

The Idea of Conquest in Early Modern British Political Discourse

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This thesis studies Anglophone discourses of conquest in seventeenth-century British political debates. It focuses on the development and deployment of conquest arguments across a series of moments during the first half of the seventeenth century. No such study has thus far been undertaken. The present thesis, therefore, aims to offer the first substantial treatment of early modern Anglophone discourses of conquest. It is structured around four case studies, spread out over four main chapters, each examining an extended moment of importance in the development of conquest arguments. These four chapters are flanked by the Introduction and the Conclusion & Epilogue. The Introduction delimits the topic under investigation, surveys the relevant modern literature and explains the methodological approach. Chapter 1 looks at ideas of conquest in the context of James I's accession. It shows how debates over conquest emerged from the reception of James's political thought against the backdrop of his accession and the Anglo-Scottish union debates. Chapter 2 considers conquest discourse during the last stages of the union debates and as part of an ancient constitution narrative that developed in their wake. Chapter 3 investigates uses of conquest arguments in the civil war of the 1640s. It focuses on the pamphlet debates of 1642/3 and conquest rhetoric as part of Leveller conceptions of the Norman Yoke. Chapter 4 concentrates on conquest arguments in the Engagement controversy of 1649-51 and looks at how conquest theories developed during the Engagement's pamphlet debate. Finally, the Conclusion & Epilogue summarises the main findings and demonstrates that the conquest theories that had been developed over the course of the century came to be used in the years following the Revolution of 1688/89.

This thesis investigates the emergence and development of Anglophone discourses of conquest in seventeenth-century British political thought. Specifically, it covers the period from James I's accession to the English throne in 1603 to the so-called Engagement controversy at the end of the English civil war (c. 1650/51), before concluding with an epilogue that surveys conquest discourses in the context of William III's arrival in England in 1688. At the beginning of the century, it is argued, there was a basic understanding that the forceful acquisition of government could generate absolute power. This was to change over the duration of the first half of the seventeenth century, as theories of conquest grew out of political debates accompanying a series of changes to government and concomitant discussions over political sovereignty. A particular watershed moment was the civil war of the 1640s which occasioned much of the most relevant debate from which theories of conquest arose.

There are four main chapters tracing this development. They respectively cover: (1) the accession of James I to the English throne and concomitant discussions about an Anglo-Scottish union; (2) the last echoes of the union debates in the shape of a crucial legal trial and the use of conquest arguments in emerging anti-absolutist accounts of an ancient constitution; (3) the beginning of the English civil war and the pamphlet debates of 1642/3; (4) the Engagement controversy at the end of the civil war in which the grounds for obedience to the new regime were being discussed. The dissertation focuses on discourses of conquest in British domestic political-constitutional debates and examines the uses to which these developing languages of conquest were put in the shape of political arguments.

The introduction surveys the existing scholarly literature on early modern conquest thought and delimits the field of enquiry. Conquest is often associated with international

history, including English and European expansion into the New World. This international sphere and notions of conquest arising from it, are peripheral to this dissertation. Instead, the thesis focuses on British political discourse and discussions of conquest arising out of moments in which claims to, and the nature of, political sovereignty was being contested. Furthermore, the introduction explains the thesis's methodological approach: 'serial contextualism'. This means that concepts of conquest are examined in a series of case studies of which each constitutes its own distinct context. Four case studies are thus carried out over the four chapters.

Chapter 1 examines conquest discourses during the transition from the last Tudor to the first Stuart ruler. The central suggestion is that conquest discourse emerged out of what might be called a misunderstanding of James I's political thought. An examination of James's ideas will highlight how his notions of kingship and the royal prerogative, which he articulated in a language of conquest prior to his English accession, were misunderstood by some of his new subjects. A set of conquest arguments James had forged with a defensive intention, to protect himself against theories of popular sovereignty, rattled his new subjects as they feared for their national sovereignty and the future role of parliament and the laws. In short, some of James's new subjects feared that he might abrogate the laws and rule like a conqueror. In the context of James's accession to the English throne and the unfolding debates over an Anglo-Scottish union as envisaged by the king, discourses of conquest began to be used as a toolkit with which the details of political sovereignty were explored. Specifically, political actors began to look for historical precedent in order to investigate the effects of conquest in the context of the dynastic union. The expected royalist defence of absolutism in terms of conquest arguments, however, failed to materialise beyond some unsystematic and descriptive uses of conquest language. The disproportionate focus on James's use of conquest by anti-

absolutist thinkers culminated in the construction of a straw man of royalist conquest thought. In other words, while few to no royalists at the beginning of the century advanced systematic defences of royal sovereignty based on conquest right, the latter still became a central pillar against which anti-absolutist ancient constitutionalist accounts began to pitch their arguments. James's arrival and the language in which he expressed his political thought had thus inadvertently brought about the beginning of conquest discourse in seventeenth-century British political debates.

Chapter 2 explores the place and use of conquest arguments in the last stages of the Anglo-Scottish union debates and as part of a developing ancient constitution rhetoric. Crucially, this highlights that conquest discourse remained politically potent beyond the immediate context of James's accession. Moreover, languages of conquest were beginning to be refined and formalised. In the first instance, the chapter focuses on the political and legal negotiations pertaining to the naturalisation of the so-called Scottish *post-nati* in England, James's Scottish subjects born after his accession to the English throne. The legal case, which has become known as *Calvin's Case*, assumed the dimension of a proxy case about the nature and extent of James's prerogative (and sovereignty). In deliberations of the matter in parliament as well as in court, discussants had sustained recourse to conquest arguments in their attempts to establish the confines of royal authority. The legal trial in particular aided the development of a conceptually more rigorous language of conquest. The register of conquest which had become available through these and preceding debates was then used in articulations of an ancient constitution rhetoric; anti-absolutists continued to attack a conquest straw man. Their narrative of English (legal) history sought to emphasise the antiquity and continuity laws and political institutions in an attempt to limit the king's power. The occurrence of a historical or contemporary conquest was an obvious conceptual stumbling block and

much attention was devoted to depriving 1066 of its potentially absolutist contemporary implications.

Chapter 3 investigates the use of conquest arguments in the English civil war of the 1640s. In particular, the chapter focuses on the pamphlet wars of the years 1642/3. Ideas of conquest were fiercely discussed in conflicts between royalists and parliamentarians over the position and power of the Crown which had ensued in the wake of Charles I's *Answer to the XIX Propositions*. Whereas the majority of the modern literature on the period and topic in question has maintained that ideas of conquest were virtually absent from royalist writings prior to the 1680s, this chapter demonstrates their central position in royalist thought as early as 1642. The straw man cultivated by anti-absolutists over the previous three decades came alive. While royalist pamphleteers began to argue that conquest could indeed be constitutive of absolute authority, their parliamentary adversaries vigorously denied this claim. Whereas the majority of debates over conquest throughout the first three decades of the century (covered in Chapters 1 and 2) had centred around history – evaluating the importance of historical precedent for contemporaneous politics – the civil wars saw a gradual shift towards arguments from first principles. Accordingly, parliamentary writers looked towards the concept of consent as the natural inhibitor of conquest right, rather than partisan interpretations of past conquests. Finally, the chapter takes a brief look at Leveller interpretations of the Norman Yoke and their anti-Normanism. This presented a radical departure from previous parliamentary and ancient constitutionalist strategies. Ancient constitutionalism had emphasised the continuity of legal and political institutions on either side of the Norman Conquest. The Levellers, conversely, stressed the interruption and change the Norman Conquest had caused, singled out 1066 as the origin of contemporary royal tyranny and accordingly posited the need to overthrow the monarchy in order to obtain liberty. In their hands,

conquest became simultaneously synonymous with six centuries of oppression and the promise of liberation that lay in the possibility of a conquest of their own.

Chapter 4 centres around the Engagement controversy (c. 1649-1652) that followed in the wake of the parliamentary seizure of power. Parliament demanded that its subjects ‘engaged’ with it, that is to say swear an oath of allegiance in order to guarantee obedience. Against the backdrop of parliament’s undeniably violent acquisition of power, arguments from conquest were pivotal to discussions about the legitimacy of obedience to the new regime and questions over whether its assumption of power was lawful in the first place. Discourses of conquest which debated the conditions of sovereignty in the context of the Engagement became increasingly formalised as categories of conquest thought emerged as a result of constant discussions. Three central strands in particular grew out of these debates. First, *de facto* defences of obedience emphasising the importance of possession of power of the means of its acquisition and which thus tended to obviate debates about the nuances of conquest. Second, and sometimes linked to the first, accounts presenting conquest as the legitimate outcome of a just war, thus constituting a rightful base for claims to power. Third, attempts to combine conquest and consent. This latter strand was pursued with contrasting aims, of either containing the power conquest could generate or, conversely, to legitimise it. The foremost advocate of this latter approach was Thomas Hobbes, whose theory of conquest in *Leviathan* is the final piece of this chapter.

Finally, the Conclusion & Epilogue provides a summary of the discourses of conquest identified throughout the thesis, their respective developments and uses. Furthermore, it includes an excursion into the context of the ‘Glorious Revolution’ of 1688. Examining the role of conquest arguments in the debates surrounding 1688 highlights that the theories of conquest used at this point corresponded to the ones

developed roughly between James I's accession and the end of the civil war as traced throughout Chapters 1-4. Whereas there was no fully theorised and nuanced Anglophone account of conquest available at the outset of the seventeenth century, the political actors in the years surrounding 1688 had a number of theories of conquest at their disposal which had been developed throughout the century.

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Introduction

I – EARLY MODERN DISCOURSES OF CONQUEST

In ‘A REVIEW, and CONCLUSION’ to his 1651 *Leviathan* Thomas Hobbes claimed that up to this point it had not been understood ‘in what point of time it is, that a Subject becomes obliged to the Conqueror; nor what is Conquest; nor how it comes about, that it obliges men to obey his Laws’.¹ In short, Hobbes complained that one of the pivotal concepts of seventeenth-century political thought had been inadequately examined. He went on to offer an answer to the question of what conquest was, as did others before and after him. Their views, which were as numerous as they were diverse, are the subject of this dissertation.

Hobbes made his observation at the end of the English civil war and his remark needs to be understood in this immediate context. Yet, the question of what led the Malmesbury philosopher to his perhaps surprising statement invites consideration of not just the preceding five or ten years but a deeper exploration of discourses of conquest in seventeenth-century British political thought. Over the period from James I’s accession to the English throne to the end of the civil war, the concept of conquest came to be used as a lens through which the conditions of political sovereignty were examined with increasing frequency and sophistication. Repeated uses and discussions of conquest

¹ Thomas Hobbes, *Leviathan*, ed. Noel Malcolm, vol. 3 (Oxford: Oxford University Press, 2012), 1133. In *Leviathan* Hobbes also offered an explanation of what exactly conquest was in his view. This will be treated in detail in Chapters 3 & 4.

meant that conquest discourses gradually became more formalised and theorised; as the lens was ground, the image of conquest rights became sharper. This dissertation sets out to accomplish a survey and analysis of this development.

In modern scholarship, seventeenth-century ideas of conquest have not attracted the attention they deserve. In the secondary literature, conquest has been considered as part of military or international history or as a component of the history of empire. When it has featured in works of intellectual history, it has mostly been a peripheral matter, rather than the main topic in its own right. The most problematic and pervasive fallacy across the sub-disciplines is the assumption that there was a uniform and largely unchanging theory of conquest which could be taken off the shelf by writers and deployed freely in their works. At the beginning of the seventeenth century, there was, no doubt, a basic theory of conquest that defined it as the forceful overthrow of government that abrogated existing laws and which argued that the power that emerged was absolute and unchecked.² This thesis examines the development of the more nuanced accounts of conquest which developed out of British political and constitutional debates throughout the seventeenth century. These more nuanced versions specifically explored the conditions of sovereignty begotten by conquest and considered aspects such as political legitimacy and the precise mechanism through which political obligation in the context of conquest was created. As we shall see, conquest theory underwent a significant development during this period.

An intuitive implicit assumption regarding the notion of conquest is that it was an inherently international phenomenon involving one country overthrowing another. Nevertheless, this thesis draws attention to the development of conquest theory out of

² In the 1590s Richard Hooker, for example, noted that ‘Kings by conquest make their own charter: so that how large their power [...] is, we cannot with any certainty define’ (quoted in Johann P. Sommerville, *Royalists and Patriots: Politics and Ideology in England 1603-1640*, 2nd ed. (Abingdon: Routledge, 2014), 65.)

English domestic political and constitutional debates. The latter arose as a consequence of increasingly antagonistic (initially verbal) confrontations between the monarchy and parliament, which ultimately culminated in the civil wars. Crucially, the deployment of conquest rhetoric in English domestic political debates, that is to say, the development of conquest discourses, will be at the centre of this thesis. The focus, accordingly, will rest on what was done with ideas of conquest, to what ends they were deployed in political discourse, who used them and how they developed, for example through pamphlet debates at times of political crisis.

While the seventeenth century bristles with moments of exciting novelty, including the transatlantic expansion of British domains, it also presents the natural choice for this investigation into early modern ideas of conquest as part of a distinctly domestic British political context. Conquest arguments, as this thesis will show, became politically opportune in moments of political disruption, when sovereignty or even the very concept of sovereignty were contested. In this respect, the British Isles offered an abundance of political change and crises during the seventeenth century. The argument is that political theory was created out of the desire and need to comprehend the political realities and developments of the time.³ From the arrival of a new and foreign ruler, to rising tensions between the Crown and its parliamentary opponents, to the eventual eruption of the civil wars and the Engagement controversy in their aftermath, seventeenth-century England offers a series of moments of political crisis and a corresponding need to explain and

³ John Figgis suggested that there was a ‘dependence of theory upon circumstances.’ He explained ‘that facts are the parents of theories far more than theories of facts, that political thought is inevitably relative to political development, men are all too prone to forget. [...] it is unquestionably true, that a doctrine produced by the pressure of circumstances may have a great practical work to perform.’ Where his statements referred to divine right theories of government, this thesis will suggest that they were equally true for the development of conquest theory. (John Neville Figgis, *The Divine Right of Kings*, 2nd ed. (Cambridge: Cambridge University Press, 1914), 16.)

justify authority, or at least obedience to it. Four separate case studies, spread out over four chapters, will trace the role and development of conquest discourses at each of those aforementioned moments. This will reveal how discourses of conquest were being transformed from discussions of historical precedent into nuanced debates about the conditions of political sovereignty. In other words, the near half century from the accession of James I to the end of the civil wars witnessed under-theorised discourses of conquest being gradually refined through repeated discussion, ultimately culminating in formalised and theoretically sophisticated discourses of conquest.

The usefulness of ideas of conquest and the imperative to discuss the same varied throughout the seventeenth century, depending on political circumstances. Ideas of conquest were discussed and deployed most vociferously at times when the idea of sovereignty, or at least the right to claim its possession, was contested. The resulting pattern in which conquest ideas periodically came to the fore and retreated again has at least three implications for this thesis and its structure. First, it influences the scope of the thesis or, more specifically, the episodes under investigation. Second, it determines the specific sources considered within the respective episodes. Third, it allows an insight into the relationship between theories of conquest and surrounding political ideas. This will suggest that, if contextualised correctly, discussion of conquest theories may act as an effective prism through which to view and understand contemporary political discourse, a connection this thesis considers in detail.

To begin with, the dynamic of conquest debates has implications for the scope of this investigation. This thesis considers moments of political change and upheaval during which ideas of conquest were deployed as part of political discourses. This means it is not a continuous narrative but rather considers a series of episodes across which ideas of

conquest were used and developed. The presence and importance of conquest ideas in political debates oscillated throughout the century; and while there was a gradual development towards theoretically more sophisticated accounts, conquest was not present in equal measure across all decades of the seventeenth century. This also means, as will be shown, that discussions of conquest were prominent or absent at unexpected moments. The methodological dimensions of this approach and the specific scope and episodes under consideration are discussed in more detail below.

Second, the choice of sources within the episodes covered throughout the thesis has been primarily influenced by the question of whether they offer a relevant treatment of conquest ideas. Crucially, theories of conquest were not exclusively discussed in tracts of top-level political theory. Instead, nascent ideas were rehearsed in lesser-known pamphlets – often in ‘conversations’ that occurred as part of larger debates. Conquest only gradually emerged as an idea that merited being debated in its own right. As conquest discussions grew in frequency and importance, and political circumstances changed with the beginning of the civil war, debates took a more theoretical tone and conquest emerged as an idea to be addressed explicitly. This gradual emergence of conquest debates out of a thicket of politically reactive pamphlets, then, also accounts for the absence of some staple works of political theory which might be expected to feature. It was only with the civil war that notions of conquest noticeably entered the mainstream of Anglophone political theory. This circumstantially driven emergence of conquest ideas, from relative obscurity in polemical political pamphlets to the pages of political theory, is also reflected in the selection of sources in this thesis.

Finally, these considerations on the nature of conquest discourses also offer an insight into the way in which theories of conquest relate to surrounding political thought. Crucially, notions of conquest developed in conjunction with and in response to

surrounding political ideas and debates, and not as a discrete notion in isolation. Ideas of conquest rather emerged out of political debates centred around the extent and nature of royal prerogative and the king's position vis-à-vis the law at the beginning of the century. While conquest debates gradually developed from being implicit aspects of wider discussions of political sovereignty, legitimacy, and obligation into being examined explicitly, ideas of conquest remained firmly nested within the wider geography of political discourse. Although the idea of conquest was given dedicated chapters or sections in political works, it was never a standalone idea; instead, it was always invoked in support of or to scrutinise more fundamental political questions.

To begin an investigation of early modern conquest discourse in the seventeenth century, one might object, is too late. After all, it might be thought that Tudor England was no stranger to conquest and conquest discourse. One need only think of the rich historiography of the Tudor conquest of Ireland.⁴ But the Irish example is instructive: in fact, it reveals not the ubiquity and sophistication of conquest discourse, but rather the determination of the Tudor state to avoid talking about conquest at all. Given the widespread image of Tudor England as the conquerors of Ireland, one might expect a pervasive conquest discourse to populate early modern English political debates in the wake of the supposed Elizabethan subjection of the island. Indeed, modern scholarship has been unambiguous in its collective assertion that the Tudor presence in Ireland

⁴ Publications from the last decades include titles such as Nicholas P. Canny, *The Elizabethan Conquest of Ireland: A Pattern Established, 1565-76* (Hassocks: Harvester Press, 1976); Colm Lennon, *Sixteenth-Century Ireland: The Incomplete Conquest* (New York: St Martin's Press, 1995); John McGurk, *The Elizabethan Conquest of Ireland: The 1590s Crisis* (Manchester: Manchester University Press, 1997); Patricia Palmer, *Language and Conquest in Early Modern Ireland: English Renaissance Literature and Elizabethan Imperial Expansion* (Cambridge: Cambridge University Press, 2001); Pádraig Lenihan, *Consolidating Conquest: Ireland 1603-1727* (Harlow: Pearson Longman, 2008).

constituted a conquest. This stands in stark contrast to the view the Tudor state adamantly advanced as it did everything it could to avoid calling its Irish involvement a conquest. While there is little doubt about an English military presence in Ireland and the oppression of the Irish, the Elizabethan court repeatedly denied that their actions constituted a conquest.⁵

When Elizabeth I despatched Robert Devereux, 2nd Earl of Essex, to Ireland in 1599 to quell Tyrone's uprising, she issued a noteworthy proclamation. She declared that

‘For [...] better comfort touching the apprehension of conquest we do profess hereby to the world that we are so far from any such purpose as the very name of conquest in this case seemeth so absurd to us as we cannot imagine upon what ground it could enter into any man's conceit that our actions, tending only to reduce a number of unnatural and barbarous rebels and to root out the capital heads of the most notorious traitors should need any such title of conquest’.⁶

The queen unequivocally and, it seems, pre-emptively distanced herself from any allegations of tasking her newly appointed representative with the conquest of Ireland. Elizabeth was undoubtedly interested in forging a non-violent image, portraying England

⁵ An exception was the case of Sir John Davies, James's solicitor-general (1603-6) and attorney-general (1606-19) in Ireland. Davies held that Ireland had in fact not been conquered prior to Tyrone's defeat; in his reasoning, Davies relied on civil law principles, rather than common law. See in particular John Davies, *A Discoverie of the True Causes Why Ireland Was Never Entirely Subdued, nor Brought under Obedience of the Crowne of England, Untill the Beginning of His Majesties Happie Raigne*, 1612. On Davies's political and legal thought, see Hans S. Pawlisch, 'Sir John Davies, the Ancient Constitution, and Civil Law', *The Historical Journal* 23, no. 3 (1980): 689–702. See also John G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987), 59–63; Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (University Park, PA.: Pennsylvania State University Press, 1993), 127–28; Glenn Burgess, *British Political Thought, 1500-1660: The Politics of the Post-Reformation* (Basingstoke: Palgrave Macmillan, 2009), 164–69; Sommerville, *Royalists and Patriots*, 41, 84–85.

⁶ Paul L. Hughes and James Francis Larkin, eds., *Tudor Royal Proclamations*, vol. 3 (New Haven: Yale University Press, 1964), 200–202.

and herself as nothing but the rightful sovereign over Ireland.⁷ The reason for denying a conquest may not have been merely rhetorical; there were conceptual implications, too. If Essex's excursion was officially declared a conquest, this would have been tantamount to conceding that English sovereignty had to be (re-) established, thus admitting that it had at least temporarily lapsed. Robert Cecil appears to confirm this interpretation as he rhetorically asked in the year of Essex's dispatch: 'For, I pray you, what would you have the Queen do? Should she make a conquest of all Ireland again?'⁸ The conquest that gave England sovereignty over Ireland lay some four centuries in the past. Early modern court views therefore characterised English involvement in Ireland not as conquest but spoke of efforts of 'planting' and 'colonising', typically activities that would follow a conquest.⁹ Thus a language centred around notions of colonialism, rather than conquest, dominated early modern English political discussions over Ireland.¹⁰

The paradoxical result is that despite the historiography, the Tudor state deliberately avoided the thought that it was involved in a conquest, and that most contemporaries shied away from discussing the Irish endeavours in terms of conquest. Rather than beginning with Ireland, therefore, this thesis turns its gaze towards seventeenth-century domestic British political discourse as part of which ideas of conquest rose to prominence in a variety of debates about sovereignty at the heart of the nation.

⁷ Christopher Maginn and Steven Ellis note that 'while Henry VII, and perhaps Henry VIII, contemplated leading a grand military expedition' to Ireland a comparable plan 'does not appear to have even entered into the thinking of the later Tudors' and eventually 'no Tudor sovereign was to set foot in Ireland'. (*The Tudor Discovery of Ireland* (Dublin: Four Courts Press, 2015), 14.)

⁸ Ernest G. Atkinson, ed., *Calendar of State Papers, Ireland, 1599-1600* (London: Her Majesty's Stationery Office, 1899), 221.

⁹ See for example David Beers Quinn, 'Sir Thomas Smith (1513-1577) and the Beginnings of English Colonial Theory', *Proceedings of the American Philosophical Society* 89, no. 4 (December 1945): 543-560.

¹⁰ I am looking to address questions surrounding the supposed Tudor conquest of Ireland in a separate piece of research.

II – HISTORIOGRAPHY

There is as yet no substantial treatment of the development of domestic Anglophone discourses of conquest in the seventeenth century. Instead, when discussing conquest historians have tended to think of it as part of the international sphere. While early modern conquest discourse has thus rarely been the subject of analysis, historians have regularly used conquest in a descriptive manner to characterise developments in early modern international history, and the history of empire.¹¹ A brief overview of this international sphere will highlight its separate nature from the English domestic discourses this thesis seeks to focus on.

Historical accounts of the formation of empire have frequently characterised early modern English colonial activity in terms of conquest.¹² David Armitage, Ken MacMillan and Anthony Pagden, for example, have addressed the conceptual underpinnings of early modern empires and consider conquest as part of a repertoire of justifications and ideologies of empire.¹³ The latter were forged in particular in Anglo-Spanish conflicts

¹¹ For example David Day, *Conquest: How Societies Overwhelm Others* (Oxford: Oxford University Press, 2008); Robert Bartlett, *The Making of Europe: Conquest, Colonization, and Cultural Change, 950-1350* (London: Allen Lane, 1993); R. R. Davies, *Domination and Conquest: The Experience of Ireland, Scotland and Wales 1100-1300* (Cambridge: Cambridge University Press, 1990). For a discussion of works concerned with Anglophone conquest discourse, see below, pp. 15 ff.

¹² A.L. Rowse, for example, gives an account of England's westward growth, incorporating Ireland more or less *en passant* as 'Ireland was on the way to America'. The Green Island was the first stepping stone to a larger empire that lay across the Atlantic. This empire, Rowse leaves no doubt, was initially founded in violence, 'colonisation and conquest' (*The Expansion of Elizabethan England* (London: Macmillan, 1955), 137.) See also David Scott, *Leviathan: The Rise of Britain as a World Power* (London: William Collins, 2014).

¹³ David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640* (Cambridge: Cambridge University Press, 2006); Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France, c. 1500-c. 1800* (New Haven: Yale University Press, 1995).

over the New World, as rival claims over contested territory were staked and early principles of international sovereignty formulated. In fact, the rivalry between these two sea-faring monarchies significantly shaped the body of thought concerned with questions of empire and territorial sovereignty abroad, thereby influencing the context within which international conquest arguments occurred.

A brief look at this Anglo-Iberian rivalry will demonstrate how these arguments developed historically. One of the earliest articulations of a claim to empire came on 4 May 1493 when Spanish-born Pope Alexander VI issued the papal bull *Inter Caetera*.¹⁴ The decree sought to regulate territorial questions in the New World, covering recent discoveries as well as lands yet to be found; the proclamation ‘paved the way for Spain and Portugal to claim exclusive rights to the portion of the world that was not currently discovered’.¹⁵ In the bull, which arguably epitomised the principle of ‘divide and conquer’, Pope Alexander declared that he was to ‘give, grant, and assign to you [the Kings of Castile and Leon] and your heirs and successors [...] all islands and mainlands found and to be found, discovered and to be discovered towards the west and south’ of a demarcation line running through the Atlantic Ocean, stretching from North to South Pole ‘one hundred leagues [...] west of the Azores’. To this was added the provision that none of the territory in question was to ‘be in the actual possession of any Christian king or prince’.¹⁶

¹⁴ The full English translation of the bull can be found in Frances Gardiner Davenport, ed., *European Treaties Bearing on the History of the United States and Its Dependencies*, vol. 1 (Washington, D.C: Carnegie Institution of Washington, 1917), 56–78. On the importance and interpretations of *Inter Caetera*, see also H. Vander Linden, ‘Alexander VI. and the Demarcation of the Maritime and Colonial Domains of Spain and Portugal, 1493-1494’, *The American Historical Review* 22, no. 1 (October 1916): 1–20.

¹⁵ Ken Macmillan, ‘Disclosing a Great Error: John Dee’s Answer to the Papal Bull *Inter Caetera*’, *Terrae Incognitae* 36, no. 1 (June 2004): 13.

¹⁶ Davenport, *European Treaties*, 1:77.

While the papacy's power to confer sovereignty and possession in the secular realm remained contested (not just amongst Protestants), the papal donation constituted the benchmark against which subsequent justifications of empire had to be judged.¹⁷ Leading English writers on questions of empire found that 'the first task of any argument in favour of English or British colonisation should be the refutation of the papal donations of the Americas to Spain, and hence the Papacy's power of disposing dominion more generally.'¹⁸ Before refuting the Spanish pretensions to a sizeable part of the 'undiscovered' world, however, imitating Spanish arguments was deemed adequate in order to compete for the riches and power that awaited. 'The language of the papal documents was, so to speak, the standard language of European overseas expansion.'¹⁹ From the earliest colonial efforts at the end of the fifteenth century and across the subsequent occasional expeditions throughout the sixteenth century, the English Crown utilised a language comparable to that of the Alexandrine bull, equipping their agents, however, also with an explicit right to conquest. In 1496 a letter patent from Henry VII granted John and Sebastian Cabot, father and son, the 'authority, faculty and power to sail to all parts, regions and coasts of the eastern, western and northern sea, under our banners, flags and ensigns [...] to find, discover and investigate whatsoever islands, countries, regions or provinces [...] in whatsoever part of the world placed, which before this time were unknown to all Christians'. The letter specified that 'John and his sons or their heirs and deputies may conquer, occupy and possess [...] as our vassals and governors, lieutenants and deputies therein, acquiring for us the dominion, title and

¹⁷ See for example Stuart Elden, *The Birth of Territory* (Chicago: The University of Chicago Press, 2013), chap. 5.

¹⁸ Armitage, *The Ideological Origins*, 90 ff.

¹⁹ James Muldoon, 'Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America', in *The Many Legalities of Early America*, ed. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2001), 32.

jurisdiction' any territory thus discovered.²⁰ Nearly identical language was used eighty years later in the letter patent for Sir Humphrey Gilbert (1578) and Sir Walter Raleigh's 'journeis for discoverie, or in the iourneis for conquest' (1584).²¹

During Elizabeth I's reign, English thinkers also formulated more comprehensive accounts of, and justifications for, England's claims to empire. Where the patent letters still reflected the occasional use of conquest language, later and more elaborate articulations of British imperial rights and claims divested themselves of such conquest vocabulary. The terminology adopted, instead of conquest, derived from a neo-classical narrative that was deployed to underpin English imperial ambitions. This perspective combined arguments according to which unoccupied land was *res nullius* and became the property of the first taker with neo-Roman conceptions of colonisation.²²

The argument which maintained that unoccupied or unused land was a legitimate target for acquisition was prominently discussed by Thomas More in *Utopia*. More had explained that the Utopians 'think it is perfectly justifiable to make war on people who leave their land idle and waste yet forbid the use and possession of it to others who, by the law of nature, ought to be supported from it'.²³ This line of reasoning became popular

²⁰ The letter patent in full can be found in Henry Percival Biggar, ed., *The Precursors of Jacques Cartier, 1497-1534: A Collection of Documents Relating to the Early History of the Dominion of Canada* (Ottawa: Ottawa, 1911), 8–10.

²¹ For the letters, see Yale Law School's *The Avalon Project* online at <http://avalon.law.yale.edu>; 'Avalon Project - Letters Patent to Sir Humfrey Gylberte (June 11, 1578)', accessed 6 February 2018, http://avalon.law.yale.edu/16th_century/humfrey.asp; 'Avalon Project - Charter to Sir Walter Raleigh (25 March 1584)', accessed 6 February 2018, http://avalon.law.yale.edu/16th_century/raleigh.asp. See also David Ramsay, *The History of the American Revolution*, vol. 1 (Indianapolis: Liberty Classics, 1990), 23 for the similarities between the Cabots' and the later letters. See, Pagden, *Lords of All the World*, 64.

²² See, Quinn, 'Beginnings of English Colonial Theory'.

²³ Thomas More, *Utopia*, ed. George M. Logan and Robert M. Adams, Rev. ed. (Cambridge: Cambridge University Press, 2002), 54. More also related that in cases of overpopulation of the island, Utopians 'enrol citizens out of every city and plant a colony [...] on the mainland near them' (Ibid.).

with English settlers well into the seventeenth century as it allowed them to derive claims of supremacy over less developed people whose ‘improvement’ they could aid.²⁴

Another central, and complementary, rhetorical strategy was to invoke neo-Roman conceptions of colonisation and settlements. One of the principal advocates of this model of imperial expansion was Sir Thomas Smith. David Beers Quinn has outlined how Smith’s ‘views on colonization [were] strongly influenced by classical precedent’.²⁵ Smith developed his classically influenced conceptions of colonisation during the renewed English efforts to settle in Ireland in the second half of the sixteenth century. Plans of this nature were structurally and thus also linguistically indebted to ancient Roman precedent.²⁶ The decisive components for successfully establishing permanent sovereignty were ‘settlements’, or ‘plantations’; in other words, the effective occupation of the territory, rather than its conquest. The prevalence of invoking Roman precedent has also been recognised by Anthony Pagden who noted that it was specifically ‘Rome which provided the ideologies of the colonial systems of Spain, Britain and France with the language and political models they required’.²⁷ Likewise, David Armitage has pointed out the importance of the ‘neo-Roman conception of Britain as a new *res publica*’.²⁸ And Ken MacMillan, similarly, holds that internationally recognisable criteria of Roman law were pivotal to staking any claim in the international field. He argues that ‘the principal legal foundations of the English New World were based on the crown’s imperial (rather

²⁴ See, Pagden, *Lords of All the World*, 77.

²⁵ Quinn, ‘Beginnings of English Colonial Theory’, 546.

²⁶ Quinn, for example, specifically points out the early modern use of the phrase ‘to induce a colony’ which he traces back to Caesar and Cicero’s ‘deducere coloniam’. Further, the structure of the colony as Smith envisaged it corresponded closely to Roman precedent, from its leadership hierarchy to the arrangement of garrisons (Ibid., 546.)

²⁷ Pagden, *Lords of All the World*, 11.

²⁸ Armitage, *The Ideological Origins*, 47. Armitage, like Quinn, singles out Sir Thomas Smith as one of the primary believers in the Roman-based model of colonial expansion.

than domestic) sovereign rights and responsibilities, and on the legal system that underpinned the exercise of this authority, Roman law and its derivatives.²⁹ MacMillan specifically singles out John Dee, the English mathematician and astrologer, as a leading exponent of Roman law arguments in defence of Elizabethan empire.³⁰ Dee, moreover, sought to supplement the legal arguments with a historical dimension. Specifically, he advanced an elaborate version of the Arthurian myth, which circulated at the time, in order to demonstrate that England historically satisfied the criteria of Roman law, such as the right of the first taker and effective occupation.³¹ It was this latter category of effective or sustained occupation, rather than conquest, which became increasingly important.³²

Recently, Andrew Fitzmaurice charted this demise of the concept of conquest on the international stage. While it had been used in early rhetorical defences of empire, it was subsequently displaced in an emerging body of international law thought by rival

²⁹ MacMillan, *Sovereignty and Possession*, 13.

³⁰ Dee was a chief figure in the efforts to provide English activity in the New World with a legal foundation. After publishing his *General and Rare Memorials Pertayning to the Perfect Art of Navigation* in 1576, he was repeatedly commissioned to provide legal expertise to the English crown when it came to foreign expeditions. He presented his *Limits of the British Empire* (*Brytanici Imperii Limites*), in four separate parts, to Elizabeth I and her closest advisers. His general purpose was both to convince Elizabeth of the necessity to expand her dominion and demonstrate that such endeavour was legal. With a range of arguments, he tried to show that England fulfilled three key criteria: (1) it was historically the first taker (through King Arthur) of most of the territory now fought over with Spain, (2) it showed intention (*animus*) as well as physical presence (*corpus*) in taking the territory and (3) it followed it up with effective occupation. By structuring his arguments around these points, Dee carefully sought to follow requirements as outlined in Justinian's *Digest*. See also Ken MacMillan, 'Introduction', in *John Dee: The Limits of the British Empire*, by John Dee, ed. Ken MacMillan and Jennifer Abeles (Westport, Conn.: Praeger, 2004).

³¹ The myth itself had been kept alive as versions of King Arthur's *Britannicum Imperium*, his Pan-British Empire, were occasionally circulating. See, Armitage, *The Ideological Origins*, 46.

³² On the role of civil law thought in seventeenth-century England, see Brian P. Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* (Oxford: Clarendon Press, 1973), chap. 3.

ideas, according to Fitzmaurice. Considering a period of five hundred years, beginning with Columbus's voyage in 1492, Fitzmaurice asserts that over this time '[t]he dominant doctrines were discovery, conquest, cession, and occupation'.³³ As a field of inquiry formed and gave rise to a discipline of international law thought, 'conquest was not popular as a legal argument'.³⁴ The divide, according to Fitzmaurice, was largely rhetorical. The practices of the colonising European powers in the New World were not necessarily altered, but '[t]he reality of conquest was clothed in the more acceptable language of peaceful occupation'.³⁵ The five centuries following Columbus's voyage constituted 'a triumph of the idea of occupation over its rivals discovery and conquest. Occupation prevailed over the rival legal understandings of empire because the theory of occupation developed in tandem with the progressive, or stadial, theory of history', Fitzmaurice concludes.³⁶

This deliberate avoidance of conquest arguments, particularly by English writers, was understandable. Anthony Pagden noted that the '[a]rgument from conquest [...] was unlikely to have much force in a political culture such as Britain [...] because it had itself been the creation of the Norman Conquest of 1066' and since been careful to perpetuate a narrative of continuity which emphasised the survival of institutions since before the arrival of William I.³⁷ Early modern English imperial ambitions, and the modern literature analysing the same, suggest that Anglophone ideas of conquest were not fleshed out or

³³ Andrew Fitzmaurice, 'Discovery, Conquest, and Occupation of Territory', in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender et al. (Oxford: Oxford University Press, 2012), 840.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid., 860.

³⁷ Pagden, *Lords of All the World*, 77. Ken MacMillan similarly noted that 'Subjugation, extending back to the Norman Conquest of 1066, had historically doubtful legitimacy to the English. Instead, the land's vacancy was frequently used as the chief rationale for establishing lawful possession' (*Sovereignty and Possession*, 9.)

developed into a coherent theoretical account in the arena of sixteenth-century international politics. While there might have been a language of conquest, it did not provide the political discourse of seventeenth-century England with a political-theoretical toolkit which seventeenth-century thinkers could employ. As international debates shifted towards arguments of occupation, conquest remained under-theorised.

Early versions of what is known today as international law essentially grew out of Roman legal principles and neo-Thomist just war theories. Developed by the likes of Francisco Vitoria, Alberico Gentili, Francisco Suarez and Hugo Grotius, the proto-discipline touched on issues relevant to the international dimension of conquest.³⁸ Their ideas also featured in some areas of English political discourse, but their theories were only systematically adapted for Anglophone debates over conquest in the context of the civil wars of the 1640s. The impact of their work during this time, particularly Grotius' influence, forms a cornerstone of Chapter 4, as well as the Conclusion & Epilogue.

This study, therefore, is not a contribution to British imperial history or an attempt to write the global history of the idea of conquest. Instead, it focuses on a number of moments forming part of a wider domestic British political discourse exploring constitutional questions and the nature of sovereignty, recognising the peculiarly confined habitat within which a particular Anglophone discourse of conquest developed in response to the extraordinary events that reshaped the political landscape during the first half of the seventeenth century.

³⁸ For neo-Thomism, see Quentin Skinner, *The Foundations of Modern Political Thought*, vol. 2 (Cambridge: Cambridge University Press, 1978), 135–73. For the early modern development of international law thought, see Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999). For Gentili, see also Benedict Kingsbury and Benjamin Straumann, eds., *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire* (Oxford: Oxford University Press, 2010). Ideas of just war and their importance for conquest theory, especially in the works of Hugo Grotius, will be examined in Chapter 4 and the Conclusion & Epilogue.

While the kingdoms of the Old World fought over power and influence in the New, England faced a number of political upheavals at home. Unsurprisingly, conquest had occasionally surfaced as part of international debates. What might be more surprising is the development of a parallel language of conquest nestled within the discourse about sovereignty that grew specifically out of the domestic English sphere. Notions of conquest thus appeared in places perhaps less expected, namely in English political and constitutional debates, in particular in moments of contested sovereignty. Turning from the international realm to that of English domestic political discourse, there are, broadly speaking, two spheres of ideas to which this thesis seeks to contribute. The first is what has become known as the paradigm of the ancient constitution during the first three decades of the seventeenth century. The second is the English civil war and its aftermath. Within both discourses, conquest came to play a significant role.

Just over sixty years after its initial publication, J.G.A. Pocock's *The Ancient Constitution and the Feudal Law* remains one of the principal works in the field of early modern English constitutional thought.³⁹ Crucially, Pocock identifies a pervasive belief in an ancient constitution according to which

‘The relations of government and governed in England were assumed to be regulated by law; the law in force in England was assumed to be the common law; all common law was assumed to be custom, elaborated, summarised and enforced by statute; and all custom was assumed to be immemorial, in the sense that any declaration or even change of custom [...] presupposed a custom already ancient and not necessarily recorded at the time of writing’.⁴⁰

Examining early modern English legal thought in general and the common law in particular, therefore, would provide a window into the history of the period. One central

³⁹ Pocock, *Ancient Constitution*. The book was originally published in 1957.

⁴⁰ *Ibid.*, 261.

question of the ‘common-law mind’ which was as controversial as it was important, was that regarding conquest. Pocock argues that writers in early Stuart England denied any lasting effects of the Norman Conquest or even negated its occurrence altogether in the first place. This was a logical corollary of subscribing to a principle of the immemorial origins of the common law. In order to safeguard and uphold the freedom of their legal principles and institutions, ancient constitutionalists endorsed a theory of unbroken continuity; in other words, the idea that their institutions and customs had never been breached or replaced in recorded history.⁴¹ The inevitable consequence of such a theory was the absence of a single supra-legal sovereign in English history and, by implication, in contemporary England. The theory was vulnerable to the thought that the history of legal sovereignty had been disrupted in the past. An obvious case in point was the occurrence of conquest and specifically the Norman Conquest of 1066. Accordingly, Pocock relates, the Norman Conquest was the ‘one event in the English past over which the common lawyers expended floods of ink and burned much midnight oil’.⁴² Their ink was mostly used to pen treatises or pamphlets in which they sought to either downplay the consequences of the Conquest or deny its occurrence outright. In the common lawyers’ argument, the immemorial origins of the constitution were truly and literally immemorial; it was ‘not merely that they were very old [...] but that they were immemorial in the precise legal sense of dating from time beyond memory, beyond [...] the earliest historical

⁴¹ The ancient constitutionalists ‘who sought to defend threatened privileges or liberties [emphasised ...] that their rights were rooted in a law which no king could invade’ (Ibid., 16.)

⁴² Ibid., 42. It was widely accepted in sixteenth-century political thought that a military conqueror acquired an absolute right over the vanquished and had the ability to amend the laws and institutions of his newly gained lands. Furthermore, such an absolute right was heritable, that is to say, a conquest in the past could still bestow absolute power on the conqueror’s descendants in the present. Such reasoning also forms the backdrop against which theories of conquest experienced their revival during James I’s early years.

record that could be found.’⁴³ To admit the occurrence of a conquest ‘was to admit an indelible stain of sovereignty upon the English constitution.’⁴⁴ Driven by a perpetual fear of conceding their treasured liberties, common-law thinkers were ‘tirelessly and monotonously insistent that the establishment of the Normans in England did not constitute a conquest.’ Mostly ‘a conquest was [...] not admitted [...] William was no conqueror, said the lawyers and the antiquaries and the parliamentarians in chorus; he was a claimant to the crown under ancient law who had vindicated his claim by trial of battle’.⁴⁵ While parliamentarians were thus seen to be vigorously rejecting claims of an extensive royal prerogative based on foundations of conquest, Pocock expressed his surprise at a supposed paucity of royalist conquest discussion as ‘Conquest struck few roots in royalist thought’ during the first half of the seventeenth century.⁴⁶

Since the first publication of *The Ancient Constitution* other scholarly contributions have suggested amendments to the work’s arguments, focusing specifically on the supposedly widespread denial of the Norman Conquest and the fundamentally historical mind-set which epitomised the common-law mind, as diagnosed by Pocock.⁴⁷

⁴³ Ibid., 36.

⁴⁴ Ibid., 53.

⁴⁵ Ibid.

⁴⁶ Ibid., 149. He locates ‘first signs of a royalist reaction’ to the ancient constitution narrative during the Interregnum (148). Only between 1680 and 1688, Pocock argued, can we observe a significant increase in royalist conquest language (54n).

⁴⁷ See in particular the work of Glenn Burgess and Johann Sommerville: Glenn Burgess, ‘Usurpation, Obligation and Obedience in the Thought of the Engagement Controversy’, *The Historical Journal* 29, no. 3 (1986): 515–536; *The Politics of the Ancient Constitution*, 82–86; ‘Pocock’s History of Political Thought, the Ancient Constitution, and Early Stuart England’, in *The Political Imagination in History: Essays Concerning J.G.A. Pocock*, ed. D. N. DeLuna, Perry Anderson, and Glenn Burgess (Baltimore, MD: Owlworks, 2006), 175–208; *British Political Thought*, 158–62; Johann P. Sommerville, ‘History and Theory: The Norman Conquest in Early Stuart Political Thought’, *Political Studies* 34, no. 2 (1986): 249–261; ‘James I and the Divine Right of Kings: English Politics and Continental Theory’, in *The Mental World of the Jacobean Court*, ed. Linda Levy Peck (Cambridge: Cambridge University Press, 1991), 55–70;

Quentin Skinner, for example, has pointed out that chroniclers recording the history of England in a ‘less embattled spirit of enquiry’ almost unanimously concurred that the ‘English were conquered and subdued’.⁴⁸ Skinner further observed that beyond the mere ideologically-driven rejection of the Conquest, there was a need to produce a coherent account of the past which turned the ‘rights of conquerors into the pivotal issue throughout the ensuing debate’ of the civil war.⁴⁹ Agreeing with Pocock, Skinner found that royalists were reluctant to advance a defence of royal sovereignty based on conquest. Such an account would destabilise the foundations of sovereignty and open the door to usurpers, ‘thereby leaving Charles I no case against Oliver Cromwell.’⁵⁰ Skinner thus came to conclude that ‘the defence of absolutism by means of conquest theory was attempted only very occasionally in the latter part of the seventeenth century’; in other words, it had no place in the landscape of political thought before 1660.⁵¹ Conquest, on this account, was nearly exclusively used by parliamentarians seeking to taint the monarchy as absolutist and erect a bulwark against what they perceived as an excessive interpretation of the royal prerogative.

