

right to give the Sovereign advice, and that the Sovereign could ever be *obliged* to take advice from anybody is unthinkable. The choice of royal servants is therefore the Sovereign's alone and he may appoint and dismiss them at will.

11 Sovereigns will want to reward their servants from time to time. The Sovereign therefore has the right, and the sole right, to grant titles of nobility. He may even have the right of demotion, and he is certainly not accountable to anyone else for the way in which he exercises the ennobling power. Aristocracy is to be the Sovereign's creation in so far as that is possible in societies where aristocracies are used to thinking of themselves as hereditary.

Hobbes's account of sovereignty is sovereignty on the grand scale. It is worth repeating that Hobbes infers all the attributes of sovereignty from the original case of voluntary contract by Institution, and only then does he say that conquest sovereignty by Acquisition would enjoy the same rights. In *Leviathan*, the argument is carried on at a fairly abstract level, and it may not be obvious at first sight that *Leviathan* can be read as a philosophical commentary on recent European and English history, but this is in fact the case. What follows is an attempt to historicise Hobbes by showing how each of the attributes of sovereignty can be related to matters of contemporary political dispute. In itself, this should come as no surprise, because Hobbes is above all concerned with laying the ideological groundwork for an undisputable and therefore stable commonwealth.

THE ATTRIBUTES OF SOVEREIGNTY AS CONTEMPORARY POLITICAL COMMENTARY

Nothing could be easier for the modern reader than to read Hobbes's *Leviathan* and miss the implicit references to seventeenth-century politics. What is required is not a detailed knowledge of political developments in the seventeenth century, but rather an awareness of certain typical political themes out of which Hobbes was quick to draw important theoretical lessons. The predominant theme in Hobbes's political theory is fear for one's life and possessions. (Fear gave rise to the picturesque legend that Hobbes's mother went into premature labour on hearing the guns of the Spanish Armada in 1588; being at Malmesbury at the time, she must have had remarkable hearing.) Hobbes and terror were born twins, and the theory of the awful State of Nature might have been the result, though we have to balance against this the fact that Hobbes himself seems to have been a notably cheerful man.

What, exactly, was it that Hobbes is supposed to have been fearful of? The simple answer is that Hobbes thought that England during her Civil War was returning to the State of Nature which Hobbes dreaded, but historians of the English Civil War have been pointing out ever since the Civil War was over that England during that war was nothing like a State of Nature as described by Hobbes. On the whole, the fabric of English society was strong enough to remain substantially intact, so Hobbes cannot be right about the State of Nature, or at best he exaggerates. This is to ignore the continental influences on Hobbes (he was in exile in France for the ten years after 1641). Hobbes scholars have

always pointed to the influence of continental science and philosophy on Hobbes (Hobbes had met Descartes and Galileo during a continental visit in the 1630s) but they have been surprisingly mute about the possible influences of continental politics on *Leviathan*, and especially the influence of the Thirty Years War in Germany (1618–48). At times *Leviathan* reads like a philosophical commentary on Grimmelshausen's *Simplicissimus*, the standard account of Germany's descent into so chaotic a state, with so many sovereigns competing for mastery, that it begins to look very like the Hobbesian State of Nature. Hobbes probably thought that when the English Civil War broke out between the two competing sovereigns, king and Parliament, England was about to tread the terrible path that Germany had already trodden. Hobbes's explanation of why that did not happen in England would be that the English had the good sense to get themselves a new Sovereign, Cromwell, after the Stuart sovereigns had, temporarily as it turned out, disappeared from the scene.

