstrated. Or An answer to Colonell John Bellamy, his Vindication thereof, in justification of The moderate reply to the city-remonstrance</i> (PB TP, [24 July] 1646) E.345[18]. |
| 88 | Samuel Eaton, <i>The defence of sundry positions & scriptures for the Congregational-way justified: or An answer to an epistle written by Mr. Richard Hollingworth, unto S.E. and T.T. wherein he (in many particulars) chargeth them with injurious dealing against God, and against himselfe, in that booke of theirs, called A defence of sundry positions, &c. Containing a vindication from such charges and aspersions so laid upon them. As also a briefe answer to his large (if not unreasonable) demands, to have scripturall, or rationall answ. given to his 112 queries</i> (PB MS, [29 July] 1646) E.346[4]. |

APPENDIX 34: WORKS PRINTED FOR THOMAS UNDERHILL

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| 1 | William Whittingham, <i>A briefe discourse of the troubles begun at Frankeford in Germany</i> (PB GB&RW, FD: April 1642) E.142[2]. |
| 2 | Antidotes against some infectious passages in a tract, concerning schisme (FD: April 1642) E.142[12]. |
| 3 | Denzil Holles, <i>The speech of Denzell Holles Esquire. Delivered at the Lords Barr, Wednesday the 15th. of Iune</i> (PB GM [Appendix 4:B1], FD: 15 June 1642) E.200[48]. |
| 4 | <i>Thankes to the Parliament</i> (FD: June 1642) 669.f.6[30]. |
| 5 | <i>Remarkable passages from Nottingham, Lichfield, Leicester, and Cambridge declaring what the Kings standard is, and the time and manner of its setting up. Also how Lichfield and Tamworth are disarmed, and the Lord Gray his house disarmed and pillaged by the traitorous cavaliers. Together with some other remarkable occurrents</i> (FD: 30 August 1642) 669.f.6[75]. |
| 6 | <i>Speciall and Late Passages from the most eminent places in Christendome</i> (FD: 04 September 1642) E.240[24]. |
| 7 | [John Paulet], <i>The latest remarkable truths from Worcester, Chester, Salop, Warwick, Stafford, Somerset, Devon, Yorke, and Lincoln counties</i> ([29 September] 1642) E.119[5]. |
| 8 | <i>A true relation of the late battaile before Worcester, taken on Sunday last, Sept. 25 by a gentleman of the Innes of Court</i> (FD: 29 September 1642) 669.f.6[80]. |
| 9 | <i>The Latest remarkable truths, (not before printed) from Chester, Worcester, Devon, Somerset, Yorke and Lanchaster counties, as also from Scotland</i> (FD: 24 September 1642) E.240[23]. |
| 10 | <i>An argument or, debate in law: of the great question concerning the militia; as it is now settled by ordinance of both the Houses of Parliament</i> (PB TP&MS, [30 September] 1642) E.119[13]. |
| 11 | <i>Jovis 6. October. 1642. A declaration of the Lords and Commons assembled in Parliament in commendation of the inhabitants of the towne of Manchester, for their valiant resisting the late Lord Strange, and now Earle of Darbie</i> (FD: 06 October 1642) 669.f.5[84]. |
| 12 | Henrietta Maria, <i>The Queens Majesties message and letter from the Hague in Holland, directed to the Kings most excellent Majesty, &c.</i> (FD: 08 October 1642) E.122[12]. |
| 13 | <i>The rider of the vvhite horse and his army, their late good successe in Yorre-shiere, or, A true and faithfull relation of that famous and wonderfull victory at Bradford, obtained by the club-men there, with all the circumstances thereof</i> (PB GM [Appendix 4:A3] [08 February] 1643) E.88[23]. |
| 14 | <i>December 22. 1642. The Latest printed newes from Chichester. Windsor. Winchester. Chester. Manchester, and Yorke, &c.</i> (PB GB&RW [Appendix 1:2] FD: 22 December 1642) E.83[8]. |
| 15 | <i>Equitable and necessary considerations and resoltions for association of arms throughout the counties of the kingdom of England, and principality of Wales</i> ([26 |

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| | December] 1642) E.83[20]. |
| 16 | <i>Brave newes of the taking of the city of Chitchester [sic] by the Parliaments forces, under the command of Sir William Waller, upon Wednesday last, at 5. of the clock, halfe an hour before it began to raine</i> (PB GB&RW [Appendix 1:2] [30 December] 1642) E.83[36]. |