‘The Ancient Constitution Reassessed: The Common Law, the Court and the Languages of Politics in Early Modern England’, in *The Stuart Court and Europe: Essays in Politics and Political Culture*, ed. R. Malcolm Smuts (Cambridge: Cambridge University Press, 1996), 39–64; *Royalists and Patriots*, 65–68.

⁴⁸ Quentin Skinner, *Visions of Politics*, vol. 3 (Cambridge: Cambridge University Press, 2002), 241. Skinner’s seminal contribution came in the form of his essay: ‘History and Ideology in the English Revolution’, *The Historical Journal* 8, no. 2 (1965): 151–178. This paper was later republished in Skinner, *Visions*, 3: 238–63.

⁴⁹ Skinner, *Visions*, 3: 239.

⁵⁰ Ibid., 240. In *Visions*, vol. 3, the chapter in question is an update on the original article ‘History and Ideology’ from 1965. Skinner admits that since the initial publication, it had been shown that there had in fact been royalist arguments from conquest (240n).

⁵¹ Ibid., 256.

Even prior to Pocock and Skinner's work Christopher Hill had published his essay on 'The Norman Yoke'.⁵² His focus differed from Pocock and Skinner's but they all shared fundamental views regarding the patterns of thought during the period in question. Hill maintained that political thinking during the first half of the seventeenth century was deeply historical. It was only the rise of the Levellers that liberated English society from the shackles of history. This moment when normative elements materialised in political thought was a 'momentous transition' marking the progression 'from historical mythology to political philosophy'.⁵³ In this world, half cast in the shadow of the past, half looking ahead to an as yet unknown future, Hill identified contrasting visions of the role of conquest. To begin with, there were royalist pretensions to absolute power resting on origins of conquest which were 'killed by the Civil War'. This was accompanied by a Cokean Whig interpretation of history in which Anglo-Saxon liberties had to be preserved by denying or downplaying the Norman arrival in the face of a daunting threat to the continuity of English legal customs and institutions, which embodied the stronghold of early Stuart Englishmen's freedom. Lastly, there was the radical outlook of Levellers and Diggers, who viewed the existing laws as the manifestation of the Norman Yoke which was enslaving all Englishmen and could only be lifted by removing all law and starting over.⁵⁴

These canonical contributions emphasised the prevalence of historically-minded, precedent-bound thinking that reigned in England during the first half of the seventeenth century. They agreed that the Conquest of 1066 was a sensitive topic which was either

⁵² Christopher Hill, *Puritanism and Revolution: Studies in Interpretation of the English Revolution of the 17th Century* (London: Secker & Warburg, 1958), 46–111.

⁵³ *Ibid.*, 68.

⁵⁴ *Ibid.*, 79–80.

avoided, its occurrence denied, or its effects downplayed in seventeenth-century political discourse and only acknowledged outside the domain of common-law thinking.

Johann Sommerville's 1986 'History and Theory' contested the basic premises of these historiographical orthodoxies.⁵⁵ He rejected the notion that it took the civil war to free the English 'from the shackles of their historical past' and introduce reason and rationality into political thought where history had reigned supreme before.⁵⁶ Instead, he found, reason and rational argument did play a central role in early Stuart political discourse. Not only were the shackles of the past weaker than Pocock and others had suggested, argued Sommerville, but there had also been widespread acceptance of the occurrence of conquest.⁵⁷ To support his point, Sommerville identified thinkers who acknowledged the reality of a past conquest with some of them even actively deriving the monarchy's absolute prerogative from it.⁵⁸ In part, Sommerville suggests, this was because not all contemporaries attached the same importance to conquest or derived the same extreme conclusions. A group of early Jacobean courtiers, for example, acknowledged the king's lineage which stretched back to 1066 but did not derive an absolute right from his ancestry.⁵⁹ Sommerville further demonstrated the presence of political-theoretical ideas in English political thought prior to the civil war.⁶⁰ English

⁵⁵ Sommerville, 'History and Theory'. For a more recent articulation of some of his arguments, see also Sommerville, *Royalists and Patriots*, 65–67.

⁵⁶ Sommerville, 'History and Theory', 250.

⁵⁷ 'The staggering truth is that Coke admitted that England had been conquered' (Ibid., 252.)

⁵⁸ Specifically, Sommerville names John Cowell, William Fulbecke and John Hayward (see, Ibid., 255.) These thinkers, including Calybutte Downing, were, however, civil lawyers and therefore did not hold the common law in the same regard.

⁵⁹ 'The reason for this was that, in their view, conquerors had no more power than other kings' (Ibid., 256.)

⁶⁰ Particularly, he sees this in the ideas of the civil lawyers: 'the civil lawyers interpreted English history in accordance with a preconceived set of political ideas. They did not deduce their political theory from English history' (Ibid., 257–58.)

political thought, according to Sommerville, was not insular but had been influenced by continental ideas at least since the beginning of the seventeenth century.⁶¹

Sommerville's observations, however, tend to conflate the idea of conquest generally with the Norman Conquest specifically. It was not a problem for Coke and other common lawyers to admit that England had been conquered by Romans, Danes and Saxons; these were occurrences so far in the past that they were themselves part of the immemorial origins of English identity. Or, as Glenn Burgess put it, 'the conquests they allowed were themselves immemorial'.⁶² Moreover, none of the writers that Sommerville introduced developed an account of conquest that went beyond recognising its potential to confer absolute power upon a ruler. Sommerville is undoubtedly correct in observing political-philosophical strands of thought in English political debate preceding the advent of the civil war. These did not, however, include nuanced accounts of conquest right.

Against this backdrop, this thesis seeks to offer answers to as yet open questions about the beginnings of seventeenth-century conquest discourse and to suggest some amendments to accounts of royalist views of conquest specifically. To this end it locates the origins of early modern Anglophone conquest discourse in the context of James I's accession and reveals distinctive theories of conquest in royalist works of the early 1640s.

It will be shown that the Cokean ancient constitution narrative was a defensive (rhetorical) strategy fashioned in reaction to a perceived absolutist danger arising from James I's use of conquest rhetoric in his articulations of kingship and history. The new king's political musings were the essential driving force behind the development of the ancient constitution narrative with its conquest-denying rhetoric which had left Pocock

⁶¹ See, *Ibid.*, 258.

⁶² Burgess, *The Politics of the Ancient Constitution*, 83, see 82-86 for a summary of the modern literature on conquest theory (up until 1993).

and Skinner looking for its royalist counterparts. Even though James's use of conquest language to defend his prerogative stemmed from a context preceding his accession to the English throne and did not amount to a systematic account of conquest right, Coke and others continued to fashion their anti-absolutist narrative around a rejection of conquest. They turned conquest language into a critical vocabulary, firmly attaching a stigma of absolutism to it and thus to James's political ideas. In doing so, they erected a royalist conquest straw man which provided a convenient target for them to attack and against which they pitched their defence of common law supremacy.

This straw man subsequently came alive at the beginning of the civil war as royalists began to advance defences of the Crown in a register of conquest the ancient constitutionalists had pre-emptively sought to refute. Where Pocock and Skinner suspected that conquest thought was entirely absent from royalist thought until the late seventeenth century, it will be shown that in fact it took hold among royalist thinkers by the time of the early 1640s. Throughout the civil war and its aftermath, conquest discourses were gradually formalised as a result of repeated debates over the precise conditions of sovereignty that conquest could create. This culminated in recognisable genres of conquest discourse by the end of the civil war.

III – METHODOLOGY: *SERIAL CONTEXTUALISM*

Methodologically, this thesis pursues an approach of *serial contextualism*.⁶³ As the name suggests, this is an adaptation of a version of contextualism, applied to a series of contexts

⁶³ For the approach of 'serial contextualism', see David Armitage, 'What's the Big Idea? Intellectual History and the Longue Durée', *History of European Ideas* 38, no. 4 (2012): 493–507.

throughout the seventeenth century.⁶⁴ The aim of this approach is to study the development of conquest discourses within the specific contexts of their formation and use, whilst highlighting connections between these discourses across multiple contexts. This will reveal a gradual development from one context to the next, as ideas and vocabularies of conquest articulated in a particular moment were picked up, used and moulded in line with changing requirements at later moments. In other words, this approach allows a synchronic analysis of each particular context, highlighting its specific impact on the development of a given discourse of conquest, whilst also pursuing wider developments diachronically across contexts.

While the aim of the thesis is to reconstruct the development of discourses of conquest over the course of the seventeenth century, it is necessary to avoid treating the entire period as a monolithic context but rather to subdivide it into self-contained moments in order to preserve and highlight the distinct contexts these moments represent. Accordingly, the thesis is composed of four main chapters each of which constitutes a case study of a particular extended moment during which conquest discourses developed in response to the political circumstances and corresponding needs prevailing at the given time. Crucially, the aim behind approaching discourses of conquest in this contextualist manner is to understand what political actors at specific moments in time and as participants of specific debates were trying to do or achieve by articulating their positions in the ways that they did. Or, as Quentin Skinner put it, the aim is ‘to grasp not merely what people are saying but also what they are *doing in* saying it’.⁶⁵

⁶⁴ The central tenets of contextualism as it is used here are articulated in Quentin Skinner, ‘Meaning and Understanding in the History of Ideas’, *History and Theory* 8, no. 1 (January 1969): 3–53; reissued in Quentin Skinner, *Visions of Politics*, vol. 1 (Cambridge: Cambridge University Press, 2002), chap. 4. See also J. G. A. Pocock, *Political Thought and History: Essays on Theory and Method* (Cambridge: Cambridge University Press, 2009).

⁶⁵ Skinner, *Visions*, 1: 82.

This chimes with David Armitage's articulation of a serial contextualist approach which he has recently begun to develop and which he describes as 'the reconstruction of a sequence of distinct contexts in which identifiable agents strategically deployed existing languages to effect definable goals.'⁶⁶ This captures the aim of the present thesis. Considering discourses in which conquest was being used in isolation would block the view to a development that took place across contexts. While conquest by no means followed a teleological path, actors at later moments in time betrayed an awareness of and indebtedness to preceding episodes.

This kind of 'transtemporal' history, which underpins serial contextualism, is envisaged by Armitage as 'extensive but similarly delimited: it links discrete contexts, moments and periods while maintaining the synchronic specificity of those contexts'.⁶⁷ Each moment, each case study under investigation in this thesis is treated as a discrete context. Examining them in conjunction without conflating them into one context can highlight possible connections or corridors between the contexts along which ideas and notions of conquest could travel. Such corridors were sometimes more easily visible, for example when authors at different points in time explicitly acknowledged their indebtedness to the same set of ideas, and sometimes harder to detect, when concepts were used and appropriated surreptitiously. Both of these were ways in which concepts

⁶⁶ Armitage, 'What's the Big Idea?', 498. An earlier, less explicit application of this principle can be found in Armitage, *The Ideological Origins*. See also David Armitage, *Foundations of Modern International Thought* (Cambridge: Cambridge University Press, 2013); Jo Guldi and David Armitage, *The History Manifesto* (Cambridge: Cambridge University Press, 2014).

⁶⁷ Armitage, 'What's the Big Idea?', 498. 'Transtemporal history is not transhistorical: it is time-bound not timeless, to avoid the dangers of reification and denial of agency inherent in Lovejoy's abstract, atemporal history of ideas, for example. It also stresses the mechanisms of connection between moments and is therefore concerned with questions of concrete transmission, tradition and reception, again unlike the traditional history of ideas which assumed but did not investigate how ideas travelled materially and institutionally across time' (Ibid.)

and discourses of conquest travelled in seventeenth-century British political debates. Juxtaposing a series of episodes or moments, as this thesis seeks to do, can thus help us discover otherwise hidden continuity.

IV – CHAPTER OVERVIEW

The thesis is spread out over four chapters which cover the first half of the seventeenth century and fall broadly into two parts of two chapters each. They are followed by the Conclusion & Epilogue which looks back at the developments sketched out in the main chapters before looking ahead to the end of the century.

The first chapter examines the emergence of conquest discourses in the context of James Stuart's accession to the English throne in 1603 and the ensuing debates over the Anglo-Scottish union. This moment of transition from Tudor to Stuart rule represents the first case study in this series of four. The chapter argues that conquest discourse at the time of James I's accession sprang into life as the result of what might be described as a misunderstanding which saw James inadvertently introduce notions of conquest to English political discourse. James VI had defended his prerogative in terms of conquest prior to his accession to the English throne in an attempt to quell theories of popular sovereignty with no intention of undermining English conceptions of law, parliament and liberty. By articulating his ideas in a fashion appropriate to the Scottish context but sounding alien or even threatening to English ears, James set in motion a dynamic which saw conquest language become part of the political repertoire. Some of James's English subjects felt their national sovereignty and liberties were threatened by their new king's conquest rhetoric and focused their anti-absolutist efforts on refuting or containing the

notion of conquest which they feared was the root of incipient Jacobean absolutism. These efforts produced a straw version of an absolutist conquest doctrine, which James himself had not articulated or endorsed in any systematic manner. The idea of conquest, it is thus suggested, came to prominence through misunderstandings and an element of carelessness as James underestimated the effect this language would have on his English subjects as he kept using it freely to characterise the dynastic union he envisaged. In other words, seventeenth-century Anglophone conquest discourse owed much of its emergence to happenstance.

Chapter two covers reverberations and developments of conquest discourses throughout the remainder of James's reign. To begin with, it turns to notions of conquest featuring in the *post-nati* debates, the political and legal debates over the naturalisation of Scottish subjects in England who had been born after James VI became James I. The legal proceedings over the naturalisation question have become known as Calvin's case. This legal context required a refinement of previously loosely articulated political ideas and fostered a more rigorous examination of conquest. The resulting repertoire of conquest language subsequently spilled over into politically-motivated historical scholarship and articulations of ancient constitutionalism. At the hands of the foremost ancient constitutionalist, Sir Edward Coke, and his disciples, a systematic inquiry into England's legal past produced a partisan interpretation of history capable of supporting an ideology advocating limited monarchy. In their efforts to accommodate past conquests, ancient constitutionalist anti-absolutist narratives continued to attack a straw version of conquest theory which misrepresented the practical relevance conquest theory had in royalist accounts. The chapter thus demonstrates the continuous development of conquest language, first in the context of legal proceedings sharpening conceptual elements of

conquest discussion and then as part of a critical opprobrium aimed at a supposedly conquest-based Jacobean absolutism.

The third chapter moves on to the 1640s and the early stages of the English civil war. In particular, it focuses on the deployment and development of conquest discourse in the pamphlet wars of 1642/43 and highlights emerging royalist accounts of conquest. It then offers a look at Leveller interpretations of the Norman Yoke, which revealed a view of conquest diametrically opposed to that of the ancient constitutionalists. The central argument of the chapter is that the civil war was the necessary catalyst for the development of an increasingly formalised and theorised discourse of conquest. It was in the rhetorical skirmishes which accompanied the actual ones on the battlefields, that recognisable outlines of a field of conquest theory emerged. Up to this point, appeals to conquest had predominantly been found in anti-monarchical rhetoric of the parliamentary opposition which attacked straw versions of royalist conquest accounts. While a scholarly orthodoxy long maintained that royalists only began to argue from conquest towards the end of the seventeenth century, this chapter highlights the emergence of a royalist doctrine of conquest at the beginning of the 1640s. Furthermore, the chapter will draw attention to the importance of ideas of consent which were articulated in response to and alongside incipient conquest theories. The closing section of the chapter will survey the Levellers' idea of a Norman Yoke and the inherent focus on conquest in their accounts of an oppressive monarchy and the need for a new conquest to replace the old.

The fourth and final chapter covers the first years of the commonwealth. A particular focus is placed on discourses of conquest during the Engagement controversy, 1649-51. After parliament's victory, or its successful conquest, the new regime needed to consolidate power. In other words, parliament's conquest needed to be vindicated and obedience to the new rulers, whose claim to power was effectively grounded in violence

and force, required justification. The central argument of the chapter is that the years of the Engagement debates gradually formalised conquest discourse. This process was discernible from three strands of conquest thought which crystallised during the Engagement. They included a *de facto* defence of obedience which used conquest language to varying degrees; the articulation of a just conquest theory, which portrayed the civil war as an instance of just war at the end of which conquest constituted a legitimate claim to power or at least obedience; and accounts which revisited the role of consent in the context of conquest, either seeing in it the anti-dote to conquest absolutism or a necessary element to qualify sovereignty grounded in conquest without curtailing the remits of the latter.

After the examination of the civil war period, the thesis's Conclusion & Epilogue moves on to consider the end of the century specifically the Revolution of 1688/89. One might expect that the intervening period – and particularly the Interregnum – would have led to further debates over conquest, not least in the light of Cromwell's military forays into Scotland and Ireland. A closer look, however, appears to show that the three and a half decades that followed the end of the civil war did not produce the same level of sustained conquest debates as the half-century that preceded them. The early years of the commonwealth did witness some further discussions of conquest rights, often with respect to Hobbesian ideas of conquest. Beyond those reverberations in the wake of the establishment of the commonwealth and the ideas articulated in *Leviathan*, however, conquest debates remained largely absent from public political debate.

The dearth of theoretically sophisticated conquest discourse during this period illustrates a wider point concerning the cyclicity of the idea, briefly alluded to above. After its initial appearance in political debate and its gradual rise to prominence throughout the first half of the century, it became less opportune to frame arguments about

sovereignty and political legitimacy in terms of conquest. The vocabulary of conquest, despite its period of popularity during the civil war, could never quite overcome a remaining stigma of unpalatable absolutism and arbitrary government. Accordingly, the idea of conquest was discussed less during the decades that followed the civil war.

This disappearance from the political stage was temporary. The theories of conquest which had been articulated and honed over the first fifty-or-so years of the century were picked up again in the context of the Revolution of 1688/89. This period exhibits a richness of conquest debates, compared with the relative paucity of the preceding thirty years. The events and developments surrounding 1688/89 are thus the more rewarding case study and simultaneously form a natural end point of this thesis.

In the Conclusion & Epilogue, the key arguments of the thesis are recapitulated. Beyond the restatement of the core arguments of the preceding chapters, the epilogue also includes a detour into the years following the Revolution of 1688. This excursion in the form of an epilogue will highlight how the various strands of conquest thought forged throughout the century, as shown over the course of the four chapters, were used in the political discourse after 1688. The five years from 1688 to 1693 thus reflected fifty years of the development of conquest thought. Whereas at the beginning of the century, there was only a basic and under-theorised discourse of conquest, the debates following the regime change of 1688 clearly demonstrate the availability of recognisable theories of conquest by the end of the century. These, it will be seen, had grown out of the crises of sovereignty traced throughout the four constituent chapters of the thesis. Over the eight and a half decades that separated the arrival of one foreign king in 1603 and the next in 1688, formalised and theoretically sophisticated discourses of conquest had developed out of practical political discourse.

1

‘A Conquest as may be cemented by love’: King James VI & I and the Union of England and Scotland

I – CONQUEST IDEAS IN SEVENTEENTH-CENTURY ENGLAND:

ACCIDENTAL BEGINNINGS

Ideas of conquest rose to prominence in seventeenth-century English political thought because of what might be characterised as a misunderstanding. One of the protagonists of this misunderstanding was King James VI & I. His political ideas and the vocabulary with which he expressed them in his writings and speeches, this chapter will argue, were the inadvertent catalysts for the introduction of a new language of conquest in early modern British political debate. Two principal factors behind this development stand out: a decontextualized English reception of James’s political writings at the time of his accession to the English throne and, subsequently, the king’s inability or unwillingness to abandon a register of conquest in his attempts to explain the details of the dynastic union he envisaged. This chapter will consider the impact of both these factors on the development of conquest thought in early Jacobean England.

In the last years of Elizabethan England, at a time when the ageing virgin queen’s last breath seemed an imminent possibility, her subjects considered the future of their

nation.¹ As they acquainted themselves with their possible future king, his political ideas received considerable attention among the politically minded. Fears over James's un-English interpretation of the royal prerogative emerged and were fuelled further in the years following his accession to the English throne and in the light of his ideas for an Anglo-Scottish union. These debates over English identity and laws, influenced by James's political thought in theory and the intricacies of the imminent union in practice, were frequently discussed with reference to conquest, be it in the search for historical precedent or as a possible constitutional consequence.

One of the roots of these emerging fears of incipient Jacobean absolutism, this chapter will suggest, was James's apparent derivation of royal authority from conquest right in his *Trew Law* (1598). What the English interpreted as an attack on their political institutions, their laws and liberties, however, had had its beginnings in James's own attempts to defend himself against notions of popular sovereignty and resistance theory prior to his accession to the English throne.² This discrepancy between the context of the genesis of James's thought and that of its later reception in English political circles – or, at any rate, the different polemical uses of conquest in the respective contexts – it will be argued, was a key factor behind the misunderstanding between the king and his new subjects which turned conquest into a much-debated concept.

In response to the perceived threat posed by the new Stuart king, common lawyers, such as Sir Edward Coke, developed an anti-absolutist narrative which sought to place a

¹ For the political dimension of the Elizabethan succession, see also Peter Lake, *Bad Queen Bess?: Libels, Secret Histories, and the Politics of Publicity in the Reign of Queen Elizabeth I* (Oxford: Oxford University Press, 2016); Susan Doran and Paulina Kewes, eds., *Doubtful and Dangerous: The Question of Succession in Late Elizabethan England* (Manchester: Manchester University Press, 2014).

² See, Peter Lake, 'The King (the Queen) and the Jesuit: James Stuart's True Law of Free Monarchies in Contexts', *Transactions of the Royal Historical Society* 14 (2004): 243–260. The backgrounds to James's *Trew Law* will be discussed in more detail in Section II of this chapter.

limit on the powers of the monarchy and to this effect specifically targeted conquest right. The resulting so-called ancient constitution, a set of arguments focused on denying past occurrences of conquest, or at least downplaying their significance, has received considerable attention in modern scholarship.³ Admitting the occurrence or impact of a conquest, for an ancient constitutionalist, was tantamount to acknowledging that the English constitution was inevitably compromised.⁴ The origins of royalist conquest thought, however, which was ostensibly the ancient constitutionalists' target, have typically mystified modern scholars and they collectively expressed surprise at the vehemence of anti-royalist attacks on conquest in the light of an alleged simultaneous absence of royalist defences of sovereignty in terms of conquest. Pocock repeatedly noted the scarcity of royalist conquest arguments as he diagnosed that 'Conquest struck few roots in royalist thought' before the last two decades of the seventeenth century.⁵ Similarly, Quentin Skinner observed that up until and including the civil wars, conquest rhetoric was practically exclusively employed by parliamentarians whose impetus for anti-conquest rhetoric remained elusive.⁶ Pocock even specifically stressed that King James VI & I, one of the 'twin dragons of theoretical absolutism', as he dubbed him,

³ John Pocock argued that common-law thinkers in the sixteenth and seventeenth century categorically denied even the occurrence of a conquest of England in the past so as not to risk its pristine liberty. The 'classical formulation' of English history as one of immaculate continuity, which came to 'dominate the seventeenth century', could not admit a conquest (*Ancient Constitution*, 36.) For discussions of ancient constitutionalism since the first publication of Pocock's work in 1957, see Introduction, n. 47.

⁴ See also Pocock, *Ancient Constitution*, 53.

⁵ Ibid., 149. He locates 'first signs of a royalist reaction' to the ancient constitution narrative during the Interregnum (148). Only between 1680 and 1688, Pocock argued, can a significant increase in royalist conquest language be observed (54 n.4).

⁶ Skinner, *Visions*, vol. 3, chap. 8. Skinner was thereby in agreement with Peter Laslett's view (John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: University Press, 1960), 385n.)

steered clear of conquest rhetoric at all times when defending his ascent to the English throne and clarifying his understanding of monarchy.⁷

More recently, the 1610s have been singled as the key decade for the emergence and development of ancient constitutionalism and concomitant discussions of conquest. Rei Kanemura, for example, focuses on ‘the complex diversities in the idea of sovereignty and the English constitution during the 1610s.’⁸ Within this period, she specifically investigates interpretations of the Norman Conquest in historical works and the contemporary implications they derive. In particular, Kanemura finds that ‘the first decade of James’s reign left pressing constitutional questions unanswered’ thus prompting James and some of his subjects to turn to 1066 in their search of historical precedent.⁹

Where Pocock suggests that James refrained from conquest arguments altogether and Kanemura focuses on the 1610s, this chapter argues that James was in fact the inadvertent instigator of conquest debates and that their effect could already be seen in the years immediately after his accession. James’s use of conquest arguments, it will be argued then, constituted the early royalist conquest thought against which much of the anti-absolutist furore was directed. James’s ideas of conquest were unsystematic and of limited importance for his political views, merely taking a supporting role in a larger argument for his divine-right claims to power.¹⁰ This did not stop his critics from singling out the very notion of conquest, however, to construct an anti-absolutist counter narrative.

⁷ Pocock, *Ancient Constitution*, 149. The other twin in this metaphor was Sir Robert Filmer.

⁸ Rei Kanemura, ‘Historical Perspectives on the Anglo-Scottish Union Debate: Re-Reading the Norman Conquest in the 1610s’, *History of European Ideas* 40, no. 2 (2014): 159.

⁹ Ibid.

¹⁰ On the importance of divine-right arguments, see Figgis, *The Divine Right of Kings*, chap. 7; Glenn Burgess, ‘The Divine Right of Kings Reconsidered’, *The English Historical Review* 107, no. 425 (1992): 837–861.

This narrative accorded conquest a role disproportionate to James's use of it, following a dynamic which might be characterised as the construction of a straw argument of conquest. In order to emphasise elements of continuity and antiquity as the safeguards of liberties, ancient constitutionalists needed conquest as the origin of a spectre of absolutism against which they were fighting. Conquest was thus built into a straw man that they could subsequently attack.¹¹ Such straw men typically result from honest misunderstanding or wilful misrepresentation of an adversary's position.¹² In the case of Jacobean conquest language, it was arguably an original misunderstanding which was subsequently used to construct a political narrative as the king's adversaries recognised its political potency. This dynamic characterised much of the early anti-absolutist opposition to conquest arguments.

James's political thought and its reception in England, it will thus be argued, were instrumental for the subsequent development of conquest debates throughout the century, including the formation of ancient constitutionalism. The turn of the century and the Jacobean succession, then, may be the moment of origin for conquest thought which thus far eluded Pocock and others.¹³

¹¹ For a recent piece on the role of straw men in the history of political thought, see Jon Parkin, 'Straw Men and Political Philosophy: The Case of Hobbes', *Political Studies* 59, no. 3 (2011): 564–579.

¹² Trudy Govier defines the situation as one where 'a person misrepresents an argument, or theory or claim, and then, on the basis of that misrepresentation, claims to have refuted the position that he or she has misrepresented' (quoted in Parkin, 'Straw Men', 565.)

¹³ Kanemura's perceptive study's focus on the 1610s is nonetheless indicative of a tendency which sees the advent and role of a Cokean ancient constitutionalism predominantly as a phenomenon of the 1610s and thereafter. Some exceptions to this rule are Burgess, *British Political Thought*, 161; Burgess, 'Pocock's History of Political Thought', 188–97; Christopher W. Brooks, 'The Place of Magna Carta and the Ancient Constitution in Sixteenth-Century English Legal Thought', in *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, ed. Ellis Sandoz (Columbia; London: University of Missouri Press, 1993), 83–88. This chapter aims to demonstrate the importance of the opening years of James's reign for the development of conquest ideas.

These discussions of conquest emerging from the debates surrounding the Jacobean succession and the early stages of James's proposed union are the central concern of this chapter. Covering roughly the decade spanning five years on either side of James's accession to the English throne (in 1603), it represents the first of four case studies focusing on some of the central extended moments during which ideas of conquest were forged and advanced during the seventeenth century. The central argument is that the moment of James's accession accidentally generated discussions of conquest, which would subsequently continue throughout the century. In the wake of this period, conquest grew into a widely-used concept in discussions about the nature and extent of political sovereignty.¹⁴ In order to highlight this development, the chapter draws on printed material, including James's political works and tracts discussing the Anglo-Scottish union in the wake of James's accession. Furthermore, parliamentary debates, likewise concerned with the matter of the union, will be considered.

The chapter is subdivided into four main sections examining the progression of conquest rhetoric throughout the decade in question, beginning with James's political thought from the late 1590s and culminating in a speech he delivered in the English Parliament in 1607. First, James's *Trew Law* is examined. This examination will highlight the defensive intentions James had in writing the work and how his use of conquest language nonetheless sparked discussions of conquest in the context of his accession to the English throne.

¹⁴ It was relatively uncontentious in sixteenth-century political thought that a military conqueror acquired an absolute right over the vanquished and had the ability to amend the laws and institutions of his newly gained lands. (See, Sommerville, *Royalists and Patriots*, 65–68.) What is meant when this chapter talks about a *theory* of conquest, is a more elaborate set of arguments seeking to regulate the exact moment and manner in which a conquest can create political obligation.

In a next step, moving from succession to union debates, will show how conquest acquired a firm place among the concepts with reference to which the union was being discussed. Perusing parliamentary debates will demonstrate how conquest became a staple political concept during debates which explored historical precedent for and constitutional repercussions of the union. Previous theoretical concerns over the king's theory were supplemented with alarm over potential practical manifestations in the shape of the king's union designs.

The third section traces the role of conquest arguments as part of debates over the union beyond Westminster in public discourse, specifically in published union tracts. These tracts will highlight how authors unfailingly considered conquest amid their attempts to derive practical insights from relevant historical precedent. While the majority of the union tracts concluded that the present union did not satisfy conquest criteria, they collectively kept conquest discussion in the public eye.

Finally, a brief look at James's speech in Parliament in March 1607 will suggest that the king seemed not to have learned from the fallout of his use of conquest rhetoric over the preceding years. He continued to have recourse to conquest vocabulary in his characterisations of the union he desired. Perhaps unsurprisingly, then, debates after 1607 concerned with questions of the union continued to feature discussions of conquest.

This period, as stated, was crucial to the beginnings of seventeenth-century conquest language and highlights its accidental origins. The rhetoric and events of the years considered here infused conquest ideas with a political pertinence previously unknown. James's articulation of his political thought, ostensibly conceived on the back of defensive intentions, had inadvertently opened Pandora's box containing English history and political identity. In the debates that ensued, ideas of conquest developed into

a political vocabulary in terms of which central tenets of the royal prerogative and sovereignty were discussed.

II – JAMES’S *TREW LAW* AND EMERGING DEBATES OVER CONQUEST

In his *Trew Law* of 1598, James VI explained that the Scottish and English monarchies historically rested on foundations of conquest. Scotland’s mythical ‘first King *Fergus*’, had made ‘himselfe master of [Scotland], by his owne friendship, and force’ and the English Crown had its beginnings in the arrival of William I, who ‘came into *England*, and made himself king [...] by force, and with a mighty army’.¹⁵ While James’s arrival in London upon succeeding Elizabeth had been greeted with joy as parades and theatrical performances crowded the streets of the capital, his political ideas were received more critically.¹⁶ The differences in political custom and tradition between his old and his new kingdom were considerable.¹⁷ In England, where James’s political works were republished at the time of his accession, his views of absolute kingship were received with unease against the backdrop of the country’s political and legal traditions with which they seemed to clash.¹⁸ The king’s use of conquest vocabulary specifically, which, as one

¹⁵ James VI & I, *Political Writings*, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1994), 73, 74.

¹⁶ For details of the jubilant reception James received from his new subjects, see for example Jenny Wormald, ‘The Union of 1603’, in *Scots and Britons: Scottish Political Thought and the Union of 1603*, ed. Roger A. Mason (Cambridge: Cambridge University Press, 1994), 18–19.

¹⁷ Jenny Wormald, ‘James VI and I, Basilikon Doron and The Trew Law of Free Monarchies: The Scottish Context and the English Translation’, in *The Mental World of the Jacobean Court*, ed. Linda Levy Peck (Cambridge: Cambridge University Press, 1991), 37 ff.

¹⁸ *Ibid.*, 51.

observer at the end of the century noted, was a ‘hateful Word to English Ears’, received particular attention in the works of an emerging anti-absolutist opposition.¹⁹

The English indignation at the king’s use of conquest ideas was at the heart of the misunderstanding that moved conquest into the spotlight of political debates. While some of the king’s new subjects interpreted his use of conquest language as the historical underpinning of an attack on their (parliamentary) liberties, James’s motives for composing the *Trew Law* were more likely defensive in nature. It had probably sprung from a desire to reject monarchomach theories of popular sovereignty and resistance theory, which undermined his position of authority and presented a challenge to his claim to the English succession.

The argument in this section, then, is that King James’s very own exposition of his political ideas and their reception was instrumental to fostering the conquest debates which accompanied James during his first years on the English throne.²⁰ His views on kingship and its historical origins in Scotland and England, which caused such offence, however, only developed their explosive potential when they were re-read and re-interpreted under circumstances which were no longer the same as those at the time of their conception. In other words, ideas uttered in the wake of the religious conflict in Europe and against the backdrop of succession debates in England, acquired a new

¹⁹ William Molyneux, *The Case of Ireland’s Being Bound by Acts of Parliament in England, Stated* (Dublin, 1698), 17.

²⁰ It has been controversially discussed whether James’s political thought should be considered ‘political theory’ proper. J.W. Allen, for example, argued that James’s writings expressed his political thought, but did not qualify as theory, see John W. Allen, *A History of Political Thought in the Sixteenth Century* (London: Methuen, 1928), 255. Jenny Wormald argued the opposite, characterising James’s writings as political theory, see Wormald, ‘James VI and I’, 43. While James’s writings are an attempt to theoretically justify his political practice, they lack a universal outlook that would unambiguously qualify them as political theory. Crucially, James did not develop a theory of conquest. Instead, he merely invoked the historical occurrences of past conquest to underscore his own claim to sovereignty.

dynamic as they spilled over from the context of the Elizabethan succession into a discourse concerned with a regal union as the first Stuart ruler mounted the English throne. James's problems were later exacerbated when he failed to take a series of opportunities to correct possible misunderstandings during debates about the impending union as he continued to use conquest language to describe his political visions.

While the *Trew Law* was probably composed with more than one eye to the English succession, it was nonetheless not intended to undermine the foundations of English political and legal custom.²¹ Instead, it had deeper roots in European and Scottish political history and was more directly prompted by the recent publication of a book undermining James's claim to the English crown. Its deeper background reached back to ideas articulated, for example, by George Buchanan, whereas the more recent impetus for its composition was most likely the publication of a book by Robert Parsons.

Buchanan, for example, had been young James's tutor.²² His ideas, most famously articulated in his *De Iure Regni* (1579), present one possible target.²³ Buchanan had located the origin of power in 'the people', was an exponent of elective kingship and

²¹ For this reading of the *Trew Law* as a predominantly defensive text, seeking to rule out justifications of rebellion, rather than entrenching a theory of absolute monarchical rights, see also Burgess, *British Political Thought*, 142–48; Alan Cromartie, *The Constitutionalist Revolution: An Essay on the History of England, 1450-1642* (Cambridge: Cambridge University Press, 2006), 148–50.

²² For the role of Buchanan in James's upbringing, see also Alan Stewart, *The Cradle King: A Life of James VI and I* (London: Pimlico, 2004), 41. Moreover, J.H. Burns suggests that the publication of Buchanan's own treatise was 'connected with [his] conception of his tutorial responsibilities' to the young king and was intended as a piece of advice in the mould of the mirror-of-princes genre (J. H. Burns, *The True Law of Kingship: Concepts of Monarchy in Early-Modern Scotland* (Oxford: Clarendon Press, 1996), 195.)

²³ George Buchanan, *A Dialogue on the Law of Kingship Among the Scots: A Critical Edition and Translation of George Buchanan's De Iure Regni Apud Scotos Dialogus*, ed. Roger A. Mason and Martin S. Smith (Aldershot: Ashgate, 2004).

argued in support of resistance theory.²⁴ While James came to reject Buchanan's teaching, 'there cannot be much real doubt that Buchanan's *De Iure regni apud Scotos* was in James's mind as he wrote *The Trew Law*', as J.H. Burns argued.²⁵ A survey of the arguments of the *Trew Law*, below, will suggest that this was a plausible hypothesis. The question why James chose to answer his former tutor at this exact moment, almost twenty years after the publication of Buchanan's *De Iure Regni*, however, in turn, has one possible answer in the publication of Robert Parsons's *A Conference About the Next Succession of the Crown of England* (1594).²⁶

Peter Lake has recently highlighted this link between James's *Trew Law* and the ideas articulated by Parsons in *A Conference*.²⁷ Lake demonstrates that James was aware of the publication of the *Conference* and plausibly suggests that Parsons's tract was 'of pressing interest' to the king since it seemed to question James's claim to the English throne and undermine his view of monarchical power.²⁸ The suggestion, neither here nor in Lake's article is that the *Conference* was the single and exclusive target for James.²⁹ Rather, Parsons's work encapsulated a set of political ideas previously articulated in a

²⁴ See, Burns, *True Law of Kingship*, chap. 6. For Buchanan's political thought including its impact on James, see also Allen, *Sixteenth Century*, 336–42; Roger A. Mason, *Kingship and the Commonweal: Political Thought in Renaissance and Reformation Scotland* (East Linton: Tuckwell Press, 1998), chaps 7–8.

²⁵ Burns, *True Law of Kingship*, 234. Peter Lake makes a similar point ('The King and the Jesuit'.)

²⁶ Robert Parsons, *A Conference About the Next Succession to Crowne in England* (N., 1594). The tract was published under the pseudonym R. Doleman. On debates over Parsons's authorship, see also Peter Holmes, 'The Authorship and Early Reception of A Conference About the Next Succession to the Crown of England', *The Historical Journal* 23, no. 2 (1980): 420. Holmes convincingly argues that Parsons was in all likelihood the tract's sole author.

²⁷ Lake, 'The King and the Jesuit', 246–50.

²⁸ *Ibid.*, 246.

²⁹ For the link between King James's writings and the ideas of his prominent Catholic subject, see also David H. Willson, *King James VI and I* (London: Cape, 1956), 28–43; Holmes, 'Authorship and Early Reception', 140; Maurice Lee, *Great Britain's Solomon: James VI and I in His Three Kingdoms* (Urbana: University of Illinois Press, 1990), 82–83; Stewart, *Cradle King*, 227–28.

number of publications focusing on resistance theory.³⁰ In this sense, the *Conference* was the immediate trigger, rather than sole focus.

Parsons, fervent Catholic and prominent Jesuit, seized the moment of insecurity about the Elizabethan succession to offer radically different political ideas and alternative principles for the royal succession.³¹ Parsons made a case for original popular sovereignty from which he derived retained resistance rights, particularly with a view to ultimately deposing (malign) rulers.³² In other words, he posited that monarchies were elective in nature and the people preserved an inalienable right to resistance in cases of malignant rule.³³ As part of this defence of the people's self-determination, he further questioned a widely-held belief in hereditary succession, instead suggesting that a ruler's religious identity was of paramount importance.³⁴ As Parsons drew the practical conclusions from his political theory, he was widely understood to have launched a direct attack on James's claim to the throne and a last-gasp attempt to steer England back into Catholic waters.³⁵

³⁰ For this wider dynamic of a European literature on resistance rights, arguably most prominently represented by Buchanan's *De Iure* and the *Vindiciae Contra Tyrannos* (both 1579), and an absolutist counter-movement, see also Sommerville, *Royalists and Patriots*, 9–13.

³¹ For an overview of Parsons's (political) thought and its contemporary importance, see also Allen, *Sixteenth Century*, 260–62; Michael L. Carrafiello, *Robert Parsons and English Catholicism, 1580-1610* (Selinsgrove, Pa: Susquehanna University Press, 1998); Victor Houlston, *Catholic Resistance in Elizabethan England: Robert Parsons's Jesuit Polemic, 1580-1610* (Aldershot: Ashgate, 2007); Burgess, *British Political Thought*, 108–13. On Parsons and resistance thought, see: Peter Holmes, *Resistance and Compromise: The Political Thought of the Elizabethan Catholics* (Cambridge: Cambridge University Press, 1982), 149 ff.; 161 ff.

³² In Parsons's theory, the commonwealth's foundations ultimately rested on the people's sovereignty which meant that 'the power and authority which the Prince hath from the common wealth is in very truth, not absolute, but [...] a power delegate, or power by commission from the commonwealth, which is giuen with such restrictions cauteles and conditions' (*Conference*, I, 73)

³³ See, Parsons, *Conference*, I, 32–33, 72–73.

³⁴ See, *Ibid.*, sig. B4-B5.

³⁵ Burgess, *British Political Thought*, 112–13.

Contemporaries and modern historians alike understood this as a call for the Spanish Infanta as a potential successor to the English throne.³⁶

Feeling under attack, ‘James’s itch publicly to assert and defend his rights’, prompted him to write up and publish his views.³⁷ In other words, attacks on James understanding of monarchical government and, specifically, his personal position as part of it, were the seedbed from which his ideas grew, likely directed against a ‘work [that] greatly troubled’ him. While he may have tried to ‘transcend particular contexts’, James generally considered it necessary to defend his views of the royal prerogative and nature of monarchical rule; he felt threatened by such pernicious ideas propelled into the public sphere.³⁸

Based on the context of its origin, James’s *Trew Law* can most plausibly be interpreted as defensive in nature, directed against what he perceived to be a threat to his succession and interpretation of kingship. It appears to be unlikely, therefore, that the Scottish king’s intention was to actively undermine some of the pivotal principles of English political self-understanding. In turn, this means that anti-absolutist attacks on James’s use of conquest, were in effect misdirected –and perhaps deliberately so – as they singled out what was at best a supporting argument in the king’s chain of reasoning.

Four years after the publication of Parsons’s *Conference*, James published his *Trew Law of Free Monarchies* which contains many of the vital elements of his political thought relevant in this context. The work exhibited ‘a nuanced, moderated absolutism’ and in doing so emphasised the necessity for an extensive royal prerogative the limits of which

³⁶ Holmes, ‘Authorship and Early Reception’, 415, 423.

The validity of Isabella’s claim, like those of multiple others, was discussed in the second part of Parsons’s treatise.

³⁷ Lake, ‘The King and the Jesuit’, 247.

³⁸ Burgess, *British Political Thought*, 143.

depended on the king's will, rather than his being bound by law.³⁹ A brief exegesis of the *Trew Law* will highlight that James's targets were most likely Buchananite theories, rehearsed by Parsons. At the same time, this overview will show how James's arguments, and, crucially, the language in which he expressed them could plausibly be interpreted as an attack on English political liberties by his new subjects some years later.

With a view to the main purpose of the *Trew Law*, James explained that it was his 'onely purpose and intention in this treatise [...] to persuade, as farre as lieth in me, by these sure and infallible grounds, all such good Christian readers [...] to keepe their hearts and hands free from such monstrous and vnnaturall rebellion'.⁴⁰ To this end, James emphasised principles of hereditary succession and outlined a conception of indivisible sovereignty designed to discourage insurrection.⁴¹ Both, vitally, were underscored by the king's interpretation of the historical origins of the English and Scottish monarchies. Historical arguments have by some been deemed 'irrelevant to politics' and 'immaterial' to absolutist political ideas, including the case of James I.⁴² This is certainly untrue with respect to ideas of conquest in the context of King James's absolutist political thought. And even if arguments about historical conquest were subsidiary elements in James's case for absolutism, the importance his opponents accorded them turned them into a major subject of debate. First and foremost, though, James was concerned with strengthening his claim to power as based in divine right.⁴³

³⁹ Johann P. Sommerville, 'Introduction', in *Political Writings*, by James VI & I, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1994), xv.

⁴⁰ James VI & I, *Political Writings*, 83.

⁴¹ His account of sovereignty suggests a Bodinian influence. See also Burns, *True Law of Kingship*, 226–28.

⁴² Sommerville, *Royalists and Patriots*, 54.

⁴³ Burgess points out the use of divine right theory as an argument to counter resistance right theories, 'The Divine Right', 843–44. See also Figgis, *The Divine Right of Kings*, chap. 7.

To begin with, James took care to defend hereditary succession in monarchies. Specifically, he highlighted the role of ‘heritable ouer-lord’ occupied by kings. They came to the throne ‘by birth, not by any right in the coronation’ and it was ‘a like vnlawful [...] to displace him that succeedeth [to the crown], as to eiect the former’.⁴⁴ The succession to the throne was strictly hereditary. Altering or hindering this mode of succession, was as illicit as rebellion against a sitting ruler. Irrespective of the manner in which a crown was initially obtained, hereditary succession created and preserved a lasting obligation to the rulers. The ‘duty and alleageance, which the people sweareth to their prince, is not only bound to themselues, but likewise to their lawfull heires and posterity’.⁴⁵ The emphasis on the lasting nature of political obligation was of particular importance for the imminent transition from one dynasty to another. This conception of continuous and unbroken obligation would also be crucial for James’s historical derivation of political authority, as will become evident below. When one ruler’s life came to its end, moreover, ‘the nearest and lawful heire entreth in his place’. In the case of England and Elizabeth, James left no room for doubt, that ‘lawful heire’ was him.⁴⁶

Absolute, hereditary monarchies, furthermore, logically excluded the notion of retained resistance rights which were being articulated by some thinkers at the time.⁴⁷ In particular, anti-royalist, monarchomach theories of rebellion, which had emerged in the wake of the French wars of religion in the 1570s, instilled in the Scottish king a heightened awareness of threats to monarchy.⁴⁸ In the *Trew Law*, accordingly, James

⁴⁴ James VI & I, *Political Writings*, 82.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ See, Holmes, *Resistance and Compromise*, pt. three; Skinner, *Foundations*, vol. 2, chaps 7–9.