Hobbes's assertion that a majority is enough to make the social contract valid and that the Sovereign may compel the rest to enter Civil Society means that Sovereignty can be legitimately exercised in a society where the consensus about government is incomplete. Perhaps consensus about government is always incomplete, but it matters particularly when the government of the day opposes itself to those institutions which are there to register consensus, which in the English case means Parliament. Social contract relies for its validity on the consent of the governed, either active or passive, and it begins to look bad for governments if consensus-registering institutions begin to dissent. This might not matter very much to kings like James I and Charles I who thought they ruled by Divine Right, but it would matter a great deal if an increasing number of their subjects were beginning to think about political obligation in social contract terms. These subjects could easily make common cause with other discontented subjects who were beginning to think that the Stuart kings were violating an ancient English constitution which put definite constraints upon sovereignty. By 1642 English Parliaments had been quarrelling with their sovereigns at least as far back as Elizabeth's reign, though historians still disagree about how serious those quarrels were. However, nobody seems to disagree that these quarrels became worse under the Stuarts, when they became so bad that Charles I managed to rule without Parliament for a decade (the Eleven Years' Tyranny, 1629–40). Most of us probably no longer think that the House of Commons 'won the initiative' by 1642. It used to be thought that continuous parliamentary opposition from the beginning of James I's reign built up to such a climax that the Commons felt strong and independent enough to enter into a contest with the king for sovereignty, but things could easily appear like that to a Royalist like Hobbes. A contested sovereignty is a divided sovereignty, and a divided sovereignty means civil war.

King and Parliament would soon meet on different sides of a battlefield, and what could be more divided than that? Hobbes therefore insists that sovereignty is indivisible and is for ever. English kings originally acquired their sovereignty by conquest (*1066 And All That*). In Hobbes's terms, the creation of sovereignty by Acquisition is a valid contract, so it cannot matter that late in the day some subjects, or even a majority, begin to argue erroneously that the king has no right to govern except on the advice of Parliament. By authorising all that the Sovereign does, his people gave up their Right of

Nature, and it is not for them unilaterally to take some of it back by trying to put constraints on sovereignty. This would amount to no less than an attempt to renegotiate the original contract but, if Hobbes is right, that would be a fruitless exercise. Not only would Civil Society have to return to the State of Nature at least for a time, but also, if they thought about it properly, men would voluntarily set up a new Sovereign with absolute powers anyway. This effectively happened during Cromwell's Lord Protectorship after two civil wars. Hobbes could have saved Englishmen all that trouble.

Charles I was put on trial for his life and executed in 1649. Charles refused to recognise the court which tried him, and Hobbes obviously thinks that he was right. Hobbes is adamant that it is nonsense to say that the king can break any law. Kings may act wickedly, but in Hobbes's special sense they can do no man an injury, because an injury is specifically an offence against law. Law is the Sovereign's command and he cannot, except in the metaphorical sense of making good resolutions, be self-commanded. Being still in the State of Nature, the Sovereign can judge but cannot be judged. Least of all can he be judged by his own subjects, or by a body of them, because to set up a court to judge the Sovereign would effectively be to set up another Sovereign. As soon as this happened, both the king and his parliamentary accusers would be back in the State of Nature as rival sovereigns. The king was in Parliament's power in 1649, but the fact that he had fought two civil wars against Parliament was no reason to try him and to execute him, because sovereigns in the State of Nature have the Right of Nature to fight each other. Hobbes's argument is slightly ambiguous here. Sovereigns in the State of Nature have the right to fight each other, and killing in war in no crime. Presumably that means that Parliament had the right to kill the king, but not to try him. The trial may have been a farce, and so the judicial execution of the king was a farce too, but it would have been small comfort to kings to know that the only option open to their rebellious subjects would be to kill them straight away without any legal proceedings at all.