| 17 | <i>The vnfaithfulnesse of the cavaliers and commissioners of array in keeping their covenants. By which may be discerned the issue of all future treaties and agreements with them</i> (FD: 11 January 1643) E.84[37]. |
| 18 | [John Evelyn], <i>A Plain favlt in plain-English. And the same in Doctor Fearne: who (upon different grounds) build one error; but this is the best of it, that their difference destroyes the same error, which they would build upon the ruine of Parliaments</i> ([09 February] 1643) E.88[30]. |
| 19 | <i>The Queens letter from Holland: Directed to the Kings Most Excellent Maiesty</i> ([18 February] 1643) E.90[2]. |
| 20 | <i>Touching the fundamentall lawes, or politique constitution of this kingdome, the Kings negative voice, and the power of Parliaments</i> (PB WE&JG [Appendix 9:3], [24 February] 1643) E.90[21]. |
| 21 | Hezekiah Woodward, <i>The [cause use cure] of feare. Or, strong consolations (the consolations of God) cordiall at all times, but most comfortable now in these uncomfortable times, to fixe, quiet, and stablish the heart, though the earth shake, and make it stand stil, to see the salvation of the Lord</i> (PB WE&JG, FD: 25 February 1643) E.90[23]. |
| 22 | Hezekiah Woodward, <i>The Kings chronicle: In two sections; Wherein we have the acts of the wicked and good kings of Iudah fully declared, with the ordering of their militia, and grave observations thereuponsubjacentes. (i.e.) The sweetest prospect in the world, to looke over other mens errors, so, as to looke into our selves, and correct our owne</i> (PB GM, [08 March] 1643) E.92[16]. APF George Miller. |
| 23 | <i>Cheshires successe since their pious and truly valiant collonell Sr. VWilliam Brereton barronet, came to their rescue</i> (PB RO&GD [Appendix 10:T1], [13 March] 1643) E.94[6]. |
| 24 | <i>Lancasters massacre: or, the new vway of advancing the Protestant religion, and expressing loyaltie to the King and Queene</i> (PB TP&MS [Appendix 5:13], FD:25 March 1643) E.94[27]. |
| 25 | <i>Prince Ruperts burning love to England: discovered in Birminghams flames. Or A more exact and true naration of Birmingham's calamities, under the barbarous and inhumane cruelties of P. Ruperts forces</i> (PB RO&GD [Appendix 10:T1], [01 May] 1643) E.100[8] |
| 26 | Richard Dey, <i>The right and legall church-warden. Declaring and expressing their lawfull admittance unto the said office by the choice and appointment of the lord major and aldermen of London, the majors, and bailiffs of cities and corporations and by the justices of peace in each county through England, so that they may be legally authorized without any future dependance on the prelates</i> ([06 April] 1643) E.95[5]. |
| 27 | John Randolph, <i>Honour advanced: or, A briefe account of the long keeping, and late leaving of the close at Liechfield, being a full relation of all the passages worthy</i> |

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| | <i>observation during the whole time of the siege; as also of the honourable tearmes upon which it was resigned ([29 April] 1643) E.99[28].</i> |
| 28 | <i>Hezekiah Woodward, The Kings chronicle latter section. Wherein the way, the good kings, priest and people have taken for the well-posturing the kingdom, is fully declared, and made glorious before the eye of the beholder by Gods own right hand, for the encouragement of all, who will walk in the same way, observe the same steps and motions there; and fixe their eye upon the same marke, the glory of God; their owne and the peoples safety (PB GM [10 April] 1643) E.95[11]. APF George Miller.</i> |
| 29 | <i>Exploits discovered, in a declaration of some more proceedings of Serjeant Major Chudley, generall of the forces under the Earle of Stamford: against Sir Ralph Hopton (PB RO&GD [Appendix 10:Y2] FD: 29 April 1643) E.100[16]. APF Benjamin Allen.</i> |
| 30 | <i>Die Veneris 50. Maij. 1643. It is this day ordered by the Lords and Commons in Parliament, that the booke concerning the enjoyning and tollerating of sports upon the Lords day, be forthwith burned (PB TP&MS [Appendix 5:13] FD: 05 May 1643) 669.f.7[12].</i> |