⁴⁸ See also John H. M. Salmon, *The French Religious Wars in English Political Thought* (Oxford: Clarendon Press, 1959).

hoped to mute, what he described as, ‘the Sirene songs’ of rebellion.⁴⁹ Specifically, he aimed to refute the ‘seditious preachers in these daies of whatsoeuer religion, either in this countrey or in France [...] that busied themselues most to stir vp rebellion vnder cloake of religion’.⁵⁰ Under no circumstances could the people have a right to rebel and depose their ruler. This privilege, according to James’s account of divine kingship, was exclusively reserved for God, who had also ordained the king in the first place. Even cases of malicious rulers provided no justification for an uprising: ‘The wickednesse therefore of the King can neuer make them that are ordained to be iudged by him, to become his Iudges’. It was decidedly unlawful for ‘the people, or any part of them [...] to take vpon them the vse of the sword, whom to it belongs not, against the publicke Magistrate, whom to onely it belongeth’.⁵¹

The absolutism James articulated in response to resistance theories also included the king’s necessarily supra-legal position. He conceded that ‘a iust Prince will not take the life of any of his subiects without a cleare law’ but simultaneously asserted that ‘the same laws whereby he taketh them, are made by himself, or his predecessours; and so the power flowes from him selfe’.⁵² Historically, this supra-legal position of monarchs could be traced back to the fact that kings and queens had preceded parliaments from which ‘it followes of necessitie, that the kings were the authors and makers of the Lawes, and not the Lawes of the kings.’⁵³ Not only had kings preceded parliaments, but for both, England and Scotland, James traced the origins of the monarchy to original conquests. Scotland’s ‘first King *Fergus*’, a mythical figure, had arrived in Scotland from Ireland and made

⁴⁹ James VI & I, *Political Writings*, 62.

⁵⁰ Ibid., 71. The conceptual background to James’s *Trew Law* as well as the more immediate impetus for writing it are discussed below.

⁵¹ Ibid., 78.

⁵² Ibid., 75.

⁵³ Ibid., 73.

‘himselfe master of the countrey, by his owne friendship, and force’. For James it followed that ‘kings therefore in *Scotland* were before any estates or rankes of men within the same, before any Parliaments were holden, or lawes made’.⁵⁴ In England, similarly, James maintained that the contemporary monarchy had its origins in the Norman Conquest. In 1066, ‘the Bastard of *Normandie* came into *England*, and made himself king [...] by force, and with a mighty army’. He ‘gaue the Law, and tooke none, changed the Lawes’ and imposed Norman government institutions upon the English. Since the time of William I, England had thus had an uninterrupted line of rulers as ‘his successours haue with great happinesse enioyed the Crowne to this day’.⁵⁵

James, then, traced hereditary succession principles and the impossibility of resistance rights, both culminating in the king’s supra-legal position, to mediaeval instances of conquest which formed the bedrock of contemporary institutions.⁵⁶ In Scotland, this was the mythical case of Fergus, whereas in England the Norman Conquest was the historical foundation. Crucially, just as the crown was passed on by inheritance, the political obligations of subjects were passed on across generations: ‘the duty and alleageance, which the people sweareth to their prince [at the initial conquest] is not only bound to themselues, but likewise to their lawfull heires and posterity’.⁵⁷ That is to say, an initial political obligation acquired by one generation could not be declared null and void by later generations but was binding in perpetuity.

⁵⁴ Ibid.

⁵⁵ Ibid., 74.

⁵⁶ The question whether monarchs historically preceded parliaments, or vice versa, would become one of the central points of contention in the debates between royalists and ancient constitutionalists. The anti-absolutist response to James’s ideas is examined in more detail in Chapter 2.

⁵⁷ James VI & I, *Political Writings*, 82. The emphasis on this lasting nature of political obligation was of particular importance for the imminent transition from one dynasty to another. This conception of continuous and unbroken obligation would also be crucial for James’s historical derivation of political authority, as will become evident below.

The king's political positions, which ostensibly grew out of his desire to contain resistance rights, were interpreted in a different light in the context of his imminent accession to the English throne. It was thus his originally defensive move that went on to create a set of aggressive ideas that he would no longer be able to contain, let alone erase from public debate. By invoking the Norman Conquest as the historical foundation for monarchical rule in England, however, he had made plausible the interpretation that he, as a distant heir, likewise wished to rule as a conqueror. It did not matter that this was not explicitly James's argument; what mattered was that it was a seemingly viable interpretation of what he was saying. Unwittingly, he thus opened the floor to a discussion about rights of conquest and their relevance to his claim.

James's emphasis on his absolute power set off some alarm bells among the ranks of the parliamentarians. One particularly avid spokesperson of an anti-absolutist persuasion and future adversary of the new king was Edward Coke. As a convinced proponent of the antiquity of parliament, Coke could not but interpret James's invocation of the Norman Conquest as an assault on what he regarded as deeply historical English (legal) customs and liberties.

James's articulations of kingship as received in England in the years surrounding his accession did not sit well with many of his new subjects. While the idea of conquest may have been a supporting device in the king's argument for the overarching notion of absolute divine-right sovereignty, ardent supporters of English parliamentarianism and common lawyers focused their attention on this very idea of conquest. James's ideas, as articulated in the *Trew Law*, therefore, had repercussions on two levels. Firstly, James's reiterations of absolutist political theory and royal authority originating from force and conquest were instrumental in the formation of a countermovement in the form of the

ancient constitution narrative. Secondly, a growing field systematically exploring the mechanics of regal unions in the wake of the succession debates foregrounded the possibility of conquest however remote. Combined with James's own continued use of conquest vocabulary, this became a notoriously potent register that pervaded subsequent union debates.

James's political views, or at least the way in which he expressed them, thus rattled some of his new subjects. A prime example of this was Sir Edward Coke. Coke, who will receive more detailed attention in the next chapter, shall briefly be introduced at this point as the epitome of the opposition James could come to expect. Coke, who spearheaded an anti-absolutist movement striving to position the common law above individual rulers, began to formulate his views on the laws' antiquity even before James's arrival in London. The impending Jacobean accession prompted the common lawyer to entrench some of the central principles of the laws' supremacy in the Preface to his *Third Report* as early as 1602.⁵⁸ Coke's basic idea was that if English common law antedated any historically known ruler, its authority would exceed that of any specific ruler past or future; the law would make rulers, so to speak, rather than vice versa. Coke's aim was not just to negate contemporary absolutist implications of the historical conquest of 1066 but to defend English law against its potential abrogation as he feared James might arrive to the English throne effectively with powers akin to those of a conqueror. In the preface to the second part of the *Reports* Coke explored the notion of the antiquity of English law. English common law, he wrote, was 'of all laws [...] [the] most equal and most certain, of greatest antiquity.' No knowledge was 'so excellent both for prince and subject, as

⁵⁸ George Garnett, "'The Ould Fields': Law and History in the Prefaces to Sir Edward Coke's Reports", *The Journal of Legal History* 34, no. 3 (2013): 251.

knowledge of laws.’⁵⁹ Law, according to Coke, mattered to both, those it was meant to protect as well as the rulers who had to abide by it. It would be specifically the legal dimension that became central to debates dealing with the constitutional consequences of James’s accession and the potential for a legal union. Among the ranks of those contributing to the public debates ‘no one was better qualified than Coke to grasp the possible legal implications.’⁶⁰

That some of the English political minds feared the union with Scotland could constitute an effective conquest through their northern neighbours may seem surprising; that the Scots, in turn, had previously feared English domination brought about by the peaceful means of a union, perhaps less so. Sir John Harington observed this exact reversal of anxious concerns when looking back a mere half-century. Godson to Queen Elizabeth, Harington found himself seeking the patronage of James VI by the early 1600s.⁶¹ He published *A Tract on the Succession to the Crown*, a treatise supporting the Stuart claim to succession, the year before Elizabeth’s death.⁶² At a time when works speculating on the succession were still forbidden, Harington’s book with its precarious subject matter was a rare occurrence.⁶³ Before discussing the actual matter at hand, namely James’s potential succession and the subsequent dynastic union, Harington took an excursion into history in search of meaningful precedent. He found it in Protector Somerset’s *An epistle or exhortacion, to vnitie [and] peace ... to ... the inhabitauntes of*

⁵⁹ Coke, 2 *Rep.*, preface, v-xi. All citations of Coke’s *Reports* refer to Sir Edward Coke, *The Reports of Sir Edward Coke, Knt. In Thirteen Parts*, ed. John H. Thomas and John F. Fraser, 6 vols (London: J. Butterworth and Son, 1826).

⁶⁰ Garnett, ‘The Ould Fields’, 248.

⁶¹ Jason Scott-Warren, ‘Harington, Sir John (bap. 1560, d. 1612)’, *ODNB*.

⁶² John Harington, *A Tract on the Succession to the Crown*, ed. Clements R. Markham (London: J.B. Nichols and Sons, 1880).

⁶³ On the censorship, see Arnold Hunt, ‘The Succession in Sermons, News and Rumour’, in *Doubtful and Dangerous: The Question of Succession in Late Elizabethan England*, ed. Susan Doran and Paulina Kewes (Manchester: Manchester University Press, 2014), 155.

the realme of Scotlande from 1548. Here Harington found the precursory designs for a dynastic union that should come to be revived under James Stuart.

Advertising the Edwardian union project, Somerset had promised the Scots that the English would be ‘content to call and crye vpon you, to looke on your state, to auoyde the greate calamitie your Countrey is in: To haue vs rather brothers, then enemies, rather Countreymenne, then Conquerours.’⁶⁴ All those who opposed the union, suspecting that England ‘seke not equalitie, nor the mariage, but a conquest’ Somerset assured that their intention was ‘not to conquer, but to haue an amitie, not to wynne by force, but to conciliate by loue, not to spoyle and kil, but to saue and kepe, not to disseuer and diuorce, but to ioyne in mariage from high to low, bothe the realmes, to make of one Isle one realme, in loue, amitie, concorde, peace, and Charitie.’ He complained that ‘[t]hese vain feares and phantasies, of expulsion of youre nacion, of chaungyng the lawes, of makyng a conquest, bee driuen into your heddes, of those who in deede, had rather you were all conquered, spoyled, & slain.’⁶⁵

Fifty-four years later, when Harington was undertaking a renewed attempt to advertise an Anglo-Scottish union, he was faced with the situation turned on its head. He noted that ‘it seames by the Duke’s writing, the Scotts did then [...] feare a conquest.’ Conversely, ‘[i]t appears [...] that some English feare the like now, foolish feares of men, that commonly drawe on by fearing, that which they most feare.’⁶⁶ His observation suggests that conquest was perceived as a real threat and Coke was not the only one fearing an incoming absolute ruler who would possess absolute power over his English

⁶⁴ Edward Seymour, *An Epistle or Exhortacion, to Vnitie [and] Peace ... to the Nobilitie, Gentlemen, and Commons, and Al Others the Inhabitauntes of the Realme of Scotlande* (London, 1548), (not paginated).

⁶⁵ Ibid.

⁶⁶ Harington, *Succession to the Crown*, 19A.

subjects and the laws.⁶⁷ Harington sought to dispel such fears and believed that ‘all these tragicall terrors may have a comicall and commendable conclusion.’ He did, however, anticipate one specific cause for concern that would be a major stumbling block to the new king some two years later. Harington conceded that ‘[t]he change of name is a badge of conquest.’ He pointed out that Machiavelli had made the observation in his *Discorsi* where he ‘bringes in England for an example.’⁶⁸ In response, Harington suggested: ‘[l]et us then admitt [...] this badge of a just, mylde, and unbloody conquest, which both nations shall conquer all their old rancor and malice and envy, a conquest in which warre itself shalbe conquered, a conquest that may avert, prevent, and defend all other conquests.’⁶⁹

Ultimately, Harington’s *Tract* was unable to put all further conquest debates to bed, nor were the English willing to admit a conquest. Expressing concerns about or even support for the union seemed to become inextricably linked with use of a vocabulary in which conquest featured prominently. Harington’s work exemplified a problem James and his supporters came to wrestle with, too. By naming and addressing conquest as a central concept of the union debates, they gave the idea a stage, and helped it to prominence when truly they were looking to dismiss any talk of it altogether. This trend would intensify, leading to conquest becoming a staple of the union debates.

⁶⁷ On this role reversal, see also Brian P. Levack, *The Formation of the British State: England, Scotland and the Union, 1603-1707* (Oxford: Clarendon Press, 1987), 34–35.

⁶⁸ Harington, *Succession to the Crown*, 19A. In wars arising out of the ambition of princes, Machiavelli found, often ‘the victor is content provided its people became subject to his obedience, often lets them keep their own laws, and always leaves them their houses and their chattels.’ Peoples fighting in wars out of necessity, such as a famine, on the other hand ‘make a violent incursion into the lands of others, kill the inhabitants, seize their goods, and establish a new kingdom under a new name’ (Niccolò Machiavelli, *The Discourses*, ed. Bernard Crick, trans. Leslie J. Walker (London: Penguin, 2003), 294–96. [Bk. II, Ch. 8]).

⁶⁹ Harington, *Succession to the Crown*, 19A.

Whereas historically, it had been the Scots who were afraid of being subjugated by the English, the tables had turned with the accession of James I.⁷⁰ What united their fears was the language of conquest in which they both expressed them. English concern over the new king, moreover, did not come out of the blue at the moment of his accession. The roots lay deeper. James's political writings from the late sixteenth century, and composed for a very different purpose, fuelled concerns and mistrust in his early reign. It was the merging of theoretical fears over his idea of kingship with the circumstances of the union within which they could now become a practical reality that infused a language of conquest with a new political salience. The union, in other words, came to act as a catalyst turning heretofore subtler concerns into the most important points on the political agenda. The fact that James's reflections on conquest right in the *Trew Law* were by no means a blueprint for his approach to the union of his two kingdoms was immaterial as long as some of his subjects read and understood them in this manner. Imminent decisions about the name and legal status of the union improved the plausibility of such readings of James's thought. Last but not least, the king's repeated and careless use of conquest vocabulary throughout his speeches in parliament meant that conquest debates quickly gathered momentum in political debates.

One central anti-absolutist strategy was the construction of a legal-historical narrative concerned with curtailing the powers of the monarch. James was given a first taste of the things to come by Edward Coke. Coke's direct response to the king's views was also indicative of a new style of debate between monarch and subjects. Unlike his predecessor, James chose to descend into the political arena and actively engage in

⁷⁰ That being said, some of James's Scottish subjects were equally uneasy regarding the effects the union would have on them. In particular, his move to London from where he intended to govern the country of his birth, was eyed suspiciously. Some members of the Scottish council feared that 'Scotland might become a conquered and slavish province to be governed by a Viceroy or Deputy', (Levack, *Formation*, 34.)

debates concerning arguably some of the central pillars of monarchical rule. As Peltonen noted, ‘the deliberative nature of James’s speeches created a rhetorical space’ within which his subjects could formulate their criticism directly in response to their king.⁷¹

Criticism of James’s union project as well as more disinterested explorations of historical precedent will reside at the centre of the next section. Both will reveal how the union debates intensified talk of conquest. James thus far may not have acted like a conqueror, but his writings made him appear like one. Against this backdrop, it was plausible for his critics to equally have recourse to a language of conquest in their attempts to express their fears and concerns.⁷²

III – CONQUEST IN PARLIAMENTARY UNION DEBATES

Even before James VI had officially become James I, his imminent accession to the English throne had placed his political writings and ideas in the spotlight of English political discourse. Specifically, his view of the extent of the royal prerogative was a cause for debate and, for some, concern.⁷³ James’s outspokenness in his defence against incipient notions of popular sovereignty and concomitant resistance theories had, moreover, contributed to making ideas of conquest central to debates about the nature of sovereignty and the extent of the royal prerogative. With the death of Elizabeth, James’s ensuing accession to the English throne and, correspondingly, the impending dynastic

⁷¹ Markku Peltonen, *Rhetoric, Politics and Popularity in Pre-Revolutionary England* (Cambridge: Cambridge University Press, 2013), 148.

⁷² See also Levack, *Formation*, 40.

⁷³ Wormald, for example, detects an ‘atmosphere of unease’ among parliamentarians in light of James’s political ideas and (lack of) clarifications after 1603. (‘James VI and I’, 48.)

union, which seemed ‘thrilling to some and daunting to more’, these theoretical debates acquired a further, practical dimension and, as a result, intensified.⁷⁴

This section examines the transition from succession to union debates and looks at how the discourses of conquest spilled over from one context to the other and acquired polemical prominence in the process. In particular, it emphasises the resistance James experienced in response to his union ideas in parliament. Sir Francis Bacon’s works, in which he defended the union, will serve as a window onto the ensuing debates over the union. Bacon may not have been a leading theorist (of union) but he was an astute observer of the discourse he frequently summarised and analysed in his capacity as adviser to the king.⁷⁵ In his work, therefore, some of the key ideas, and the (political) language of conquest in which they were discussed, are reflected.

To the concerns about an expanded royal prerogative which had arisen in light of James’s political writings and his looming succession was added another fear after 1603: that the union of the two kingdoms would in effect create a new single state and thus extinguish the constitutions of the old ones.⁷⁶ The king’s desire to change the style of his new realm to Great Britain, in particular, fuelled such anxieties. While fears of becoming the subject of conquest might appear understandable north of the border, as seen above in Harington’s succession tract, the same would seem less plausible in the English case. Nevertheless, there were indeed voices warning that ‘the change of style will be, as it

⁷⁴ Bruce Galloway and Brian P. Levack, ‘Introduction’, in *The Jacobean Union: Six Tracts of 1604*, ed. Bruce Galloway and Brian P. Levack (Edinburgh: Scottish History Society, 1985), ix.

⁷⁵ Glenn Burgess describes Bacon as ‘the king’s key English adviser on the union question’ (Burgess, *British Political Thought*, 157.) On Bacon’s role, see also Conrad Russell, *The Crisis of Parliaments: English History 1509-1660* (Oxford: Oxford University Press, 1971), 266. Bacon was an experienced MP as he had had a seat in every parliament since 1581 (see Perez Zagorin, *Francis Bacon* (Princeton, N.J.: Princeton University Press, 1998), 165.)

⁷⁶ See, Levack, *Formation*, 38.

were, the erecting of a new kingdom, and so it shall be as it were, a kingdom conquered, and then may the king add laws and alter laws at his pleasure'.⁷⁷ Fears of an ever expanding prerogative were thus augmented and merged with concerns over the union's political implications and both were articulated in a vocabulary of conquest.

James ascended the English throne in March 1603 but the first parliament of the new reign was only held in the spring of 1604 as the plague, making the rounds in London, had prevented the assembly from convening sooner. Not only was this the first meeting between the new king and his parliament, it was also the place for debate over possible implications of the union of the crowns. After all, the union between the two kingdoms was the chief project the new king was eager to advance.⁷⁸ The Parliament of 1604 was therefore a crucial moment in the formation of a wider conquest discourse as previous questions over the prerogative blended with those concerning the union.

In September 1603 the Venetian ambassador to London at the time, Giovanni Carlo Scaramelli, had reported home that 'Parliament is to deal with the question of the union of these two crowns'. He was decidedly pessimistic about the outcome. Concerning the idea that England and Scotland might be united under a common name, he related that 'the Scottish already let it be known that they will never consent to abandon their name'. He sensed a deteriorating atmosphere and a doomed start to the union project: 'as the question becomes burning the hatred between the two races grows more intense, and French, Spanish, and Flemish all begin to see that the power of the two kingdoms is not what they thought it'.⁷⁹

⁷⁷ Anonymous anti-union pamphlet quoted in Levack, *Formation*, 38.

⁷⁸ The union was 'undoubtedly intended as the major issue of the session', and ended up taking 'more parliamentary time than any other subject.' (Galloway and Levack, 'Introduction', xviii.)

⁷⁹ *Calendar of State Papers, Venice*, x, 12 September 1603.

In his opening speech to parliament on 19 March 1604, James presented a very different hope and outlook for of the union. In his opinion, England and Scotland were meant to be united, it was providentially ordained: ‘God first vnited these two Kingdomes [...] in one Island [...] by nature so indiusible.’ Divisions in the past had been there only ‘in apprehension’, not ‘in effect.’ Now coming together under his rule, the new United Kingdom became ‘like a little World within it selfe.’ He thus pronounced: ‘I am the Husband, and all the whole Isle is my lawfull Wife; I am the Head and, and it is my Body; I am the Shepherd, and it is my flocke.’⁸⁰

His audience, the members of parliament, demonstrated little desire for the liaison their new ruler had outlined.⁸¹ Throughout the session of 1604, they were indignant about the looming loss of power and liberty they feared based on the political ideas James had previously outlined and which appeared to be given a practical dimension in the shape of the union the monarch had in mind. During the first encounter between king and MPs, the speaker of the Commons, Edward Phelips, welcomed the new head of ‘this most victorious and happy Nation’. At the same time, he cautioned the king that he held his title ‘not as a Conqueror, by the Sword, but as an undoubted Inheritor, by the Scepter’. This was an early example of what James had to expect over the following years, not just in parliament. Furthermore, Phelips emphasised the importance of parliament ‘by whose Power only new Laws are to be instituted, imperfect Laws reformed, and inconvenient Laws abrogated’.⁸² Phelips thus put down the red lines over which James was warned not to step.

⁸⁰ King James VI & I, *Political Works*, 136.

⁸¹ See Russell, *The Crisis of Parliaments*, 266 ff; Conrad Russell, *King James VI and I and His English Parliaments* (Oxford: Oxford University Press, 2011), 31 ff; Bruce Galloway, *The Union of England and Scotland, 1603-1608* (Edinburgh: J. Donald, 2003), 18–23.

⁸² *Commons Journals*, i, 142-49.

In June of the same year, the Commons drafted their *Form of Apology and Satisfaction*. The central concern expressed in the *Apology* was that over ever-expanding royal power: ‘What cause we your poor Commons have to watch over our privileges is manifest in itself to all men. The prerogatives of princes may easily and do daily grow; the privileges of the subject are for the most part at an everlasting stand. They may be by good providence and care preserved, but being once lost are not recovered but with much disquiet’.⁸³ This was the moment when fears of Jacobean absolutism appeared to become a practical reality. James, whose *Trew Law* gave expression to his view of kings’ supra-legal position, now endorsed a potential (legal) union which would effectively abrogate existing English (and Scottish) law, thus making it possible to liken his style of rule to that of a conqueror.⁸⁴

Parliamentarians’ concerns about an expanding prerogative, and England becoming the subject of conquest, which Harington detected and which speak from these lines, were genuine, rather than just a mask for anti-Scottish sentiments.⁸⁵ Faced with the MPs’ disapproval for his central political endeavour, it may have dawned on James that the union project would become more complex than he had hoped. Confronted with adversity, and perhaps recognising his own limitations, James made Francis Bacon his adviser. After having been largely neglected at court under Elizabeth, Bacon was held in higher regard by the incoming monarch, soon becoming one of James’s closest non-Scottish confidants.⁸⁶ His writings on the dynastic union are primarily of interest for the

⁸³ J. R. Tanner, ed., *Constitutional Documents of the Reign of James I, A.D. 1603-1625, with an Historical Commentary* (Cambridge: Cambridge University Press, 1960), 222.

⁸⁴ See also Pocock, *Ancient Constitution*, 285.

⁸⁵ Levack, *Formation*, 39.

⁸⁶ See Stewart, *Cradle King*; Lisa Jardine and Alan Stewart, *Hostage to Fortune: The Troubled Life of Francis Bacon* (London: Phoenix Giant, 1998). Bacon was knighted on 23 July 1603 to mark James’s coronation, and was given the office of ‘learned counsel’ in 1604 (see also Markku Peltonen, ‘Bacon, Francis, Viscount St Alban’ (1561-1626), *ODNB*).

picture they paint of the mood in the political nation with respect to the union in question. In this particular context, Bacon's own political theory is of lesser interest. Instead, his work can be seen as a kind of a seismograph, recording the tremors and larger shockwaves which the intended union sent through the capital. Addressing the king, Bacon himself likened the fallout from the union to 'earthquakes, which [...] bring terror and wonder, but no actual hurt; the earth trembling for a moment, and suddenly stablishing in perfect quiet as it was before'.⁸⁷ As adviser to the king and seasoned MP, Bacon took a central position in what would become a long and drawn out process of union negotiations between the monarch and headstrong members of the Commons.

One of the first tasks bestowed on Bacon in his role as 'learned counsel' to the king, was to assemble a report of parliament's objections to the union as proposed by the king.⁸⁸ On 25 April, Bacon presented his findings and observed that 'in frameing a new name wee should erect a new kingdome, and that the king by the force of his proclamations might establish new lawes as if he came in by conquest'.⁸⁹ Such fears of conquest were also discernible from the list that resulted from his investigation and for which he had grouped objections to the union in four categories: 'Matter of generality or common reason', 'Matter of estate inward, or matter of law', 'Matter of estate foreign, or matter of intercourse', 'Matter of honour or reputation'.⁹⁰ Under the first point, 'matter of generality', it was specified that 'we find no precedent, at home or abroad, of uniting or contracting the names of two several kingdoms or states into one name, where union hath

⁸⁷ Francis Bacon, *The Letters and the Life of Francis Bacon Including All His Occasional Works*, ed. James Spedding, vol. 3 (London: Longman, Green, Longman, and Roberts, 1861), 91. All subsequent references will be in the form Bacon, *Letters & Life*, volume, page.

⁸⁸ See, Galloway, *The Union*, 21.

⁸⁹ Quoted in Russell, *King James VI and I and His English Parliaments*, 36.

⁹⁰ Bacon, *Letters & Life*, iii, 197-9. The list can also be found reprinted in Galloway, *The Union*, 28-29.

grown by marriage or blood.’ The only examples that could be found, in fact, were ‘in the case of conquest.’⁹¹ Bacon’s catalogue of objections set the agenda for the following parliamentary debates as well as extra-parliamentary conversation. The very next day, other members of the House fleshed out their misgivings and anxieties in more detail. One of the more prominent MPs, Sir Edwin Sandys, in a speech to parliament on 26 April 1604 echoed Bacon’s observation as he noted that ‘a new title of a kingdome given by those which are of the kingdome, is an establishment of a new kingdome, and if a new be erected the old is presently dissolved’.⁹² He also commented on the lack of precedent for the endeavour they were about to embark on in an exploration of known mechanisms behind the formation of unions. He differentiated between unions of three kinds: by marriage, by election or by conquest. Only the last of these, he related, was able to bring about the union of laws James envisaged.⁹³ Soon, more MPs as well as pamphleteers were embroiled in intricate debate about James’s wish and proposal for ‘perfect union’. The two dominant topics under discussion were the new joint name for the two kingdoms and a legal union, that is to say, a merging of the laws. Bacon’s report and MPs’ contributions, such as Sandys’s, were instrumental in shaping the pattern of these debates. Before the next section examines a sample of union tracts and their use of conquest language, it is worth considering two more of Bacon’s works from the time. These were both occasioned by the regal union, exploring unions between nations generally and the proposed one between England and Scotland specifically. These jointly highlight the central position of conquest language, conceptualising the consequences of an Anglo-Scottish union as well as investigating historical precedent and corresponding general mechanisms.

⁹¹ Bacon, *Letters & Life*, iii, 197-9.

⁹² Quoted in Russell, *King James VI and I and His English Parliaments*, 36.

⁹³ See, Galloway, *The Union*, 21.

Bacon wrote *A Brief Discourse Touching the Happie Union of the Kingdoms of England and Scotland* in the wake of James's accession to the English throne in 1603.⁹⁴ In matters of union, as this title also reflects, Bacon was committedly supporting the new king's agenda.⁹⁵ The *Brief Discourse* turned out to be farsighted as Bacon anticipated some of the most significant problems that would hamper the progression towards the desired union and in response advocated gradual rather than abrupt change, coupled with the necessary patience. In the opening parts of the work, Bacon explicitly warned the king that 'suddayne and great mutations, as well in state as in Nature', the planned union undoubtedly being a case in point, 'are rarely without violence and perturbation'.⁹⁶ He was probably aware of the labour pains his monarch's favourite project was likely to induce but towards which James seemed ignorant. In agreement with James's perspective, Bacon found that the new ruler of the two countries had divine blessing to unite what belonged together. James was the '*lapis angularis*' and the union was 'reserved for your Majesty's happy times by the special providence and favour of God, who hath brought your Majesty to this happy conjunction with great consent of hearts.'⁹⁷ Bacon explored the 'manner of union', specifically considering the two most common forms: violent and

⁹⁴ On the *Brief Discourse*, see also Joel Epstein, 'Francis Bacon and the Issue of Union, 1603-1608', *Huntington Library Quarterly* 33, no. 2 (1970): 122 ff.; Jardine and Stewart, *Hostage to Fortune*, 272f., 280ff.

⁹⁵ Bacon's influence on King James may be said to have been a moderating one. While his efforts during the union negotiations were 'unapologetically on behalf of the King' (Jardine & Stewart, *Hostage to Fortune*, 280), Bacon's political views on the matter suggests a belief in mixed constitutions. Perez Zagorin noted that '[a]lthough a devoted royal servant, neither as crown lawyer nor as an adviser was Bacon ever a supporter of unrestricted monarchical absolutism. His theory of English kingship recognised in the monarchy both attributes of sovereignty and legal limitations that secured the liberty and property rights of subjects, while perhaps tipping the balance somewhat more in favour of the former than a number of his contemporaries would have accepted' (Zagorin, *Francis Bacon*, 163.) Bacon was concerned with finding the right balance between the crown's prerogative and the liberty of Parliament and endorsed the idea of a mixed constitution (see, *Letters & Life*, iv, 177).

⁹⁶ Bacon, *Letters & Life*, iii, 91.

⁹⁷ *Ibid.*, 92.

natural unions. With a view to the Anglo-Scottish case, he rejected the idea – which had surfaced on both sides of the border – that they were dealing with the former. Here he explained that it would ‘not be pertinent’ to treat of a particular form of union in this case: ‘union by victory’. In such a case, ‘one body doth merely subdue another, and converteth the same into his own nature, extinguishing and expulping what part soever of it it cannot overcome.’ He clarified that ‘these representations do answer in matter of policy to union of countries by conquest; where the conquering state doth extinguish, extirpate, and expulse any part of the state conquered, which it findeth so contrary as it cannot alter and convert it.’⁹⁸ The key difference between such violent unions and natural ones, he argued, was that they were cases of ‘*compositio* and *mistio*, putting together and mingling’. In other words, one was ‘but a conjunction of bodies in place, the other in quality and consent’. Seeking to clear up any possible misunderstandings or, perhaps, to re-emphasise his interpretation of conquest, he repeated that the difference was ‘that *compositio* is the joining or putting together of bodies without a new form: and *mistio* is the joining or putting together of bodies under a new form’. In the case at hand, this meant that one needed to ‘superinduce a new form agreeable and convenient to the entire state’ for this was the ‘more happy’ option.⁹⁹ Bacon thus sought to defuse a language of conquest that had acquired prominence in the course of the early union debates but was at risk of distorting the king’s project.

Against this backdrop of a general typology of unions, Bacon focused on Anglo-Scottish particularities. He explained that ‘kingdoms [...] perfectly united’ needed to fulfil four aspects: ‘Union in Name, Union in Language, Union in Laws and Union in

⁹⁸ Ibid., 93.

⁹⁹ Ibid., 93-5.

Employments'.¹⁰⁰ Two of these, name and laws, would become the most contentious issues in later debates; and Bacon seemed well aware of their potential for conflict. 'For Name, though it seem but a superficial and outward matter, yet it carrieth much impression and enchantment', he noted. The laws, he held, were 'the principal sinews of government' and thus demanded careful handling. In order to avoid too much conflict, he found that 'it sufficeth that there be an uniformity in the principal and fundamental laws'.¹⁰¹

In the closing section of his short work, Bacon once again demonstrated a surprising level of foresight. 'For Manners', he found, 'a consent in them is to be sought industriously, but not to be inforced. For nothing amongst people breeds so much pertinacy in holding their customs, as sudden and violent offer to remove them'.¹⁰² This, he and his monarch would find, also held true in debates about the laws, and most specifically the common law, parliament and their role in limiting the royal prerogative. In sum, then, Bacon's *Brief Discourse* reflects the pivotal role conquest language was beginning to play in the union debates. In order not to aggravate incipient ill feelings about a supposedly growing prerogative through an abrupt change in the laws, Bacon recommended gradual changes and the required patience to go along with it. Conquest rhetoric was beginning to take root as a critical language of anti-absolutism. As his comments show, Bacon appears to have been aware of this and his clarifications and suggestions may be interpreted as attempts to curb the as yet inchoate register of conquest used in criticism of the crown and attempts to delimit its prerogative.

Francis Bacon's second contribution in the context of the union debates, which also reflected the growing importance of conquest language, were his *Certain Articles or*

¹⁰⁰ Ibid., 95.

¹⁰¹ Ibid., 96-7.

¹⁰² Ibid., 98.

Considerations Touching the Union of the Kingdoms of England and Scotland (1604).

After his previous endorsement of gradual change had gone unheard and realising the height of the mountain the king would have to climb in order to bring about a change in name of the new kingdom, Bacon offered his thoughts on the possible ways forward. Again, this work reflects the central position a vocabulary of conquest took in the discourse surrounding the regal union. In light of the resistance in parliament, Bacon, living up to his title of learned counsel and drawing on his experience in parliamentary procedure, urged James to reconsider which plans ‘shall require authority of Parliament, and which are fitter to be effected by your Majesty’s royal power and prerogative [...] and which of them is likelier to pass with difficulty and contradiction, and which with more facility and smoothness’.¹⁰³ That is to say, since parliament blocked James’s union designs, alternative routes had to be explored to still attain the king’s aims.

With respect to ‘further union’, including a change in name, Bacon expected this to be a matter ‘which many will make a great question of’.¹⁰⁴ Bacon had been proved right, of course, as MPs viewed legal union and a new name critically, fearing that the abrogation of English laws as a result of either. Not least Harington had reminded them recently that a change in name was tantamount to ‘a badge of conquest’. Abrupt changes generally were seen with suspicion and after all ‘People are distinguished by names before their places’.¹⁰⁵ Consequently, Bacon asked James ‘whether your Majesty should not make a stop or stand here, and not to proceed to any further union’; after all, ‘the perfect fermentation and incorporation of [two bodies politic] must be left to Time and

¹⁰³ Ibid., 220.

¹⁰⁴ Ibid., 221.

¹⁰⁵ Quoted in Brett F. Parker, ‘Recasting England: The Varieties of Antiquarian Responses to the Proposed Union of Crowns, 1603–1607’, *Journal of Medieval and Early Modern Studies* 43, no. 2 (2013): 397.

Nature'.¹⁰⁶ Should James wish to proceed, however, in the matter of a common name, 'the main question is, whether the contracted name of Britain shall be by your Majesty used, or the divided names of England and Scotland'. In case James was resolved to adopt a common name for the two kingdoms, as he seemed poised to, the question was – as hinted at above – 'whether it were not better for your Majesty to take that alteration of stile upon you by proclamation [...] than to have it enacted by Parliament'.¹⁰⁷ Gauging the feasibility of the project, Bacon acknowledged that 'the difficulties in this have been already thoroughly beaten over; but they gather but two heads'; one of these was that the change in name would 'involve an alteration of the laws and policies of the kingdom'.¹⁰⁸ In order to avoid these problems and MPs' resistance, Bacon suggested a royal proclamation, allowing the king to circumvent parliament altogether. James's adviser emphasised that such 'proclamation altereth no law' and would thus be less contentious and possibly present a reasonable compromise.¹⁰⁹ Changing and assimilating the laws would be 'a matter of great difficulty and length', additionally he found that 'we see by experience [...] how harsh changes and innovations are'. Consequently, he wondered 'whether it be not good to proceed by parts, and to take that that is necessary, and leave the rest to time'.¹¹⁰ Bacon included a draft proclamation 'touching his Majesty's Stile'. By following such a course, King James could by-pass parliament and avoid drawing out the discussion about alterations to the laws as the mark indicator of a conqueror. Bacon had to 'walk a tight political rope' in his role when brokering compromise between the

¹⁰⁶ Bacon, *Letters & Life*, iii, 221, 98.

¹⁰⁷ *Ibid.*, 225-6.

¹⁰⁸ *Ibid.*, 226.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, 230-1.

king, in whose service he stood, and parliament as he considered good relations with the latter essential for the crown.¹¹¹

Bacon began by re-emphasising the providential design behind the unification of the two kingdoms, which brought ‘with it greater security from outward enemies, and greater freedom from inward burdens’. In line with his previous argument that what they were dealing with was a natural union, he found that the ‘happy fruit of the union of kingdoms’ was achieved

When such conjunction or augmentation is not wrought by conquest and violence, or by pact and submission, but by the law of nature and hereditary descent. For in conquests it is commonly seen, although the bulk and quantity of territory be increased, yet the strength of kingdoms is diminished [...] by the evil coherence of the nation conquering and conquered.¹¹²

The language Bacon employed here to dissociate the Anglo-Scottish union from others that were founded in conquest aptly reflects the wider importance a register of conquest was acquiring in the course of the union debates and the royalists’ urgent desire to distance themselves from the same. He sought to elaborate on instances of conquest, which, in his opinion, were fundamentally different from the Anglo-Scottish case. In unions by conquest one country would be ‘apt to be insolent and the other discontent, and so both full of jealousies and discord’. While it seems debatable whether this presents a significantly different scenario from the case of England and Scotland, Bacon found that ‘when the lines of two kingdoms do meet in the person of ones monarch as in a true point or perfect angle [...] there shall proceed one inheritor in blood to several kingdoms, whereby they are actually united and incorporate under one head’.¹¹³ To foster a feeling of collective identity and nationality in this new kingdom, then, Bacon’s draft

¹¹¹ Epstein, ‘Bacon and the Union’, 121.

¹¹² Bacon, *Letters & Life*, iii, 235.

¹¹³ *Ibid.*, 235-6.

proclamation continued to outline that ‘we have thought it good to withdraw and discontinue the divided names of England and Scotland out of our regal stile and title, and to use in place of them the common and contracted name of Great Britany’. Such a name, as other participants of the debate pointed out too, was ‘the true and ancient name which God and time hath imposed, extant and received in histories, in cards, and in ordinary speech and writing, where the whole island is meant to be denominate’.¹¹⁴

These conceptual discussions and the conquest language in which they were conducted were also continued in extra-parliamentary union tracts. The shape and argumentative structure of the latter was markedly influenced by the preceding parliamentary debates on the matter.

IV – CONQUEST IN EARLY UNION TRACTS

In the wake of the union and the first parliamentary session of 1604, interest in the matter spread beyond the debating chamber of the House of Commons and occasioned the publication of a number of tracts on union questions. This section analyses some of the key publications with a particular view to the role and importance of the concept of conquest. The works considered here all testify to the importance of conquest ideas even though they were broached and deployed in different ways. Some sought to downplay or deny their importance in the context of the union under the new Stuart king, whilst others accepted that conquest had been a factor in the evolution of English (and Scottish) law and they even confidently derived direct conclusions for contemporaneous politics. The overarching result was that conquest language was kept in the mainstream of political

¹¹⁴ Ibid., 238.

discourse as the union debates became a catalyst for the further development of a previously budding register of conquest.

The following selection of union tracts includes a multitude of approaches, from attempts to categorise types of unions – commonly following a pattern of marriage, inheritance, election, conquest – to explorations of historical precedent and ultimately detailed considerations of the consequences of an Anglo-Scottish union.¹¹⁵ What unites them is their focus on conquest as one possible explanation and conceptual tool to understand the proposed union. Moreover, many of the tracts in question were published relatively soon after the parliamentary debates on the union and reflected the issues and arguments advanced in the same. The objections raised here (and recorded by Bacon) with their explicit reference to concerns over conquest (in precedent and consequence), in other words, shaped the subsequent extra-parliamentary debates, too.

John Thornborough, who had become bishop of Bristol in 1603, composed *A discourse plainely prouing the euident vtilitie and vrgent necessitie of the desired happie vnion*, which was published soon after the parliamentary debates of 1604 and included the complete list of objections as collated by the MPs. As Thornborough's title unmistakably suggested, he took the king's side and argued a case for the union. Faced with the objections, he 'could not hold [his] hand from writing to remoue & cleare them' to come to the support of the 'soueraigne Vnitor.'¹¹⁶ Seeking to refute each objection in turn, he began with the assertion that there had been 'no president at home nor abroad, of vniting or contracting of the names of two seuerall Kingdomes or States into one name, where

¹¹⁵ For an overview of some of these tracts, their authors and topics, see also Galloway, *The Union*, chap. 3.

¹¹⁶ John Thornborough, *A Discourse Plainely Proving the Evident Utilitie and Urgent Necessitie of the Desired Happie Union of ... England and Scotland* (London, 1604), 1.

the Vnion hath growne by mariage or bloud.’ He contended that Charles V ‘vnited in the common name of Spaine diuers other his kingdomes, wherof two of them; namely Aragon and Castile descended to him in right of bloud.’ He thus wondered that ‘the Obiectors acknowledge vniting of kingdoms in case of conquest. I maruell they do it not much more by right of bloud’, after all ‘in that vnion of constraint, there is euer doubt, and dread for continuance therof.’¹¹⁷ Thornborough thus disagreed with the assertion that there was a supposed lack of precedent in the case of nations united under a common name without conquest.

Addressing the concern that the new name would mean the ‘extinguishment of the old’ kingdom, Thornborough chose the common explanation that rather than the creation of a new kingdom, the union would merely reinstate an old, long lost one. ‘Before the conquest of the Saxons, it is certaine that the whole Ile was called by the name of Britain.’¹¹⁸ Looking back in history, Thornborough suggested that the name of England was in fact the very name introduced by foreign conquerors and James’s return to the name of Britain was thus the true act of liberation. With respect to the proposed Anglo-Scottish union, then, ‘it is most honorable by iust descent in right of bloud, not onely to change, but to abolish the name imposed by a Conqueror to the dishonor of a Nation.’¹¹⁹ Thornborough, as one of the first respondents to parliament’s objections, had sought to refute both fundamental concerns: lack of precedent for a change in name except through conquest and constitutional dangers arising out of a change in name. Where others had turned to history to point out the supposedly inherent dangers of union and associated attempts to limit royal powers, Thornborough utilised history to praise James. The new king had restored a historical equilibrium, he had removed the Norman Yoke, not

¹¹⁷ Ibid, 3.

¹¹⁸ Ibid., 6.

¹¹⁹ Ibid., 8.

reinforced it. Thornborough concluded that, '(God be praised for it) the cause be not, betweene English, and Scottish in Conquest, aud captivity' but instead 'two famous kingdomes in right of bloud, vnder one mighty Monarch.'¹²⁰ He was the first of many to reject the notion that James and the Scots had conquered England or had any intention of doing so in their propositions for a closer union under a common name. Others followed in his wake.

Among the abundance of union tracts, there were others that sought to point out explicitly that the coming together of the two kingdoms was not a conquest. In *The miraculous and happie vnion of England and Scotland*, Sir William Cornwallis, an essayist who had served in Essex's Irish campaign and who had become a member of the king's privy council soon after his accession, confirmed that when we 'see the triall of reason, this Ilande is happily come within the circle of one Diadem, not by conquest, nor by weaknes, nor for protection'; rather it had come 'together by the vertue of an vnited blood, and made one mans Kingdome by the happy coniunction of the royall blood of both nations.'¹²¹ Cornwallis did not investigate theoretical possibilities as to how unions could be formed but he (implicitly) distinguished between conquest and inheritance and was unequivocal that the latter was sufficient for the Anglo-Scottish union under James. Less explicit with regards to how it was brought about but no less in his rejection of any idea of conquest was John Gordon in his sermon *Enotikon*. He related that 'God would not performe this Vnion of these two kingdomes by conquest' as that was 'a kind of

¹²⁰ John Thornborough, *The Joyefull and Blessed Reuniting the Two Mighty & Famous Kingdomes, England & Scotland into Their Ancient Name of Great Brittain*. (Oxford, 1605), 17–18.

¹²¹ William Cornwallis, *The Miraculous and Happie Union of England and Scotland* (London, 1604), 26.

violent Vnion.’ Instead ‘in the time appointed by his incomprehensible wisdome [God] hath vnited vs not by a violent, but a free and voluntary Vnion.’¹²²

An anonymous tract which has only partially survived, took a very similar approach to Thornborough’s.¹²³ The author began by discussing the various forms a union can take. He adhered, more or less, to the four familiar forms: election, marriage or succession, conquest and incorporation based on mutual consent. In cases of conquest ‘the conquerors have ever been accustomed to annexe the vanquished contreys to their empire by redacting them under subiection and servitude.’ With such power they could abolish ‘their ancient laws, magistrats and forme of government, and impos[e] to them new laws.’¹²⁴ Such a union born out of conquest represented the nightmare scenario that haunted the English at this time. The author listed past examples of conquest, including the invasion of Ireland during the reign of Henry II.¹²⁵ Much like Thornborough, he admitted that a union created under the force and duress of a conquest was hardly the most stable ‘and therefore is not fit for such free royall monarches that are not by armes constrained to a forced union, but by the succession of one lawfull prince ar moved to contract a mutuall and natural mixture of their estats, for the constitution of one true body under one head.’¹²⁶ Fortunately, the body found its head not through conquest, the author continued, but ‘by the speicall providence of God, both [crowns] ar devolved by lineall succession

¹²² John Gordon, *Enōtikon or A Sermon of the Vnion of Great Brittannie, in Antiquitie of Language, Name, Religion, and Kingdome* (London, 1604), 32.

¹²³ What is left of the tract is printed as *A treatise of the Union of England and Scotland* (the title is based on the opening lines in lieu of a title proper due to a missing title page) in Bruce Galloway and Brian P. Levack, eds., *The Jacobean Union: Six Tracts of 1604* (Edinburgh: Scottish History Society, 1985), 39–74. The page numbers of following citations refer to this edition.

¹²⁴ *A treatise of the Union of England and Scotland*, 41.

¹²⁵ This view differed from the one endorsed by Bacon, who held that Ireland was subdued already at the time of King John. Despite this disagreement over the exact time of the conquest of Ireland, they concur that it was not a Tudor conquest.