It was the radical Reformation which led Hobbes to argue that the Sovereign may censor opinions, particularly religious opinions, and that he may lay down lawful rules for public worship. This had been a contentious issue in England ever since the Reformation itself in the 1530s, and as parts of Protestantism began to radicalise themselves in the last quarter of the sixteenth and in the first half of the seventeenth century, the state had to begin to take notice of them in ways which had not been necessary before. In Protestant England, anti-Catholicism was no longer enough. All kinds of plucky little dissenting Protestant sects began to spring up, and these were of the kind which would follow the example of the Puritans at the Hampton Court Conference in 1604 who would not doff their hats to King James. Soon they would be arguing that the state should be run on the same voluntary basis as their churches, which in Hobbes's eyes would be just another attempt to constrain and divide sovereignty. Granted the Sovereign's duty to keep the internal peace, these dissenting sects would have to be stamped on. The best way to do this would probably be to regulate public worship. The Anglican *Book of Common Prayer* had been a matter for bitter controversy in its day, but the book of *common prayer* it was. English monarchs, with the exception of Bloody Mary, had been Heads of the Church since the reign of Henry VIII, and a decent public observance of its established rites by everyone in the realm would contribute substantially

to social peace.

The Sovereign's right through his judges to make all decisions in courts of law is an attack by Hobbes on a particular view of the history of the Common Law of England. An important part of the anti-Royalist argument in England had always been that the Common Law existed independent of the royal prerogative. The Common Law, which was supposed to embody the liberties of the subject from time immemorial, was certainly not the king's creation, let alone his creature. Common Law courts and the king's courts had always engaged in an intermittent rivalry for jurisdiction (largely on account of the fees which litigation produced). Common Law was judge-made law, neither statute law made by king-in-parliament, nor the lawful command of a king issued through royal proclamations. In the seventeenth century, the Common Law, and especially common lawyers, came increasingly to be seen as the repository of the ancient rights and liberties of Englishmen. It must be emphasised that, at least in the beginning, there was nothing remotely republican about this stance. King James I got off to a bad start in England because on his way down from Scotland he hanged a thief. Nobody in the least minded the thief being hanged, but it had to be explained to James that in England thieves had to go through the ordinary process of law before they were strung up. Sir Edward Coke was later famously to argue before the king that the Common Law of England existed independently of the king, but Coke was on his knees when he did it. To argue that the royal prerogative—the powers the king had just because he was king—was limited in some way was not to argue against the principle of monarchy itself. Quite the contrary. The king *was* king. He had certain prerogative powers, and these powers were very wide; much better not to ask questions about *exactly* how wide those powers were. One of James I's faults was that he is the only king of England ever to be interested in political theory. As the wisest fool in Christendom, he would insist on trying to define how far the royal prerogative went. This in its turn led common lawyers, and eventually parliamentarians, to begin to ask how far the powers of Common Law courts went, and what exactly the powers of Parliament were.

Charles I began where James had left off, and that three-sided dispute about the division of sovereignty between king, Common Law and Parliament in England was the immediate intellectual context of the English Civil War. The immediate political cause of the outbreak of the war in 1642 was an issue of exactly this kind. Some English parliamentarians had always feared what a royal army might do to English liberties if it returned victorious over the endemically rebellious Irish. There was a Scottish rebellion, possibly egged on by English malcontents, in 1641. Charles I, who had just about been holding his own financially for the past ten years without calling a Parliament to raise new taxation, decided to call Parliament in the hope of getting the money to finance an army to put down the Scots. The parliamentary opposition was immediately suspicious. Parliament constitutionally provided extra taxation, but the king, while being obliged to give reasons why he needed the money, was more or less free to spend it how he liked afterwards, because in those days there was nothing like the Public Accounts Committee of the House of Commons. Suppose the king had in mind the putting down of others besides the Scots, parliamentary malcontents included? The crucial question was therefore about who was going to command the army the king intended to raise. Officers

held the King's Commission (they still do). Appointment to military commands had been part of the royal prerogative for as long as anyone could remember, and that was the rub. Parliamentarians, or a large enough party of them, were not going to let the king pack an army financed through Parliament with royalist officers who, on the king's command, would be perfectly willing to put down a difficult House of Commons. And so to civil war. Nothing could demonstrate more clearly the dangers of a divided sovereignty to a thinker like Hobbes. If division of sovereignty leads to that halfway house to the State of nature, civil war, then what could be more sensible than to argue that sovereignty should be entirely invested in one man or a single body of men? Let the Sovereign make and execute the laws, and let him choose his own servants, and civil war would be far away. (It would come as no surprise to Hobbes that Cromwell was later to do to Parliament what the parliamentary party feared might happen in 1642.)