| 31 | <i>Englands alarm to vvar against the Beast: by command from heaven, and his Israels example upon earth, comming-in to rescue David, out of the hands of a cruell Lord, and a bloody Edomite: upon the same ground from Scripture and reason, Israel had then, and Christians now, to resist the prince ruling in the aire, and with the kings of the earth ([01 July] 1643) E.56[15].</i> |
| 32 | <i>Simeon Ashe and William Rathband, A letter of many ministers in old England, requesting the judgement of their reverend brethren in New England concerning nine positions ([10 July] 1643) E.59[20].</i> |
| 33 | <i>Englands second alarm to vvar, against the Beast. Saul, with his Edomite has shed blood to his power; he smites Israels city, and destroyes his owne house; overcame his people once, and overthrew himselfe for ever! It relates to what is done now (PB MS [Appendix 7:D5], [10 July]) E.59[19].</i> |
| 34 | <i>The answer of the Convention of the Estates, to the remonstrance and desires of the Commissioners of the Generall Assembly, concerning the dangers of religion: with a second remonstrance of the Commissioners of the Generall Assembly, to the honourable Convention of Estates, concerning the remedies of the dangers of religion (PB WE&JG [Appendix 9:T2], [16 August] 1643) E.65[14].</i> |
| 35 | <i>Remonstrans redivivus: or, An accompt of the remonstrance and petition, formerly presented by divers citizens of London, to the view of many; and since honoured by the late conspirators, to be placed under their title of extreame ill designes, with the remonstrance it selfe (PB TP&MS [25 July] 1643) E.61[21]. APF John Rothwell</i> |
| 36 | <i>The harmony of our oathes. Shewing, an agreement betwixt the oathes of supremacie, alleageance, the freemans oath, protestation and covenant. All publisht at large for the satisfaction of those, who having not seen, or not remembering the particulars therein contained, beleve and entertaine needlesse scruples concerning the same (PB TP&MS, [28 July] 1643) E.62[5].</i> |

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| 37 | <i>Englands third alarm to vvarre: stirring up the whole land as one man, to help the Lord, and his servant David (all the faithfull in the world) against most bloody adversaries, mighty hunters before the Lord. In which warre, no resistance is maintained, bnt what has now (as in Davids time) a sweet agreement with duty, and affinity with the best obedience: no resistance then or now of regall authority, or higher power, but of those, who are the greatest enemies thereunto: such were Sauls willing helpers in his war against David; such are the Kings helpers in his warre now, against his best subjects, the faithfull of the land (PB RO&GD [Appendix 10:H2], [03 Aug] 1643) E.63[9].</i> |
| 38 | <i>A staffe of comfort to beare up the spirit under the heaviest outward cases: with some answer from the Lord, to the deserted soule in Hemans case. Whereunto is annexed a speciall preservative against the hurtfull sword, of speciall use in these hard and fierce times, that the sword may doe us no hurt ([04 Aug] 1643) E.1184[2].</i> |
| 39 | <i>To the honorable the knights, citizens and burgesses of the Commons House in Parliament assembled The humble petition of the Lord Major, aldermen, and commons of the Citie of London in Common Councell assembled (FD: 07 August 1643) 669.f.8[20].</i> |
| 40 | <i>The late covenant asserted. 1. That it is in whole and in part agreeable to sacred scripture, holy, just, and good. 2. That Oxford-covenant is abominable, contrary to law, right reason, good sense; whereby it appeares, what keeps the lords of the world are of the scales and soules there. 3. That the protestation two years agon, and covenant now, are both one for substance; and a sweet agreement betweene all foure, protestation, covenant, oath of supremacy and allegiance ([14 August] 1643) E.250[2].</i> |
| 41 | <i>Nathaniel Fiennes, Colonell Fiennes letter to my Lord General, concerning Bristol. This is licensed and entred according to order (PB TP&MS, [22 August] 1643) E.65[26].</i> |
| 42 | <i>Act of the Convention of Estates: for putting the kingdome into a posture of defence. At Edinburgh the 26. of August, 1643 (PB GM [Appendix 4:T3], [06 October] 1643) E.70[2].</i> |