¹²⁶ *A treatise of the Union of England and Scotland*, 42.

in the person of one prince, native of the one but naturall to both.¹²⁷ The union was the result of the divine will, which had expressed itself not through conquest but peacefully, through inheritance. Although it might have come about naturally, the tract issued a warning not to rush into a legal union. Echoing the Machiavellian caution also found in Bacon, the author maintained that ‘there is nothing more dangerous to entreat [...] nor more fit to engender discontentment, cheiffly in free and royall monarchies, then the innovation of their ancient laws, customes and forme of judicatorie – or any change which may import prejudice to their privileges of estate and libertie of parlement.’¹²⁸ Should James wish to change the name of the kingdom, however, he would be on safe ground. The whole island used to be known as Britain and thus the change in name would ‘cause no innovation’, nor extinguish any existing kingdom.¹²⁹

In his *Historicall Collections* Henry Savile, Provost of Eton and former Warden of Merton College, Oxford identified three ways in which ‘two states absolute and sovereign’ could become united.¹³⁰ These three were the familiar categories of marriage, inheritance and conquest. Examples of marriage included the famous example of Castile and Leon, inheritance by bloodline was seen in France under Henri IV while cases of conquest for him included the Roman Empire and Ireland at the time of Henry II. Regarding unions through conquest specifically, Savile related that they did confer absolute power on the conqueror and could constitute a legitimate claim to sovereignty. In his view, ‘unions of states absolute by conquest is *de jure*’.¹³¹ This meant that sovereignty in ‘unions by way of [...] conquest are *de jure communi*, by the common law

¹²⁷ Ibid., 58.

¹²⁸ Ibid., 59.

¹²⁹ Ibid., 66.

¹³⁰ Henry Savile, *Historicall Collections*, 189. Included in Galloway and Levack, *The Jacobean Union*. Page numbers again refer to this edition. For biographical background, see ODNB and Galloway and Levack, ‘Introduction’, lxxiv.

¹³¹ Savile, *Historicall Collections*, 194-5.

of nations, indivisibly annexed, the right of all heirs or of any third person in that case being foreclosed'.¹³² As far as the Anglo-Scottish venture was concerned, Savile agreed that the merger was brought about peacefully by inheritance, rather than conquest.¹³³

These, and other, union tracts explored questions over an Anglo-Scottish future by turning to the past. In their examination of historical precedent, they all considered conquest as a possibility, only to dismiss it with respect to the dynastic union under England's first Stuart king. While the notion of conquest was not directly applicable to England and Scotland, and their surveys did not produce a theoretical account of conquest rights, their explorations did keep a language of conquest in the political spotlight. Historical enquiry, moreover, acquired an increasingly political dimension in the years that were to follow.

While English common lawyers perceived James's arrival as a potential threat and saw in the dynastic union a chance to develop an account of ancient constitutionalism that could neutralise the Norman Conquest, civil lawyers were unmoved by the events of 1066. But the union was an opportunity for them, too, to expound and develop their accounts of political sovereignty. Sir John Hayward, for example, questioned Coke's incipient account of the common law's antiquity, first tenets of which Coke had articulated in 1602. Hayward, a historian and civil lawyer, had been eyed with suspicion by Elizabeth for his supposed support of the earl of Essex's political aspirations. His views of royal absolutism, however, were in line with James's and endeared him to the new king. In *A Treatise of Union of the Two Realms of England and Scotland* Hayward rejected the suggestion 'that the lawes of England were neuer changed since the time of

¹³² Ibid., 193. For the role of international law thought and the place of conquest within it, see Chapter 4.

¹³³ Ibid., 192.

Brutus; not onely in the peaceable state of the realme, but not by any of the seuerall conquerors thereof'.¹³⁴ In particular, Hayward maintained, it had been the Conquest of 1066 which had bestowed an absolute right on William and which constituted the foundation for regal power to this day. Describing William's seizure of power as consensual, according to Hayward, was 'ridiculous' as the Norman had undoubtedly come 'to the Crowne by dint of sworde'.¹³⁵ Hayward derived James's power from the Conquest, which in his view established a rightful and lasting title: 'the possession of the crowne purgeth all defects, and maketh good the actes of him that is in authoritie, although he wanteth both capacitie and right.' 'The successors of an vsurper, by course and compasse of time, may prescribe a right; if they who haue receiued wrong, discontinue both pursuit and claime'.¹³⁶

Hayward also endorsed the king's union designs. In response to parliament's objection that a change in name was unprecedented without conquest he retorted that 'we shall cleerely discerne, that it is so farre from wanting example, that there is scarce any example to the contrarie, that diuers people haue perfectly and for long continuance combined together, whether by conquest, confederation, or right of blood, but it hath been vnder one common name.' Suggesting otherwise merely amounted to scaremongering, according to Hayward, as 'to men fearefull or suspicious all fancies and coniectures seeme matters of truth; and words doe easily slide into minds that are enclined to

¹³⁴ John Hayward, *A Treatise of Union of the Two Realmes of England and Scotland* (London, 1604), 11.

¹³⁵ John Hayward, *An Answer to the First Part of a Certaine Conference* (London, 1603), Sig. R3a. This argument was part of a wider attack on Robert Parsons; see also Malcolm Smuts, 'States, Monarchs and Dynastic Transitions: The Political Thought of John Hayward', in *Doubtful and Dangerous: The Question of Succession in Late Elizabethan England*, ed. Susan Doran and Paulina Kewes (Manchester: Manchester University Press, 2014), 276–92. Hayward strictly presented consent and conquest as incompatible claims to power. This commonly held dichotomy was dissolved in some pamphlets of the 1640s, see also Chapter 3, below.

¹³⁶ Hayward, *Answer*, Sig. K4a.

beleue'.¹³⁷ Hayward constituted an exception as he not only openly acknowledged the occurrence of the Conquest and its lasting effects but actively derived contemporaneous (absolutist) conclusions from his historical reasoning. In his defence of James's claim to the English throne Hayward thus went further (in his use of conquest arguments) than James himself had done.¹³⁸

Some of Hayward's fellow (civil) lawyers also expounded their political theories at this critical juncture in Anglo-Scottish history. The Scot Sir Thomas Craig, for example, concurred with Hayward on many of the central points of contention.¹³⁹ Craig, who was a member of the Scottish delegation negotiating the union with its English counterpart at Westminster, penned tracts in support of James's claim to the English throne and endorsed the king's ambitions for an Anglo-Scottish union. Craig's first tract on the succession was *De jure successionis regni Angliae, libri Duo* which was published in English one hundred years later as *The Right of Succession to the Kingdom of England, in two books* (1703). The second tract was entitled *De unione regnorum Britanniae tractatus* (1605). *De Unione* was chiefly concerned with questions surrounding the regal union and most likely sprang from Craig's insights and experiences from his time as a member of the delegation negotiating the union but it was only published in print three hundred years after being written.¹⁴⁰

¹³⁷ Hayward, *A Treatise of Union*, 39-40.

¹³⁸ For a recent overview of Hayward's political thought in the context of the union debates, see also Smuts, 'Political Thought of John Hayward'; Burgess, *British Political Thought*, 157-58, 161. For the historical dimension of Hayward's work, see D. R. Woolf, *The Idea of History in Early Stuart England* (Toronto: University of Toronto Press, 1990), 106-15; Kanemura, 'Historical Perspectives', 169-74.

¹³⁹ For the similarities between Hayward and Craig, see also Burgess, *British Political Thought*, 158 and Allen, *Sixteenth Century*, 256-63.

¹⁴⁰ See also John W. Cairns, 'Craig, Thomas (1538?-1608)', *ODNB*, for Craig's life and posthumously published works.

As part of his defence of James's right to the succession and the king's union project, Craig developed arguments against elective kingship and sought to resolve concerns over the mechanics of union. Crucially, Craig argued that English (common) law rested on feudal principles which had been established with the arrival of the Normans.¹⁴¹ He emphasised that English law was feudal in origin, 'though the English conceal the fact and profess to believe that their laws are purely of indigenous growth'.¹⁴²

With respect to the practical details of the union, Craig deemed 'conquest or succession' to be the only possibilities.¹⁴³ Since 1066, in his view, 'there has not been an English king who has not seriously aimed to unite the two kingdoms'. The 'more warlike and ambitious' rulers had tried to 'achieve it by conquest', whereas the 'the wiser, holding such a method questionable' pursued peaceful means, such as marriage or inheritance. It was the latter, which was 'before us to-day'.¹⁴⁴ Even if an English conquest had been possible, and, he conjectured, seemed preferable to some, it would not have achieved anything the union could not too: 'that what they [the English] gain from union is far in excess of what the most decisive victory could have given them'.¹⁴⁵

The question of historical and contemporaneous conquest rights was also addressed by William Fulbecke.¹⁴⁶ He noted that '[t]he law of this realme hath, as the realme it selfe, suffered chaunge by conquest'.¹⁴⁷ Fulbecke also dedicated a brief section to questions of

¹⁴¹ See, Pocock, *Ancient Constitution*, 85; Burgess, *British Political Thought*, 159–60. According to Craig, the English and Scottish legal systems were both rooted in feudalism which in turn would facilitate a potential legal union.

¹⁴² Thomas Craig, *De Unione Regnorum Britanniae Tractatus*, ed. and trans. Charles Sanford Terry (Edinburgh: Scottish History Society, 1909), 322.

¹⁴³ *Ibid.*, 241.

¹⁴⁴ *Ibid.*, 242.

¹⁴⁵ *Ibid.*, 441.

¹⁴⁶ On Fulbecke's idea of conquest, see also Gavin Loughton, 'Calvin's Case and the Origins of the Rule Governing "Conquest" in English Law', *Australian Journal of Legal History* 8, no. 2 (2004): 172.

¹⁴⁷ William Fulbecke, *The Pandectes of the Law of Nations* (London, 1602), Epistle 'To the Courteous Reader'.

conquest as part of which he sought to derive ‘the universall and absolute right, advantage, libertie, power, and prerogative of the Conquerour’ from a plethora of historical examples.¹⁴⁸

The civil lawyers, unlike English common lawyers not constrained by allegiance to the history of the common law, perhaps came closest to articulating abstract theories of conquest at the beginning of the seventeenth century.¹⁴⁹ These would often be part of deliberations on the rights of war and included in broader attempts to formulate international law. In the realm of English political debates, their ideas of conquest did not attract widespread attention or support during the first half of the seventeenth century. The debates about the remits of royal sovereignty were too deeply steeped in historical considerations. The interpretative high ground in matters of historical precedent was more important than civil law maxims or examples from international history. Only in the wake of the civil wars, with the first-hand experience of an actual armed conflict determining the sovereign, were their ideas beginning to permeate developing ideas of conquest.¹⁵⁰ In the meantime, the union debates had reinforced the focus on an as yet disparate conquest language without a precise theoretical focus.

¹⁴⁸ Ibid., 50.

¹⁴⁹ Sommerville, ‘History and Theory’; Kanemura, ‘Historical Perspectives’. See also Levack, *Civil Lawyers in England*, chap. 3.

¹⁵⁰ This is discussed in more detail in Chapter 4 and in the Conclusion & Epilogue.

V – UNION AND CONQUEST IN JAMES I'S ADDRESS TO PARLIAMENT
(MARCH 1607)

The public debates must have been frustrating and possibly also surprising to James. After he had received a friendly reception from his new subjects, day to day politics and idiosyncrasies of English parliaments soon caught up with him. In the light of these disputes, the king heeded the advice he had received from Bacon and others and acted by means of a royal proclamation, thus circumventing parliament. The proclamation that James had issued on 20 October 1604, 'concerning the Kings Majesty's Stile', included elements from, or at least showed similarities with, the draft Bacon had supplied the king with. Part of the proclamation outlined that the 'Union is not inforced by Conquest and violence [...] but naturally derived from the Right and Title of the precedent Princes of both Kingdomes.'¹⁵¹ After the heat of the debates in parliament earlier that year, James considered it necessary to publicly and expressly dispel fears that he would rule as a conqueror. With this explicit denial, James appeared to have accepted the constraints of English law, including the limits this would impose on his power. The proclamation, however, held that 'immediately upon our Succession, divers of the ancient Lawes of this Realme are Ipso facto expired.'¹⁵² This presented a contradiction in terms and must have been alarming to Edward Coke and his fellow common lawyers, who sought to protect the immemorial origin of their country's laws. While James was eager to distance himself from the image of a conqueror, he was not prepared to concede any part of his absolute prerogative. He still insisted on publicly emphasising his place which was, in his view, above the law. After James had set an end to discussions by not pursuing any further

¹⁵¹ James F. Larkin and Paul L. Hughes, eds., *Stuart Royal Proclamations*, vol. 1: Royal Proclamations of King James I, 1603–1625 (Oxford: Clarendon, 1973), 95.

¹⁵² *Ibid.*

union and, for the time being, contenting himself with a merely ceremonial change in style, there are fewer debates about the union and its nature in the following months and years.

Addressing parliament on 31 March 1607, four years after his accession, the king talked about what had been his favourite project during the years since taking the crown. In a seemingly conciliatory mood, he offered parliament a truce and promised that he was not planning the ‘abolishing of the Lawes, but onely the clearing and the sweeping off the rust of them’.¹⁵³ He confessed that he still ‘desire[d] a perfect Vnion of Lawes and persons, and such a Naturalizing as may make one body of both Kingdomes’.¹⁵⁴ If James had actually ‘grasped [...] that Englishmen found talk about conquest disturbing’, he chose to accept causing a disturbance as he reverted to a register of conquest in his reprise of the union discussion.¹⁵⁵ Acknowledging the resistance his plans had been met with in England, he now outlined that ‘for Scotland I auow such an Vnion, as if you had got it by Conquest, but such a Conquest as may be cemented by loue.’¹⁵⁶ He renewed his pledge from 1604 that the union would be one of love and like a marriage. Scotland, he told the English MPs, would be of the same status as ‘Cumberland and Northumberland.’ The English would be ‘the husband, and they [Scotland] the wife: you the conquerors, they as conquered, though not by the sword, but by the sweet and sure bond of loue.’¹⁵⁷ Addressing some of the most deep-seated English fears, James assured them that any

¹⁵³ James VI & I, *Political Writings*, 163.

¹⁵⁴ *Ibid.*, 161.

¹⁵⁵ Cromartie, *The Constitutionalist Revolution*, 154–55.

¹⁵⁶ James VI & I, *Political Writings*, 161–62. Alternatively, James referred to the union as a ‘Golden conquest, but cymented with loue’ (*Ibid.*, 178).

¹⁵⁷ *Ibid.*, 164. Brian Levack notes that this characterisation might have added to Scottish fears of being subsumed into, or effectively conquered by England: ‘it is certainly true that James would never have spoken these words to his Scottish parliament. Tactless he might have been, but he would never have compared the kingdom of the Scots to Northumberland, used the term “conquest” to describe the theoretical foundation of the union’ (Levack, *Formation*, 27–28, see also 34.)

scenario in which ‘England would [...] bee ouerwhelmed by the swarming Scots, who if in Vnion were effected, would raigne and rule all’ was mere scare mongering. To bolster his point, he rhetorically asked ‘can any man thinke that Scotland is so strong to pull you out of your houses? or doe you not thinke I know England hath more people...?’¹⁵⁸ If he could not fully convince MPs, at least they should acknowledge the practical impossibility of some of the scenarios outlined by anti-unionists.

By emphasising, as he had done four years before, that ‘Vnion is a marriage’ and, in this case, was brought about by a ‘Conquest [...] cemented by loue’, James dismantled the dichotomy erected sixty years earlier by Protector Somerset. The Duke had explained that there were two means to bring about a union, ‘Either by force & superioritie whiche is conquest, or by equalitie and loue, whiche is parentage and marryng.’¹⁵⁹ James, in his attempt to forge ‘a little World within it selfe’, had combined the two in an attempt to appease a skeptical parliament and a cautious nation.¹⁶⁰ His rhetoric at this point was more defensive than it had been just three years before. He seemed to feel a need to appease the MPs and defang some of the allegations thrown at him in the previous years.

The king’s deferential demeanour is best understood by taking into account a decade of succession and union debates, during which a vocabulary of conquest had emerged and become manifest. In a peculiar dynamic, every mention of the idea, even if seeking to deny its relevance, ensured its place on the changing map of political theory. Soon, the accession of the new king, the dynastic union and conquest were intricately connected and James’s rhetoric after the succession exacerbated the situation rather than helping to defuse it.

¹⁵⁸ James VI & I, *Political Writings*, 164–65.

¹⁵⁹ Seymour, *Exhortation to Unity*.

¹⁶⁰ James VI & I, *Political Writings*, 136.

VI – CONCLUSION

The decade covered in this chapter witnessed an increase in the use of conquest vocabularies. This chapter identified James's political thought from the 1590s, when he was still only King of Scotland, as pivotal for the emergence of a new and potent conquest language. By invoking conquest as a historical foundation and rhetorical device to defend his idea of kingship, James triggered renewed interest in the idea. In turn, the vocabulary was picked up by his critics and singled out for attack. While they arguably overemphasised its importance, James's continued characterisations of the union as a conquest validated and even exacerbated fears among the English over the king's notion of an expansive royal prerogative.

Concerns over the union were voiced in parliament and relevant historical precedent perused in search for clarity over the political consequences of the union. Parliamentary and extra-parliamentary exploits informed one another and drew on a shared language of conquest to conceptualise some of the most pressing questions and concerns. What became evident, is that beyond a simple understanding that violently acquired power was absolute, there was no ready-made, universally agreed theory of conquest, that could be used to demystify the union process and the king's resulting powers. Over the ensuing years, the meaning and implications of conquest were fiercely contested; polemical exchanges saw competing understandings being advanced. Rhetorical skirmishes thus became contests over the interpretative high ground, that is to say about the question who got to interpret conquest. The years considered here, then, present the moment when conquest became a central political idea which was being explored and tested. Not even King James's use of conquest, which was at the centre of controversy, represented anything resembling an elaborate theory. Whether James's

political writings were a blueprint for his actions or not appears immaterial as long as they were perceived to be in unison. As James VI of Scotland, James Stuart had written about the importance of conquest as a historical source for his absolute (divine right) claim to sovereignty. As James I of England, he had defended the union of the two kingdoms in the same terms. This sufficed to incense Coke and others as they began to formulate a narrative designed to constrain the powers of the king. At the very centre of this narrative, were notions of conquest, even though they had been secondary in James's political writings and merely rhetorical in his characterisations of the union. The ancient constitutionalists' indignation appears to conform to a scenario in which their actions were driven by their self-affirmed perception of reality. This also illustrates a dynamic of unintended consequences through which the concept of conquest entered the mainstream of English political thought at the turn of the century. Rather than being a deliberately chosen cornerstone of absolutist doctrine (bar the occasional exception, e.g. Hayward), it was invoked loosely and maybe even thoughtlessly. Yet, this was enough for an anti-absolutist opposition to single the idea out for criticism, making it pivotal to their quest to delimit the royal prerogative.

The next chapter will continue to explore the fate of conquest ideas, as they remained central to political debates. To begin with, it will focus on the political and legal dimensions of the naturalisation debates in 1607/8. It will then turn to anti-absolutist legal-historical narratives which used the language of conquest that the preceding debates had made available.

*‘So harsh a sound, and so odious in nature’: Conquest
Discourse in Early Stuart England*

I – CALVIN’S CASE AND ANCIENT CONSTITUTION: LANGUAGES OF
CONQUEST TAKE SHAPE

Discussions of conquest remained part of James I’s reign beyond its opening half-decade. What had begun through something of a misunderstanding around the time of his accession developed into an increasingly sophisticated theoretical debate in the years that followed. Specifically, the legal and historical dimensions of conquest were explored in parliamentary debates, a crucial court case and antiquarian research. In the process, a language of conquest was produced that had direct practical value as it was used for an anti-absolutist rhetoric with the intention to define and limit the king’s power. The evolution and uses of this conquest discourse, which was carried over from the turn of the century, will be the central concern of this chapter.

James had characterised the Anglo-Scottish union as a ‘Golden conquest [...] cymented with loue’.¹ Such statements, put alongside the claim in the *Trew Law* that conquest underpinned monarchical rule, together with his attempts to circumvent parliament in proclaiming himself King of Great Britain, had rattled some of his subjects.

¹ James VI & I, *Political Writings*, 178.

In response, Edward Coke, for example, had begun to articulate a narrative emphasising the antiquity and supremacy of the common law and tracts discussing the union had explored historical conquest precedent. These early debates surrounding conquest would fuel the proliferation of conquest discourse.

The growing significance of conquest discourse can be observed in the later stages of the union debates. A legal union between England and Scotland had been rejected, as had James's wish to introduce a joint name for his two kingdoms. In both instances, there had been concerns over the constitutional implications, specifically the new powers that might be acquired by the king. After these earlier defeats, James was embroiled in an argument over his power to naturalise Scottish subjects in England who were born after his accession to the English throne. The naturalisation, or *post-nati*, debates went through two essential stages: first political, in parliament, then legal, in the Exchequer Chamber. The discussions across both stages were more than simply an attempt to ascertain the king's right to naturalise subjects: they were proxy debates about the extent of James's prerogative and the nature of his sovereignty. Crucially, conquest became a central concept in these *post-nati* debates. The legal stage, known as Calvin's case, was particularly conducive to the development of a conceptually more rigorous language of conquest.²

This conceptual development of conquest ideas as part of Calvin's case, however, has received little to no attention in modern literature. The few existing treatments of Calvin's case have predominantly considered its place in transatlantic history, rather than its impact on domestic political discourse.³ This chapter thus aims to provide a survey of

² Calvin's case was named after the Scottish *post-natus* whose naturalisation was being negotiated at the time.

³ See, for example, Harvey Wheeler, 'Calvin's Case (1608) and the McIlwain-Schuyler Debate', *The American Historical Review* 61, no. 3 (1 April 1956): 587–597; Daniel J.

the case's impact on early modern conquest thought within the context of English constitutional debates. Specifically, conquest was one of the central concepts actors involved in Calvin's case turned to in their attempts to clarify the nature and extent of royal sovereignty. At the end of this process stood a distinctive theoretical articulation of conquest right by a common lawyer, Edward Coke, which would resurface in later debates in the context of the civil war. The naturalisation debates, then, are noteworthy for contributing to a gradual theorising of conquest ideas and their formal expression when faced with the need for conceptual rigour concomitant with a legal trial.⁴ The conceptual precedent Calvin's case established did not only develop significance a century and a half later on the other side of the Atlantic, as much of the modern literature seems to suggest, but was visible in English domestic political discourse in the decades following the conclusion of the union debates.

The second part of this chapter aims to show one way in which languages of conquest which had been developed in the context of the union debates, including Calvin's case, subsequently resonated in political debates. Most prominently, an anti-absolutist narrative, concerned with placing limits on the king's power, cast its legal-historical arguments in such a language of conquest. The primary aim of these antiquarian arguments was to contain the constitutional impact of past conquests from which absolutist conclusions for contemporaneous politics could be derived. Edward Coke,

Hulsebosch, 'The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence', *Law and History Review* 21, no. 3 (2003): 439–482.

⁴ See, Loughton, 'Calvin's Case', 161. Loughton's article focuses on tracing scattered occurrences of attempts to legally defend territorial acquisitions in the decades and centuries preceding Calvin's case and he aims to show the importance of Coke's formulations specifically for subsequent legal reports rather than emphasising the politically potent language that emerged from the naturalisation debates and their legal continuation.

whose prefaces to his *Reports* were briefly alluded to in the first chapter and who was directly involved in the proceedings of Calvin's case, was one of the most prominent advocates of this movement of ancient constitutionalism.⁵ The occurrence of conquest generally and the Norman Conquest specifically, was the natural Achilles heel of ancient constitutionalism's account of the law's antiquity and continuity: conquests were commonly considered to bestow absolute power and abrogate existing law. A focus on conquest was thus inherent to the ancient constitutionalists' approach. Specific fears of a more recent conquest, albeit a less sanguinary one, had been raised by James's accession and his plans for a dynastic union under his rule. The union debates, which had prompted historical research into relevant precedent and in the context of which practical fears over a Jacobean conquest had been articulated, therefore, formed the seedbed from which ancient constitutionalist arguments subsequently grew.⁶

Attempts to defend the supremacy of the laws and position of parliament through a partisan interpretation of England's past sprang from a desire to thwart a potential Jacobean conquest and resulting absolutism. In the wake of the first wave of succession and union debates, a language of conquest was available which could be adapted for the purposes of a doctrine of ancient constitutionalism. The second section of this chapter will briefly sketch this development. In particular, it will focus on two of the most prominent authors who used conquest language in their work as part of legal-historical narratives seeking to limit the extent of the royal prerogative: Edward Coke and John

⁵ See in particular Pocock, *Ancient Constitution*. But see also Introduction, n. 47 for the numerous works that have questioned, defended and modified ideas of ancient constitutionalism since Pocock's work.

⁶ For the specific importance of the Anglo-Scottish union for a surge of politically motivated historical scholarship, including explorations of conquest, see: Parker, 'Recasting England'; Kanemura, 'Historical Perspectives'; Burgess, 'Pocock's History of Political Thought'; Woolf, *Idea of History*, 55–64.

Selden.⁷ The aim is to highlight an increasingly widespread use of conquest language in political arguments, rather than an investigation into the details of seventeenth-century antiquarianism and historiographical research. Ancient constitutionalism, that is to say, will be viewed as an ideologically-loaded exploration and use of England's past, conducted with contemporaneous political aims in mind.

The final section of the chapter fast forwards to Charles I's reign and the Parliament of 1628. A brief survey of parliamentary debates of 1628 will demonstrate that conquest languages were persistent and had survived the transition from the first Stuart king to the second. Conquest, in other words, was not a notion that was exclusively used in connection with the person of James I. Instead, it had become a staple political concept used in discussions of sovereignty and absolutism. The brief episode from 1628 will highlight, moreover, how conquest was used as a language directly attacking the king, accusing him of effectively being a conqueror and heir of 1066, rather than suggesting limits on his power through a partisan re-interpretation of the past. This direct kind of conquest attack would later come to be used again during the civil wars which the next chapter will cover.

⁷ Coke and Selden began to explore problems of contemporary politics through historical in the wake of the Jacobean accession and subsequent union. Coke began to articulate some of his central ideas in the expectation of James's accession and was subsequently directly involved as a judge in Calvin's case. Selden also started his exploration of politically relevant English history in the wake of the union debates; Selden's *Analecton* (1607) arguably marked the beginning.

II – CALVIN’S CASE: SHARPENING CONQUEST LANGUAGE

Concepts of conquest were central to the naturalisation debates which formed one of the final stages of the union negotiations. The notion of conquest was a useful tool because the *post-nati* debates were concerned with the extent of a king’s power and the nature of his subjects’ allegiance in the wake of James’s effective acquisition of a new state. James’s accession had raised concerns over the exact remit of the king’s powers and in the discussions accompanying his accession and the union, conquest had emerged as a register in terms of which those questions of sovereignty were discussed. Conquest played a role in the naturalisation debates in at least two ways: conquest allegations against James in the wake of his accession and his early union designs partly necessitated the clarification of allegiance and royal powers that Calvin’s case was designed to achieve. The debates and trial, in turn, extended into discussions of conquest rights and were thus an early contribution towards formalising and theorising ideas of conquest. Questions concerning the naturalisation of the so-called *post-nati* were debated in parliament before subsequently being passed on to a court of law in the form of a test case. While the parliamentary debates remained focussed on the practical political dimension of the case and did not exhibit explicit references to conquest, they formed the prelude to the legal case that followed.

Questions over a legal union and the implications of a potential change in name of a new joint kingdom had occupied parliament in the immediate aftermath of James’s accession.⁸ Subsequently, MPs turned their attention to matters of naturalisation at the end of 1606. In his controversial proclamation from October 1604, James had explained that ‘the

⁸ See Chapter 1.

Naturalisation of the Subjects' was one of the key elements of the union.⁹ Naturalisation, James made clear, fell under his absolute royal prerogative. After the king had previously been frustrated in his attempts at fostering a closer union under a common name, the matter of naturalisation was the last battle in a series of skirmishes over his authorities. As the dispute wore on, it was precisely questions of prerogative and allegiance that came under intense scrutiny.

Two years after the proclamation, parliament began to debate matters of naturalisation. Nicholas Fuller, speaking against general naturalisation, remarked that 'God hath made People apt for every Country'. England, in his view, was not for the Scots. He raised concerns over English universities and London being flooded by Scots and sketched out economically catastrophic effects that would spring from naturalisation. 'The Union', he found, meant that England and Scotland were 'no more but as Two Arms of One Body'.¹⁰ Consequently, the Scots did not merit being naturalised in England, despite the same head now carrying the crowns of both kingdoms. Fuller was intent, however, to assure his audience that he was not harbouring a particular bias against Scotland. Rather, he thought it unfit to merge kingdoms in cases of descent.¹¹ 'It shall not be good', he figuratively explained 'to mingle Two Swarms of Bees under one Hive, upon

⁹ Larkin and Hughes, *Stuart Royal Proclamations*, 1: Royal Proclamations of King James I, 1603–1625:95.

¹⁰ *Commons Journals*, i, 334–5. Armitage, *The Ideological Origins*, 128, points to further fears that were articulated at the time concerning a misbalance of the republic that an influx of foreigners could cause.

¹¹ Entertaining a hypothetical scenario in which Queen Mary and King Philip of Spain had been blessed with a child, he or she would have been king or queen over England, Spain and Sicily. In such case, 'had it been fit to naturalise those Subjects?', Fuller asked rhetorically. The answer, unsurprisingly, was a resounding no (*Commons Journals*, i, 334–35).

a sudden'.¹² Fuller generally rejected naturalisation as a consequence of union in kingdoms through descent.

The response to Fuller's speech was given by Francis Bacon, speaking in favour of general naturalisation.¹³ Bacon rejected Fuller's practical concerns outright. There would be fewer Scots coming into England than predicted and England, moreover, was not 'yet peopled to the full.'¹⁴ Furthermore, naturalisation would neither inevitably lead to a union of the laws, as some had suggested, nor would Scotsmen be favoured over Englishmen under a monarch who was Scottish by birth.¹⁵ Bacon set out the theoretical aspects pertaining to the debate. While he sought to emphasise that he 'desire[d] in this case and in this place to speak rather of convenience than of law' he felt obligated to point out that Fuller's case appeared to him 'contrary to authority and experience of law.'¹⁶ Addressing these legal concerns, Bacon differentiated between four categories of persons: alien enemies, alien friends, denizens and natural subjects. To be an alien, one had to be not just born outside the domain of the current ruler but 'under the obedience of a foreign king or state in particular'.¹⁷ For Scots born after 1603 this was impossible, of course. More importantly, however, any change in status could only be brought about by the king himself (and afterwards only confirmed by parliament and the law). This early

¹² *Commons Journals*, i, 334-35. It is arguable whether this was a wholesale rejection of naturalisation in cases of union or whether the antipathy was directed against the suddenness of change. The latter is conceivable in so far as Bacon and others made a similar point (see, Chapter 1).

¹³ For the argumentative pattern and rhetorical structure of Bacon's speech, see also Peltonen, *Rhetoric, Politics and Popularity*, 152 ff.

¹⁴ Bacon, *Letters & Life*, iii, 311-12.

¹⁵ *Ibid.*, 313-5.

¹⁶ *Ibid.*, 316.

¹⁷ *Ibid.*, 318.

formulation of the king's personal authority was indicative of the thrust of Bacon's argument which linked allegiance to the body natural, rather than just politic.¹⁸

What became evident in Bacon's speech in favour of naturalisation, however, were the limits parliament faced. While parliament had gathered to debate the 'convenience' of the matter, they had encountered legal difficulties they were unfit to resolve and 'as the debate went on, it shifted more and more from the point of "conveniency" towards the point of law'.¹⁹ Before seeking a legal solution, James took to addressing the House of Commons himself. In a speech of 31 March 1607 he explained that he 'desire[d] a perfect Vnion of Lawes and persons' to which end it was imperative to institute 'such a Naturalizing as may make one body of both Kingdomes vnder mee your King.'²⁰ The future of the union depended on naturalisation and correspondingly close ties and integration; it was through the *post-nati* that 'the Vnion [will] be continued and liue euer aage after aage.'²¹

While James emphasised the importance of naturalisation, he was equivocal as to who had the final say on the matter. At one moment he seemed to concede to parliament that the question of 'Naturalizing [...] onely lieth in your hands' only to remind MPs subsequently 'that it is a special point of the Kings owne Prerogatiue, to make Alien Citizens' and 'that in any case wherein the Law is thought not to be cleare [...] then in such a question wherein no postiuue Law is resolute, *Rex est Iudex*, for he is *Lex loquens*.'²²

¹⁸ For the so-called 'king's two bodies' theory, considering the monarch's natural and metaphysical (political) bodies and its roots in medieval thought, see Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 2016), 7–23.

¹⁹ Spedding's commentary in Bacon, *Life & Letters*, iii, 325–6.

²⁰ James VI & I, *Political Writings*, 161.

²¹ *Ibid.*, 168.

²² *Ibid.*, 171.

The king alone had the power to grant citizenship and it was his decision that would count whenever the law was silent.

As if he had a premonition about the trouble these latter lines might bring him with an increasingly confident parliament seeking to assert its own powers, James added that ‘this I speake onely as knowing what belongeth to a King, although in this case I presse no further then that which may agree with your loues, and stand with the weale and conuinencie of both Nations.’²³ Against the backdrop of fears over James’s view of kingship that had arisen before his succession and the early stages of his English reign, declarations like these were grist for the mills of all those concerned that the Stuart king was behaving like a conqueror.

In the same speech James fittingly also referred to the union as one obtained by ‘such a Conquest as may be cemented by loue.’ In fact, the naturalisation and the notion of conquest were directly juxtaposed: only five lines separated them. James pointed out that naturalisation was crucial to the perfect union he desired and added that the very union in question was one obtained ‘by Conquest.’²⁴ It may come as no surprise, then, that the following legal debates seeking to clarify the extent of the king’s prerogative (and the place of questions over naturalisation within it) were framed with reference to the notion of conquest. As the records from the trials for Calvin’s case will reveal, conquest was developing into a theoretical device employed to explain and explore the limits and nature of (royal) authority. James’s direct involvement in these matters played a central role. The debates in the House had not made any reference to conquest prior to his interjection. Yet, the king re-introduced the notion into the debates (seemingly without need). As Markku Peltonen noted, James’s ‘peculiar and very different style of politics

²³ Ibid.

²⁴ Ibid., 161–62.

compared to that of his predecessor and his role in parliamentary debates' go towards explaining the dynamic between him and parliament. The new king was 'exceptionally loquacious' and through the style and argumentative nature of his speeches, he 'invited his subjects to respond in kind and to argue *utramque partem*', ultimately providing a forum within MPs came to respond.²⁵

After his speech, the king ordered a three-week recess for parliament, leaving the MPs to consider his views. This break, however, did not bring about a change in the MPs' views.²⁶ Effectively, questions of naturalisation had become a vehicle to negotiate overarching matters of allegiance and the magnitude of the royal prerogative. In what followed, conquest became a pivotal heuristic device used to discern the powers of monarchs who had newly acquired the crown of a (given) kingdom.

In the face of this stalemate on the political front, the king deemed it expedient to resolve the matter in a court of law. It was this transfer of debate from parliament to the law courts that prompted a change in the dynamics of the discussion of the prerogative and allegiance. The legal turn proved instrumental to the refinement of political vocabularies as it meant that ideas and concepts required more exact definitions. The concept of conquest was employed to explain underlying power dynamics at stake. In a case that sought to clarify the king's rights in a newly acquired kingdom, exploring consequences of a possible conquest, among other alternatives, was a logical choice, particularly so against the backdrop of the use of conquest in previous union debates. The historical philosophy witnessed in these union debates, such as the distinction between three or four categories of political union was also evident in the ensuing naturalisation debates and even the legal trial. During the latter, however, these distinctions of historical

²⁵ Peltonen, *Rhetoric, Politics and Popularity*, 148.

²⁶ The *Commons Journal* for 28 April to 1 May records that naturalisation was discussed again but no decision reached.

precedent underwent conceptual refinement amid the need for clear definitions for the attempt to formalise conditions of political obligation and allegiance. The move from political polemic to a court of law, then, aided in the evolution from mere rhetorical arguments to legalised concepts.²⁷

In order to solve the problem, a test case was set up. The details of the case and ensuing arguments were exceedingly complex and merit some more detailed elaboration.²⁸ An English estate was acquired in the name of a Scottish child born after James's accession. The estate was then appropriated by an Englishman and a suit brought against the latter by the child's guardians before the King's Bench. The goal was to determine whether the defendant could argue that the plaintiff was unfit to plead, based on the fact that he was an alien. Simultaneously, a second case relating to writs pertaining to the estate was brought before the Chancery, 'to ensure that no legal avenue was left open to doubt.' Both cases were combined and together they were brought into the Exchequer Chamber, 'a traditional court of reference from King's Bench, Chancery and Common Pleas, for decision on difficult points of law.'²⁹ The function of this court was not only to try particularly difficult cases but also to set a binding precedent for the future, giving it a status comparable to a Supreme Court, 'eminently suitable for the king's needs, and apt for a case of political and constitutional importance.'³⁰ The fallout from the trial, however, did not merely establish legal precedent. Given the importance, stage and protagonists involved, the language and concepts used in the speakers' and judges' reasoning and

²⁷ See, Loughton, 'Calvin's Case', 163.

²⁸ For the best summary of the entire case, see Galloway, *The Union*, 148–60. Kantorowicz considered Calvin's case 'far less simple' than other medieval and early modern legal cases exploring the details of the allegiance due to rulers (*The King's Two Bodies*, 14.)

²⁹ Galloway, *The Union*, 148.

³⁰ *Ibid.*, 148–49.

verdicts were almost guaranteed to set a precedent in their own right.³¹ This was particularly so at a time when legal thought was already of central significance to wider political debate.³² As the case was effectively as much concerned with the nature of the king's power and his subjects' allegiance as it was with the question of naturalisation, the vocabulary and concepts employed had the potential to significantly influence future political debates regarding prerogative and allegiance.

Reliable material surviving from the trial is limited. The few complete sources available today comprise Bacon's speech and Lord Chancellor Ellesmere's verdict.³³ Sir Edward Coke's summary in the seventh instalment of his *Reports* remains one of the most comprehensive accounts. These sources will thus also be at the centre of the following analysis.

The resolution of the case itself hinged on the status accorded to the *post-natus*. The defendants' case rested on the claim that the plaintiff, Robert Calvin, was 'an alien born [...] at Edinburgh within his kingdom of Scotland aforesaid, and within the allegiance of the said lord the King, of the said kingdom of Scotland, and out of the allegiance of the said lord the King of his kingdom of England'.³⁴ The implications this carried were two-fold: it meant that the case was about the legal status of the *post-nati*, and this status, moreover, would be defined qua their allegiance and its relation to the body politic or natural.³⁵

³¹ Edward Coke considered the case 'the shortest in syllables, and the longest in substance; the least for value [...] but the weightiest for the consequent, both for the present, and for all posterity.' (Coke, 7 *Rep.*, 6 [3b]).

³² See, Cromartie, *The Constitutionalist Revolution*, 180 ff. for the growth of the legal profession and its importance for public intellectual life at the beginning of the seventeenth century.

³³ On Bacon's role in the case, see also Jardine and Stewart, *Hostage to Fortune*, 293 ff.; Zagorin, *Francis Bacon*, 188 ff.

³⁴ Coke, 7 *Rep.*, 2 [1b].

³⁵ See also William Ferguson, *Scotland's Relations with England: A Survey to 1707* (Edinburgh: Saltire Society, 1994), 104 ff.; W. J. Jones, *Politics and the Bench: The*

The defence case was noticeably structured around arguments familiar from the earlier parliamentary debates.³⁶ Importantly, it relied on the categorisation of unions that had become visible in the contributions immediately following James's accession of the English throne (see Chapter 1). The defence's argument followed a dichotomy of peaceful unions between sovereign states on the one hand and unions by conquest on the other. Conquest-based unions for example occurred in cases of a subjugation of foreign (non-sovereign) countries. Only such mergers by conquest led to absolute unions including laws and political institutions, whereas those between sovereign states were merely united in the natural body of the monarch.³⁷

The overall argument was framed as a question of allegiance: the status of the *post-nati* would depend on the nature of their allegiance to the king.³⁸ In the defence's reasoning, subjects only owed obedience to the body politic, not the natural body of the monarch. Through this distinction the defence sought to decouple allegiance to the ruler from his body natural. Since Scotland expressly had not submitted to England, the present union fell into the category of one between sovereign states. This was in line with previous union tracts which emphatically argued that James was not ruling as a conqueror. In turn, this meant that there was only a union in the body natural of the king. Since the two countries remained formally independent politically and legally (there was no legal union, nor a union of parliaments at this point), Scots owed no automatic allegiance to

Judges and the Origins of the English Civil War (London: George Allen and Unwin, 1971), 49 ff.; Galloway, *The Union*, 148 ff.; James S. Hart, *The Rule of Law, 1603-1660: Crowns, Courts and Judges* (Harlow: Pearson Longman, 2003), 79 ff. For the rhetorical element of the parliamentary debates about naturalisation, see Peltonen, *Rhetoric, Politics and Popularity*, 152 ff. Peltonen, *Rhetoric, Politics and Popularity*, pp. 152ff.

³⁶ Some of the defence case has to be inferred from the other remaining speeches and their references to and rejections of elements of the defence's case.

³⁷ This reflects for example Savile's argument in the *Historicall Collections*; see also Galloway, *The Union*, 150 ff.

³⁸ See, *Ibid.*, 148.

(James as) the King of England and thus did not have to be naturalised south of the border. Naturalisation would be logical in cases of conquest since those unions brought the conquered lands under English law, making them part of the English body politic (to which allegiance was due).³⁹ This argument, moreover, carried deeper implications. If allegiance was due only to the body politic, not the body natural, then the body natural must automatically be inferior to the body politic. This would imply that the king was not only subordinate to king-in-parliament but also to the common law.⁴⁰ The stakes of the case had risen; it was no longer just about the question whether Scots would be naturalised in England. Instead, the king's position vis-à-vis the law and the extent of the royal prerogative was under review.

In his response, Francis Bacon tailored his speech to the points raised by the defence. His aim was not only to prove the viability of naturalisation but at the same time to defend the sovereignty of the person (and office) of the king. Meeting his opposition on their ground, he also had recourse to conquest as a conceptual tool to unpack the intricacies of sovereignty and royal supremacy. His approach was multi-faceted: he rejected factual assertions, mostly by providing historical precedent to disprove the defence's case and, crucially he offered an alternative interpretation of the question of allegiance, especially in relation to conquest. In parliament he had felt compelled to re-emphasise that he was 'not willing to enter into an argument of law, but to hold [him] self to point of convenience'.⁴¹ Now, in the Exchequer Chamber, it was the opposite. Bacon could break free of those constraints and deploy a full legal register, but noted with respect to some

³⁹ For the most exhaustive discussion of the so-called 'king's two bodies theory', see Kantorowicz, *The King's Two Bodies*, 7–23.

⁴⁰ See, Galloway, *The Union*, 151.

⁴¹ Bacon, *Letters & Life*, iii, 318.

of the practical objections which he was contesting that ‘these reasons being politic, and not legal, and we are not now in parliament, but before a judgement-seat, I will not meddle with them.’⁴²

As had already become evident in his utterances in parliament, Bacon rejected practical concerns regarding an overflowing country or supposedly unfair distribution of favours. Instead, he focussed on the theoretical dimension of the decision and the precedent it would set. He maintained that he had an ‘answer which avoids and confounds all their objections in law.’⁴³ To refute the defence, Bacon effectively had to show that allegiance was due to James I from his Scottish-born subjects also in his role as King of England making them equal in this respect to the king’s new subjects south of the border, thus opening the route to naturalisation. Therefore, Bacon had to argue either that allegiance was due to the body natural or claim that the union was a conquest, imposing an absolute union with a united body politic. Bacon was thus faced with the conceptually difficult position of seeking to justify wide-ranging royal powers, not unlike those found in conquerors, without allowing the king’s critics to actually compare him to a conqueror.

To do so, Bacon argued that allegiance did, above all, derive from the body natural of the ruler. He sought to ‘overthrow that distinction of descent and conquest’ as far as the resulting allegiance was concerned.⁴⁴ He attacked the defence case which had maintained that ‘countries won by conquest become subject to the laws of England [...] and that law doth draw allegiance, and allegiance naturalisation’.⁴⁵ This was precisely the defence’s contention that conquered states would be subsumed into the body politic and

⁴² Thomas Howell, ed., *A Complete Collection of State Trials*, vol. 2 (London, 1816), col. 590.

⁴³ Ibid.

⁴⁴ Ibid., 591. This distinction, as seen above, had been made repeatedly in union tracts following James’s accession and had also been a pivotal feature of the defence’s case against naturalisation.

⁴⁵ Ibid.

would thus instantly be under English law. Bacon rejected both the suggestion that allegiance and naturalisation were necessarily linked and further found that ‘the minor proposition is false: that is, that the laws of England are not superinduced upon any country by conquest’.⁴⁶ Instead, he explained, ‘the old laws remain until the king by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be utterly repugnant, and differing from the laws of England’.⁴⁷ The power of a ruler by conquest, in other words, was absolute. They alone could decree whether old law was retained or new laws introduced. The act of conquest itself did not lead to the *ipso facto* expiry of all existing law in the conquered territory.