The question of who should decide who should serve the king went deeper than the immediate crisis of 1641–2. Parliamentarians knew that when they claimed the right to advise the king on who to choose as officers for the army, they were encroaching on the royal prerogative. What made them do it then was that some parliamentarians could look back to nearly forty years' worth of worthless or dangerous royal servants and favourites. Parliament had been trying to get at obnoxious royal servants through the rather drastic and cumbersome processes of impeachment and attainder almost ever since the Stuarts came to the throne in 1603. Cranfield, Buckingham and Strafford had all suffered in this way, and Strafford paid with his life. From an oppositionist point of view, the only way of getting kings with absolutist pretensions to listen to them when they disagreed about government policy (especially foreign or financial policy) was to attack royal servants with the only constitutional and legal means available. Attacks on the king's servants reduced the effectiveness of royal government. Small wonder that Hobbes, with his concern for a strong and effective sovereign centre to the state, should insist absolutely that the Sovereign had the right to choose and dismiss his own servants at will.

War is the business of kings, so it should come as no surprise that Hobbes puts the war-making power exclusively in the Sovereign's hands. The Sovereign decides when to make war, against whom, and where. This question of war had been contentious in England since the beginning of James I's reign. In ordinary times, the king was expected 'to live of his own', which meant that rents from royal lands and certain traditional forms of royal taxation (wardship, the customs) were supposed to be enough to keep the king in the style to which he was accustomed and to defray the ordinary expenses of government (and in those venal days probably about half the royal revenues came indirectly to the king in the form of 'gifts' to royal officials). It was accepted constitutional practice that in emergencies the king could ask Parliament, which effectively meant the House of Commons, for extra taxation, and war was one of these accepted emergencies. From the first of James's parliaments, discontented members of the House of Commons had begun to ask some very searching questions about royal requests for extra revenue for military and naval purposes. Parliamentary and popular memory could never rid itself of the thought that England had never prospered so much as in the old days of Elizabeth, when the foreign policy had been war with Spain and peace with all the world. That meant war at sea, not a land war in Europe. The cost of war was rising in the seventeenth century (as

was the price of everything else), and land wars were generally recognised to be the most expensive of all. James I was an orthodox Calvinist, and Protestant Englishmen had always felt proud that England had become the leader of the European Protestant cause during Elizabeth's reign. James I's daughter, Elizabeth, was married to Frederick, Protestant Elector Palatine, and she became the Winter Queen when Frederick laid his claim to the Kingdom of Bohemia to begin the Thirty Years War in Europe. James was a meddler, and from 1618 onwards the parliamentary opposition was always afraid that he might meddle in the land war in central Europe. James never did, but it remained a possibility until the end of his reign. James's successor Charles did get himself involved in foreign wars under his favourite Buckingham's promptings, but his interventions achieved nothing tangible, and they were horribly expensive. Disputes between kings and the House of Commons about foreign policy were never far below the surface of seventeenth-century English politics, and these disputes were one of the contributing causes of the Civil War. Hobbes naturally puts the war-making power entirely into the Sovereign's hands to prevent this possible cause of discord and division.