| 43 | <i>John Dorney, A briefe and exact relation of the most materiall and remarkeable passages that hapned in the late well-formed (and as valiently defended) seige laid before the city of Glocester ([22 September] 1643) E.67[31].</i> |
| 44 | <i>Alexander Henderson and Philip Nye, The Covenant: with a narrative of the proceedings and solemn manner of taking it by the Honourable House of Commons, and reverent Assembly of Divines the 25th day of September, at Saint Margarets in Westminster (FD: 25 September 1643) E.70[22].</i> |
| 45 | <i>Anthony Burgess, The difficulty of, and the encouragements to a reformation. A sermon preached before the Honourable House of Commons at the publike fast, Septem. 27. 1643 (PB RB [03 November] 1643) E.71[2].</i> |

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| 46 | Nathaniel Fiennes, <i>Colonell Fiennes his reply to a pamphlet entitvled, An answer to Colonell Nathaniel Fiennes relation concerning his surrender of the city and castle of Bristol by Clem. Walker which said answer is here reprinted verbatim</i> (PB GM [Appendix 4:H1], [06 October] 1643) E.70[1]. |
| 47 | <i>Shropshires misery and mercie. Manifested in the defeat given to the Lord Capels ravenous and devouring armie, by the forces of Cheshire and Shropshire, under the conduct of those valiant and unanimous commanders, Sir William Brereton, Sir Tho: Middleton, and Col: Mitton. Together with the names of the officers and common souldiers, hurt, kild, and taken prisoners on both sides</i> (FD: 16 October 1643) E.75[9]. |
| 48 | John Dury, <i>A copy of Mr. John Duries letter presented in Sweden to the truly noble and religious Lord Forbes: briefly intimating, the necessity of a common, fundamentall confession of faith amongst those Christians that receive the holy scriptures as the only rule of faith and practise, and in the scriptures, have the same apprehension of the tenour of Gods evangelicall covenant in Christ</i> (PB GM [15 November] 1643) E.251[8]. |
| 49 | Herbert Palmer, <i>Memorials of godlinesse and Christianitie. Part I. Of making religion ones businesse. A meditation, first communicated in a letter to a private friend, and now offred to all as a patterne of what all should make their desire and endeavour</i> (PB GM [03 January] 1644) E.1201[2]. |
| 50 | Thomas Blake, <i>The birth-priviledge: or, Covenant-holinesse of beleevers and their issue in the time of the Gospel. Together with the right of infants to baptisme</i> (PB GM [18 March] 1644) E.37[29]. |
| 51 | <i>A True relation of the great victory it hath pleased God to give the Lord Fairfax, and Sir Thomas Fairfax his son, &c. over the remnant of Newcastles forces in Yorkshire, upon Thursday the 11. of April, 1644</i> (FD: 11 April 1644) E.43[6]. APF Robert White. |
| 52 | William Goode, <i>A particular relation of the severall removes, services, and successes of the Right Honorable the Earle of Manchesters army drawn forth of the associated counties of Norfolke, Suffolke, Essex, Cambridge, &c, since he went from Bedford</i> ([11 May] 1644) E.47[8]. |
| 53 | Edmond Felton, <i>Engins invented to save much blood and moneyes (in these times of warre) and to doe extraordinary good service, with the approbation of the Honourable Major Generall Skippon, and five of the committee for the fortifications of the city of London</i> ([30 April] 1644) E.44[15]. |
| 54 | Simeon Ashe and William Goode, <i>A particular relation of the most remarkable occurrences from the vnited forces in the north under the command of those three approved and faithfull friends both unto the church and common-wealth Generall Lesly, the Lord Fairefax and the Earle of Manchester</i> (PB GM [Appendix 4:L1], [14 June] 1644) E.51[3]. |
| 55 | William Lilly, <i>Merlinus Anglicus junior: the English Merlin revived; or, his prediction upon the affaires of the English Common-wealth, and of all or most kingdomes of Christendome this present yeare, 1644</i> (PB RW [12 June] 1644) E.50[27]. |
| 56 | Herbert Palmer, <i>The glasse of Gods providence towards his faithfull ones. Held forth in a sermon preached to the two Houses of Parliament, at Margarets Westminster, Aug. 13. 1644. being an extraordinary day of humiliation</i> (PB GM FD: 13 August 1644) E.6[8]. |