The crucial step in Bacon’s arguments was to equate unions by descent with those achieved through conquest, or to ‘overthrow that distinction’. The defence had upheld a distinction between unions by conquest and by descent, ostensibly following previous union tracts that had suggested the same distinction. Only in instances of conquest, the defence held, was a complete union achieved, which merged the body politic of the conquering state with that of the vanquished. Political obedience and allegiance, the defence had argued, was due to the body politic – ergo naturalisation was the automatic consequence in cases of conquest, since there was only one body politic in which the two previously separate states were united. If a union rested on descent, however, the defence had suggested, the only union between the states was in the person of the ruler, in his or her body natural. Accordingly, allegiance was owed to separate bodies politic in separate nations and subjects of the one were not automatically naturalised in the other. In his attempt to dissolve those differences, Bacon objected that:

⁴⁶ Ibid.

⁴⁷ Ibid., 591-2. One such example, according to Bacon was the case of Ireland. The Irish had become ‘subject to the laws of England not *ipso jure* upon conquest but grew by a charter of King John.’ (592)

‘it will sound strangely in the hearing of foreign nations, that the law of England should *ipso facto*, naturalise subjects of conquests, and should not naturalise subjects which grow unto the king by descent; that is, that it should confer the benefit and privilege of naturalisation upon such as cannot at the first but bear hatred and rancour to the state of England, and have had their hands in the blood of the subjects of England, and should deny the like benefit to those that are conjoined with them by a more amiable mean; and that the law of England should confer naturalisation upon slaves and vassals [...] and should deny it to freemen: I say, it will be marvelled at abroad, of what complexion the laws of England be made, that breedeth such differences. But there is little danger of such scandals; for this is a difference that the law of England never knew.’⁴⁸

Bacon had previously been careful to avoid the implication that James ruled as a conqueror. Yet, Bacon wanted to achieve the set of powers for James that the defence had portrayed as exclusively reserved for conquerors. Instead of accepting this pernicious label, however, Bacon’s strategy rested on the attempt to dissolve the conceptual and practical differences between descent and conquest the defence had sought to uphold. He argued that the effects of descent and conquest were identical as far as the allegiance of (new) subjects was concerned. Bacon maintained ‘that this difference [between unions of sovereign states and unions of conquest] is but a device full of weakness and ignorance; and that there is one and the same reason of naturalising subjects by descent, and subjects by conquest: and that is the union in the person of the king’.⁴⁹ By tying allegiance to the body natural, rather than the body politic, Bacon argued that a union of two states under one ruler was sufficient for naturalising the ruler’s subjects also in his newly acquired domains. If allegiance was owed to the body natural of a ruler who brought about a union, this could unite states through descent, rather than conquest.

⁴⁸ Ibid., 592-3. He further explained that a submission through conquest was equivalent in its outcome to others, such as patrimony as it ‘is upon the same root, which the saving or gift as it were of life and being; for the conqueror hath power over life and death of his captives (580). This suggests that he had a clear notion of conquest in mind, including its political and constitutional repercussions.

⁴⁹ Ibid., 594.

The trial drew to a close. The verdict among the fourteen judges was not unanimous but they sided overwhelmingly with the plaintiff (i.e. the Crown), supporting the naturalisation of the *post-nati* by twelve votes to two.⁵⁰ Conquest arguments had (perhaps surprisingly) been part of the naturalisation debates throughout, including the ensuing legal case. They were used as a means to clarify the conditions of political allegiance in situations where states had been acquired by a new ruler. The importance of conquest arguments was accordingly also reflected in the verdicts of the judges. Of the few extant accounts detailing their reasoning, the most relevant one is Sir Edward Coke's. Coke sided with the majority of his fellow judges, supporting the king's right to naturalise the Scottish *post-nati*.⁵¹ Prior to the trial, the Commons had argued that the common law was above the king in this matter of naturalisation. Coke, himself a champion of the common law, granted the king (qua his body natural) the right to naturalise subjects whilst attempting to defend the common law at the same time.⁵²

In his verdict, Coke also addressed the consequences of conquest and specifically conquerors' rights. He offered a detailed analysis and made several distinctions for a variety of conquest scenarios. Conquerors' rights, to begin with, depended on the nature of the vanquished people. Coke maintained that 'there is a diversity between a conquest of a kingdom of a Christian King, and the conquest of a kingdom of an Infidel'.⁵³ When subjugating a Christian kingdom, a conqueror 'may at his pleasure alter and change the

⁵⁰ Galloway, *The Union*, 149 f. alludes to rumours that the vote was rigged on behalf of the Crown but points out that protagonists at the time rejected accusations of foul play.

⁵¹ Galloway characterised both, Coke and Ellesmere's verdict as 'unexceptional' in the context of the case (*The Union*, 155.)

⁵² Wheeler described Coke as one who 'straddled both sides', that is to say he sided with the king on the issue but not at the cost of principally undermining the common law ('The McIlwain-Schuyler Debate', 591.)

⁵³ Coke, 7 *Rep.*, 29-30 [17b].

Laws of that kingdom, but untill he doth make an alteration of those Laws, the ancient Laws of that kingdom remain.’ When conquering pagans, ‘there *ipso facto* the Laws of the Infidel are abrogated [...] untill certain Laws be established amongst them, the King by himself [...] shall judge them and their causes according to natural equity’.⁵⁴ Coke acknowledged the absolute power of successful conquerors, including their ability to alter laws. Christians were granted a temporary moratorium during which their old laws were retained, whereas non-believers were immediately brought under the conqueror’s laws.

Beyond this distinction, Coke further specified the remits of conquerors in later generations and compared conquerors and successors by descent. He argued that ‘if a king have a kingdom by title of descent, there, seeing by the Laws of that kingdom he doth inherit the kingdom, he cannot change those Laws of himself, without consent of Parliament’. Similarly, ‘if a king hath a Christian kingdom by conquest, as King Henry the second had Ireland, after King John had given unto them, being under his obedience and subjection, the Laws of England for the government of that country, no succeeding king could alter the same without Parliament’.⁵⁵ Coke accepted the absolute power of conquerors generally. Crucially, however, he qualified and limited the authority of rulers by descent irrespective of how their authority was originally established. Descendants of dynasties with peaceful origins and inheritors of conquests alike required parliamentary consent to alter the law.

In the particular case of the *post-nati*, Coke supported the view that Scots could be naturalised in England qua their political allegiance to the (body natural of the) king. He

⁵⁴ Coke, 7 *Rep.*, 30 [17b]. The choice of words is interesting. James had specifically announced that upon his accession English laws had ‘*ipso facto* expired’ (see above, Chapter 1, Section V); Coke may thus be responding to James directly.

⁵⁵ Coke, 7 *Rep.*, 29-30 [17b]. It is also worth noting that Coke here claimed Ireland had been conquered by King John, that is to say it was not a Tudor or Elizabethan conquest. On the role of the Irish example in Calvin’s case, see also Loughton, ‘Calvin’s Case’, 164–65.

was careful, however, to draw a line so that the royal prerogative permitted naturalisation without extending to all-embracing and unrestricted legislative powers. A first king and initial conqueror, Coke conceded, had a practically unlimited ability to alter the laws of their new kingdom (in pagan countries this would happen immediately whereas there might be a transition period in Christian ones). When a monarch attained power through descent or even as a distant successor to a former conqueror, they had to legislate in consultation with parliament. Their prerogative in these cases was limited by parliament and the law. By establishing consent as a natural counterpart to conquest, Coke thus provided the theoretical underpinnings for the anti-absolutist faction's quest. Consent, on this account, could contain the impact of an act of conquest. The idea of consent as a natural antidote to conquest, would become particularly important again in the early 1640s, as Chapter 3 will show.

Perhaps Bacon's speeches were not the only motivation for Coke's clarifications. Lord Ellesmere's verdict in the case may have played a role, too.⁵⁶ The latter, like Coke, supported the *post-nati*'s naturalisation. In his reasoning, however, he differed from Coke and their other colleagues. Ellesmere derived the monarch's powers and privileges exclusively from the king's body natural and rejected the notion of the king's two bodies. He explained that

‘[t]his Bond of Allegiance whereof wee dispute [...] bindeth the soule and conscience of euery subiect seuerally and respectiue, to be faithfull and obedient to the King: and as a Soule or Conscience cannot bee framed by Policie; so Faith and Allegiance cannot bee framed by Policie, nor put into a politike bodie. An oath must be sworne by a naturall bodie; homage and

⁵⁶ For Ellesmere's view of Calvin's case and his political theory, see also Louis A. Knafla, *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere* (Cambridge: Cambridge University Press, 1977), 65–76; Galloway, *The Union*, 155. As noted above, the less immediate target for Coke's ideas was most likely James's idea of kingship and prerogative. Coke's conquest rule would also invalidate the king's invocations of conquest as a historical pillar of his absolute rule.

fealtie must be done by a naturall bodie, a politike body cannot doe it.’⁵⁷

Knafla further notes that he appears to have ‘dated the English constitution from the Norman Conquest, when King William I had introduced feudal tenures into England’.⁵⁸ Ellesmere’s view might go towards explaining Coke’s clarification of conquest right, explaining that the rights of all sovereigns by descent, including descendants of conquerors had restricted powers. Coke perceived it as necessary to offer a riposte, so that the current situation and James’s accession could under no circumstances be construed as granting the Stuart king the rights of a conqueror.

A court case, superficially designed to resolve the question of *post-nati* naturalisation, thus ended up providing a forum within which the nature of (royal) sovereignty and possible means for its acquisition were discussed. Conquest was considered as one of those means as the protagonists used the idea to clarify the theoretical underpinnings of political sovereignty. Coke noted that the case was ‘the shortest in syllables, and the longest in substance; the least for value [...] but the weightiest for the consequent, both for the present, and for all posterity.’⁵⁹ Its importance was not limited to mere legal precedent. It was equally significant for the development of the concept and language of conquest on the political stage.

Whereas the union tracts preceding Calvin’s case were usually no more than surveys of historical precedent, the legal proceedings produced a distinctive articulation

⁵⁷ Thomas Egerton, *The Speech of the Lord Chancellor of England, in the Eschequer Chamber, Touching the Post-Nati* (London, 1609), 101. The tract is also included in: Knafla, *Law and Politics in Jacobean England*, 202–53.

⁵⁸ Knafla, *Law and Politics in Jacobean England*, 70. Knafla observes that this represented ‘a view of sovereignty that differed from many of his contemporaries’ (Ibid.). This would have included Edward Coke.

⁵⁹ Coke, *7 Rep.*, 6 [3b].

of a (legal) analytical category of conquest which could be employed to ascertain the extent and conditions of political allegiance depending on the origins of sovereignty. Whereas in the union tracts history had been rigidly prescriptive, it was now being used to flesh out and underscore universal political concepts. At the end of Calvin's case, then, a systematic body of conquest theory had been articulated in a way that made it relevant to contemporary debates.⁶⁰ Coke's formulation sought to curb possible long-term consequences of past conquests, blunting their sharp absolutism over time. It thus permitted the acknowledgement of conquest, whilst limiting its present-day impact. Placing this theoretical limit on the extent of sovereignty gained through conquest did not replace the historical or antiquarian pursuits of the ancient constitutionalists. Rather, the ancient constitution rhetoric developed in conjunction with the Cokean conquest rule.

III – COKE & SELDEN: EXAMPLES OF LEGAL-HISTORICAL CONQUEST LANGUAGE

A spectre of conquest was haunting the young dynastic union. The union debates, and Calvin's case specifically, had created a language of conquest which was subsequently picked up by authors forging an anti-absolutist narrative. This anti-absolutist narrative, in the shape of ancient constitutionalism, logically needed to oppose conquest in order to sustain its central argument regarding the continuity of the common law. The familiar and central pillars of early modern ancient constitutionalism were briefly sketched out in the introduction to this thesis as well as in the opening section of the present chapter. The

⁶⁰ See also Loughton, 'Calvin's Case', 162; Galloway, *The Union*, 157. Both briefly allude to the importance of Calvin's Case for the development of theories of conquest.

main aim of this section is to survey the use of legal-historical conquest arguments, as put forth in the wake of James's accession and the subsequent union debates. To this end, this section will specifically look at the works of Edward Coke and John Selden whose use of conquest arguments will serve as examples of a strategy which employed such conquest language in the service of an anti-absolutist narrative, seeking to deny the impact of the Conquest of 1066 and thus by implication limit James's power.

As the previous chapter highlighted, James's articulation of kingship and his view of the historical foundations of the English monarchy were reason for alarm among some of his new English subjects. Especially in his *Trew Law* the king had defended his supra-legal position as the logical product of history. He held that in 1066 'the Bastard of *Normandie* came into England [and] made himself king.' He 'gaue the Law, and tooke none, changed the Lawes' and imposed Norman government institutions upon the English.⁶¹ James seemed to be portraying himself as an absolute ruler who could trace his claim back to the Conqueror. Subsequently, James had made little visible effort to dispel fears over such interpretations. Instead, he had issued an extra-parliamentary proclamation in which he styled himself 'King of Great Britain' and explained that 'immediately upon our Succession, divers of the ancient Lawes of this Realme are Ipso facto expired'.⁶² It is in this context, and as a response to the king's choice of register, that Coke's anti-absolutist arguments need to be understood. Coke was initially concerned with dismissing the possibility that James Stuart could portray himself as the distant heir to William I, inheriting his absolute rights. To this end, he cast doubt on the

⁶¹ James VI & I, *Political Writings*, 74. In a speech in parliament of 1610, James re-affirmed that 'in the first originall of Kings, whereof some had their beginning by Conquest [...] Kings set downe their minds by Lawes, which are properly made by the King onely' (Ibid., 183).

⁶² Larkin and Hughes, *Stuart Royal Proclamations*, 1: Royal Proclamations of King James I, 1603–1625:95.

occurrence of the Conquest. He then admitted that it may have taken place but at the same time denied that it had any tangible lasting political impact.

Already at the turn of the century, Coke had begun to publish his *Reports* on the most important common law cases. These, in turn, were prefixed by prefaces locating them in their political and legal context. The first set, published in 1600, gave a first indication of the direction Coke was taking. The wisdom of history, he explained, would guide the way into the future.⁶³ A (re-) interpretation of the past could provide the requisite historical precedent to cement present-day common law superiority.

Coke gradually developed this approach further in the subsequent prefaces, as he steadily added layers to his idea of an ancient constitution.⁶⁴ A key part of this storyline was the continuity of the common law. Hence, he explained in the Second *Report*: ‘If the ancient laws of this noble island had not excelled all others, it could not be but some of the several conquerors and governors thereof, that is to say, the Romans, Saxons, Danes or Normans [...] would [...] have altered or changed the same.’⁶⁵ The second and third instalments of the *Reports* were published in 1602. With James’s accession to the English throne imminent, ‘both continuity and immemoriality were suddenly in urgent need of elaboration.’⁶⁶ It was in the preface to the Third *Report* that Coke truly began to develop an account of the ancient origin and unbroken continuity of English law. Arguably, the imminent succession of James VI of Scotland to the English throne, and Coke’s premonition over possible implications, can account for the added urgency Coke’s exposition of common law antiquity and continuity acquired.⁶⁷ The catchphrase, which

⁶³ See, Coke, 1 *Rep.*, preface, xxx.

⁶⁴ On the notions of continuity and antiquity as developed by Coke throughout the prefaces of the *Reports*, see also Garnett, ‘The Ould Fields’.

⁶⁵ Coke, 2 *Rep.*, preface, vii-viii.

⁶⁶ Garnett, ‘The Ould Fields’, 250.

⁶⁷ See, *Ibid.*

came to encapsulate Coke's view like little else, was that 'the common law of England had been time out of mind of man before the conquest, and was not altered or changed by the Conqueror'.⁶⁸ This formula provided both, antiquity and continuity.

Coke's musings on the laws' antiquity and continuity, and thus supremacy, defined the basic idea of the anti-absolutist ancient constitution narrative. The logical conclusion of any argument that found law to precede monarchy, was the absence of a single supra-legal sovereign in English history and, by implication, in contemporary England. Just as James had rejected Buchanan and Parsons and their notions of popular sovereignty, he was now incensed by the early antiquarian attempts to restrict the remit of his power through legal-historical arguments. The king was alarmed and ready to push back. During a speech in Star Chamber he warned: 'incroach not vpon the Prerogatiue of the Crowne.' He recommended to his audience to 'blunt the sharpe edge and vain popular humour of some Lawyers at the Barre, that thinke they are not eloquent and bold spirited enough, except they meddle with the Kings Prerogatiue.'⁶⁹ James saw himself as besieged by an army of common lawyers seeking to place the authority of the common law alongside or even above his royal prerogative. It is tempting to imagine the king's frustrations, and even that he may have empathised with Shakespeare's Dick the Butcher's suggestion to simply 'kill all the lawyers.'⁷⁰

The king's warning and request, however, undoubtedly aimed first and foremost at Sir Edward, fell on deaf ears. Instead, the Chief Justice and his followers set out to cultivate their narrative of their country's history that placed the common law above the king. Their efforts logically culminated in the appeal to an ancient constitution, one of

⁶⁸ Coke, 3 *Rep.*, preface, vi-vii.

⁶⁹ James VI & I, *Political Writings*, 212–13.

⁷⁰ William Shakespeare, *Henry VI, Part II*, act 4, scene 2, line 72 in: William Shakespeare, *The Arden Shakespeare Complete Works*, ed. G. R. Proudfoot, Ann Thompson, and David Scott Kastan, Rev. ed. (London: Arden Shakespeare, 2011), 520.

immemorial origin and characterised by continuity, as Coke had begun to elaborate in his *Reports*' prefaces.

While Coke's argument may have been unorthodox at the outset, he was subsequently joined by fellow common lawyers and antiquaries. One of them was John Selden, whose use of conquest ideas shall here be briefly considered.⁷¹ By some considered to be 'the most prolific writer on the topic of history and law', Selden's works throughout the 1610s 'continuously used Norman England [...] to address constitutional issues'.⁷² Selden was versed in both history and common law: he was an antiquary who also continued to work as a barrister in London.⁷³ Whereas Coke was predominantly interested in legal arguments, supplemented with historical insight, Selden's approach was the opposite. To him, initially at least, the historical scholarship was what mattered and legal conclusions appeared to be the offshoot. These historical pursuits he engaged in, moreover, had 'recently become dangerous, because [they were] deemed politically relevant'.⁷⁴ This political relevance was the intersection between Coke and Selden's work. While Selden advanced a more thorough historical perspective, he shared Coke's political aims (of protecting an ancient constitution). What thus connected Coke and

⁷¹ Selden's scholarship was as wide-ranging as his output was prolific. At this point, a mere cursory glance at his developing view of ancient constitutionalism and the idea of conquest will be possible. For more detailed treatments of Selden's view of the Conquest and ancient constitutionalism, see George Garnett, *John Selden and the Norman Conquest: Selden Society Lecture Delivered in the Old Hall of Lincoln's Inn, July 5th, 2010* (London: Selden Society, 2013); Paul Christianson, *Discourse on History, Law, and Governance in the Public Career of John Selden, 1610-1635* (Toronto: University of Toronto Press, 1996), chap. 1; Paul Christianson, 'Young John Selden and the Ancient Constitution, ca. 1610-18', *Proceedings of the American Philosophical Society* 128, no. 4 (1984): 271–315 which is an earlier version of the chapter in the book of 1996.

⁷² Kanemura, 'Historical Perspectives', 167.

⁷³ See, Paul Christianson, 'Selden, John (1584-1654)', *ODNB*. For a recent and exhaustive biography of John Selden, see also G. J. Toomer, *John Selden: A Life in Scholarship*, 2 vols (Oxford: Oxford University Press, 2009).

⁷⁴ Garnett, *John Selden and the Norman Conquest*, 4.

Selden's pursuits was their use of conquest in their political writings.⁷⁵ While Selden's view arguably diverged from Coke's when he began his exploration of English (legal) history, his ideas gradually approached a Cokean outlook, as will be seen.

In one of his earliest historical works, the *Analecton*, Selden had referred to England as a 'Norman Colony' testifying to his view of the Norman Conquest as the source of absolute authority.⁷⁶ In *Jani Anglorum* (1610), Selden was equivocal with respect to 1066 and its effects. Concerning William I's reign, Selden wrote that '[a]fter his Inauguration he liberally bestowed the Lands and Estates of the English upon his fellow-soldiers; that little which remained he put under the yoke of a perpetual servitude.'⁷⁷ While Selden here seemed to endorse views of the Conquest as the origin of the feudal system in England, he later shied back from taking the view through to its ultimate conclusion. The Conqueror, he explained instead, had retained some English laws, as was common for rulers in their new lands. While admitting that any such gesture would have been 'more [...] for shew than use', it still provided a straw to clutch in an attempt to preserve continuity.⁷⁸ In his preface to the work Selden even swung entirely the other way. He

⁷⁵ Cromartie notes that '[t]he focus of their anxieties was the year 1066', as Coke had to locate the common law's roots in the development of custom whilst Selden was seeking to place the law above the monarchy. (*Sir Matthew Hale, 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995), 32.)

⁷⁶ Quoted in Cromartie, *Sir Matthew Hale*, 35. For the evolution from unqualified admission of the Conquest to accounts qualifying its effects in Selden's work, see also 34-36.

⁷⁷ John Selden, *The Reverse or Back-Face of the English Janus* (London, 1682), 47-48.

⁷⁸ This hints at Selden's renaissance learning and knowledge of the canonical texts of the time. The trope of the empty gesture displayed by a conqueror when ruling his new people is taken from Machiavelli's *Discourses*: 'He who desires or proposes to change the form of government in a state and wishes it to be acceptable and to be able to maintain it to everyone's satisfaction, must needs retain at least the shadow of its ancient customs, so that institutions may not appear to its people to have been changed, though in point of fact the new institutions may be radically different from the old ones. This he must do because men in general are as much affected by what a thing appears to be as by what it is, indeed they are frequently influenced more by appearances than by

maintained that despite the undoubted Norman invasion and its influence upon the laws, 'to refer the original of our English Laws to that Conquest (as some make bold to do) is a huge mistake'.⁷⁹

Throughout Selden's subsequent works, a similar tendency can be witnessed. He grew more confident in his endeavour to root English liberties in the country's past but still displayed occasional ambivalence. In his 'Illustrations' for Michael Drayton's *Poly-Olbion* (1612), Selden referred to the 'Conqueror's adoption by the Confessor, Harold's oath to him, and such institutions of his lawful title.' And yet he maintained that 'It is plaine that [William's] will and imperious affection dispos'd all things as a Conqueror.' After all, he had brought about a 'change of the Lawes' and 'disinherited' the English.⁸⁰

Subsequently, Selden turned to the archetypal ancient constitutionalist: Sir John Fortescue. Selden supplied a preface and notes for a bilingual edition of Fortescue's *De Laudibus* published in 1616.⁸¹ At this point Selden arguably began to endorse a view which can be characterised as more 'Cokean'.⁸² He began advocating a position of gradual change, that is to say avoiding abrupt alterations: successive rulers 'made a mixture of the British customes with their own'.⁸³ Not denying external influences upon British legal tradition, he compared the nation's laws to Theseus' oft-repaired ship that

the reality.' (Machiavelli, *The Discourses*, 175. [I.25]) See also Christianson, *The Public Career of John Selden*, 27, who calls it 'a rare Machiavellian moment' for Selden. See also, Pocock, *Ancient Constitution*, 286.

⁷⁹ Selden, *English Janus*, 'Preface'.

⁸⁰ Michael Drayton, *Poly-Olbion* (London, 1612), 268. On this passage, see also Kanemura, 'Historical Perspectives', 168.

⁸¹ John Fortescue, *De Laudibus Legum Angliæ* (London, 1616). John Selden's 'Notes upon Fortescue' followed the bilingual text. Subsequently cited as Selden, 'Notes upon Fortescue', page number.

⁸² Garnett, *John Selden and the Norman Conquest*, 13.

⁸³ Selden, 'Notes upon Fortescue', 7.

may not literally contain any of its original planks but was still the same ship in essence.⁸⁴ This view or metaphor perhaps epitomised the Seldenian view of the common law and the place of conquest within it.⁸⁵ It permitted disruptions and gradual changes whilst at the same time seeking to preserve continuity despite these very changes. In a way, it was the historical equivalent to Coke's conquest rule he formulated in the context of Calvin's case. Coke had conceded that a conqueror had a right to change laws upon victory. This right, however, was not to be mistaken for an automatic expiry of existing law upon a conqueror's arrival (at least in Christian states). Subsequent generations, moreover, required parliamentary consent in order to adapt law. In a similar fashion, Selden's image of Theseus's Ship representing the common law, was designed to accommodate external influence and change whilst maintaining the essence and identity of the laws themselves.

In the 'Review' of his *History of Tithes* (1618), Selden subsequently discussed the role of 'the Norman Conquest (as it is vulgarly called).' The disapproving tone is indicative of a shifting perspective as he approximated a more traditional Cokean position. The *History of the Tithes* marked a significant step towards claims for continuity.⁸⁶ Selden found that 'neither were the Laws formerly made, abolished by that Conquest, although by Law of Warre regularly all Rights and Laws of the place conquered, be wholly subiect to the Conquerors will.' In the case of England under the Normans, however, 'not only the Conquerors will was not declared, that the former Laws

⁸⁴ Ibid., 19. 'This symbiotic fit between social and political patterns produced a firm but flexible constitution, one continually adjusting to new circumstances by dropping old and adding new laws' (Christianson, 'Selden and the Ancient Constitution', 277.)

⁸⁵ Theseus's Ship is an ancient paradox of identity, seeking to explore whether something undergoing a process of change can retain its original identity even after all original components have been replaced.

⁸⁶ For the trouble the publication caused for Selden, see G. J. Toomer, 'Selden's "Historie of Tithes": Genesis, Publication, Aftermath', *Huntington Library Quarterly* 65, no. 3/4 (2002): esp. 360 ff. See also G. J. Toomer, *John Selden: A Life in Scholarship*, vol. 1 (Oxford: Oxford University Press, 2009), 257 ff.; Christianson, *The Public Career of John Selden*, 63 ff.

should be abrogated but also the ancient and former Laws of the Kingdome were confirmed by him.’⁸⁷ Selden further seemed to argue that there was something to be said on behalf of a rightful and legitimate claim for William’s place upon the throne: ‘Indeed, it was not to be reputed a Conquest, or an Acquisition by right of Warre (which might haue destroyed the former Laws) so much as a violent recouering of the Kingdome out of the hands of Rebels, which withstood the Dukes pretence of a lawfull Title.’⁸⁸ Selden summarised: the Norman ‘got the Crown as if he had bin a lawfull Successor to the Confessor, and not a vniuersall Conqueror.’⁸⁹ Selden was thus content to conclude that

‘these things proue enough that [...] William seised the Crown of England, not as conquerd, but by pretence of gift or adoption, aided and confirmd by neernesse of bloud; and so the Saxon Laws formerly in force could not but continue and such of them as are now abrogated, were not at all abrogated by his Conquest but either by the Parlements or Ordinances of his time and of his successors, or else by non-vsage or contrarie custom.’⁹⁰

Selden gravitated towards a Cokean position, emphasising the continuity of legal and government institutions around the Conquest.⁹¹ Along the way he had also deviated from Coke’s approach. While Coke had ‘used historical evidence [...] simply to add decorative, baroque flourishes to a legal argument’, his younger disciple ventured further into the historical evidence itself. Thus, for Selden the liberty of which he saw evidence in the accounts of the past, ‘was not the vestige of a subverted antiquity.’ Instead, he derived value from the ancient sources as they ‘offered the surest defence against

⁸⁷ John Selden, *The Historie of Tithes*, 1618, 482. Selden included a marginal note which identified Calvin’s case as his point of reference.

⁸⁸ Ibid.

⁸⁹ Ibid., 483. See also, Garnett, *John Selden and the Norman Conquest*, 30–31; Janelle R. Greenberg, *The Radical Face of the Ancient Constitution: St Edward’s ‘Laws’ in Early Modern Political Thought* (Cambridge: Cambridge University Press, 2001), 149–51.

⁹⁰ Selden, *Historie of Tithes*, 484.

⁹¹ Garnett observes that ‘it seems that Selden’s view of the law of the land law was becoming more Cokean the more thoroughly he delved into it’ (*John Selden and the Norman Conquest*, 32)

incipient Stuart tyranny.’⁹² Despite some methodological differences, Coke and Selden were pulling in the same direction. If King James was one of the ‘twin dragons of theoretical absolutism’ Coke and Selden were the knights in shining armour who strode onto the scene to rescue the ancient constitution from captivity.⁹³ Combining Coke’s legal acumen with which he had sought to offset potential conquest claims in Calvin’s case, with Selden’s greater and more accurate historical learning allowed for the formation of a stable, yet flexible, ancient constitution narrative that would be able to contain claims from conquest and defend the supremacy of the laws in their wake.

The common law view that enabled the ancient constitution to become an appealing account of England’s past was, of course, not without alternatives and critics.⁹⁴ A prominent contemporary critic, to name but one example, was Robert Parsons.⁹⁵ He criticised Coke’s characterisation of England’s laws as ‘the birthright, and the most ancient and best inheritance that the subjects of this realm have’ maintaining that this was ‘strange hyperbole, axaggeration, or ouerlashing.’⁹⁶ As such, it tended to suggest ‘a false, and preiudicial conclusion’ regarding the true quality of English municipal laws.⁹⁷ Parsons held that English law could be traced back to the events of 1066. Even if the laws were judged to be ‘excellent’, they undeniably resulted from the Conquest and no

⁹² Ibid., 47.

⁹³ Pocock referred to King James VI & I and Sir Robert Filmer as ‘twin dragons of theoretical absolutism’ (*Ancient Constitution*, 149.)

⁹⁴ The idea of a pervasive common law mind, as advanced by Pocock, has been challenged; see for example Skinner, *Visions*, 2002, vol. 3, chap. 8; Sommerville, ‘History and Theory’.

⁹⁵ On the role of Parsons and his critique of Coke’s view, see also Cromartie, *The Constitutionalist Revolution*, 209; Garnett, ‘The Ould Fields’, 269–77. Garnett notes the ‘catalytic effect’ Parsons’s critique had on Coke’s subsequent argumentation (269 n. 170).

⁹⁶ Coke, *5 Rep.*, preface, v; Robert Parsons, *An Answer to the Fifth Part of Reportes Lately Set Forth by Syr Edward Cooke Knight*, 1606, 12.

⁹⁷ Ibid..

‘indifferent, and disappassionat man, [can] but remember that, which all our writers do commonly note, that [the laws] were brought in principally by Conquest, and a Conquerour, and such a one as intended to bridle the English by that meanes, and to bring them vnder by those lawes.’⁹⁸ The laws were severely deficient in Parsons’s view, however, and so deliberately obscure that it ‘may easily be beleeeued, that they were made indeed by a Conquerour.’⁹⁹ Polemically, he complained that Coke’s deference meant that he was asking the English ‘to be still, yea and to kisse the rodde, wherwith then we were beaten.’¹⁰⁰

Irrespective of such criticism, of which Parsons was but an example, the ancient constitutionalist view exhibited above was central to the development of conquest discourses in the seventeenth century. Despite the negligible number of actual defences of royal sovereignty deploying conquest arguments, the common law adherents fortified their position. They could not have known that about twenty years after the *History of the Tithes* of 1618 there would in fact be an increased use of royalist conquest arguments and parliamentary responses that systematically drew on consent to counteract them.

IV – CHARLES I AND A LANGUAGE OF CONQUEST IN THE PARLIAMENT OF 1628

A language of conquest which had been developed in response to James’s accession and the union remained in circulation after the end of the first Stuart king’s reign. Conquest arguments, in other words, had become a universal currency of political argument which

⁹⁸ Ibid., 13.

⁹⁹ Ibid., 15.

¹⁰⁰ Ibid., 13.

arguably even gained in value when Charles I took the reins from his father. This brief section is designed to demonstrate that the conquest language traced over this chapter and the last, was not a personal matter exclusive to James I, but had established itself firmly and independently of a specific monarch in English political thought. Moreover, this excursion into the late 1620s, will show how conquest was used in a more confrontational manner.

While the relationship between James and his parliaments had not always been harmonious, things took a turn for the worse almost instantly upon the accession of the second Stuart king: Charles I, James's son. The new king pursued an extravagant foreign policy and required funds beyond the Crown's means to sustain his war efforts abroad.¹⁰¹ In collecting these funds, the new king repeatedly chose to circumvent parliament and opted for a forced 'loan.' Those who refused faced imprisonment on royal orders. In the wake of this confrontation/escalation, anti-royalist factions intensified their conquest rhetoric as they attacked the king's rule. In particular, conquest language became a vehicle to transport accusations of tyranny. As part of an ancient constitution rhetoric, the idea of the conqueror had been eschewed in an attempt to limit the monarchy's power. Amid more openly recognisable absolutist tendencies and increasing tension between parliament and the (new) king, it was now also used as a derogatory term for the monarch, indirectly stigmatising him as a tyrant. It is this rhetorical escalation, found in the parliamentary debates of 1628, that this section seeks to briefly sketch out.

The new king, like his father about two decades before, had to postpone the gathering of his first Parliament because of a severe outbreak of the plague in London. The long wait the MPs had to endure after they had already been called to London, finding

¹⁰¹ Mark A. Kishlansky, *A Monarchy Transformed: Britain, 1603-1714* (London: Penguin, 1997), chap. 5.

themselves amidst a climate ripe with a constant fear that death may be lurking behind the next corner, provided fertile ground for disquiet, rumours and speculation about the king's imminent marriage. Many suspected, not without reason, that marriage negotiations between Charles and the French court were still ongoing. Speculation about the religious implications of the impending marriage further increased the anticipation of the first sitting of the assembly.

While the French side expected leniency towards Catholics in England, the king's parliament awaited a further religious crack-down. Through their insistence, the French 'inexorably push[ed] Charles [...] into a quarrel with Parliament' even before the first session.¹⁰² In conjunction with the virulent outbreak of the plague and the expectation of war, tension was tangible before the king and members of parliament had encountered each other for the first time. It was in the Parliament of 1626, however, that financial matters began to play a key role as the king required further funds to keep up his war endeavours. Charles requested a benevolence, later rebranded as a loan, to ensure the provision of sufficient financial means. During a 'preaching campaign' designed to defend the forced loan, the need for parliamentary consent was denied by Roger Maynwaring and Robert Sibthorpe.¹⁰³ Sibthorpe pre-emptively explained that tributes were traditionally due to the monarch of a people, and this practice was not 'onely the Custome of Conquerers, in forraine Kingdomes, which they invaded; but even of Native

¹⁰² Conrad Russell, *Parliaments and English Politics, 1621-1629* (Oxford: Clarendon Press, 1979), 209.

¹⁰³ Burgess, *British Political Thought*, 174. On Maynwaring and Sibthorpe, see also Sommerville, *Royalists and Patriots*, 119–24. For the key arguments, see Roger Maynwaring, *Religion and Allegiance: In Two Sermons Preached before the Kings Maiestie*. (London, 1627); Robert Sibthorpe, *Apostolike Obedience, a Sermon* (London, 1627).

peacefull Kings, to their naturall Subjects, in those Dominions whereto they were elected, or wherein they succeeded.’¹⁰⁴

Amid growing hostility, Charles’s attempts to collect the loan were neither well received, nor blessed with success. Faced with staunch opposition from five members of the gentry in particular, he consequently resolved the conflict by imprisoning them, relying on the king’s special command, which in his view formed part of king’s prerogative. The ensuing legal case, known as Darnel’s case or, more popularly, The Five Knights’ case, proved to be the first ‘serious flashpoint’ on the way to a gradual breakdown between the king and his legislative assembly.¹⁰⁵ The imprisoned refusers of the forced loan sued for *Habeas Corpus*. That is to say they sued under the common law against wrongful imprisonment as they had been incarcerated without due process.

The king’s lawyers, however, responded by referring to the ‘king’s special command’ as the reasons for their imprisonment. That is to say, the king claimed to have done nothing but exercised his royal prerogative. ‘What was meant to become a test case on the Loan thus became [...] a test case on the King’s prerogative power’ to arbitrary imprisonment.¹⁰⁶ The case thus ended up ‘challenging the fundamental prerogative of the king’ and effectively ‘turned legal issues into political ones.’¹⁰⁷ Conquest became part of this political dimension as pamphleteers and discussants sought to explore the question of the means by which sovereignty was acquired impacted on the resulting political power. Put differently: could conquest lead to a greater remit of powers and would the

¹⁰⁴ Sibthorpe, *Apostolike Obedience*, 17.

¹⁰⁵ Russell, *Parliaments and English Politics*, 334.

¹⁰⁶ Ibid., 335.

¹⁰⁷ Mark Kishlansky, ‘Tyranny Denied: Charles I, Attorney General Heath, and the Five Knights’ Case’, *The Historical Journal* 42, no. 1 (1999): 62. In this respect, the political-constitutional importance was not unlike that of Calvin’s case, ca. 20 years before.

Crown be willing to invoke conquest arguments to this end? These links between conquest right and the royal prerogative particularly came to the fore in the 1628 debates.

In the meantime, Charles I's behaviour in the 'Five Knights' Case' was stretching the royal prerogative more than his subjects could bear. MPs in the 'Apology' of 1604 had already warned that the royal prerogative ought not to be extended further. The consequences became visible in the reaction exemplified by Coke and Selden. Now, in 1627, the Earl of Clare's complaint in a letter to the Earl of Somerset was symptomatic of the mood under the new king: 'New rules of policy and government' he wrote, were favouring 'not law but will, modernly termed prerogative; not for the good of the subject, as Fortescue and other ancient sages of our law affirm, but for the commodity of the Prince.' 'Prerogative', he told another correspondent, 'is the darling of our time.'¹⁰⁸

During James's reign, opposition to the king's policies saw his opponents strengthen their soft powers; skirmishes remained rhetorical, such as the embellishment of the ancient constitution. Rather than being called a 'conqueror' outright, James was warned that he would be seen like one, should he act in certain ways. Under the new regime, the gloves came off.¹⁰⁹

Underlying concrete fears of a king interfering with ancient liberties now rose to the surface and prompted concrete political action. In the Parliament of 1628, heated rhetoric reached new heights. Sir Edward Phelips, for example, admitted that he 'more fear[ed] the violation of public rights at home than a foreign enemy.'¹¹⁰ Charles's

¹⁰⁸ Quoted in David Cressy, *Charles I and the People of England* (Oxford: Oxford University Press, 2015), 100.

¹⁰⁹ Ahead of the session in 1628 one member gloomily declared: 'This is the crisis of parliaments. We shall know by this if parliaments live or die.' (Benjamin Rudyard (MP), quoted in Michael B. Young, 'Charles I and the Erosion of Trust, 1625-1628', *Albion* 22, no. 2 (1990): 228.)

¹¹⁰ Robert C. Johnson, ed., *Commons Debates, 1628*, vol. 2 (New Haven: Yale University Press, 1977), 61.

appropriation of an ever increasing array of powers under the pretence of their necessity for war left his subjects desperately reasserting their liberties; after all, these were a birth right and the foundation of their national identity. The enemy, maybe even in the form of a conqueror, in other words, was to be found within, rather than in the shape of an external foreign aggressor.

During the 1628 session, parliamentarians launched their formal attempt to constrain their monarch's powers. Extraordinary taxation and arbitrary imprisonment had been the proverbial straw breaking the camel's back. While the resulting Petition of Right avoided using a language of conquest, it remained a potent weapon during the debates surrounding it.¹¹¹ Against this backdrop of lingering fears over the future of parliaments, a constantly increasing prerogative under a king willing and able to exploit it to the last, and a growing conviction that parliament needed to assert itself vis-à-vis the king, MP Robert Mason launched an indirect but yet powerful attack on the Charles, when giving his opinion on a proposed amendment to the phrasing of the Petition of Right. The Lords had suggested to present the petition to the king 'with a due regard to leave intire that Sovereign Power wherewith your Majesty is intrusted, for the Protection, Safety and Happiness of your People.' Mason objected to the idea of leaving the monarch's power 'entire.' He found that the word was 'very considerable'. It was akin to the power of 'a Conqueror' who was 'bound by no Law, but hath power *dare Leges*, his Will is a Law'. Historically, 'William the Conqueror, at first, to make his way to the Crown of England the more easie, and the possession of it more sure, claimed it by Title; but afterward when there were no powerful pretenders to the Crown, the title of Conquest (to introduce that absolute Power of a Conqueror) was claimed.' With a view to the presently looming threat

¹¹¹ Michael Young noted how the language of communications, such as petitions, at the time could be deceptive, when 'the deferential language of parliamentary discourse masked an actual decline in deference' ('Erosion of Trust', 222).

of Charles I collecting forced loans and imprisoning those refusing, Mason pointed out that ‘the Statutes [...] mentioned in our Petition [of Right]’ were designed to ‘restrain[...] that absolute Power of Conqueror.’ If, however, they added the word ‘entire’ to the bill, they would ‘leave the Sovereign Power intire, we do take away that restraint which is the vertue and strength of those Statutes, and set at liberty the claim of the Sovereign Power of a Conqueror, which is to be limited and restrained by no Laws.’¹¹² In other words, Mason warned that a single word that was added to or omitted from the Petition of Right would equate Charles’s power, historically, to those of William the Conqueror.

This brief episode demonstrates that conquest language had found its place in early modern English political discourse and was not limited to the ruler during whose time it had entered the political stage.

V – CONCLUSION

In the wake of James’s accession and the union debates, the legal proceedings of Calvin’s case further established a recognisable register of conquest. Subsequent ancient constitutionalist arguments picked up these available conquest languages and put them to use in their anti-absolutist narratives. The parliamentary, legal and historical debates during the two decades following James I’s accession to the English throne showed how the language of conquest developed into a key register for attempts to debate and limit sovereignty and the royal prerogative. Coke’s arguably atypical articulation of a conquest rule in which consent acquired the task of containing the consequences of conquests,

¹¹² Mason in the Parliament of 1628 (23 May), in John Rushworth, ed., *Historical Collections ... Beginning the Sixteenth Year of King James, Anno 1618. And Ending the Fifth Year of King Charls, Anno 1629*. (London, 1659), 570–71.

proved to be particularly important in later debates. Naturalisation debates and ancient constitutionalism alike highlighted that conquest was mostly seen as an idea worth avoiding; there were few to no attempts to actively defend power and sovereignty through appeals to conquest. Arguably, Sir Walter Raleigh's observation from almost forty years before still held true: 'this name of Conquest which ever imports Violence, and Misery is of so harsh a sound, and so odious in nature.'¹¹³ In other words, it was best to avoid being perceived as a conqueror. The anti-absolutist opposition, however, remained focused on pre-emptively rejecting conquest arguments.

This extended 'moment' spanning roughly the two decades from 1607 onwards, and the language of conquest which had developed out of it, had thus helped Englishmen define the parameters of power and entrench the place of parliament and the position of the laws. And it had provided for them a language that continued to serve them with a vocabulary with which to describe and interact with their rulers' sovereignty and power; a language that would equip them with the necessary tools to do the same during the tumultuous decades that lay ahead.

The next chapter will take the story forward to the 1640s and the political debates on the eve of the English civil wars, after the intervening decade of the 1630s had not produced a sustained conquest discourse. Specifically, it will trace continued parliamentary attempts to constrain royal power and an emerging royalist defence which began to invoke conquest arguments in support of their notion of absolutism. With the occurrence of an actual war on English soil, ideas of conquest had a fertile ground that allowed them to move away from predominantly historical arguments about the precedent of 1066 and towards universalist accounts developed from first principles by

¹¹³ Walter Raleigh, *An Introduction to a Breviary of the History of England* (London, 1693), 69.

drawing on the practical first-hand experience of what might be considered an internal conquest. Against the backdrop of persistent anti-absolutist conquest rhetoric from the moment of the Stuart accession this swing, which saw royalists embrace and rely on conquest arguments, might almost feel like a self-fulfilling prophecy.

*‘The Country conquers it self’: Conquest Discourse and
the English Civil War*

I – THE FORMATION OF ROYALIST CONQUEST THEORIES, C. 1642/43

Conquest arguments had entered the stage of British political thought in the context of James Stuart’s accession to the English throne. Over the four decades that followed, the predominant use of conquest language had been designed to define, limit or attack monarchical rule and the royal prerogative. Conquest had not been used systematically to defend the king’s sovereignty. With the outbreak of the English civil war in 1642, this would all change. This emergence of royalist conquest thought, moreover, is one that has been largely overlooked in the modern literature thus far. Therefore, this chapter will examine the development of conquest ideas during the years of the English civil war with an emphasis on the formation of royalist conquest theories in the pamphlet wars of 1642/3.

Beginning in 1642, the first years of the English civil war witnessed a thus far unparalleled outpouring of political pamphlets.¹ A considerable number of them featured discussions of conquest. The increased frequency of conquest discussions probably

¹ Burgess, *British Political Thought*, 187; Joad Raymond, *Pamphlets and Pamphleteering in Early Modern Britain* (Cambridge: Cambridge University Press, 2003), chap. 5.

sprang from the fact that the English were suddenly confronted with a scenario that could reasonably be conceived of in terms of conquest, as a violent resolution of the conflict between parliament and the Crown became increasingly likely. Describing and understanding the violent events of this period required new concepts and a new language. It may therefore not come as a complete surprise that the decade of the 1640s witnessed a significant development of Anglophone conquest discourse. Indeed, Charles I himself at one point declared that his primary goal was ‘Procuring Peace to these kingdoms by Treaty [until ...] altogether impossible.’ Yet, he seemed aware that a treaty would not necessarily be reached and admitted that ‘it seems to him very clear that there is no way for a final ending of such distractions as afflict this kingdom, but either by treaty or conquest; the latter of which his majesty hopes none will have the impudence or impiety to wish for.’²

The majority of modern scholarly accounts appear to presuppose the existence of a nuanced (Anglophone) theory of conquest prior to the civil war, which could simply be rolled out and deployed on the rhetorical battlefield as combatants saw fit. At the same time, these accounts place seventeenth-century conquest thought almost exclusively in the domain of the parliamentarians. John Pocock, for example, has pointed to the paucity of royalist discussion suggesting that ‘Conquest struck few roots in royalist thought’ during the first half of the seventeenth century.³ This imbalance has left historians unsure

² William Cobbett, ed., *The Parliamentary History of England, from the Earliest Period to the Year 1803*, vol. 3 (London, 1806), cols 426–8.