Historians are still squabbling about what the lines were that England divided on in the Civil War. Marxist historians call the English Civil War and the Interregnum a 'bourgeois revolution', but the bourgeois revolution thesis has always had to live with the uncomfortable fact that the Civil War divided the English aristocracy. What could have induced English aristocrats to side with Parliament against their king? Perhaps Hobbes's assertion that it is part of the Sovereign's prerogative to choose whom for what rank gives us an important clue: both James I and Charles I sold honours. There appears to have been something like a regular tariff, and there is nothing which annoys a real aristocrat more than an upstart who has bought his nobility. Ancient service to the state is supposed to be the basis of rank, not moneymaking. Hume may be right when he says that aristocracy is merely 'reputation of ancient fortune', but that is not how aristocrats see it. The trade in honours became notorious under James, and continued under Charles. It appeared to debase the idea of kingship as well as debasing the idea of nobility, but more was at stake. Kings were not obliged to call Parliaments regularly in the seventeenth century, and there was still some doubt as to whether the constitution obliged them to call Parliaments at all. (Regular Parliaments was to be one of the consequences of the Revolution of 1688.) The king's motive for calling Parliaments was nearly always money. A universal European price rise helped the cause of parliamentarians because the king was always going to need more money for his own expenses and for the ordinary expenses of government. This desperation for money would be increased by the fact that much of the king's revenue came from rents from royal lands, and it is well-established that when prices rise, rents from land rise less quickly than the price of most other things. As long as kings were broke Parliaments would be called.¹ The converse was also true: if kings could really find enough cash to 'live of their own', then there was no reason in principle why they should ever call a Parliament again. Parliamentarians were playing a double game. They argued endlessly that James was spending as much in peacetime as Elizabeth spent at war, but on the other hand they were bound to look on with suspicion when kings found new ways of raising non-parliamentary revenue, because that could make the king independent of Parliament, a true separation of powers and the possible

annihilation of one of them. Some aristocrats were Parliament men, and all could sneer at the jumped-up aristocrats who kept appearing in their midst by royal command. Small wonder, then, that some aristocrats were to side with Parliament in the Civil War, and small wonder that Hobbes, concerned as he is for the unity of the state, should argue that aristocracy should be the Sovereign's creature, if not his creation, in so far as that is possible.²

The English Civil War was fought for many things, but there can be no doubt that contemporaries thought that one of the things they were fighting for was religion. (Not everybody was as honest as the parliamentarian who said that we fight for religion because everyone has religion; if all men possessed land, we would say we fought for land.) We have already remarked that Englishmen had been quarrelling, sometimes bloodily, over religious questions since the Reformation of the 1530s. To remember how important religion was, all we have to do is to remind ourselves that the Civil War and its aftermath, the Interregnum, is sometimes called the Puritan Revolution. Hobbes, with his implicitly European perspective, could not help but have in mind the example of what the Thirty Years War, as a religious war, was doing to Germany. His argument that the Sovereign has the right to settle religious questions, including questions about official doctrine as well as ceremony, is the least surprising of all.

THE LAWS OF NATURE: SOME OF THE CONTROVERSIES WHICH SURROUND HOBBS'S DOCTRINE

Hobbes writes a classic English prose. All the commentators on Hobbes recognise that he writes with more than ordinary clarity and pungency, so how can it be that so much learned controversy surrounds Hobbes's *Leviathan*? In particular, how can it be that controversy surrounds the central theme of *Leviathan*, the theory of political obligation as it is derived from the Laws of Nature and social contract? Some commentators even go as far as to claim that Hobbes hasn't got a genuine theory of political obligation at all.

So what is the controversy *about*? The basis of it can be stated very simply: it is sometimes argued that Hobbes fails to provide any moral basis for political obligation, no reason for supposing that men would ever feel internally obliged to obey the Sovereign. Men would obey the Sovereign out of fear of violent death at his hands, but they would never feel that they *ought* to obey him. The old Natural Law doctrine always held that in most circumstances men ought to obey the supreme authority in the state. A moral basis for political obligation was essential in polities where law-enforcing agencies were not all that efficient. The internalised feeling that one ought to obey the law was a kind of inner policeman before policemen had been invented. Where, it is said, does one find in Hobbes an argument which would lead one to suppose that a Sovereign's subjects would ever feel that they *ought* to obey him? Hobbes appears to be misusing and debasing the language of Natural Law for purely prudential ends which, as it was traditionally conceived, Natural Law had never been used to serve.

Why does this matter? It matters on two levels, one philosophical and one practical, though the two are obviously connected. On the philosophical level, to say that Hobbes