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| 57 | William Brereton, <i>A true relation of two great victories obtained of the enemy: the one by Sr. William Brereton in Cheshire, the other by Sir John Meldrum in Lancashire; relating the death of Col. Marrow, and the lists of prisoners taken in both the fights</i> (PB MS [Appendix 7:14], [30 August] 1644) E.7[25]. |
| 58 | William Brereton, <i>The successes of our Cheshire forces: as they came related by Sir William Brereton's own pen, to a minister of note and eminency in the city</i> ([04 September] 1644) E.8[8]. |
| 59 | Anthony Burgess, <i>Judgements removed, where judgement is executed. Or A sermon preached to the Court Marshall in Lawrence Jury, London, the 5th of Septemb. 1644</i> (PB MS [26 November] 1644) E.18[15]. |
| 60 | Anthony Burgess, <i>The magistrates commission from heaven. Declared in a sermon preached in Laurencejury, London, the 28. day of Sept. 1644. at the election of the Lord Major</i> (PB GM, [30 October] 1644) E.14[18]. |
| 61 | Willem Apollonius, <i>A consideration of certaine controversies at this time agitated in the kingdome of England, concerning the government of the church of God</i> (PB GM, [09 April] 1645) E.1155[2]. |
| 62 | Anthony Burgess, <i>Romes cruelty & apostacie: declared in a sermon preached on the fifth of November, 1644. Before the Honourable House of Commons</i> (PB GM, FD: 05 November 1644) E.19[16]. |
| 63 | Hezekiah Woodward, <i>Inquiries, into the causes of our miseries, whence they issue-forth upon us: and reasons wherefore they have born-us down so low, and are like to carry us yet lower, sect. III. Inquiries touching peace, whether we that ask peace, are sons of peace? Have improved our present peace, or the peace we have had? Whether we seek for it, where it is to be found? And knock for it at the right door, &c. More large on the back-side of the leafe</i> (PB RW [Appendix 3:H1] [08 January] 1645) E.24[3]. |
| 64 | Herbert Palmer, <i>The soule of fasting: or Affections requisite in a day of solemne fasting and humiliation. According to the pattern, Neh. 9.5. &c.</i> (PB MS, [21 January] 1645) E.1182[1]. |
| 65 | <i>A review of a certain pamphlet under the name of one John Lilburne. By a well-willer to the peace of Sion</i> (PB RW [Appendix 3:2&H1], [14 April] 1645) E.278[4]. |
| 66 | Thomas Blake, <i>Infants baptisme, freed from Antichristianisme. In a full repulse given to Mr. Ch. Blackwood, in his assault of that part of Christs possession, which he holds in his heritage of infants</i> (PB RW [29 April] 1645) E.279[10]. |
| 67 | Daniel Cawdrey, <i>Sabbatum redivivum: or The Christian sabbath vindicated; in a full discourse concerning the sabbath, and the Lords day. Wherein, whatsoever hath been written of late for, or against the Christian sabbath, is exactly, but modestly examined: and the perpetuity of a sabbath deduced, from grounds of nature, and religious reason</i> (PB RW, [01 May] 1645) E.280[3]. |
| 68 | <i>Intelligence from Shropshire, of three great victories obtained by the forces of Shrewesburie (commanded by the committee there;) viz. the taking of Stokesey and Cause-castles, places of great strength; and a great victory obtained in the fields, with a catalogue of the prisoners. Sent from persons of worth, that were in the action, to a person of honour in London</i> (FD: 28 June 1645) E.290[11]. |

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| 69 | Anthony Burgess, <i>The reformation of the church to be endeavoured more then that of the common-vvealth, declared, in a sermon preached before the Right Honourable House of Lords at the publike fast, August 27. 1645</i> (PB GM, FD: 27 August 1645) E.298[13]. |
| 70 | <i>A friendly check to Dr Bastwick: sent unto him in a letter from a Presbyterian friend</i> ([11 September]1645) E.300[18]. |