³ Pocock, *Ancient Constitution*, 149. He locates ‘first signs of a royalist reaction’ to the ancient constitution narrative during the Interregnum (148). Only between 1680 and 1688, Pocock argued, can we detect a significant increase in royalist conquest language be observed (54n).

against whom or what parliamentarians were in fact arguing.⁴ Quentin Skinner noted that the need to produce a coherent account of the past turned the ‘rights of conquerors into the pivotal issue throughout the ensuing debate’ of the civil war.⁵ This debate, according to Skinner’s view, mainly took place among parliamentary thinkers. Employing conquest language would have been inopportune for royalists, on this account: to base monarchy on a right of conquest could open doors for future usurpers of power, ‘thereby leaving Charles I no case against Oliver Cromwell.’⁶ Skinner thus came to conclude that ‘the defence of absolutism by means of conquest theory was attempted only very occasionally in the latter part of the seventeenth century’; in other words, it had no place in the landscape of political thought before 1660.⁷ Similarly, Peter Laslett has observed that ‘the English populist writers of the seventeenth century [...] all wrote as if the defenders of kingship and absolutism had argued from conquest, but in fact they did not.’⁸

In fact, a number of royalist supporters can be located in the early 1640s who used and developed conquest arguments in their defence of the Crown and this was even

⁴ Pocock has acknowledged some traces of royalist conquest thought that he had not included in the 1957 edition in the ‘Retrospect’ of the edition some thirty years later. He retained the main thrust of his argument, however, that there was a general lack of royalist conquest thought prior to the Restoration; see *Ancient Constitution*, 280 ff.

⁵ Skinner, *Visions*, 3: 239.

⁶ Ibid., 240. In *Visions*, vol. 3, the chapter in question is an update of the original 1965 article ‘History and Ideology’. Skinner concedes that since the initial publication, it had been shown that there had in fact been royalist arguments from conquest (240n). Specifically, he names John Bramhall and John Maxwell as examples of a royalist doctrine of conquest. In Section II of this chapter more names will be added to this list, showing that a royalist argument from conquest was even more common.

⁷ Skinner, *Visions*, 3: 256.

⁸ Locke, *Two Treatises*, 385n. For exceptions to the widespread view that conquest arguments were altogether absent from royalist rhetoric, see John M. Wallace, *Destiny His Choice: The Loyalty of Andrew Marvell* (Cambridge: Cambridge University Press, 1968), 22–29; John Sanderson, *‘But the People’s Creatures’: The Philosophical Basis of the English Civil War* (Manchester: Manchester University Press, 1989), 32–33, 61–65; Martin Dzelzainis, ‘The Ideological Context of John Milton’s “History of Britain”’ (University of Cambridge, Faculty of English [Unpublished PhD Thesis], 1984), chap. 3.

observed and remarked upon by seventeenth-century commentators. In 1648 a polemical pamphlet, published under the pseudonym of Verity Victor, for example, claimed that ‘The *King* and his *Court Sycophants* did always say and affirm, that as he was a successor to the Conqueror, he held his *Crown* by the sword.’⁹ Around the same time, in the opening section of his *Historicall Discourse of the Uniformity of the Government of England* (1647), Nathaniel Bacon related that a ‘debate concerning the right of an English King to Arbitrary rule over English Subjects as Successor to the Norman Conquerour, (so called) first occasioned this Discourse.’¹⁰ Samuel Rutherford’s *Rex Lex* (1644) maintained that ‘all title by conquest’ was ‘unlawfull’. Disapprovingly, therefore, he noted that ‘Grotius [... and] Dr. Ferne [...] teach that conquest is a lawfull title to a Crowne.’¹¹ While Grotius’s arguments would come to be of particular importance during the Engagement Controversy in the wake of the regicide (see Chapter 4), Henry Ferne’s writings had a considerable impact in the war of words of the early 1640s, as this chapter will show. Ferne might thus be one of the ‘court sycophants’ from Verity Victor’s account. Alongside the established Whig view of the Conquest, then, a distinct royalist strand of conquest thought materialised in the 1640s.¹²

⁹ Verity Victor, *The Royal Project: Or A Clear Discovery of His Majesties Design in the Present Treaty*. (London, 1648).

¹⁰ Nathaniel Bacon, *An Historicall Discourse of the Uniformity of the Government of England* (London, 1647), ‘To Consideration’.

¹¹ Samuel Rutherford, *Lex, Rex: The Law and the Prince. A Dispute for the Just Prerogative of King and People*. (London, 1644), 69–70. A marginal note aptly summarised Rutherford’s disparaging view of royalist conquest arguments: ‘Royalists who hold conquests a just title to the Crowne, teach manifest treason against our Sovereign King Charles and his Heires.’

¹² Christopher Hill identifies four early modern interpretations of the Norman Conquest: Whigs, Levellers, Diggers and Royalists. The Whig view is substantially addressed in the previous chapter; the present chapter will focus on royalist and Leveller views. Hill did not detail the royalist view beyond the assertion that it derived absolutist conclusions from 1066. At any rate, Hill suggested that the royalist view disappeared with the civil war; see, Hill, *Puritanism and Revolution*, 79 ff.

This chapter, therefore, takes its cue from these reflexions as it sets out to investigate the role that conquest acquired and the ways in which it evolved during the political debates surrounding the civil war. The chapter will focus specifically on the political pamphlets and tracts of this time, with a view to identifying the versatile role that a language of conquest came to play. It is thus looking to question the historiographical orthodoxy of an exclusively parliamentary notion of conquest and offer an alternative reading of the debates. To this end, a host of royalist as well as parliamentary writers will be considered. Crucially, both sides developed their respective notions of conquest in response to arguments made by the opposing side. Reconstructing their exchanges as they played out across pamphlets will highlight this development. Alongside Henry Ferne the royalist group will include Dudley Digges, John Bramhall, Michael Hudson, John Maxwell and Griffith Williams. Some of their most vocal parliamentary counterparts addressing questions of conquest who will be examined in this chapter include William Bridge, Jeremiah Burroughs, Charles Herle, Philip Hunton and, perhaps most prominently, Henry Parker.

Throughout, the chapter's central argument is that there was in fact no thoroughly theorised Anglophone concept of conquest available prior to the 1640s and that ideas of conquest, once entering the debates of the civil war, were used to varying ends and by parliamentarians and royalists alike.¹³

The evidence from the scholarly literature and the first two chapters of this thesis indeed suggests that defences of royalism on a basis of conquest arguments were somewhat rare before approximately 1640. While James I and some of his supporters infrequently invoked conquest ideas, there was no overall theory of conquest right. Yet,

¹³ The vital distinction here is one between a basic understanding that military conquest granted absolute power and more nuanced accounts which sought to explain the precise mechanism and moment of how and when conquest could generate political obligation.

Coke and others polemically exploited the idea of conquerors and conquest in advancing their own agenda of an ancient constitution. In order to emphasise elements of continuity and antiquity as the safeguards of liberties, they needed the Norman Conquest as the origin of a spectre of absolutism they were fighting against. Thus, ancient constitutionalists had arguably constructed a straw man view of royalist conquest ideas which they subsequently proceeded to attack, as the previous two chapters showed. While the ancient constitutionalists' case was largely an attack on a straw figure during the first three decades of the seventeenth century, the conquest straw man came alive in the 1640s. The hollow shape that Coke and others had conjured up as a target for their attacks against absolute rule turned into flesh and blood as royalists warmed to the idea of defending their cause with reference to conquest in the wake of articulations of models of popular sovereignty. As such, the present chapter is placed at the pivotal point of the development this dissertation seeks to portray and investigate. That is to say, it captures the moment in which conquest talk turned into conquest language, conquest thought turned into conquest theory.

The argument opens with a discussion of the debates arising from the *Nineteen Propositions* and the King's *Answer* in 1642. Throughout these debates, parliamentarians and royalists had to continuously refine their respective arguments in response to challenges from their opposition. Following their exchange of arguments will show how conquest was one of the ideas undergoing regular adaptations and refinement. It is argued that the polemical pamphlets in which these disputes took place created a discourse that encouraged later versions of a political-theoretical elaboration of conquest theory. Crucially, this reveals how conquest ideas were appropriated by rival sides of the political divide. While royalists increasingly argued that conquest could in fact provide a

legitimate basis for power, parliamentarians were eager to deny the same. Where historical precedent had been the weapon of choice to refute arguments from conquest, new avenues of political theory were now being explored. As part of newfound stratagems to contain conquest-based authority, the notion that legitimate conquest required *consent* found widespread application.¹⁴ It was in response to this context that Thomas Hobbes developed some of his early ideas of conquest. The chapter will thus also show how Hobbes's treatment of conquest in the first half of the 1640s laid the conceptual foundations for his ideas' later, and more famous, articulation in *Leviathan*.

The last part of the chapter examines the role of conquest in Leveller thought towards the end of the 1640s. Specifically, it will focus on Leveller anti-Normanism. By this is meant the Levellers' rejection of the monarchy which in their view rested on the corrupt foundations of 1066. The Norman Conquest, the interruption and discontinuity it had caused, were emphasised in the Levellers' account. While their political aims were not entirely dissimilar from those of the ancient constitutionalists', their approach to achieving them was radically different. Emphasising the lasting effect of the Norman arrival, rather than trying to conceal its impact, the Levellers' path to true liberty lay in the abolition of the monarchy altogether. What was needed, in their account, was a new conquest precipitating the demise of the system established by the one six hundred years previously. Their focus on 1066, in conjunction with the universal rights they sought to entrench, made their ideas into an example of a transition from historical conquest

¹⁴ Quentin Skinner's essay on the combination of conquest and consent in Hobbes's thought problematised the seemingly contradictory juxtaposition in Hobbes's *Leviathan*. This chapter suggests that one of the keys to understanding Hobbes's amalgamation of the two ideas in his post-civil war writing lies in this earlier period (of the early 1640s) of his work and thought. Quentin Skinner, 'Conquest and Consent: Hobbes and the Engagement Controversy', in *The Interregnum: The Quest for Settlement, 1646-1660*, ed. G. E. Aylmer (London: Macmillan, 1972), 79–98. An updated version of the piece is included in Skinner, *Visions*, 3: 287–307.

arguments to more political-theoretical understandings of conquest as the origin of political obligation. Moreover, in the Levellers' vocabulary the medieval Conquest became synonymous with oppression and tyranny, which could only be overthrown by a conquest of their own in order to (re-)gain freedom.

II – IDEAS OF CONQUEST IN THE *OBSERVATOR* DEBATES

Ideas of conquest entered mainstream royalist political thought during the pamphlet wars which were precipitated by parliament's *Nineteen Propositions* and the king's response in 1642. In June, parliament presented King Charles with their *Nineteen Propositions*. This set of demands encapsulated parliament's desire to acquire more constitutional powers.¹⁵ Parliament effectively claimed for itself 'an executive role' and thus 'prompted a further round of escalation in the constitutional argument.'¹⁶ This 'further round' saw the number of published pamphlets peak: 1642 marked the highest number of publications in a single year of the period up until 1660.¹⁷

A significant interjection in this war of words was undoubtedly the king's *Answer to the XIX Propositions*. This pivotal document, written by the king's political advisers on his behalf, 'inadvertently opened one of the great political and constitutional debates of the English Civil War.'¹⁸ Effectively, the king's *Answer* accepted that the country was

¹⁵ *The Humble Petition and Advice of Both Houses of Parliament with XIX Propositions* (London, 1642).

¹⁶ Michael J. Braddick, *God's Fury, England's Fire: A New History of the English Civil Wars* (London: Allen Lane, 2008), 192.

¹⁷ See, Burgess, *British Political Thought*, 187. See also Raymond, *Pamphlets and Pamphleteering*, chap. 5.

¹⁸ Michael Mendle, *Dangerous Positions: Mixed Government, the Estates of the Realm, and the Making of the Answer to the XIX Propositions* (Alabama: University of Alabama Press, 1985), 5.

a mixed monarchy.¹⁹ It explained that there were ‘three kindes of Government amongst men, Absolute Monarchy, Aristocracy and Democracy.’ It went on:

‘The ill of absolute Monarchy is Tyranny, the ill of Aristocracy is Faction and Division, the ills of Democracy are Tumults, Violence and Licentiousnesse. The good of Monarchy is the uniting a Nation under one Head to resist Invasion from abroad, and Insurrection at home: The good of Aristocracy is the Conjunction of Counsell in the ablest Persons of a State for the publike benefit: The good of Democracy is Liberty, and the Courage and Industry which Liberty begets.’²⁰

Ironically, it was precisely insurrection at home which the monarchy was no longer able to contain. Addressing his subjects, the king’s response further held that

‘The experience and wisdom of your Ancestors hath so moulded this out of a mixture of these, as to give to this Kingdom [...] the conveniencies of all three, without the inconveniencies of any one, as long as the Balance hangs even between the three Estates, and they run joyntly on in their proper Chanell.’²¹

The royal *Answer*, ‘constitutionally incorrect’ and arguably a ‘disastrous tactical error in royalist polemic’, incited potent responses.²² It was an invitation to argue and speculate about the true foundations of sovereignty and government in England. While royalists were concerned with repairing the foundations of absolute monarchy, the situation

¹⁹ On the acceptance of the idea of mixed government at the time of the civil wars, see also Sanderson, *Philosophical Basis*, 59–60. What exactly mixed government entailed was the subject of debate. The notion of shared sovereignty was particularly irksome to Thomas Hobbes, who sought to redress it with his political theory, which will be addressed below.

²⁰ *His Majesties Answer to the XIX Propositions of Both Houses of Parliament: Whereunto Is Added the Humble Petition and Advice of Both Houses of Parliament with XIX Propositions and the Conclusion Sent unto His Majestie the Second of June, 1642* (London, 1642), 17–18.

²¹ *Answer to the XIX Propositions*, 18. It further laid out that ‘In this Kingdom the Laws are joyntly made by a King, by a House of Peers, and by a House of Commons chosen by the People, all having free Votes and particular Priviledges’ (Ibid., 18).

²² John G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, 2nd pbk. ed. (Princeton, N.J: Princeton University Press, 2003), 361. Pocock identifies Viscount Falkland and Sir John Colpeper as the authors, writing on behalf of the king. For the assertion of authorship, see also Braddick, *God’s Fury*, 193; Mendle, *Dangerous Positions*, 5–7. Mendle further suggests that Charles I may not even have read the *Answer* properly prior to publication.

offered an unexpected and welcome opportunity for parliamentarians to further intensify their calls for a realisation of shared or popular sovereignty. After all, the government had been ‘presented as a classical republic’ in the king’s *Answer*.²³

One of the most influential responses to the king’s take on the *Nineteen Propositions* came from Henry Parker. Soon after the *Answer* had been published, Parker’s *Observations upon some of His Majesties Late Answers and Expresses* appeared in print. The *Observations* put Parker squarely on the map of constitutional discourse at the time, and has to this day earned him a reputation as possibly ‘the most formidable parliamentary apologist of the First Civil War.’²⁴ In a previous pamphlet on the controversial collection of ship money, published in 1640, Parker had first outlined some of the ideas which he developed further in the *Observations*. He had used the notion of necessity, deployed by the king to defend his collection of extra taxes, to argue that it should be the needs of the people rather than the Crown that guide the monarchy’s actions. What this meant was that ‘the supream of all humane lawes is *salus populi*.’²⁵

In his *Observations* of 1642, Parker developed this idea further. He now ventured to argue that parliament, and not the king, was best suited to serve the people’s needs.²⁶ Parker, in his role as parliamentary polemicist, argued that

‘Power is originally inherent in the people, and it is nothing else but that might and vigour which such or such a societie of men contains in it selfe, and when by such or such a Law of common consent and agreement it is derived into such and such hands, God

²³ Pocock, *The Machiavellian Moment*, 363.

²⁴ *Ibid.*, 368.

²⁵ Henry Parker, *The Case of Shipmony Briefly Discoursed, According to the Grounds of Law, Policie, and Conscience* (London, 1640), 7.

²⁶ To argue his case, it was necessary to adopt an argumentative structure not unlike the king’s but with a different ruler filling the place at the top; see Burgess, *The Politics of the Ancient Constitution*, 230. For Parker’s parliamentary absolutism, see also Michael Mendle, ‘The Ship Money Case, The Case of Shipmony, and the Development of Henry Parker’s Parliamentary Absolutism’, *The Historical Journal* 32, no. 3 (1989): 513–536.

confirms that Law: and so man is the free and voluntary Author,
the Law is the Instrument, and God is the establisher of both.’²⁷

Parker derived two key principles from the thought that the original source of political power was in the people. First, he claimed that whilst the king was superior to any individual subject, he was inferior to them collectively. Second, he maintained that whatever produced something, was greater than it.²⁸ If the people created a sovereign, they also retained a right to resist or abolish it. These two basic principles in turn logically culminated in the conclusion that ‘the Paramount Law that shall give Law to all humane Lawes whatsoever [...] is *Salus Populi*: The Law of Prerogative it selfe, [...] is subservient to this Law.’²⁹

To further entrench his point Parker urged that ‘[n]either can the right of conquest be pleaded to acquit Princes of that which is due to the people as the Authors, or ends of all power, for meere force cannot alter the course of nature, or frustrate the tenour of Law.’³⁰ Pre-emptively addressing possible arguments from the historical Conquest, Parker added that ‘tis a shamefull stupidity in any man to thinke that our Ancestors did not fight more nobly for their free customes and Lawes, of which the conqueror and his successors had in part disinherited them by violence and perjury.’³¹ Parker thus presented a distinctive account of popular sovereignty, grounded in natural law arguments, and was looking to shield his position from possible royalist claims from conquest. The

²⁷ Henry Parker, *Observations Upon Some of His Majesties Late Answers and Expresses* (London, 1642), 1.

²⁸ ‘The King, though he be *singulis Major*, yet he is *universis minor*’, superior to each of his subjects but inferior to all of them collectively. Parker’s second, and related assertion was that ‘it is a rule in nature *quicquid efficit tale, est magis tale*’, whatever produces something, is greater than it. Both of these were the natural consequence of Parker’s view that ‘the people [were] the true efficient cause of power’ (Parker, *Observations*, 2.)

²⁹ *Ibid.*, 3.

³⁰ *Ibid.*

³¹ *Ibid.*, 3–4.

Observations represented a key moment in the pamphlet wars of the 1640s. ‘Parker’s drift from known law and constitution into equity, popular sovereignty, and the law of nature’, as Michael Mendle observed, ‘released what had been the constitutional stream of the official war of words into broader political, religious, and (in several cases) moral waters.’³² In fact, the *Observations* caused a deluge of responses as ‘writers got to grips with the new and dangerous vocabulary.’³³

Royalists in particular had to defend their positions of sovereignty from theories of popular sovereignty and were in need of strategies to counter Parker’s claims. Part of the vocabulary emerging during the course of the subsequent (as I shall call them) ‘Observator debates’, then, was a register of conquest which steadily grew more systematic.³⁴ Conquest as an argument to justify and defend monarchical power was not a complete novelty, as the first two chapters indicated, but it was the context of the 1640s that provided both the need and the opportunity to refine and substantiate conquest-based accounts further.³⁵

³² Michael Mendle, *Henry Parker and the English Civil War: The Political Thought of the Public’s ‘Privado’* (Cambridge: Cambridge University Press, 1995), 90. Braddick equally found that the *Observations* ‘broke new ground in a number of ways’ (Braddick, *God’s Fury*, 193–94.)

³³ Jon Parkin, *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England, 1640-1700* (Cambridge: Cambridge University Press, 2007), 28.

³⁴ Parker, who had published the *Observations* anonymously, was subsequently referred to as ‘the Observator’ (see, Mendle, *Henry Parker*, 1.)

³⁵ See, Margaret Atwood Judson, *The Crisis of the Constitution: An Essay in Constitutional and Political Thought in England, 1603-1645* (New Brunswick, N.J.: Rutgers University Press, 1949), chaps 9–10. For an account of royalist conquest thought in the early 1640s, see Dzelzainis, ‘Ideological Context’, chap. 3. For summary overviews of royalist thought during the civil war, including references to conquest, see also John W. Allen, *English Political Thought, 1603-1660* (London: Methuen, 1938), 482–519; Sanderson, *Philosophical Basis*, 38–72; Burgess, *British Political Thought*, 203–25.

Some of the most influential responses to Parker's *Observations* came from a group of royalists that included John Bramhall, Henry Ferne and Dudley Digges.³⁶ These writers, who are often labelled as constitutional royalists today, defended the monarchy against Parker's visions of popular sovereignty and parliamentary supremacy.³⁷ The shared characteristics of their political thought included their advocacy of limited monarchy and a rejection of popular sovereignty and resistance rights, often through invoking conquest as the foundation of royal authority.³⁸ They accepted conquest as the effective origin of sovereignty but argued that the power it begot had subsequently been qualified and its initial absolutism blunted in myriad ways.³⁹ The precise mechanism of how a ruler who had come to power through conquest was subsequently limited was not fleshed out in detail by any of these authors. This effectively meant that royal power rested on 'self-

³⁶ The pamphlet debate in the wake of the king's *Answer to the Nineteen Propositions* consisted of a sizeable number of publications. A brief chronological overview of some of the most important publications may make it easier to follow their detailed arguments below. The starting point was Henry Parker's *Observations* (1642). This drew a number of royalist responses, including Dudley Digges's *Answer to a Printed Book* (1642), Henry Ferne's *Resolving Conscience* (1642) and John Bramhall's *Serpent Salve* (1643). Ferne's *Resolving Conscience*, in turn, occasioned a number of responses, including Charles Herle's *Fuller Answer* (1642), William Bridge's *Wounded Conscience Cured* (1642) and Jeremiah Burroughs' *Glorious Name* (1643) and *A Brief Answer to Doctor Fernes Book* (1643). Philip Hunton's more moderate parliamentary tract *A Treatise of Monarchie* (1643) also responded to some of Ferne's arguments, but was not exclusively focused on Ferne. Ferne himself subsequently continued the dispute; he responded with his *Conscience Satisfied* (1643) and *A Reply unto Severall Treatises* (1643). The latter was explicitly aimed at Herle and Hunton and prompted both of them to retort. Herle published *An Answer to Doctor Ferne's ... Conscience Satisfied* (1643) and Hunton issued *A Vindication of the Treatise* (1644). Within this debate which spanned about a dozen pamphlets, conquest rights were fiercely discussed; some of the most important resulting arguments are examined in this section.

³⁷ On constitutional royalism, see David L. Smith, *Constitutional Royalism and the Search for Settlement, c.1640-1649* (Cambridge: Cambridge University Press, 1994).

³⁸ J. W. Daly, 'John Bramhall and the Theoretical Problems of Royalist Moderation', *Journal of British Studies* 11, no. 1 (1971): 26–44; John Sanderson, 'Serpent-Salve, 1643: The Royalism of John Bramhall', *The Journal of Ecclesiastical History* 25, no. 1 (1974): 1–14; Sanderson, *Philosophical Basis*, 47–48, 61–62, 79–80; Smith, *Constitutional Royalism and the Search for Settlement, c.1640-1649*, chap. 7.

³⁹ Bramhall at one point suggested that prescription could gradually blunt the absolutism, see, Daly, 'Bramhall's Theoretical Problems', 29–30.

limited sovereignty', as J.W. Daly observed.⁴⁰ Crucially, however, sovereignty founded in conquest logically precluded popular sovereignty and thus resistance rights, which was the royalists' central aim at this point.⁴¹

Henry Ferne, a clergyman who had been made chaplain to Charles I after preaching before the king, provided one of the most succinct responses to Parker's pamphlet and in turn himself faced some backlash from parliamentary writers.⁴² Indeed, as John Wallace observed, the assumption of the political writers involved in these exchanges 'was that the solution could be found if men [...] honed their arguments to ever finer distinctions.'⁴³ It was the ensuing dialogue between the two sides, then, which prepared the ground from which the idea of conquest could grow afresh with increased conceptual depth and maturity as the rival camps clashed over its exact meaning. Ferne, 'a peaceably inclined and lucid contributor on the royalist side', penned his reply to Parker's *Observations*, entitled *The Resolving of Conscience*, with the aim of dismantling Parker's case for popular sovereignty and the consequent right to resistance.⁴⁴ He argued that the divine will, as far as temporal rulers were concerned, could manifest itself 'by election of the people, by succession or inheritance, [or] by conquest.'⁴⁵ It was the latter, Ferne

⁴⁰ Ibid., 35.

⁴¹ On the potentially precarious implications of a self-limiting monarchy, see Judson, *The Crisis of the Constitution*, 394–96.

⁴² Regarding Ferne and the fallout from his writings, J.W. Allen notes that '[n]o other Royalist writer received so much attention from Parliamentarians.' (*English Political Thought*, 493.) For the range of responses Parker's *Observations* occasioned, see Mendle, *Henry Parker*, chap. 5. Mendle singled out Ferne's *Resolving of Conscience* and Digges's *An Answer to a Printed Book* as two 'particularly important' responses to Parker's ideas (*Henry Parker*, 100).

⁴³ Wallace, *Destiny His Choice*, 10.

⁴⁴ Brian Quintrell, 'Ferne, Henry (1602-1662)', *ODNB*.

⁴⁵ H[enry] Ferne, *The Resolving of Conscience* (York, 1642), 18. Crucially, the exercise of the divine will through these channels should not be mistaken for power itself, Ferne warned. That is to say, if election was the immediate reason for the ruler's position, this was the means through the divine will had been mediated; the ultimate source of any ruler's power was and remained God himself. Election, therefore, could not grant resistance rights.

explained, that had laid the foundations in England. Targeting Parker's argument for an original power of the people, Ferne pointedly observed that historically, the English Crown had 'often been settled by Conquest in the lines of Saxons, Danes, and Normans' thus ruling out meaningful popular origins of power.⁴⁶ At the same time, Ferne was keen to qualify that he did not seek to ratify arbitrary government as he reassured his readers that he was writing 'not to win an Arbitrary power or such as Conquerours use, unto this Crown, but onely to shew that resistance can be no more made against the Kings of England' than against other absolute rulers.⁴⁷ Rather than establishing a rationale for arbitrary government, then, Ferne was interested in undermining the grounds for resistance rights as exhibited by Parker.⁴⁸

Ferne's view of conquest as legitimate grounds for sovereignty and authority, defending a vision of constitutional monarchy, was similar to Bishop John Bramhall's who targeted Parker's *Observations* in his *Serpent Salve*.⁴⁹ Bramhall, for example, castigated notions of popular sovereignty, declaring that 'of late it is become the Master-piece of our Modern Incendiaries, to magnifie the power of the People.'⁵⁰ He did not fail to observe that it was 'Dolman (otherwise Parsons the Jesuit, from whom these Men have borrowed all their grounds)'.⁵¹ Bramhall thus exposed the parallels between the

⁴⁶ Ibid., 19.

⁴⁷ Ibid., 12; see also 20.

⁴⁸ He reiterated at a later point that 'those Conquests were not mentioned to win an Arbitrary power to the King, but onely to exclude Resistance and such a supposed election' (H[enry] Ferne, *A Reply unto Severall Treatises Pleading for the Armes Now Taken up by Subjects in the Pretended Defence of Religion and Liberty* (Oxford, 1643), 21–22.)

⁴⁹ See, Daly, 'Bramhall's Theoretical Problems', 30 ff. See also Sanderson, *Philosophical Basis*, 61. Their constitutional royalist view, which permitted absolutist origins but no correspondingly absolutist exercise of power was widespread among writers endorsing royalist conquest notions; on which, see also Allen, *English Political Thought*, 493–96.

⁵⁰ John Bramhall, *The Serpent Salve, or, A Remedie for the Biting of an Aspe*, 1643, 13.

⁵¹ Ibid., 75.

arguments for popular sovereignty from the 1590s and those fifty years later.⁵² While they had come to little at the end of the sixteenth century, the challenge to the monarchy was a more serious one this time. Not posing a serious threat the first time around, they had been brushed off with half-hearted invocations of conquest ideas. Upon their revival, conquest took a more central role in the royal defence.

Bramhall's attack on the Observator's use of popular consent as the foundation for authority relied on replacing popular origins of power with an original conquest. It was impossible, Bramhall argued, 'that all Dominion is from the grant or consent of the People', since '[t]he People could not give what they never had'.⁵³ In the case of England, Charles's 'originall Title [...] was not Election, either of the Person, or of the Family, but Conquest, or rather a Multitude of Conquests, the very last whereof is confirmed by a long Succession of foure and twenty royall Progenitors and Predecessors.'⁵⁴ Inadvertently echoing Ferne, Bramhall further elaborated that whilst conquest marked the foundations of the current monarchy, this did not mean that it entitled the king to arbitrary government. His argument, he reiterated, was not designed 'to enslave our Nation as Conquered Vassalls.' One could not argue 'from the right of absolute Conquerers, to His Majesty now, as if so many good Lawes, so many free Charters, so many acts of Grace in so long a succession had operated nothing.'⁵⁵ Bramhall was content to accept conquest as the origin of the king's sovereignty but maintained that its effects had been mitigated

⁵² See Chapter 1 for Parsons's popular sovereignty arguments and James's use of conquest rhetoric to repel them.

⁵³ Bramhall, *Serpent Salve*, 7. For Bramhall's view on consent, which he argued was automatically involved rather than explicitly granted, see *Ibid.*, 6–7.

⁵⁴ *Ibid.*, 8.

⁵⁵ *Ibid.* Bramhall elaborated that 'the Right of the crown [...] in an absolute Conquerer may be limited by Statutes, Charters, or municipall Laws, in Court of Conscience, in Court of Justice, to God, to his People [...] without communicating Sovereigne Power to subordinate or inferiour Subjects, or subjecting Majesty to censure' (*Ibid.*, 11).

in the meantime; the means of acquisition of power should no longer influence its exercise.

Another reply was issued by Dudley Digges. In response to Parker's *Observations*, Digges, a Fellow of All Souls in Oxford and member of the Great Tew circle, composed *An answer to a printed book, intituled, Observations upon some of His Maiesties late answers and expresses*.⁵⁶ Here he argued that insisting on supposedly inherent liberties and thereby encroaching upon the royal prerogative, the people would 'loosen the very sinewes of government'.⁵⁷ He attacked Parker, whose ideas he likened to Buchanan's, 'that sworn enem[y] to Monarchy', by explaining that 'we cannot reap the constant fruits of an established policy, unlesse by compact we submit our selves to some possible inconveniences'.⁵⁸ These inconveniences that were to be suffered under (an absolute) monarchy included an absence of resistance rights. And the origins of government could conceivably lie in conquest, as Digges held that 'we must observe, though force be not law, yet if after conquest a people resigne their right in part or in whole, by a subsequent act of consent, they are obliged to stand to those conditions'.⁵⁹ The idea of consent here introduced by Digges would become a central point of contention in ensuing debates when parliamentarians turned consent into their weapon of choice against conquest rights and the conditions under which consent had to be granted in order to create political

⁵⁶ For biographical information, David Stoker, 'Digges, Dudley (1613-1643)', *ODNB*. For Digges's links to Thomas Hobbes and Falkland's Great Tew circle, see Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979); Sanderson, *Philosophical Basis*, 73–85; Parkin, *Taming the Leviathan*, 28–32. The links between Digges and Hobbes will be investigated in more detail below.

⁵⁷ Dudley Digges, *An Answer to a Printed Book, Intituled, Observations upon Some of His Majesties Late Answers and Expresses* (Oxford, 1642), 3.

⁵⁸ *Ibid.*, 4, 2. Parkin notes that Digges already exhibited Hobbesian arguments in the *Answer* (*Taming the Leviathan*, 28.) The distinctly more pronounced parallels visible in Digges's subsequent tract will be discussed below.

⁵⁹ Digges, *Answer to a Printed Book*, 9.

obligation, came to be discussed. Conforming to prevailing understandings of divine-right rule, Digges added that consent could only be the temporal qualification of a divinely granted right to rule.⁶⁰ He differed from many of his contemporaries, however, by not explicitly claiming that conquest could be an expression of the divine will. Given the inherent danger of claiming that conquest was the providential means of settling a government and the as yet undecided outcome of the civil war, this might be seen as cautious or prescient; either way, it was an argument that many of his fellow royalist thinkers did not shy away from, as we will see shortly. Digges's understanding of the origins of civil society, his ideas of conquest and how they differed from those of his fellow royalist thinkers, moreover, will also be examined in more detail below.

Other royalists emphasised the potential importance of conquest for government and authority. Griffith Williams in his *Jura Majestatis* found that '[t]he right by conquest is a just and good right'.⁶¹ Michael Hudson, publishing a work entitled *The Divine Right of Government* a few years after it would have been most useful to the royalist cause (1647), even dedicated an entire chapter to conquest as the original of civil government.⁶² Hudson conceded that 'Conquest in it self makes no better Title to a Crown [than] the Robber hath to the travellers purse.' Yet, what could exonerate its illegitimate origins was God's approval; a title from conquest 'may be Legitimated and made lawfull by the declaration of Gods will.'⁶³ The divine will, Hudson explained, could become apparent through 'Immediate Revelation' or 'by the extinguishment of the Issue Royall, which is a declaration of his wrath and vengeance upon that family.'⁶⁴ Only in such cases of divine

⁶⁰ See also Sanderson, *Philosophical Basis*, 75.

⁶¹ Gryffith Williams, *Jura Majestatis, the Rights of Kings Both in Church and State ... and the Wickednesses of the Faction of This Pretended Parliament* (Oxford, 1644), 16.

⁶² Mich[ael] Hudson, *The Divine Right of Government* (London, 1647). On the 'unfortunate' timing of the publication, see Wallace, *Destiny His Choice*, 27.

⁶³ Hudson, *Divine Right*, 123.

⁶⁴ *Ibid.*, 123-4.

approval was ‘the Conquerers Title [...] good and Legal; and all those who claim from that Conqueror, [...] good and lawful Kings.’⁶⁵

Some royalist writers stressed the specific link between the Norman Conquest and the Stuarts’ claim to sovereignty even more overtly. William Ball, also targeting the *Observer*, for example, found that while ‘some hereditary Monarkes are more limited then others [...] yet is their power derived immediately from God, and inherent in themselves, not in the people.’⁶⁶ With respect to England, Ball held that ‘this is our Soveraignes case; The conquerour by his sword, or by deed of gift, or rather indeed by both, came in as a Purchaser of the Kingdome of England for himself and his heires for ever, and by the law of Conquest had power to have made greater alteration in the State then he did.’⁶⁷ The threat of popular sovereignty was thus confronted by singling out the directly divine origin of kingship. For Ball and others, divine right arguments went well with conquest rights. Conquest could be interpreted as the undisputable temporal manifestation of deific designs.⁶⁸ John Maxwell maintained that ‘all Kings really so, are immediately from God’, including those established through ‘some humane and created act, as Election, Succession, [and] Conquest.’⁶⁹ He refuted those who argued that ‘all Title to a Kingdom by right of Conquest is made void; for this cannot be said to be derived from the Community by contract and voluntary consent’ by pointing out that ‘Scripture is clear and full for the lawful Title of a Sovereign by Conquest.’⁷⁰ Other royalist writers

⁶⁵ Ibid., 124.

⁶⁶ William Ball, *A Caveat for Subjects, Moderating the Observator. Wherein His Chiefest Arguments Are Confuted, the Kings Iust Prerogative Manitained and the Priviledge of the Subiect No Wayes Preiudiced* (London, 1642), 6.

⁶⁷ Ibid.

⁶⁸ For more detail on conquest arguments in conjunction with scripture, see Greenberg, *Radical Face*, 186–90.

⁶⁹ John Maxwell, *Sacro-Sancta Regum Majestas, or, The Sacred and Royall Prerogative of Christian Kings* (Oxford, 1644), 34.

⁷⁰ Ibid., 173–4.

concurred. Henry Ferne, himself a clergyman, had also demonstrated conquest's compatibility with scriptural arguments. He declared that 'it is plain by Scripture, that Conquest is a Mean of translating Kingdoms and disposing of People in the way of ordinary providence'.⁷¹ Hudson, as seen above, made the validity of conquest claims dependent upon divine approval of the same, arguing that 'conquest is unlawful, unless where it is Legitimated by Gods special warrants'.⁷² Conquest could be the earthly manifestation of God's will. Divine right defences of (royal) sovereignty which found their temporal expression through conquest were thus not unusual.⁷³

It is worth reiterating that most of these royalist views of conquest as a legitimate source of sovereignty did not endorse an entirely unlimited and absolute king. Rather, they offered what has variously been described as constitutionalist royalism, with their main aim being a refutation of any narrative espousing notions of popular sovereignty and concomitant resistance rights.⁷⁴ Nonetheless, their pamphlets, and particularly Ferne's, were vigorously rejected by parliamentary writers.⁷⁵ The previous chapter offered a brief glimpse of an incipient strategy of invoking consent in an effort to curb the extent

⁷¹ Ferne, *A Reply unto Severall Treatises*, 19–20.

⁷² Hudson, *Divine Right*, 68.

⁷³ For more examples see Greenberg, *Radical Face*, 187–88. Greenberg points out that the appeal to divine authority was more useful for those defending the status quo of the monarchy, rather than parliamentarians seeking to undermine the same. Yet, later there were also anti-royalist voices endorsing conquest as expressions of the divine will, possibly betraying their optimism regarding the outcome of the war; see John Hare, *Plaine English to Our Wilfull Bearers with Normanisme; or, Some Queries Propounded to and Concerning the Neglectours of Englands Grand Grievance and Complaint Lately Published under the Title of Anti-Normanisme* (London, 1647). John Hare's anti-Normanism is also discussed in Section V of this chapter.

⁷⁴ See, Smith, *Constitutional Royalism and the Search for Settlement, c.1640-1649*, 219–28.

⁷⁵ For summary accounts of parliamentary civil war thought, including occasional references to conquest, see Allen, *English Political Thought*, 424–81; Dzelzainis, 'Ideological Context', chap. 3; Sanderson, *Philosophical Basis*, 10–37, esp. 32–3; Burgess, *British Political Thought*, 193–203.

of sovereignty associated with conquest-based regimes. This was a more robust notion than accounts of original popular election since it could be applied to regimes with proven origins in conquest. As parliamentarians no longer sought to deny the Conquest of 1066 (like the ancient constitutionalists had done for a long time), the notion of consent took centre stage in their attempts to erect a bulwark against conquest-based royalist accounts of sovereignty.

Charles Herle, for example, protested resolutely. Herle, a clergyman and political theorist, conceded that ‘Conquests [...] may give such a right as *Plunderers* use to take.’ Beyond that, however, he complained ‘how unchristian, inhumane a barbarisme is it, to talke of a right of Conquest in a civill, a Christian State? Were a Land inhabited by Wolves and Tigers onely’, he continued, ‘conquest might give a right, because none could claim any other’. In civilised societies, however, ‘there was never more then two wayes of alienation of a right, forfeiture and consent, and even in that of forfeiture there is a consent too implied, the condition is (therein) consented to, on both sides, and what forfeiture can there be where there was never any covenant?’⁷⁶ Not only did Herle consider conquest to be an argument fit for uncivilised society, he also warned of the inherent danger of justifying monarchical rule by appealing to conquest:

‘If Conquest may create a Title where there was none before, certainly it may make that Title as absolute & arbitrary as the Conqueror pleases, for what should let, where there needs no consent or covenant, and then, why might not much sooner a King in a limited Monarchy (as this is) make himself as Arbitrary as he pleased by Conquest?’⁷⁷

Conquest, so the bottom line of Herle’s critique, could never give a right for ‘‘tis consent onely that can *transact* or *give* a right.’⁷⁸

⁷⁶ Charles Herle, *A Fuller Answer to a Treatise Written by Doctor Ferne, Entitled The Resolving of Conscience* (London, 1642), 8.

⁷⁷ Ibid.

⁷⁸ Ibid.

Compared to Herle's polemical talk of plunderers, Philip Hunton's *Treatise of Monarchie* (1643) was unusually detached and balanced at this time of heated exchanges.⁷⁹ Hunton, a polemicist supporting the parliamentary cause, admonished Herle for his comparison of conquest and plunder, explaining that he could not 'allow of so indefinite a Censure'. Instead, Hunton clarified that 'the right of Conquest is such as the precedent Warre was: if that were lawfull, so is the Conquest'.⁸⁰ The act of conquest itself, however, was not what empowered the conqueror. Conquest, Hunton argued, did not constitute 'an immediate cause of right of Sovereignty; that is, of a Civill power of Government to which obedience is due.'⁸¹ Rather, conquest could only be 'a remote impulsive cause'. That meant conquest could never be 'an immediate formall cause; for that must ever be the consent of the people, whereby they accept of, and resigne up themselves to a Government, and then their Persons are morally bound, and not before'.⁸² Conquest could thus be the impetus for the formation or change of a government but did not create sovereignty itself, since this could only be achieved through the people's consent. With a view to English history, Hunton held that William I did not 'proceed to a full Conquest' of England; instead, 'the people chose rather to submit to William and his Title, than endure the hazard of ruining war.'⁸³

⁷⁹ Hunton professed himself surprised that conquest arguments found such widespread use in the political discourse. He observed that William and his successors had been 'legall Monarchs, and in that Tenure have all the Kings of this Land held the Crown till this day, when these men would rake up and put a Title of Conquest upon them, which never was claimed or made use of by him who is the first root of their succession' (*A Treatise of Monarchie* (London, 1643), 37.)

⁸⁰ Hunton, *Treatise of Monarchie*, 22.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid., 36.

In the same vein prominent Independent Jeremiah Burroughs wondered about the implications ‘if the Kingdom be got by Conquest & the right come in that way.’⁸⁴ He argued that those reasoning from a right of conquest ‘know not what they do in making this plea’ since basing sovereignty on conquest would be equivalent to an indiscriminate right of the strongest. ‘This’, Burroughs found, ‘is no good Divinity nor Polity’; instead ‘that which subjects my conscience to such a one, is the submission upon some compact, covenant or agreement.’⁸⁵ In other words, ‘Conquest [...] onely settles former right, or makes way to some farther agreement, to adde to, what was former. The right comes not from power to conquer, or act of conquering, but from some agreement, precedent, or consequent.’⁸⁶ Crucially, Herle, Hunton and Burroughs suggested that an act of consent was the constitutive element in the creation of sovereignty. Even though conquest may have been instrumental in the acquisition of power, the latter could only be converted into legitimate sovereignty through the addition of consent.

Throughout 1642 and 1643, consent remained a potent weapon for parliamentarians seeking to dislodge the royalists’ argument from conquest. Some pamphlets introduced a further dichotomy which maintained that ‘there is a two fold conquest; one is Absolute, and the other is Conditionall.’ In England, the Norman Conquest as the root cause for a change in government was ‘not denied’ but it was a case of conditional conquest: ‘when William the Conquerour invaded the Land, we were content to submit our selves unto him [...] And so we are become not his slaves to be destroyed at his pleasure, but his Subjects.’⁸⁷ Layers of consent subsequent to the act of conquest moderated the

⁸⁴ Jeremiah Burroughs, *The Glorious Name of God ... with a Post-Script Briefly Answering a Late Treatise by Henry Ferne* (London, 1643), 38.

⁸⁵ *Ibid.*, 39.

⁸⁶ *Ibid.*, 7.

⁸⁷ *The Unlimited Prerogative of Kings Subverted, or a Short Treatise ... to Prove That Kings Ought as Well as Others to Bee Accountable for Their Actions* (London, 1642), Sig. B2.

Conqueror's power and gave his subjects their set of rights. In cases of absolute conquest, not qualified through the subjects' consent, there was likewise a retained right to resist since no rights had been surrendered in the first place. Had the English

‘by vertue of the Conquest, [...] wholly become his Vassalls and slaves [...] in this case a people may by force of Armes, nay they are bound to doe it [...] when they have a fit and convenient opportunity, and strength sufficient, to rescue themselves from under the power of such a Tyranny, and free themselves from such a Yoake’.⁸⁸

Either the English acquired rights through their granting of consent or did not surrender any by withholding their consent in the first place. In either outcome, the Conquest could be contained in this fashion.⁸⁹

This overall shift from the denial of conquest by ancient constitutionalists to attempts to limit the effects of it through consent is epitomised in William Bridge's *The Wounded Conscience Cured*. Bridge, an Independent minister, suspected Ferne of trying ‘to make our King a King by conquest.’ He rebutted that

‘Though a Prince should hold his right by conquest as the next right, yet if he hold it also by derivation from the people as the remote right, and the last be the more naturall and just way, then arguments grounded on that remote right may be more valid, then those that are grounded on the next right, but thus it is with our Prince who although he doth succeed the conquerour, yet doth also take in the voluntary and free consent of the Common-weale unto his Crowne, which a meer conquerour doth not, but rules without the consent and against the good liking of the people.’⁹⁰

Bridge, moreover, warned of accepting conquest as a legitimate reason, as this would amount to a mere endorsement of the right of the strongest: ‘therefore the right that he makes our Prince to have to the Crowne is onely the right of a Conquest; then if any mans

⁸⁸ Ibid.

⁸⁹ A very similar argument was made in Stephen Marshall, *A Plea for Defensive Arms, or, A Copy of a Letter Written by Mr. Stephen Marshall to a Friend of His in the City* (London, 1642), 7. See also Sanderson, *Philosophical Basis*, 33.

⁹⁰ William Bridge, *The Wounded Conscience Cured ... by Way of Answer to Doctor Fearne* (London, 1642), 42–43.

sword be longer or stronger then his, hee may quickly have as much right to the Crowne as the King; which opinion of the Drs. for my owne part I must abhor from, what danger will it not expose our dread Sovereign to?’⁹¹

Last but not least, Henry Parker, the man whose *Observations* had marked the beginning of the debates examined above, hit out at his (royalist) critics, arguably with an apt summary of the parliamentary position, when he declared that ‘[w]ithout some rightfull claime William had been a Robber, not a Victor, and without the consent of this nation [...] the robbery would have lasted for ever’. ‘[T]he plea of Conquest’, Parker exclaimed, ‘is but a weak absurd plea’.⁹²

These accounts show that the idea of consent increasingly came to be the strategy used to counter rights claims based on conquest. The crucial difference between the parliamentary and royalist views was the exact role that consent – in connection with conquest – played. Whereas most (constitutional) royalists were content to accept consent as a qualifying element, placing limitations on the monarchy’s power, the parliamentary side had to rely on consent as the foundation of that very power, superseding conquest. Ferne remained convinced that the parliamentarians had misunderstood the royalist position as he explained that consent did play a role, but unlike the one parliamentarians were keen to identify. What placed limitations on the king’s power ‘was not the Consent of the first supposed election, but an *after Consent following the Conquest*, as the Prince and the People could agree, which agreement was not likely to leave them a power of resistance’.⁹³ He and the other constitutional royalists did not wish to suggest that

⁹¹ Ibid., 26 [wrongly numbered 42].

⁹² Henry Parker, *Jus Populi, or, A Discourse Wherein Clear Satisfaction Is given as Well Concerning the Right of Subjects as the Right of Princes* (London, 1644), 14.

⁹³ H[enry] 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*

conquest should regulate the exercise of Charles's power, but merely its origins: 'He cannot rule as Conquerour, for he is not a Conquerour, but claimes from him that was'. Charles, in other words, had 'a limited power [...] not a free one as a Conquerour had, yet not limited by such a first election and contrivement [...] but by priviledges and immunities granted or restored to the people since the Conquest'.⁹⁴

Resignedly, Ferne observed that '[n]one of my Adversaries have bitten at the edge and strength' of the conquest argument, they 'only caught at the shadow of those two words *Conquest* and *Arbitrary*'.⁹⁵ His adversaries' supposed lack of understanding also extended to fundamental questions concerning the very notion they had brandished as their most versatile weapon: the nature of consent itself. When pressed on the nature of consent, parliamentary writers encountered difficulties. Specifically, Ferne singled out what appeared an admission that consent could be extracted through force.⁹⁶ Herle and Burroughs, for example, had conceded that subjects could be 'be brought to consent to an absolute power, although it be out of feare'.⁹⁷ This inadvertently seemed to undermine the very case the parliamentarians had sought to construct. In response to this admission, Ferne picked up on the idea of forced consent, which seemed like an obvious contradiction in terms. He wondered that Burroughs and Herle conceded that in some instances rulers 'by consent of the people were absolute [...] and not to be resisted' when at the same time the King of England was supposedly 'by consent of the people [...] so

Formerly Published for the Resolving of Conscience upon the Case. Especially unto That Which Is Entituled A Fuller Answer (Oxford, 1643), 68. My emphasis.

⁹⁴ Ibid., 33. The crucial point was that these limitations on the Crown's power were self-imposed. This is what J.W. Daly referred to as 'self-limited sovereignty' ('Bramhall's Theoretical Problems', 35.)

⁹⁵ Ferne, *Conscience Satisfied*, 68.

⁹⁶ On this dispute over forced consent in cases of conquest, see in particular Dzelzainis, 'Ideological Context', chap. 3.

⁹⁷ Burroughs, *Glorious Name*, (post-script, 'A briefe Answer to Dr Fernes Booke'), 8. Herle similarly conceded that absolute power was at times 'not introduced by conquest, but by consent' when subjects were 'awed thereto by Arms' (*Fuller Answer*, 14).

limited that the people have reserved a power of resistance'. If the parliamentarians' notion of popular origins of sovereignty could be reduced to involuntary or 'over-awed consent', it was worthless as a check on conquest-based power.⁹⁸ Conquest and force, in this case, could lead to legitimate title and the granting of consent would be reduced to a formality, thus removing the distinction between the parliamentary and royalist views and undermining the parliamentarians' central notion in their fight against conquest rights. Ferne thus pointed out that to legitimate conquest-based sovereignty 'forced consent will suffice, and such will scarce be wanting to a Conquest, and they that plead title of Conquest doe not divide it from such a forced consent of People, but from a free limiting election'.⁹⁹

III – DUDLEY DIGGES AND HIS HOBBSIAN THEORY OF CONQUEST

Ferne had singled out the idea of involuntary consent as a particular flaw in the narratives of parliamentary arguments seeking to contain conquest. The intricacies of consent and the conditions under which it was granted also occupied Dudley Digges. After his initial response to Parker, he published a longer work in which developed his ideas in more depth.¹⁰⁰ *The Unlawfulnessse of subjects taking up armes against their soveraigne* (1643) constituted 'a sort of compendium of Royalist argumentation.'¹⁰¹ According to its title, it was intended as 'an answer to all objections scattered in their severall bookes'.¹⁰² These

⁹⁸ Ferne, *Conscience Satisfied*, 56.

⁹⁹ Ferne, *A Reply unto Severall Treatises*, 19.

¹⁰⁰ The initial response was Digges, *Answer to a Printed Book*.

¹⁰¹ Allen, *English Political Thought*, 494.

¹⁰² The full title was *The Unlawfulnessse of Subjects Taking up Armes against Their Soveraigne in What Case Soever Together with an Answer to All Objections Scattered in Their Severall Bookes* (Oxford, 1643).

several books included works by Burroughs, Herle and Hunton. Digges thought they were seditious because of their attempts 'to make the yoke of government more easie' by suggesting that subjects 'may justly use their native liberty, and resume their originall power'.¹⁰³ He thus looked to conquest theory in his quest to counter their claims. In the process, he developed an account of the origins of governments from scratch.¹⁰⁴

To begin with, Digges postulated a starting point which placed individuals under thoroughly disagreeable living conditions. While freedom was 'equally common to every one' the same 'Freedom was an unlimited power to use our abilities, according as will did prompt' but 'it was not so delightfull to do what ever they liked, as it was miserable, to suffer as much as it pleased others to inflict.'¹⁰⁵ This initial situation characterised by excess freedom and no restraints 'was their unhappy condition amidst feares and jealousies, wherein each single person look't upon the world as his enemy [...] whilst every one had right to all, no body could with safety make use of any thing'.¹⁰⁶ To escape this miserable and insecure state of existence, people decided to form civil society, placing it under the auspices of a government regulating their relations. 'There being no way to effect this naturally, they reduce themselves into a civill unitie, by placing over them one head, and by making his will the will of them all.'¹⁰⁷ This one head needed to be able to wield absolute power since men were 'not capable of being obliged by compacts' alone.¹⁰⁸ This was achieved through 'a consent and mutuall obligation [...] of not using their naturall power, but onely as Law shall require, that is, of not resisting that

¹⁰³ Ibid., 1.

¹⁰⁴ For Digges's political thought, see also Sanderson, *Philosophical Basis*, chap. 3; Allen, *English Political Thought*, 498–502.

¹⁰⁵ Digges, *The Unlawfulnessse*, 2–3.

¹⁰⁶ Ibid., 3.

¹⁰⁷ Ibid., 4.

¹⁰⁸ Ibid.

body in which the supream power is placed, as likewise of aiding him, or them by vertue of that promise.’¹⁰⁹

Among other ways, this supreme power could be created through conquest. Digges explained that ‘conquest signifies greater force not juster title; that oft times gives possession, and a subsequent compact creates a true right. I doe not deny’, he specified, ‘that conquest in some cases may be a lawfull way of acquisition; [...] but because the will is not capable of being forced, it doth not follow, he hath got a right over their goods and bodies, therefore they are His Subjects, and owe to him obedience.’ At the heart of the matter, Digges concurred with other constitutional royalist writers: consent did play a role in conquest-based rule but was not the empowering element. ‘To be subject’, he explained, ‘can only flow from our consent. But this consent of the people was not an adequate cause, but a necessary qualification.’¹¹⁰ While conquest did not confer or create power in its own right, the subsequent addition of consent could not equip subjects with resistance rights.¹¹¹ He reiterated that

‘though conquest be a name of greater strength onely, and be not it selfe a right, yet it is the mother of it. Because when the people are in their power, for feare o[...] harder usage, they passe their consent to be his faithfull Subjects, and to be peaceably governed by such Lawes, as he shall, or hath given them: This subsequent Act gives him a full right to the Crowne.’¹¹²

Digges embedded these theoretical notions in English constitutional history. With respect to William I, he observed that ‘it appeares, that the originall was conquest [...] which] conveyed to him full right, because they yeilded themselves.’ Consequently, ‘The whole

¹⁰⁹ Ibid., 4–5.

¹¹⁰ Ibid., 76–7.

¹¹¹ In his response to Parker’s *Observations*, Digges had argued that ‘though force be not law, yet if after conquest a people resigne their right in part or in whole, by a subsequent act of consent, they are obliged to stand to those conditions, which they made perchance out of a probable feare of harder usage’ (*Answer to a Printed Book*, 9). For Digges’s attack on Parker, see also Mendle, *Henry Parker*, 101–4.

¹¹² Digges, *The Unlawfulness*, 116.

Land was the Conquerours and Englishmen held their lands ‘but in fee’ from the Conqueror. This meant that ‘the originall was conquest (as it is of almost all the Kingdomes in the world)’.¹¹³ Digges would not go as far as speaking of a mixed monarchy, which he considered a contradiction in terms.¹¹⁴ He argued, like Bramhall and Ferne, that Charles was not an unlimited ruler himself, despite the origins of his sovereignty in conquest. Instead, Charles was the head of a ‘restrained and limited Monarchy, that is, that such a King, though he have Supreme, yet hath not absolute power’.¹¹⁵ Those limits, however, were not the people’s residual natural rights, nor did they entail a right to resistance, but they were the result of acts of grace, of the rulers bestowing liberties on their subjects.¹¹⁶

IV – THOMAS HOBBS’S EARLY CONQUEST THEORY

Digges’s lines unmistakably spoke the political language of Thomas Hobbes, which the latter had recently articulated in *The Elements of Law* (1640).¹¹⁷ Digges’s political theory squarely rested on a state of nature closely resembling Hobbes’s and, accordingly, the requirements to establish a commonwealth were reminiscent of Hobbes’s ideas. Digges, then, was arguably ‘the first writer on either side to discover the use that could be made of Hobbes for party purposes’ and rolled out a Hobbesian theory of conquest in a manner more polemical and more clearly addressed to the parliamentary insurgents than

¹¹³ Ibid., 118.

¹¹⁴ Ibid. 66 f.

¹¹⁵ Ibid., 139. See also Smith, *Constitutional Royalism and the Search for Settlement, c.1640-1649*, 223–26.

¹¹⁶ Digges, *The Unlawfulness*, 107.

¹¹⁷ Digges had probably read Hobbes’s *Elements*; see, Parkin, *Taming the Leviathan*, 28.

Hobbes's own at this time.¹¹⁸ The complexity and importance of Hobbes's thought merit a more detailed analysis, which will aim to sketch their continuous development from *The Elements* onwards. This will demonstrate Digges's indebtedness to the Malmesbury philosopher and suggest a degree of reciprocity, that is to say it will conjecture that the pamphlet debates of 1642/3 are crucial contexts for understanding the development of Hobbes's later conquest thought in *Leviathan*.

Where royalist and parliamentary writers seemed to have arrived at an impasse regarding the roles of consent and conquest, Hobbes combined conquest and consent in his theory of political obligation as he disagreed with the idea that a choice made under coercion could not be a voluntary one. Instead, he contended, talk of non-voluntary choices was nonsensical for the simple reason that all choices were fundamentally voluntary, including those motivated by fear. This allowed him to give fear a central role in his account of political obligation, thus circumventing some of the conceptual problems encountered by other writers grappling with this issue.¹¹⁹

Hobbes's arguably most famous and detailed explanation of political obligation and conquest rights came in the *Leviathan* (which will be addressed in the next chapter), but an examination of his earliest political philosophy will reveal the deep roots of these ideas as well as some of the factors impacting on their continuous development. While all three works, *The Elements* (1640), *De Cive* (1642), and *Leviathan* (1651) were part of Hobbes's larger theoretical undertaking, they all owed their genesis and shape partially to the

¹¹⁸ Allen, *English Political Thought*, 494, 500–501. See also, Parkin, *Taming the Leviathan*, 28–32. Parkin notes that Hobbes's *Elements* presented an 'obvious resource' for Digges's work (28). Digges may have been the first one, but definitely not the last as the remainder of this chapter and the next will aim to demonstrate. On Digges's use of Hobbesian ideas, see also Tuck, *Natural Rights Theories*, 124–25.

¹¹⁹ On the unusual connection of conquest and consent in Hobbes's thought, see in particular Skinner, *Visions*, 3: 287–307. On Hobbesian consent theory, see also Deborah Baumgold, *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1988), 93–100, 124–35.

political circumstances at the time of their writing. That is to say they all exemplify the theoretical turn at the time; yet, they are also highly circumstantial. This tension between universal political theory and historical contingency is crucial for grasping Hobbes's articulations of conquest theory. To understand the later iteration found in *Leviathan*, moreover, it is necessary to start with the early stages as found in *The Elements* and proceed chronologically towards the more mature articulations of *Leviathan*. This will reveal how the later work stood on the conceptual foundations laid in the earlier period.

Written in 1640, *The Elements* circulated widely in manuscript form but remained unpublished until it appeared in the form of two separate treatises, *Human Nature* and *De Corpore Politico*, ten years later.¹²⁰ The work arguably marked the beginning of Hobbes's enterprise in political theory. Hobbes, according to his own recollection, wrote the tract during the brief tenure of the Short Parliament when 'many points of regal power, which were necessary for the peace of the kingdom [...] were disputed and denied'. His 'little treatise in English', *The Elements*, arose out of these disputes and 'set forth and demonstrate[d], that the said power and rights were inseparably annexed to the sovereignty [...] but it seems [others] understood not, or would not understand that inseparability'.¹²¹ The idea of conquest, then, featured in *The Elements* precisely as part of Hobbes's attempts to clarify the nature of sovereignty and its possible origins.

In *The Elements* Hobbes offered an early account of his theory of obligation, exhibiting aspects foundational for his subsequent work. For the first time Hobbes articulated what would become a cornerstone of his political theory, explaining that the two ways by which states and their sovereigns were created were 'voluntary offer of

¹²⁰ Ferdinand Tönnies, 'The Editor's Preface', in *The Elements of Law, Natural and Politic*, by Thomas Hobbes, ed. Ferdinand Tönnies, 2nd ed. with a new introduction (London: F. Cass, 1969), v.

¹²¹ Thomas Hobbes, *The English Works of Thomas Hobbes of Malmesbury*, ed. William Molesworth, vol. 4 (London, 1840), 414.

subjection, and yielding by compulsion'.¹²² Hobbes here introduced the fundamental distinction that remained vital throughout the remainder of his work, differentiating between states arising out of mutual agreement, called commonwealths by institution, and those based on force, referred to as commonwealths by acquisition. One of these possibilities was 'forced submission' in instances of conquest, when 'a man may subject himself to him that invadeth [...] for fear of him'.¹²³ Alternatively, in a commonwealth by institution 'men may join amongst themselves to subject themselves to such as they shall agree upon for fear of others'. But 'when many men subject themselves the former way, there ariseth thence a body politic, as it were naturally; from whence proceedeth dominion, paternal and despotic'.¹²⁴ In this case, Hobbes explained, the conqueror accordingly 'accureth a right of dominion'.¹²⁵ In this manner a commonwealth, however small, was formed. As part of the process, therefore, 'cometh the victor to have a right of absolute dominion over the conquered. By which there is presently constituted a little body politic, which consisteth of two persons, the one sovereign, which is called MASTER, or lord; the other subject, which is called SERVANT'.¹²⁶

Crucially, yielding out of fear did not make one's submission involuntary. The mere act of accepting the power of the new ruler was inevitably based on the subject's consent, however implicit. Hobbes contrasted the procedure of becoming what he called a 'servant' to that of a 'slave'. The latter, he held, did not acquiesce to the conqueror's power, was therefore not a member of the commonwealth and was thus under no political obligation. In turn, this meant that servants had a duty to obey arising out of their own

¹²² Thomas Hobbes, *The Elements of Law, Natural and Politic*, ed. Ferdinand Tönnies, 2nd ed. with a new introduction (London: F. Cass, 1969), 127.

¹²³ *Ibid.*, 105.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*, 127.

¹²⁶ *Ibid.*, 128.

decision to choose life under the absolute conqueror over death.¹²⁷ The challenge of forced consent which Ferne diagnosed in Herle's arguments, was thus not a problem for Hobbes.

Hobbes's understanding of what constituted voluntary actions, which included those motivated by fear, would become pivotal to his arguments about the formation of commonwealths and the implications of conquest. He explained that 'covenants [...] as are extorted from men by fear' were still binding. He could see 'no reason why that which we do upon fear, should be less firm than that which we do for covetousness' as 'both the one and the other maketh the action voluntary.' Hence, 'if no covenant should be good, that proceedeth from fear of death, no conditions of peace between enemies, nor any laws could be of force; which are all consented to from fear.'¹²⁸

In the state of nature, 'the fears [men] have one of another are equal.'¹²⁹ It was this fear, Hobbes argued, that drove them towards forming commonwealths. In the process, fear was instrumental again to bring about the consent needed to institute a government. Consent on its own was 'not sufficient security for their common peace, without the erection of a common power, by the fear whereof they may be compelled both to keep the peace amongst themselves, and to join their strengths together, against a common enemy.'¹³⁰ In other words, any Hobbesian commonwealth relied on a notion of fear that informed men's wills.

The Elements thus included an account of the creation of commonwealths from both institution and conquest. While the latter was superficial at this point, Hobbes's notion of a pre-societal state of nature is already more elaborate. Notably, fear or, in other words,

¹²⁷ See, *Ibid.*, 127.

¹²⁸ Hobbes, *Elements of Law*, 79.

¹²⁹ *Ibid.*, 101.

¹³⁰ *Ibid.*, 103.

coerced consent, was instrumental to both accounts of the origins of commonwealths. Hobbes's articulation of conquest ideas in *The Elements* thus demonstrates that underlying questions of (regal) power and sovereignty occupied him before the outbreak of the civil war and also made him ponder the possibility of conquest.

Two years after writing *The Elements* Hobbes published *De Cive* (1642). In the preface of the work Hobbes explained that the timing of the publication had been influenced by recent political developments in England:

‘I was studying Philosophie for my mind sake, and I had gathered together its first Elements in all kinds, and having digested them into three Sections by degrees [...] It so happened in the interim, that my Country some few yeares before the civil Warres did rage, was boyling hot with questions concerning the rights of Dominion, and the obedience due from Subjects, the true forerunners of an approaching War; And was the cause which (all those other matters deferr'd) ripen'd, and pluckt from me this third part. Therefore it happens that what was last in order, is yet come forth first in time’.¹³¹

Hobbes's observation highlights his continued concern with matters of dominion and sovereignty which had already motivated *The Elements*. It is also further evidence of how deeply Hobbes's theory is rooted in political practice. The events of the civil war led to the premature publication of his theoretical investigation.

The central tenets of Hobbes's political philosophy itself followed almost seamlessly from *The Elements*. With regard to the origins of society, for example, Hobbes reiterated his dichotomy which held that ‘Fellowes are gotten either by constraint, or by consent; By Constraint, when after fight the Conqueror makes the conquered serve him either through fear of death, or by laying fetters on him: By consent, when men enter into

¹³¹ Thomas Hobbes, *De Cive: The English Version*, ed. Howard Warrender (Oxford: Clarendon Press, 1983), 35–36.

society to helpe each other, both parties consenting without any constraint.¹³² While at first sight, consent and constraint seemed diametrically opposed, Hobbes argued that the two were not mutually exclusive. In states by acquisition, ‘the Conqueror may by right compel the Conquered, or the strongest the weaker [...] unlesse he will choose to die, to give caution of his future obedience’.¹³³ The choice of subjection over death constituted a moment of explicit or tacit consent. Hobbes further elaborated that

‘If a man is taken Prisoner in the Wars, or overcome; or else distrusts his forces, (to avoid Death) promises the Conqueror, or the stronger Party, *his Service*, i.e. to do all whatsoever he shall command him; in which Contract the good which the vanquisht, or inferior, in strength doth receive, is the grant of life [...] but the good which he promises, is his service and obedience’.¹³⁴

Thus when submitting to the conqueror, Hobbes held ‘there is as absolute service and obedience due from the vanquisht, to the vanquisher’ since ‘he who is oblig’d to obey the Commands of any man before he knows what he will command him, is simply, and without any restriction tyed to the performance of all Commands whatsoever. Now he that is thus tyed, is call’d a *SERVANT*, he to whom he is tyed, a *LORD*’.¹³⁵ These parts of *The Elements* and *De Cive* show the foundations of Hobbes’s theory of conquest.

Hobbes’s unbridled absolutism set his theory apart from the more conventional royalist conquest theories as it sat uneasily with advocates of a constitutional royalist position, such as Bramhall and Ferne.¹³⁶ Hobbes’s view that consent after conquest could not place

¹³² Ibid., 50.

¹³³ Ibid., 50.

¹³⁴ Ibid., 117. In the Latin version of the work Hobbes spoke of ‘victori’, where the English version of 1651 used ‘Conqueror’. On Hobbes’s approval of the 1651 translation, see Howard Warrender, ‘Editor’s Introduction’, in *De Cive: The English Version*, by Thomas Hobbes, ed. Howard Warrender (Oxford: Clarendon Press, 1983), 4 ff.

¹³⁵ Hobbes, *De Cive*, 118.

¹³⁶ Bramhall explicitly attacked Hobbes’s theory of conquest, see Parkin, *Taming the Leviathan*, 37–50. For more detail on Bramhall’s reception of Hobbes’s ideas, see Mark

limits on a ruler's power, and the fact that even coerced consent counted as voluntary, were two major points of contention. One further key aspect to understanding Hobbes's unorthodox view and combination of consent and conquest, lies in his conception of the will and the process of deliberation. Hobbes had developed much of the relevant thought in *The Elements* but the section 'Concerning men as persons natural' was omitted from *De Cive*, which, as its title indicated, focused on more explicitly political questions. In *The Elements*, Hobbes had articulated a theory of the workings of the human will and the process of deliberation in decision making. Unpacking this process can help understand Hobbes's position regarding the validity of decisions based on fear and explains why he considered notions of involuntary consent – or the claim, rather, that forced consent was invalid in the creation of sovereignty – to be nonsensical.

In any decision-making process, including the question whether to consent to a government or not, the human mind, according to Hobbes, assessed its desires and anxieties and '[t]his alternate succession of appetite and fear, during all the time the action is in our power to do, or not to do, is that we call DELIBERATION'.¹³⁷ Deliberation was to be understood in the literal sense, as taking away the liberty to pursue an alternative course of action at the moment of committing to a decision. During the process of deliberation itself one was still free to choose; that same freedom was relinquished once a decision was made. The will, in turn, bringing about such a decision, was the last-known appetite – or fear – that constituted the ultimate impetus for making a decision: 'In deliberation the last appetite, as also the fear, is called WILL'.¹³⁸ All decisions, Hobbes

Goldie, 'The Reception of Hobbes', in *The Cambridge History of Political Thought, 1450-1700*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1991), 589–615; Nicholas D. Jackson, *Hobbes, Bramhall and the Politics of Liberty and Necessity: A Quarrel of the Civil Wars and Interregnum* (Cambridge: Cambridge University Press, 2007).

¹³⁷ Hobbes, *Elements of Law*, 61.

¹³⁸ *Ibid.*, 61–62.

explained further, that had their origin in the will, were to be considered voluntary.¹³⁹ The will itself could not be forced, he claimed, as it was merely the last stage at the end of a chain of deliberations.¹⁴⁰ Applying this notion of free will to the granting of consent, then, meant that describing consent granted to a conqueror as involuntary was a *non sequitur*. After a moment's reflection, or deliberation rather, any decision that was reached was to be considered voluntary, for the will itself could not be forced.¹⁴¹ This conception of the will and deliberation were instrumental to the way Hobbes accommodated consent in the process of setting up a government based on conquest.¹⁴²

Hobbes's political ideas, particularly those of conquest at a time of civil war, were intolerable to some and attractive to others. Rejections, endorsements or adoptions of Hobbesian thought, however, did not just follow parliamentary-royalist fault lines. Dudley Digges, as seen above, adopted Hobbesian ideas in his quest to silence parliamentary arguments for original popular sovereignty. Particularly after the regicide, in the years of the Engagement Controversy, parliamentary *de facto* theorists seeking to shore up newly acquired power looked to Hobbes for intellectual ammunition, as the next chapter will show. In the meantime, Hobbes was faced with intense criticism from royalist thinkers. Among their charges were absolutism as well as anticipatory fears over the subversive potential of Hobbesian conquest ideas.

¹³⁹ 'VOLUNTARY actions and omissions are such as have beginning in the will' (Ibid., 62).

¹⁴⁰ Elsewhere Hobbes noted that 'The Will cannot be compelled; but the man may be' (Thomas Hobbes, *The Questions Concerning Liberty, Necessity, and Chance. Clearly Stated and Debated between Dr. Bramhall, Bishop of Derry, and Thomas Hobbes of Malmesbury* (London, 1656), 227.)

¹⁴¹ In the *Leviathan* Hobbes clarified that 'The Definition of the Will, given commonly by the Schooles, that it is a Rationall Appetite, is not good. For if it were, then could there be no Voluntary Act against Reason. For a Voluntary Act is that, which proceedeth from the Will, and no other' (*Leviathan*, ii, 92).

¹⁴² While Hobbes did not include his explanation of human nature in *De Cive*, he elaborated on his ideas in the first part of *Leviathan* ('Of Man'), and specifically the sixth chapter, on the passions.

Where parliamentarians and royalists discussed the impact of various forms of consent on government founded in conquest, another discourse developed in its wake. The Levellers were not content to debate the limits of the present government within the confines of the given system. Unlike decades of anti-royalist writers before them, they were not concerned with denying or downplaying the effects of 1066. Instead, they focused their attentions on emphasising the, in their eyes, disastrous and long-lasting effects of the Norman invasion. In their radical call to reform England's political system and institutions, the Norman Conquest became the original sin that had to be reversed in order to obtain true liberty. Their focus on conquest, in other words, was as pronounced as that of those coming before them. It was with respect to their conclusions that they differed markedly.

V – THE NORMAN YOKE: CONQUEST IDEAS IN LEVELLER THOUGHT

The Levellers developed conquest arguments in the latter half of the 1640s. The Levellers' emergence as a group is usually dated around mid-1646 and their existence as a collective entity lasted hardly longer than five years.¹⁴³ Yet, during this short time they produced some ideas that significantly impacted the landscape of political thought during

¹⁴³ The majority of modern literature locates the beginning of a Leveller movement between mid-1646 and mid-1647. The *Remonstrance of Many Thousand Citizens* (1646) was the first occasion on which future Levellers claimed to speak on behalf of a distinct group and the term 'Levellers' was first used (derogatively) in November 1647. Glenn Burgess notes that the *Remonstrance* 'mark[ed] the birth of the Levellers as a group' (*British Political Thought*, 248.) For the conceptual problems associated with grouping them together, see Rachel Foxley, *The Levellers: Radical Political Thought in the English Revolution* (Manchester: Manchester University Press, 2013), 4–5; Elliot Vernon and Philip Baker, 'What Was the First "Agreement of the People"?', *The Historical Journal* 53, no. 1 (2010): 40–42.

the civil war.¹⁴⁴ Their ideas were notable for the way in which they captured a transition from historical to more theoretical arguments based in natural law. The Levellers shared the premise with ancient constitutionalists that 1066 was a pivotal moment in English history with political consequences for their own times. Whereas ancient constitutionalists, however, tried to mitigate the effects of the Norman seizure of power, the Levellers emphasised its lasting negative impact. Thus, their ideal of liberty did not rest on the preservation of a status quo supposedly deriving from an uninterrupted past. Instead, they sought the restoration of a long lost golden past and a set of universal principles of equity. To this end, the history of the last six hundred years had to be rolled back, the conquest of 1066 had to be undone, as it were. The monarchy needed to be abolished altogether in order for England to be ‘delivered from the Norman bondage [...] and from all unreasonable Lawes made ever since that unhappy conquest.’¹⁴⁵ This anti-monarchical stance with its focus on the monarchy’s supposed foundations in 1066, known as the Norman Yoke (or its rejection as anti-Normanism), will be examined in this brief section. Such an examination will highlight how the Levellers’ use of conquest language brought together a historical mode of argument, as seen in ancient constitutionalism, with a more theoretical natural law account of normative dimensions of sovereignty, as witnessed in the debates of 1642/3.

The Levellers’ anti-monarchical stance and concomitant focus on 1066 as the source of all evil has famously been discussed in Christopher Hill’s essay on ‘The Norman Yoke’.

¹⁴⁴ On the Levellers’ emergence in the wake of parliamentary disunity in the second half of the 1640s and especially the threat of parliamentary absolutism, see Henry N. Brailsford, *The Levellers and the English Revolution* (London: Cresset Press, 1961); David R. Como, ‘An Unattributed Pamphlet by William Walwyn: New Light on the Prehistory of the Leveller Movement’, *Huntington Library Quarterly* 69, no. 3 (2006): 353–382; Foxley, ‘Problems of Sovereignty in Leveller Writings’, *History of Political Thought* 28, no. 4 (2007): 642–660.

¹⁴⁵ *A Remonstrance of Many Thousand Citizens*, (n.p., 1646), 19.

Hill argued that the Levellers nostalgically yearned for a golden past which they sought to restore after it had been compromised by the Conquest in 1066. Part of their longing for this largely fictional past was a resolute rejection of all present laws and legal institutions as they had been introduced by the Normans. Their view meant that '[t]he law became the enemy, the symbol of Normanism, instead of being the surviving pledge of Anglo-Saxon freedom.'¹⁴⁶ The Levellers, therefore, represented the polar opposite of the Whig history evident in the Cokean interpretation of the ancient constitution. They did not limit themselves to any one particular set of pre-Conquest ideals as they sought to transcend rigid historical precedent. Consequently, part of the Leveller argument was the diminishing importance of historical precedent in favour of human reason and natural law. Appeals to a pre-Norman past were meant to demonstrate the liberties any Englishman *ought* to be able enjoy, rather than provide an exact blueprint that they sought to reintroduce. Hill therefore saw a 'momentous transition [...] from historical mythology to political philosophy' in the Leveller writings.¹⁴⁷ In the same vein, Pocock presented the Levellers as antithetical to the doctrine of the ancient constitution. Comparing Edward Coke's ancient constitutionalism with the Leveller's view of 1066, Pocock found that 'no two attitudes of mind could have been more deeply opposed.' In their efforts to transcend the appeal to (legal) history, the Levellers 'could not appeal to the law, but to natural right and reason'. This, Pocock argued, represented the moment in which 'the language of political rationalism' emerged to replace previous historicism.¹⁴⁸ Quentin Skinner also found that the Levellers were using ideas of conquest 'as a means of denouncing all existing rule as an alien yoke laid on the English which they sought to

¹⁴⁶ Hill, *Puritanism and Revolution*, 73.

¹⁴⁷ *Ibid.*, 68.

¹⁴⁸ Pocock, *Ancient Constitution*, 126.

replace by ‘proclaiming instead the natural rights of free subjects.’¹⁴⁹ The Norman Conquest thus became ‘the sullied source that effectively poisoned all subsequent government’, as became particularly clear in the *Remonstrance of Many Thousand Citizens*, which will be discussed in more detail below.¹⁵⁰

Building on these accounts, this section specifically focuses on the Levellers’ use of conquest language and highlights the hybrid nature of their approach as they moved from a prescriptively historical language to a normatively theoretical one. That is to say they brought together the historical focus of antiquarians and ancient constitutionalists with the more conceptual and normative elements that emerged in the context of 1642/3.¹⁵¹ The Leveller debates of conquest rights, however, did not achieve the same theoretical and conceptual depth that the discourse of 1642/3 had exhibited. They were more polemical in nature, using the historical conquest as a target for their anti-absolutist arguments, rather than negotiating the details of political obligation that arose from conquest. Their ideas remain interesting, nonetheless, for the way in which they captured a combination of legal-historical arguments and budding theoretical accounts. The Levellers’ persistent discussions of the Norman Conquest, moreover, ensured that conquest language retained a prominent role in public political discourse. Their political

¹⁴⁹ Skinner, *Visions*, 3: 248.

¹⁵⁰ Ibid.

¹⁵¹ On the link between 1642/3 and Leveller thought, see in particular David Wootton, ‘From Rebellion to Revolution: The Crisis of the Winter of 1642/3 and the Origins of Civil War Radicalism’, *The English Historical Review* 105, no. 416 (1990): 654–669. Wootton finds that ‘the winter of 1642/3 saw something of a dress rehearsal for the arguments of 1646’ (659). However, see also Foxley, *The Levellers*, 52–64. Foxley agrees with Wootton that the debates of 1642/3 influenced later Leveller thought but warns against the ‘oversimplification’ of ‘reducing the Levellers’ thought to a mere reiteration, expansion, or application of the earlier arguments of radical’ parliamentary authors (53).

rhetoric therefore meant that a conquest discourse thrived also after the debates of 1642/43 and throughout the second half of the decade.

The *Remonstrance of Many Thousand Citizens* (July 1646) came to define and epitomise the Levellers' view of conquest and the long shadow of 1066 which they were eager to step out of. The central complaint of the *Remonstrance* was that England was 'under the Norman yoke of an unlawfull Power, from which wee ought to free our selves.'¹⁵² Addressing the House of Commons and probably penned by Richard Overton, the *Remonstrance* warned against failure 'to deliver us from all kind[s] of Bondage'.¹⁵³ That this deliverance was needed in the first place was because England was still constrained by the chains of the medieval Norman invasion: 'The History of our Fore-fathers since they were Conquered by the *Normans*, doth manifest that this Nation hath been in bondage all along ever since.'¹⁵⁴

The *Remonstrance*'s particular focus on the idea of conquest may also be explained by the immediate circumstances at the time of its publication.¹⁵⁵ The first civil war had recently come to an end after Charles I's surrender to the Scots. This new constellation gave rise to fears that the king was plotting a re-conquest of England.¹⁵⁶ Such anxieties were most explicitly expressed by Richard Overton who voiced his suspicion that Charles and the Scots were conspiring 'to subjugate the neckes of the Free-men of England to your Scottish Monarchicall Yoake of Bondage.'¹⁵⁷ Notions of conquest were thus particularly salient not just because of their historical importance or because of recent

¹⁵² *Remonstrance of Many Thousand Citizens*, 13.

¹⁵³ *Ibid.*, 3.

¹⁵⁴ *Ibid.*, 4.

¹⁵⁵ See also Foxley, *The Levellers*, 36.

¹⁵⁶ Austin Woolrych, *Britain in Revolution, 1625-1660* (Oxford: Oxford University Press, 2002), 341–42.

¹⁵⁷ Quoted in Foxley, *The Levellers*, 37.

victories in the first civil war but also because of the present moment and the as yet undetermined future of the political system that rested on it.

The *Remonstrance*, therefore, did not limit itself to a fiction of the pre-Norman past, seeking to retrieve lost liberties, but sought to establish the same based on reason and universal principles. Whereas an appeal to history limited them to a set number of existing (and past) rights, a broader appeal to natural law and reason appeared to permit an extension of their rights.¹⁵⁸ Reminding the Commons that they had been ‘chosen to worke our deliverance’, the author(s) continued to emphasise the new path they sought to embark upon, proclaiming that ‘we are the men of the present age, and ought to be absolutely free from all kindes of exorbitancies, molestations or Arbitrary Power’.¹⁵⁹ As such, they were looking for ‘natural and just libertie agreeable to Reason and common equitie’.¹⁶⁰ They effectively demanded nothing less than the abolition of the monarchy:

‘Wee doe expect according to reason, that yee should [...] declare and set forth King Charles his wickednesse openly before the world, and withall, to shew the intollerable inconveniences of having a Kingly Government [...] and so to declare King Charles an enemy, and to publish your resolution, never to have any more, but to acquite us of so great a charge and trouble for ever’.¹⁶¹

Hand in hand with the unlawful beginning of government following the conquest, branding all subsequent monarchs as (heirs of) usurpers, went the introduction of Norman laws. Where the ancient constitutionalists had hailed the common law as antique and continuous, the Levellers were keen to emphasise its compromised nature. Rather than being the safeguard of freedom, the law was viewed as the epitome of England’s oppression. The *Remonstrance* found that ‘the Lawes of this Nation are unworthy a

¹⁵⁸ See also A.S.P. Woodhouse, ‘Introduction’, in *Puritanism and Liberty: Being the Army Debates (1647-9) from the Clarke Manuscripts with Supplementary Documents*, ed. A.S.P. Woodhouse, 2nd ed. (London: Dent, 1951), 96.

¹⁵⁹ *Remonstrance of Many Thousand Citizens*, 5.

¹⁶⁰ *Ibid.*, 4.

¹⁶¹ *Ibid.*, 6.

F[ree]-People, and deserve from first to last, to be [...] reduced to an agreement with common equity, and right reason, which ought to be the Forme and Life of every Government.’¹⁶²

Further leading Levellers occasionally exhibited similar anti-Norman rhetoric. William Walwyn, one of the central Leveller writers, stressed the compromised nature of all law and supposed guarantees of liberty, such as Magna Carta. These, he held, were ‘the grants of Conquerors’ which made invoking them as a safeguard of liberty tantamount to ‘call[ing] bondage libertie.’¹⁶³ Neither historical rights nor parliamentary sovereignty were able to guarantee the English people their freedoms. Instead, what was required were universal rights, such as ‘reason, sense, and the common Law of equitie and justice.’¹⁶⁴ John Lilburne, a leading Leveller writer whose positions were at times equivocal, had initially admired Magna Carta as a stronghold of liberty. Gradually, however, he seemed to abandon his stance as he also adopted anti-Norman arguments, emphasising the compromised nature of the laws after 1066.¹⁶⁵ He now criticised William I’s supposed usurpation and abrogation of ‘the Confessours lawes.’ These, Lilburne complained, had been replaced by Norman innovations, were ‘tedious [...] and impossible to be understood.’¹⁶⁶ The corruption at the outset meant that ‘the main stream of our Common law [...] flowed out of Normandy’ from which it followed that ‘it came

¹⁶² Ibid., 15.

¹⁶³ William Walwyn, *Englands Lamentable Slaverie, Proceeding from the Arbitrarie Will, Severitie, and Injustnes of Kings, Negligence, Corruption, and Unfaithfulnesse of Parliaments* (London, 1645), 5.

¹⁶⁴ Walwyn, *Lamentable Slaverie*, 5; see also Wootton, ‘From Rebellion to Revolution’, 662; Burgess, *British Political Thought*, 247.

¹⁶⁵ Lilburne had endorsed Edward Coke’s view of Magna Carta, praising ‘those Golden expressions of the most worthy Lawyer, Sir Edward Cook in his exposition [...] of Magna Charta’ (John Lilburne, *London’s Liberty in Chains Discovered* (London, 1646), 29.) On Lilburne’s ambiguities, see also R. B. Seaberg, ‘The Norman Conquest and the Common Law: The Levellers and the Argument from Continuity’, *The Historical Journal* 24, no. 4 (1981): 794–96.

¹⁶⁶ John Lilburne, *The Just Mans Justification* (London, 1647), 13.

from the Will of a Tyrant.’¹⁶⁷ As such, the common law of his own day represented ‘an iron Norman Yoke, with fangs and teeth in it.’¹⁶⁸

Some of the Leveller positions also found expression in the first *Agreement of the People*, a ‘remarkable constitutional document’ presented to the New Model Army’s general council in October 1647.¹⁶⁹ While the extent of direct Leveller involvement in the writing of the *Agreement* remains unclear, the document encapsulated some the movement’s central ideals.¹⁷⁰ Its fundamental propositions, or demands, for England’s political future centred around the dissolution of the Long Parliament, subsequent biennial parliaments, an extension of the franchise and the acknowledgement of fundamental rights reserved to the people.¹⁷¹ The *Agreement* further stipulated that it was merely outlining ‘our native Rights’ and the authors vowed ‘to maintaine them with our utmost possibilities, against all opposition whatsoever’.¹⁷² This opposition would have included the king who was effectively the distant heir of the Norman Conqueror of 1066. The *Agreement*, which ‘became the focus of a civilian Leveller campaign’, thus outlined

¹⁶⁷ Ibid., 13.

¹⁶⁸ Ibid., 15.

¹⁶⁹ Foxley, *The Levellers*, 78.

¹⁷⁰ Rachel Foxley, for example, notes that ‘the extent of any distinctively Leveller contribution to it is unclear’ (*The Levellers*, 78). See also Vernon and Baker, ‘What Was the First “Agreement of the People”?’ 40–41. For the view that the Levellers were directly involved, specifically through Wildman and Walwyn, see Austin Woolrych, *Soldiers and Statesmen: The General Council of the Army and Its Debates, 1647-1648* (Oxford: Clarendon Press, 1987), 214–15.

¹⁷¹ *An Agreement of the People for a Firme and Present Peace* (n.p., 1647). See also David Wootton, ‘Leveller Democracy and the Puritan Revolution’, in *The Cambridge History of Political Thought, 1450-1700*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1991), 412–42; Ian Gentles, ‘The Agreements of the People and Their Political Contexts, 1647-1649’, in *The Putney Debates of 1647: The Army, the Levellers, and the English State*, ed. Michael Mendle (Cambridge: Cambridge University Press, 2001), 148–74; Vernon and Baker, ‘What Was the First “Agreement of the People”?’; Elliot Vernon and Philip Baker, eds., *The Agreements of the People, the Levellers and the Constitutional Crisis of the English Revolution* (Basingstoke: Palgrave Macmillan, 2012).

¹⁷² *An Agreement of the People*, 5.

the political system which should replace the corrupt Norman institutions which had kept England in chains.¹⁷³

In the wake of Leveller political thought, including their notions of anti-Normanism, a trend of anti-Norman rhetoric was also noticeable among a wider group of anti-absolutist thinkers.¹⁷⁴ The belief in a mythical ancient constitution was replaced by a view that emphasised, rather than downplayed the effects of the Norman Conquest. This phenomenon of anti-Normanism was also visible outside immediate Leveller circles. In 1647 and '48 John Hare published several tracts in which he expounded a strongly anti-Norman agenda.¹⁷⁵ They appeared under evocative titles such as *St. Edwards Ghost: or, Anti-Normanisme*.¹⁷⁶ Hare's principal concern was that England still carried the 'infamous title of a conquered Nation' which came with 'visible fetters of [...] captivity' constituted by 'forraigne Lawes, Language, Names, Titles and Customes, then introduced, and to this day domineering over ours.'¹⁷⁷ Under these circumstances, an 'unlimited Prerogative in the Crowne' was 'inseparably wrapt up in Title of Conquest.'¹⁷⁸

¹⁷³ Foxley, *The Levellers*, 78.

¹⁷⁴ See also A.S.P. Woodhouse, 'Introduction', in *Puritanism and Liberty: Being the Army Debates (1647-9) from the Clarke Manuscripts with Supplementary Documents*, ed. A.S.P. Woodhouse, 2nd ed. (London: Dent, 1951), 96.

¹⁷⁵ John Hare does not have an entry in the *ODNB*, but for brief discussions of Hare's thought and role in the formation of anti-Normanism see Hill, *Puritanism and Revolution*, 66–68; Brailsford, *The Levellers*, 129–30, 141 n. 43.

¹⁷⁶ John Hare, *St. Edwards Ghost: Or, Anti-Normanisme: Being a Patheticall Complaint and Motion in the Behalfe of Our English Nation against Her Grand (yet Neglected) Grievance, Normanisme* (London, 1647).

¹⁷⁷ *Ibid.*, 2.

¹⁷⁸ John Hare, *Englands Proper and Onely Way to an Establishment in Honour, Freedome, Peace and Happinesse, or, The Normane Yoke Once More Uncased* (London, 1648), 3.

England's hereditary monarchy was thus based on the initial conquest and the country nothing but a 'Norman Colony.'¹⁷⁹

Hare's suggested remedy for the country's predicament was radical. In order to address the 'Effects and Badges of [the] Conquest', he hinted, nothing short of rebellion and the abolition of the compromised monarchy would suffice.¹⁸⁰ He argued that 'without [...] the abolishing of the Right and Title of the Conquest our Kings are [...] no better then usurp[ing] Forraigners, our people absolute slaves, and our Parliaments undutifull servitors to both.'¹⁸¹ Consequently, Hare demanded that 'the Title to the Crowne bee ungrounded from any pretended Conquest over this Nation.' England could only be liberated of the 'fast-sticking blemish' of the Norman Conquest once 'wee have unconquered our selves.'¹⁸² A new act of conquest was needed to undo the original submission from six hundred years before.

In Hare's hands, the language of conquest became even more closely associated with notions of (Charles') tyranny and synonymous with everything that was wrong with the third Stuart king's rule; 'the adjective "Norman" was enough to blast any institution.'¹⁸³ While Hare was not a recognised Leveller, some of his demands closely resembled those advanced by the Levellers.¹⁸⁴ Not least the plea that the English should

¹⁷⁹ Hare, *St. Edwards Ghost*, 17. Selden had previously referred to England as a 'Norman Colony', see Chapter 2, n. 76

¹⁸⁰ Hare, *Plaine English*, 3 [mispaged as 2].

¹⁸¹ Ibid., 'To the Reader'.

¹⁸² Hare, *St. Edwards Ghost*, 18, 19.