| 71 | <i>Englands remembrancer: or, A catalogue of all, or most of the severall victories and strong holds obtained (through Gods blessing) by the Parliaments forces, since the armies rising from about Oxford, June 1645. Published of purpose to draw forth our thanks unto the Lord of Hosts at all times, but more especially upon the day of thanksgiving</i> ([02 October] 1645) E.303[32]. |
| 72 | John Dury, <i>Israels call to march out of Babylon unto Jerusalem: opened in a sermon before the Honourable House of Commons assembled in Parliament, Novemb. 26, 1645, being the day of publique humiliation</i> (PB GM, FD: 26 November 1645) E.310[3]. |
| 73 | Simeon Ashe, <i>Religious covenanting directed, and covenant-keeping perswaded: presented, in a sermon preached before the Right Honourable Thomas Adams Lord Major, and the right worshipfull the sheriffs, and aldermen his brethren, and the rest of the Common-Council of the famous City of London, January 14. 1645</i> (PB GM, FD: 14 January 1646) E.327[5]. |
| 74 | Philip Nye, <i>The excellency and lawfulness of the Solemne league and covenant. Set forth in a speech, or exhortation made by Mr. Phillip Nye to the Honorable House of Commons and reverend assembly of ministers at their taking the said Solemne league and covenant</i> (PB WW, [26 January] 1646) E.318[7]. |
| 75 | <i>Englands remembrancer: in two parts. Or, A catalogue of all or most of the severall victories, and strong holds obtained (through Gods blessing) by the Parliaments forces since the armies rising from before Oxford in June last, 1645. to the last generall thanksgiving, Octob. 2. 1645</i> (FD: 06 February 1646) E.320[12]. |
| 76 | Anthony Burgess, <i>Publick affections, pressed in a sermon before the Honourable House of Commons assembled in Parliament: Upon the solemn day of humiliation, Febr. 25. 1645</i> (PB JY, FD: 25 February 1646) E.325[5]. |
| 77 | <i>The westerne informer. Containing the latest newes from, and successfull proceedings of his Excellency, Sir Thomas Fairfax, his armie and in particular (besides many other things) that Prince Charles, with many other gentlemen, tooke shipping for France at Falmouth, March 1. (FD: 02 March 1646) E.327[11].</i> |
| 78 | <i>Englands remembrancer: in two parts. Or, A catalogue of all or most of the severall victories, and strong holds obtained (through Gods blessing) by the Parliaments forces since the armies rising from before Oxford in June last, 1645. to the generall thanksgiving, Octob. 2. 1645. As also since that time to this present thanksgiving of the Parliament, city of London, and parts adjacent. March 12. 1645</i> (FD: 12 March 1646) E.327[24]. |
| 79 | <i>Toichoructa: or, Independents razing their ovvn foundation. By which all (that will not shut their eyes) may see deep iniquities, long veiled under pretence of conscience, clearly discovered.</i> (PB TP&MS [Appendix 5:R1], [19 March] 1646) E.328[23]. |

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| 80 | Edward Leigh, <i>Critica sacra: or, Philologicall and theologicall observations upon all the Greek words of the New Testament, in order alphabeticall</i> (PB JY [02 April 1646]) E.507. |
| 81 | Richard Baxter, <i>A plea for congregational government: or, A defence of the Assemblies petition, against Mr. John Saltmarsh.</i> ([06 May] 1646) E.336[9]. |
| 82 | <i>A glasse for vveak ey'd citizens: or a vindication of the pious, prudent and peaceable petition (to the Honorable the Lord Mayor, aldermen and commons in Common-Council assembled) now in agitation, from the false aspersions and calumniations of a seditious pamphlet, intituled, A dialogue, &c.</i> (FD: 19 June 1646) E.341[5]. |
| 83 | <i>The love and faithfulness of the Scottish nation the excellency of the covenant, the vnion between England and Scotland, cleared, by collections, from the declarations of Parliament, and, speeches of severall Independent brethren</i> (PB FN, [29 June] 1646) E.341[26]. |
| 84 | George Walker, <i>A modell of the government of the church under the gospel, by presbyters, proved out of the holy scriptures, to be that one, onely uniform government of the universall visible church, and of all nationall, provinciall, classicall and congregationall churches: which is according to the will and appointment of Jesus Christ.</i> (PB GM [Appendix 4:G2], [29 June] 1646) E.342[3]. |