¹⁸³ Brailsford, *The Levellers*, 130.

¹⁸⁴ The language of anti-Normanism found widespread use. A more moderate example was John Warr, *The Corruption and Deficiency of the Lawes of England, Soberly Discovered* (London, 1649). On Warr see also Hill, *Puritanism and Revolution*, 71. In the wake of Levellers, the so-called Digger movement flourished which pursued similar ends. They, too, heavily relied on the rejection of a Norman Yoke. Their figurehead, Gerrard Winstanley, for example, bemoaned that 'all Kings, from [William's] time to King Charles, were successors of [the Norman] conquest; and all Laws were made to confirm that Conquest'. (Gerrard Winstanley, *The Works of Gerrard Winstanley: With an Appendix of Documents Relating to the Digger Movement*, ed. George H. Sabine

‘unconquer’ themselves, would likely have resonated with Lilburne, Overton and Walwyn. What such a call to action eloquently disguised, of course, was the underlying idea that what was needed was effectively a conquest of their own. Parliament and the New Model Army had to win the war in order to be able to impose their conditions by right of arms. The Levellers’ ideas may have been focused on popular sovereignty, yet nonetheless effectively presupposed a right of war.¹⁸⁵

The Leveller view of conquest represented a hybrid account. On the one hand, they were focused on historical precedent and its contemporary political consequences; on the other they sought universal rights and principles, rather than a particular prescriptive golden past. The anti-Normanism that arose from their pamphlets thus represented an ‘effort of the imagination to accommodate history to the demands of reason [...] to clothe abstract rights in a concrete and primitive form.’¹⁸⁶ In the Levellers’ language, moreover, conquest rhetoric became synonymous with tyranny. A vocabulary of conquest was exclusively used to taint absolutist government (in its royalist forms in particular). This would not remain the case in the pamphlet debates that followed the end of the civil wars, as the next chapter will show.

(New York: Russell & Russell, 1965), 521.) On the Digger movement, see also John Gurney, *Brave Community: The Digger Movement in the English Revolution* (Manchester: Manchester University Press, 2007), esp. 159 ff. for Winstanley’s version of the Norman Yoke. Hill, *Puritanism and Revolution*, 75–79; Burgess, *British Political Thought*, 273–83. For Winstanley, see John Gurney, *Gerrard Winstanley: The Digger’s Life and Legacy* (London: Pluto Press, 2013); David Loewenstein, ‘Gerrard Winstanley and the Diggers’, in *The Oxford Handbook of Literature and the English Revolution*, ed. Laura Lunger Knoppers (Oxford: Oxford University Press, 2012), 327–42, esp. 330 ff. for the Norman Conquest and Yoke in Digger thought.

¹⁸⁵ That being said, they were conscious of the dangers of parliamentary absolutism, of course, which had occasioned some of their works in the first place.

¹⁸⁶ Woodhouse, ‘Introduction’, 97.

VI – CONCLUSION

This chapter demonstrated how conquest came to be a key issue in English political discourse at the time of the civil war of the 1640s. The early stages of the civil war were a particularly crucial moment in the debates which forged early modern Anglophone ideas of conquest. After the first three decades of the century had mostly seen attempts to avoid conquest discourse, the 1640s and the occurrence of a violent conflict for power and sovereignty firmly placed conquest on the map of political discourse.

No political or ideological camp could claim the idea exclusively. Instead, royalists and parliamentarians turned to conquest to support their respective arguments. After the ancient constitutionalists had largely engaged in exercises of shadow boxing against the straw threat presented by conquest-based justifications of sovereign power prior to 1640, royalists now frequently looked to conquest, arguing that it could provide a legitimate basis for the sort of monarchical rule they wished to defend. It is hard to escape the impression that there was an element of a self-fulfilling prophecy at work, especially so after years of polemical agitation against alleged conquest-based (Stuart) absolutism. The royalist appropriation of conquest language certainly took place earlier than historians have traditionally maintained.

In turn, parliamentarians were keen to disprove such claims. A pivotal conceptual weapon of their choice was the notion of consent. The extraction of consent, popular and parliamentary, over time ratified any original conquest, blunting its initially sharp absolutist edges. Levellers, Diggers and other anti-Normanists arguably went a step further, offering more radical solutions. They also focused on conquest, or 1066 specifically, but aimed to uproot the political system that had developed in its wake, rather

than preserving continuity resting on doubtful historical foundations. Accordingly, they phrased their calls to dismantle the monarchy in a language of conquest, portraying the Norman arrival as the source of all evil and oppression that culminated in their own time in Charles I's personal rule. These developments show the many ways in which conquest discourse became a central feature in civil war political theory. It was appropriated for opposing and conflicting ends by rivalling factions. This flexibility also testified to conquest thought's double-edged nature which had for long made political actors reluctant to positively derive power and authority from it. Even in 1642 William Bridge had still issued a warning that invoking conquest in support of sovereignty would be a misguided attempt at intellectually justifying what was in essence nothing but a right of the strongest. His warning, evidently, went unheeded.¹⁸⁷

As far as discourses of conquest are concerned, the first half of the 1640s may be said to represent a moment of transition in which conquest thought acquired a theoretical dimension. It would be true to say that the majority of the pamphlets were *pièces d'occasion*, each conceived as a defence of one political view against another, as a response to another particular pamphlet.¹⁸⁸ And there is no doubt some truth in the observation that many of the publications of the period 'reflected the loose diction that passed for conceptualization in the political discourse' during this period.¹⁸⁹ Conquest ideas specifically, however, were expounded and developed with increasing theoretical acumen. Their immediate practical relevance may have added to the urgency of this

¹⁸⁷ Bridge, *Wounded Conscience Cured*, 26.

¹⁸⁸ This is particularly true in the case of Ferne, Herle, Burroughs and others, as not least reflected in the titles of their works.

¹⁸⁹ Robert Zaller, 'Henry Parker and the Regiment of True Government', *Proceedings of the American Philosophical Society* 135, no. 2 (1991): 258. Zaller specifically diagnosed vague political concepts in Henry Parker's work.

development. All the same, what this chapter sketched was merely the beginning of a process.

When Abraham Cowley wrote about the events of the civil war at the time of the Restoration, his lines betrayed a fascination with conquest but also questioned whether parliament's victory did indeed qualify as such. Cowley found that thinking of the civil wars as conquest was outright nonsensical; he reflected 'that to say in Civil Warrs that the prevailing party conquers their Country, is to say, the Country conquers it self.'¹⁹⁰ Cowley conceded that conquest could, when two sovereign nations were involved, confer a right to rule. But he remained unconvinced by the argument that parliament had won a right of conquest through military success in the civil war: 'It appears therefore plainly, that Cromwell was not a Conquerour, but a Thief and Robber of the Rights of the King and Parliament, and an Usurper upon those of the People. I do not here deny Conquest to be sometimes [...] a true title, but I deny this to be a true Conquest.'¹⁹¹ Whether the parliamentary victory in the civil war was a 'true conquest' or not and under what conditions conquests could grant legitimate authority will be examined in the next chapter, as the Engagement Controversy, which ensued after the regicide of 1649, will be at the heart of the story.

¹⁹⁰ Abraham Cowley, *A Vision, Concerning His Late Pretended Highnesse Cromwell, the Wicked* (London, 1661), 36.

¹⁹¹ *Ibid.*, 37.

*'Betwixt Conquest and Victory': Conquest, Sovereignty
and Legitimacy in the Engagement Controversy, 1649-
1651*

I – CONQUEST DISCOURSES IN THE ENGAGEMENT CONTROVERSY: AN
OVERVIEW

In the wake of the Crown's defeat at the hands of parliament and Charles I's execution, England was a conquered country. Whereas debates about conquest throughout the first four and a half decades of the century had been concerned with historical or hypothetical conquest, the civil war and its culmination in the regicide created a political reality that necessitated the formulation of new justifications for sovereignty and obedience. In the light of parliament's seizure of power through military victory, conquest was one of the foremost issues that needed to be addressed. How this was done, in the works of supporters of the Engagement, its opponents and, finally, in Thomas Hobbes's *Leviathan*, will be the subject of this chapter.

In fact, the New Model Army had already proclaimed a 'full conquest' at the end of the second civil war and prior to the king's execution. Specifically, the army's *Remonstrance* (Nov. 1648) pointed out that the any right of conquest that the king might

have relied upon during the civil war to underscore his claim to sovereignty had been turned against him. The people had, according to the *Remonstrance*, ‘at last wholly subdued [the king] and gained their owne Cause in that way of force and conquest, to which he had so appealed.’¹ The *Remonstrance* was submitted to and rejected by parliament in November 1648. In the following month, the army lost its patience amid continuing negotiations between parliament and the king over a possible settlement. This ultimately culminated in Pride’s Purge when the army denied supporters of the Treaty of Newport entry to the House on 6 December 1648.² Subsequently the king was put on trial and ultimately executed in January 1649. In the wake of the regicide the notion that England was indeed a conquered country found more widespread expression.

That the civil war had culminated in a conquest quickly became an acknowledged fact. An anonymously published pamphlet, *Conscience Puzzel’d, About Subscribing the New Engagement*, noted that it ought to be ‘declared, avowed, and owned that we are a conquer’d Nation; We are readie to make the best conditions we can for our selves.’³ The author of *The Extent of the Sword*, also anonymous, observed that ‘the House of Commons did by the help of the Military Power (without which, they could not have acted) take away Regall Power’. This forceful acquisition of political control, the author admitted, was ‘commonly called Conquest; a word that sounds harsh to some, but must be justified by us who owne it; for it is our conquest’.⁴ And *The True Portraiture of Kings* agreed as it observed that ‘we have conquered the Conqueror, and got the possession of

¹ [Henry Ireton], *A Remonstrance of His Excellency Thomas Lord Fairfax, Lord Generall of the Parliaments Forces. And of the Generall Councell of Officers Held at St Albans the 16. of November, 1648.* (London, 1648), 27. See also *Ibid.*, 48 for a re-iteration of this argument.

² See also Woolrych, *Britain in Revolution*, 420–29; David Underdown, *Pride’s Purge: Politics in the Puritan Revolution* (Oxford: Clarendon Press, 1971), 115–29.

³ *Conscience Puzzel’d, about Subscribing the New Engagement* (London, 1650), 8.

⁴ *The Extent of the Sword* (London, 1653), 2.

the true English title'.⁵ The army's military victory had established a new political reality which required new conceptual underpinnings for parliamentary sovereignty and the subjects' obedience. Conquest became one of the most widely debated concepts in the first years of the young republic.⁶

In January 1649 the King of England had been tried for treason, publicly executed and the monarchy abolished. In its place, England was declared to be run by a 'Government In the way of A Free State', which came in the shape of parliament.⁷ The divine right of kings and primogeniture had thus far regulated the succession of rulers. The violent transition from monarchy to republic required new justifications for power and obedience. One result was that theories of conquest thrived in the ensuing debates over the nature, extent and origins of sovereignty and obedience.

One of the ways in which the Rump Parliament sought to ensure its subjects' obedience was by means of the Engagement Act, from which the 'Engagement controversy', describing the ensuing debates, takes its name. Between February 1649 and January 1650 parliament issued a series of declarations, seeking to bind the people to the present government, guaranteeing the subjects' obedience ultimately through 'An Act for

⁵ *The True Portraiture of the Kings of England; Drawn from Their Titles, Successions, Reigns and Ends* (London, 1650), 42. Michael Mendle attributes the pamphlet to Parker (Henry Parker, 166–67.) But Glenn Burgess suggests that Cuthbert Sydenham was the most likely author (*British Political Thought*, 415 n. 12).

⁶ John Wallace points out 'how embarrassed the Rump Parliament was by its newly-acquired power' and finds that they turned to providence in their attempts to justify their position. ('The Engagement Controversy 1649-52: An Annotated List of Pamphlets', *New York Public Library Bulletin* 68 (1964): 384.) Conquest and providence, however, were complementary, as Chapter 3 showed and Section IV of this chapter will demonstrate again.

⁷ *A Declaration of the Parliament of England, Expressing the Grounds of Their Late Proceedings, and of Settling the Present Government in the Way of a Free State* [17 March] (London, 1649).

Subscribing the Engagement'.⁸ In the light of the debates of 1642/3, examined in the previous chapter, the Engagement could be seen as the practical elicitation of consent to authorise parliament's conquest.

One of the most prominent, and most frequently studied, strategies of defending submission to the new regime (and the Engagement), however, denied the importance of consent – and the means of acquiring power altogether – for lawful obedience, emphasising possession of power as legitimate grounds instead. *De facto* theories, or the view that the possession of power provided sufficient grounds for the subjects' obedience, omitted the normative considerations which had characterised attempts to qualify conquest rights over the preceding decade.⁹ These conceptual foundations of the Engagement controversy have been thoroughly surveyed in modern literature over the last five and a half decades. A small group of early modern thinkers, including Anthony Ascham, Francis Rous and Marchamont Nedham, has been identified as representative of *de facto* theorists, and has received a lion share of scholarly attention.¹⁰

The first section of this chapter will investigate these theorists' respective understandings and uses of conquest in their construction of *de facto* justifications of

⁸ See also Burgess, *British Political Thought*, 329–36; Wallace, 'The Engagement Controversy'; Wallace, *Destiny His Choice*, chap. 1; Blair Worden, *The English Civil Wars, 1640-1660* (London: Phoenix, 2009), 105–6.

⁹ On the strand of *de facto* theories in particular, see Burgess, 'Usurpation, Obligation and Obedience'. Burgess identified three main strategies with which the new commonwealth was defended, from mere negative justifications of the regicide (that is to say parliamentary resistance theory), ideologically driven endorsements of republicanism over monarchy, and the exponents of *de facto* arguments (*British Political Thought*, 327 ff.) Rous, Ascham and Nedham's ideas will be examined in more detail in the section III of this chapter.

¹⁰ See for example, Skinner, 'History and Ideology'; 'The Ideological Context of Hobbes's Political Thought', *The Historical Journal* 9, no. 3 (1966): 286–317; 'Conquest and Consent'. All three of these have been republished in Skinner, *Visions*, 3: 238–307. See further, Richard Tuck, *Philosophy and Government, 1572-1651* (Cambridge: Cambridge University Press, 1993), chap. 6, esp. 253-9; Wallace, *Destiny His Choice*, 30–41, 51–56.

power. A particular focus herein will rest on Anthony Ascham and his use of Hugo Grotius's thought.¹¹ Ascham's indebtedness to Grotian ideas has been repeatedly identified in modern literature.¹² John Wallace, for example, suggests that Ascham's political arguments were the result of his application of Grotian *jus gentium* principles to the aftermath of the English civil war whilst qualifying that these arguments were not 'the direct result of hard thinking about the implications of conquest theory'.¹³ More recently, a series of works by Marco Barducci sought to emphasise both the importance of Grotian thought in the English revolution and, specifically, Ascham's use of the same.¹⁴ One of Barducci's central claims is that 'Grotius [...] brought to England a theory of conquest'.¹⁵ In turn, Barducci suggests, Ascham picked up this Grotian conquest theory and 'deployed [it] to persuade his readers to recognise the Commonwealth's authority'.¹⁶ This line of argument implies at least two things: first, that Grotius had a fully articulated theory of conquest and, second, that Ascham lifted the same out of the Dutch philosopher's texts and applied it to the context of the English civil war.

This chapter will question both the notion that Grotius offered a fully-fledged conquest theory and the view that Ascham merely applied the same in an attempt to resolve his contemporaries' concerns over the Engagement. And while it will remain Ascham's secret how hard he had to think about Grotius's notion of conquest, the account

¹¹ On Ascham, see also Irene Coltman, *Private Men and Public Causes: Philosophy and Politics in the English Civil War* (London: Faber and Faber, 1962), pt. 3.

¹² Wallace, *Destiny His Choice*, 32–35; Tuck, *Philosophy and Government*, 256–59; Skinner, *Visions*, 3: 277, 296.

¹³ Wallace, *Destiny His Choice*, 31–32. Similarly, Tuck observed that 'Ascham's analysis was close to at least the spirit of Grotius.' (*Philosophy and Government*, 256.)

¹⁴ Marco Barducci, 'Hugo Grotius and the English Republic: The Writings of Anthony Ascham, 1648-1650', *Grotiana* 32, no. 1 (2011): 40–63; *Order and Conflict: Anthony Ascham and English Political Thought, 1648-50* (Manchester: Manchester University Press, 2015); *Hugo Grotius and the Century of Revolution, 1613-1718: Transnational Reception in English Political Thought* (Oxford: Oxford University Press, 2017).

¹⁵ Barducci, *Hugo Grotius*, 19.

¹⁶ Barducci, 'Hugo Grotius and the English Republic', 42.

he forged out of it and applied to the political situation of the early commonwealth would seem to make Ascham the innovator, rather than the Dutchman himself. Ascham, in other words, sagaciously drew on elements of Grotius's work to present an overall theory of conquest more coherent than *De Iure Belli*'s author's own.¹⁷

Much of the scholarly efforts dedicated to the Engagement have focused on its defenders and the *de facto* theorists in particular. Their opponents, in turn, have suffered a relative lack of attention.¹⁸ The sum of their writings, however, are of particular interest with respect to their considerations of conquest vis-à-vis the *de facto* theorists'.¹⁹ Whereas the *de facto*ists endorsed possession as legitimate grounds for submission, thus largely stripping their accounts of sovereignty and obedience of normative concerns, their opponents were keen to introduce limiting conditions under which conquest could create political obligation. An examination of the anti-engagers' treatment of conquest in the second section of this chapter will reveal an emerging set of shared parameters and theoretical categories within which conquest was discussed. This, it will be argued, grew out of the practical need to verbalise rules for conquest in a country whose new rulers had just acquired power by means of the same and suggests the continuation of a trend which saw conquest discourse move towards recognisable and agreed categories of theoretical inquiry, which had tentatively started in the context of the debates of 1642/3.

¹⁷ John Wallace perceptively noted that Ascham was 'taking Grotius' arguments out of context [and] found a use for them which Grotius never intended' (*Destiny His Choice*, 33.)

¹⁸ See, Burgess, 'Usurpation, Obligation and Obedience', 516.

¹⁹ Edward Gee, for example, was one of the more prominent among them. Gee's thought is examined in more detail in Ian Michael Smart, 'Edward Gee and the Matter of Authority', *The Journal of Ecclesiastical History* 27, no. 2 (1976): 115–127; Burgess, 'Usurpation, Obligation and Obedience', 524–29. See also Wallace, 'The Engagement Controversy', 386; Wallace, *Destiny His Choice*, 58–59. For Gee's rivalry with Anthony Ascham, see also Barducci, *Order and Conflict*, 72–75. Gee also features briefly in Skinner, *Visions*, 3: 229–32.

While defenders of the Engagement ignored or unreservedly endorsed conquest rights, its opponents debated the nuances of the conditions under which it could create authority and oblige subjects. In the meantime, Thomas Hobbes had begun a systematic articulation of conquest in the early 1640s which he continued and refined at the time of the Engagement debates. The final part of the chapter will revisit Hobbes's ideas of conquest with an emphasis on *Leviathan*, its links to the Engagement controversy and his ideas' roots in his previous works; after *The Elements of Law* (1640) and *De Cive* (1642), he published his most famous work, *Leviathan*, in 1651. Building on his contextualist approach, Quentin Skinner convincingly argued that *Leviathan* was intended as an addition to the Engagement debates, rather than being an isolated work of political theory.²⁰ He finds that 'one of Hobbes's aims in *Leviathan* was to contribute to precisely this debate about the rights of *de facto* powers'.²¹ Moreover, Skinner took the view that Hobbes's *Leviathan* represented an endorsement of *de facto* principles.²² Thematic and semantic parallels between Hobbes and the *de facto* theorists, notably Ascham and Nedham, are undeniable.²³ Against this backdrop, an interpretation of *Leviathan* as a response to and endorsement of the *de facto*ists appears plausible.

²⁰ For the importance of Skinner's contextual treatment of Hobbes, see also Jeffrey R. Collins, 'Quentin Skinner's Hobbes and the Neo-Republican Project', *Modern Intellectual History* 6, no. 2 (2009): 343–45.

²¹ Skinner, *Visions*, 3: 289.

²² See for example Skinner, 'Ideological Context'. In the version of the article included in his *Visions of Politics*, Skinner distanced himself somewhat from this view, as he concedes that while 'there are important similarities' between Hobbes and the *de facto* theorists, 'this reading makes too little of the fact that, in the basic premises of his political theory' Hobbes was in fact closer to some of the opponents of the *de facto* theorists than he was to Ascham or Nedham (*Visions*, 3: 232.)

²³ Kinch Hoekstra, 'The de Facto Turn in Hobbes's Political Philosophy', in *Leviathan After 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Clarendon, 2004), 49 ff; Noel Malcolm, 'General Introduction', in *Leviathan*, by Thomas Hobbes, ed. Noel Malcolm, vol. 1 (Oxford: Oxford University Press, 2012), 66–72; Skinner, *Visions*, vol. 3, chaps 8–10. For Ascham and Nedham's use of Hobbesian ideas, see also Parkin, *Taming the Leviathan*, 72–74, 78–79.

By revisiting the *Leviathan*, this chapter does not seek to dispute its link with *de facto* theories. Rather, it seeks to broaden and deepen the context within which Hobbes's ideas of conquest developed. The aim is to re-emphasise the conceptual and contextual links between *Leviathan* and Hobbes's previous works from the early 1640s and with the broader discourse of the Engagement period beyond mere *de facto* thought. Hobbes's clarifications of his view of conquest theory in 1651 were a restatement and refinement of his ideas from ten years before. Accordingly, they were a response to the use of conquest rhetoric during the 1640s. This included but was not limited to *de facto* thought between the years 1649 and 1651 and, importantly, was a rejection of Ascham and Nedham's understanding of conquest. His reply was aimed at misguided articulations and uses of conquest ideas since 1642/3 with a broad range of authors in mind. Looking underneath the cloak of *de facto*ism in which Hobbes has often been dressed, will reveal that *Leviathan*'s theory of conquest stood on the shoulders of *The Elements* and *De Cive*, thus demonstrating its indebtedness to the debates of 1642/3, rather than just the Engagement debates. While each of Hobbes's iterations of conquest theory, thus developed over a longer period, was conceived as a response to practical political problems, the resulting theory, it will be argued, ultimately transcended the minute political contexts within which it was articulated.

II – CONQUEST IN *DE FACTO* DEFENCES OF THE NEW REGIME AND ENGAGEMENT

In the wake of the army's military victory over royalist forces or, in other words, its conquest of the nation, the victors needed to explain why they were owed obedience.²⁴ One particular group, the *de facto* defenders of the commonwealth (and the Engagement), were not interested in how the government had obtained its power. Their relative ignorance of the acquisition of power in lieu of a focus on its possession, also meant that they had little interest in debating the nuances of conquest theory. Against the backdrop of parliament's rather obvious military seizure of power, however, this was a difficult feat to accomplish. An examination of the ideas of three of the more famous *de facto* thinkers, Francis Rous, Anthony Ascham and Marchamont Nedham, will highlight three slightly different approaches to conquest. These ranged from ignoring conquest (Rous) to elaborating distinctions between conquest and victory, declaring the former irrelevant to the English civil war (Ascham) and an open endorsement of conquest right as the just and legitimate foundations for political authority (Nedham).

After royalist supporters during the early 1640s had made arguments from conquest acceptable in their attempts to support Charles I's claim, it was now only a short step for parliamentarians to use the idea for their own purposes. In 1642 William Bridge had warned that declaring Charles a king by conquest was dangerous should parliament win the civil war and thus become a conqueror itself. If the king had power merely through conquest, 'then if any mans sword be longer or stronger then his, hee may quickly have

²⁴ John Wallace noted that 'No revolutionary could pretend that the change [of government] had been unconstitutional, and the only recourse now open to the people was to accept the fact as accomplished. The laws concerning just titles had always been ambiguous, but the laws of evidence were not, and England must witness what had happened with her own eyes.' (*Destiny His Choice*, 31.)

as much right to the Crowne as the King [...] what danger will it not expose our dread Sovereign to?’²⁵ Now, that the ‘Sovereign’ had lost the war, the precedent set by the royalists could be exploited by those supporting the new regime. The warning about the fickleness of conquest arguments, which were inevitably contingent on changing political fortunes, of course applied for them as much as it had for royalists less than a decade before.

Engagement *de facto* theorists, however, ignored Bridge’s warning as they shifted the focus from normative to more practical questions concerning the possession of power. Where the early civil war debates negotiated under which conditions and with what limitations conquest could beget sovereignty, *de facto* thinkers reduced accounts of rightful obedience to questions about the possession of power. In the commonwealth’s quest for a new account of political obligation, grounding the legitimacy of obedience in possession, irrespective of its causal origins, was tantamount to accepting conquest as an effective cause for sovereignty.²⁶ Francis Rous, Anthony Ascham and Marchamont Nedham were some of the most prominent voices endorsing these notions of *de facto*ism. Their works, which will be at heart of this section, are interesting, therefore, because of their reductive conquest accounts which were mainstays in their defences of the commonwealth and rightful obedience to it.²⁷

Officially, parliament began to defend its newly won power by means of a declaration which was steeped in the language of resistance theory. The aim was to

²⁵ Bridge, *Wounded Conscience Cured*, 26.

²⁶ Quentin Skinner notes, for example, that ‘[t]here was a need, in other words, for a theory of political obligation in terms of which the new government could be legitimated’ (Skinner, *Visions*, 3: 287.) See also Wallace, *Destiny His Choice*, 31.

²⁷ The pamphlets under consideration in this chapter were published just before as well as after the official Engagement act itself, appearing between 1648 and 1651. The time frame thus follows the majority of the modern literature; for the argument that *de facto* arguments were also prevalent after this narrower definition of the Engagement controversy, see Burgess, ‘Usurpation, Obligation and Obedience’.

exculpate the violent origins of power and to calm the subjects' minds in matters of obedience. *A Declaration ... Settling the present Government In the way of A Free State* explained that in order to liberate England from the king's tyranny, parliament had considered it 'necessary to change the Government of this Nation from the former Monarchy [...] into a Republic, and not to have any more a King to tyrannize over them.'²⁸ Using a familiar vocabulary of popular sovereignty and representation, the *Declaration* expressed parliament's view that they were the true voice of the people, as they had been 'elected' to 'represent' them. In addition, it included appeals to providence, presenting the civil war as the manifestation of the divine as well as arguments that protection was a prerequisite for obedience and its absence sufficient reason to withdraw the latter. Specifically, it stipulated that the civil war had been God's way of determining who should rule the country as parliament had been guided to victory by 'the visible hand of God'.²⁹ With respect to protection and obedience, the argument was that King Charles I had acted tyrannically towards his own people as he had 'exceeded all his Predecessors, in the destruction of those whom they were bound to preserve; and in stead of spreading Protection to all, scarce permitting any to escape the violence of his fury.'³⁰ Parliament, in other words, had fought the war for defensive purposes and had merely defended the country against its oppressive ruler. This offered a negative justification for the war and regicide but did little in the way of supplying reasons for the legitimacy of the regime.

The violent change in government left many people uneasy because they 'regarded the killing of any anointed king as a crime; and the right of the new rulers seemed to be founded only on the fact of conquest.'³¹ Further measures were thus required to ensure

²⁸ *Declaration* [17 March], 20.

²⁹ *Ibid.*, 11.

³⁰ *Ibid.*, 11–12.

³¹ Malcolm, 'General Introduction', 66.

stability and obedience to the new regime. Between February 1649 and January 1650, the Rump Parliament therefore issued a series of declarations, seeking to bind the people to the present government, ensuring their obedience. On 2 January 1650 the government issued ‘An Act for Subscribing the Engagement’, the third and final version of the Engagement act. This final version extended the franchise to all males over eighteen years of age. According to the government, the oath would prevent a renewed outbreak of war and contribute to ‘the better uniting of this Nation, as well against all Invasions from abroad, as the Common Enemy at home.’³² The Act, like the *Declaration* before it, related protection to obedience, demanding that ‘those which receive benefit and protection from this present Government, may give assurance of their living quietly and peaceably under the same.’³³ Effectively, the Engagement Act was parliament’s way of ratifying their own conquest by demanding their subjects’ express consent.

Parliament’s own (official) attempts at justification were soon supplemented by extra-parliamentary efforts, that is to say a number of political pamphlets. Francis Rous’s *The Lawfulness of obeying the Present Government* was one of the earliest and most important defences of the government.³⁴ Aged almost seventy by the time he wrote *The Lawfulness*, the Presbyterian-turned-Independent provided what is now often seen as the archetypal *de facto* defence.³⁵ His pamphlet was addressed to ‘any [who] be not so far satisfied as to

³² Robert S. Rait and C. H. Firth, eds., *Acts and Ordinances of the Interregnum, 1642-1660*, vol. 2 (London: His Majesty’s Stationery Office, 1911), 325. The oath itself read: ‘I Do declare and promise, That I will be true and faithful to the Commonwealth of England, as it is now Established, without a King or House of Lords.’

³³ *Ibid.*, 325.

³⁴ Francis Rous, *The Lawfulness of Obeying the Present Government ... with Some Other Additions to a Former Edition* (London, 1649).

³⁵ For a summary of Rous’s argument, see also Burgess, ‘Usurpation, Obligation and Obedience’, 518–21; Tuck, *Philosophy and Government*, 255–59; Wallace, *Destiny His Choice*, 45–46; Skinner, *Visions*, 3: 291–94, esp. 291 for Rous’s argument being instrumental to *de facto* theories.

thinke that settlement lawfull'.³⁶ To this end, Rous emphasised the importance of the possession of power rather than the means of its acquisition, thus epitomising the model 'Engager' who advocated passive obedience to a usurper, 'regardless of the usurper's claim to legitimacy' and whose 'appeal to providence automatically implied that the army ruled by right of conquest'.³⁷

Indeed, Rous argued that obedience to the new regime was legitimate and the origins of sovereignty were secondary: 'When a question is made whom we should obey; it must not be lookt at what he is that exerciseth the power, or by what right or wrong he hath invaded the power, or in what manner he doth dispencc it, but onely if he have power.'³⁸ At the time Rous penned his tract, those that exercised power were conquerors and the right (or wrong) by which they held their position was that of conquest. By reducing the basis for lawful obedience to the possession of power, Rous actively drew attention away from means through which power was acquired and from conquest specifically.

Rous actively shifted attention away from the origins and practically issued a blank cheque to rulers regarding their acquisition of power, as long as they firmly held the reins. He declared that 'though the change of a Government were beleevd not to be lawful, yet it may lawfully be obeyed'.³⁹ This, Rous observed, would not be without historical precedent, since 'in this Nation many persons have beene settled in supream power and authority by meere force without title of inheritance, or just conquest'.⁴⁰ Where the debates merely ten years before were concerned with establishing conditions regulating

³⁶ Rous, *Lawfulness*, sig. A2.

³⁷ Wallace, 'The Engagement Controversy', 386–87.

³⁸ Rous, *Lawfulness*, 7.

³⁹ Ibid, 1. He reiterated 'that those whose Title is held unlawfull, yet being possest of authority may lawfully be obeyed' (Ibid., 6).

⁴⁰ Ibid., 4.

the acquisition of power – and particularly in cases of conquest – Rous advanced a position that dismissed this normative dimension altogether by focusing on the legality of obedience irrespective of the origins or legitimacy of sovereignty to which it was owed. Arguably, then, Rous implicitly accepted conquest as the foundations of power without explicitly naming it. In the process he conceded that the origins of the commonwealth were illegitimate and it was partly this concession that prompted subsequent protest, part of which will be covered in section III of this chapter.

Rous's shift of emphasis from the acquisition to the possession of power was emblematic of the *de facto* theorists. Anthony Ascham was also part of this latter group and the task of defending and expanding on some of Rous's arguments fell to him. In fact, Ascham's first contribution to the Engagement, his *Discourse* (1648), preceded the publication even of Rous's first edition of the *The Lawfulnes*. Rous is unlikely to have read the *Discourse* before the publication of his own work, however. Rous subsequently acquired and read Ascham's work prior to publishing an updated version of his *Lawfulnes* in which he approvingly cited Ascham's views.⁴¹

Ascham, who had attended Eton with Francis Rous the younger (son of the author of *The Lawfulnes*) and who had been appointed tutor to the young James, then Duke of York in 1646, is of interest for his deliberations on conquest in his version of *de facto*ism and for supposedly importing a Grotian theory of conquest into English political discourse.⁴²

Ascham is mainly known today for his pamphleteering role during the Engagement. In his own time, John Milton described him as 'a person of integrity, learned and

⁴¹ See Tuck, *Philosophy and Government*, 258; Wallace, *Destiny His Choice*, 46.

⁴² For the Eton connection, see Tuck, *Philosophy and Government*, 258. Ascham's role as tutor is mentioned in his *OBNB* entry. For Ascham's use of Grotius's ideas, see Wallace, *Destiny His Choice*, 32. See also Barducci, *Order and Conflict*, 71–74; Barducci, *Hugo Grotius*, chap. 2.

descended of an ancient family'.⁴³ Rous the elder himself praised Ascham for his 'judgement' and 'learning'.⁴⁴ In the second year of the Commonwealth, however, Ascham was assassinated in Madrid when he arrived as the Commonwealth's ambassador to Spain in June 1650. By then he had already published a number of works which gained prominence and importance during political debates in the young Republic.⁴⁵

Like Rous, Ascham was writing in support of the new government during the Engagement, employing *de facto* arguments. He contended that 'our immediate allegiance is due to those who [...] plenarily possess us.'⁴⁶ In order to assess at what point this possession of power permitted legitimate obedience, Ascham held that a central question was: '*When may a man rightly judge the invadour to be in a full possession of his conquest?*'⁴⁷ While he and Rous both shared a focus on the possession of power rather than its acquisition, Ascham offered some theoretical reflections on possible justifications for insurrection against a sitting ruler. These reflections included considerations regarding the role and nature of conquest. That is to say, Rous as well as Ascham were seeking to deflect attention from conquest: the former by not discussing it, the latter by considering it and developing conceptual distinctions which moved the focus from 'conquest' to 'victory', for example.

⁴³ For Milton's characterisation of Ascham, see Geoff Baldwin, 'Ascham, Anthony' (bap. 1614, d. 1650), *ODNB*.

⁴⁴ Rous, *Lawfulness*, 15. As noted above, Rous published a revised edition of his *Lawfulness* after reading Ascham's *Discourse* in which he explicitly referred the Ascham's work, see, Tuck, *Philosophy and Government*, 258. See also above, n. 41.

⁴⁵ Most notably and subject of this section: Antony Ascham, *A Discourse, Wherein Is Examined, What Is Particularly Lawfull during the Confusions and Revolutions of Government* (London, 1648); *Of the Confusions and Revolutions of Governments* (London, 1649); *The Bounds & Bonds of Publique Obedience ... in All Which a Reply Is Made to the Three Answers of the Two Demurrers, and to the Author of the Grand Case of Conscience* (London, 1649).

⁴⁶ Ascham, *Confusions and Revolutions*, 131.

⁴⁷ Ascham, *Discourse*, 88.

Ascham sought to justify parliamentary insubordination and to offer answers to questions regarding political obligation at a time of uncertainty. In the process, he specifically considered ideas of conquest, setting apart the implications of conquest from those of other forms of acquiring power. In his attempt to exonerate parliament's rebellion, moreover, he drew on ideas articulated by Hugo Grotius, particularly in his *De Iure Belli* (1625).⁴⁸ Ascham's indebtedness to the Dutchman has been widely recognised.⁴⁹ Most recently, Marco Barducci argued that 'Grotius's analysis of conquest theory was particularly influential' in the English civil war.⁵⁰ According to Barducci, Ascham's work epitomised this influence, as his *de facto*ism was 'the first, and probably the only systematic attempt at justifying political obligation to the conqueror party in terms of Grotius's theories'.⁵¹ While Barducci and others are no doubt correct in pointing out Ascham's intellectual debt to Grotius, the claim that Ascham lifted a pre-existing conquest theory out of Grotius's writings and used it to argue for submission to the new English regime appears tenuous. Instead, it will be argued, that Ascham drew on dispersed parts of Grotian theory to justify resistance against the sovereign. Building on this, Ascham then offered a more nuanced view of conquest.

A brief exegesis of some of *De Iure Belli*'s sections most relevant for Ascham's arguments will show not only that it contained no elaborate conquest theory but will also help to assess Ascham's intellectual debt and the originality of his adaptations of Grotian ideas.

Grotius's 'theory of conquest', as Barducci calls it, rather amounted to a number of disjointed passages throughout *De Iure Belli* which only acquired the semblance of a

⁴⁸ Ascham's conceptual considerations of conquest, in turn, were influenced by his reading of Thomas Hobbes, as will be discussed below.

⁴⁹ See above, Section I.

⁵⁰ Barducci, *Hugo Grotius*, 31.

⁵¹ *Ibid.*, 38.

coherent conquest theory as the result of Ascham's selective and deliberate juxtaposition. Broadly speaking, these passages fell into three parts: the claim that force could beget authority; the declaration that civil war and rebellion were permissible under particular extenuating circumstances; and the appeal to obey a new regime, even one instituted through usurpation. The key sections are spread out over the three books of *De Iure*. By drawing on these, Ascham was able to deliver an *ex-post facto* justification for parliament's insurrection and subsequently argue for the lawfulness of obeying their rule despite its violent and compromised origins.

At its simplest, the observation that 'Sovereignty may be acquired by Conquest' was taken as confirmation that violent origins may result in ultimately legitimate governments.⁵² This was further supported by Grotius's distinction between three possible rights to sovereignty: a 'full Right of Property', a 'usufructuary Right' and a 'temporary Right'. Significantly, Grotius admitted that 'there are some Kings, who possess the Crown by a full Right of Property, as those who have acquired the Sovereignty by Right of Conquest, or those to whom a People, in order to prevent greater Mischief, have submitted without Conditions.'⁵³

The next step was to focus on Grotius's conditions for the potential legitimacy of civil war. While he was adamant that there could be no right to resistance in a commonwealth, he did leave room for exceptions. In the fourth chapter of book one, *Of a War made by Subjects against their Superiors*, he listed the circumstances under which an uprising against one's rulers might be justifiable. Grotius held that an individual right

⁵² Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck, vol. 3 (Indianapolis, Ind.: Liberty Fund, 2005), 1376. [DIB, III.viii.1]. References to Grotius's *Rights of War and Peace* [*De Iure Belli ac Pacis*] refer to this edition and will be given in the form DIB, volume, page (e.g. III, 1376) whereas the volume corresponds with the book (Volume 1 equals Book 1, etc.). For easier comparison across editions, square brackets refer to the original book, chapter, section.

⁵³ DIB, I, 280-1 [I.iii.11].

to all things was surrendered upon entering the collective entity of a commonwealth, including ‘that promiscuous Right of Resistance’ and he rejected inferior magistrates’ resistance rights; yet, there was room for exceptional circumstances.⁵⁴ These sprang from the importance of self-preservation and became apparent for example in his answer to the question ‘whether the Law of Non-resistance obliges us in the most extreme and inevitable Danger’.⁵⁵ The resolution of the conflict between the necessary power of the state and the inalienable power of self-preservation of its subjects was an appeal to necessity. Under ‘extreme necessity’, decisions to save one’s own life could legitimate an (otherwise unlawful) refusal to comply with the sovereign’s commands. Moreover, sovereigns could be legitimately resisted if they were dependent on or subordinate to the people, abdicated their throne, intended to subject it to another power, turned against their own people, or – in a mixed monarchy – had ‘but one Part of the sovereign Power and the Senate or People the other’ and invaded the Legislative’s or people’s other part.⁵⁶ It was this last proviso in particular that resonated with defenders of the commonwealth, including Ascham. The people, or parliament, had ‘a Right to defend’ their share of sovereignty from the king who could ‘by the Right of War, lose even his Part of the Sovereignty’.⁵⁷

Grotius’s articulation of scenarios under which resistance became an option without violating the underpinning sovereignty of the state offered Ascham (and others) an opportunity for a new narrative. Resistance to the sovereign born out of extreme necessity became an act of just war.⁵⁸ In line with this, Grotius explained that during a civil war,

⁵⁴ *DIB*, I, 338 [I.iv.2].

⁵⁵ *DIB*, I, 356 [I.iv.7].

⁵⁶ *DIB*, I, 356–377 [I.iv.7-14], quote: 376 [I.iv.13].

⁵⁷ *DIB*, I, 376 [I.iv.13].

⁵⁸ In situations of extreme necessity, which included a threat to one’s life, subjects regained their initial, pre-societal rights: ‘no Part has a Right to separate from its Body, unless it plainly appears, that it is absolutely necessary for its own Preservation; for, as

countries were temporarily divided into two separate entities at war with each other: ‘in Civil Wars, Necessity does sometimes make Way for this Right, tho’ irregularly. As suppose a Nation be divided into two Parties, so equal that it is hard to judge whether Side can be called the Government [...] For in such Cases, one Nation may for the Time be accounted two.’⁵⁹ These provisions opened a door for *ex-post facto* justifications of insubordination and civil war, offering a solution to the otherwise impossible quest of entrenching resistance rights in a state’s constitution. Ultimately, the newly gained power had to be obeyed in order to avoid anarchy and a continuous threat to life and limb. Grotius argued that it was possible to submit to a power in the wake of defeat as it was

‘lawful for any Man to engage himself as a Slave to whom he pleases [...] Why should it not therefore be as lawful for a People that are at their own Disposal, to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him or them, without reserving any Share of that Right to themselves?’⁶⁰

Some of these arguments, which Grotius had developed in response to the Low Countries’ wars of independence and an expanding Dutch empire, were arguably also applicable to post-civil-war England in the late 1640s and early 1650s. Amongst other things, Grotius’s rules sought to regulate sovereignty in the aftermath of military victory and defeat and declared conquest a legitimate outcome of a just war (between states). By applying this set of principles to the outcome of the civil war, Ascham was trying to persuade his contemporaries to obey the new regime and, to some extent, exculpate its unlawful origins.

we have before observed, in all Matters of human Institution, Cases of extreme Necessity, by which all Things return to a mere State of Nature, seem to be excepted.’ (*DIB*, II, 569-70 [II.vi.5]).

⁵⁹ *DIB*, II, 902 [II.xviii.2].

⁶⁰ *DIB*, I, 261 [I.iii.8].

Using Grotian building blocks, then, Ascham forged his own theory out of them. Following the central Grotian arguments, outlined above, Ascham suggested that there was a case to be made for permissible resistance against a monarch in a mixed monarchy who transgressed their sphere of power. Ascham maintained that ‘if the Prince have part of the supreme right & the People the other part, then notwithstanding an oath of Allegiance to him, he may be opposed if he invade the other part of the supreme right.’ As a result, Ascham held, ‘if the Prince invade the others right, he may [...] lose his right by the law of Warre.’⁶¹

Principally, Grotius had argued, the two central conditions that needed to be fulfilled for a war to qualify as a just war, were that the conflict was fought between two sovereigns and started with an official declaration of war.⁶² He had seemingly left a loophole, however, which Ascham made use of. Grotius, as seen above, had explained that in a civil war, one state might be considered as two separate sovereign entities.⁶³ Accordingly, Ascham spoke of ‘those places which are divided by Civill warre; in which as it is natural for each party to preserve it selfe by all meanes it can’. In these situations, Ascham claimed, the rule ‘That *in regno diviso, gens una pro tempore quasi due gentes habetur*’ governed relations, practically constituting two sovereign nations within one.⁶⁴ This, in turn, would make a civil war at least permissible, thus clearing the hurdles erected by the doctrine of non-resistance.

⁶¹ Ascham, *Discourse*, 78. Ascham explicitly acknowledged his debt to Grotius here. The template for this argument was *DIB*, I, 376 [I.iv.13]. Ascham elaborated on this idea in *Bounds & Bonds*, 6.

⁶² *DIB*, I, 250-257; III, 1252-1253 [I.iii.4; III.iii.4-5].

⁶³ *DIB*, II, 902 [II.xviii.2].

⁶⁴ Ascham, *Discourse*, 29.

Ascham thus circumvented the thorny problem of resistance rights by applying a notion of Grotius's rights of war to the civil war.⁶⁵ On this foundation, he then erected his *de factoist* case for legitimate obedience even to usurpers, which rested on the possession of power and disregarded the means of its acquisition.⁶⁶ Ascham claimed that 'wee may in this great case [of the civil war] ease our selves of this vast perplexity in examining Whether or no the invading party have a just title, or cause, or no?'⁶⁷ Clarity in matters regarding the rightfulness of the origins of power would, he admitted, be desirable but was not necessary. Once a war had started, and regardless of its origins, Ascham held that '*For a justifiable obedience, it is best, and enough for us to consider, Whether the invading party have us and the meanes of our Subsistence in his possession or no?*'⁶⁸ If the answer was affirmative, obedience was legitimate, Ascham held. Accordingly, he even found that 'we of the people may lawfully give obedience to an unlawfull power'.⁶⁹

Ascham thus constructed an account in which the insurrection against Charles was permissible, justified through an appeal to rights pertaining to just war, as articulated by Grotius. In his adaptation of Grotius's ideas on this matter, there was little to no direct use of conquest vocabulary. This was a result of a *de factoist* shift to the possession of power, rather than the means of its acquisition. Ascham, however, came to reflect in more detail on the idea of conquest in the expanded version of the *Discourse* published in 1649 as *Confusions and Revolutions*. This was an edition prompted by the changed situation

⁶⁵ Ascham applied Grotius's ideas according to his needs, but not necessarily in the spirit in which they had been articulated. See also Wallace, *Destiny His Choice*, 33. Mark Goldie further notes that 'Ascham's use of Grotius seems [...] to have been eclectic rather than systematic, and the major fiction, never intended by Grotius, that a civil war was equivalent to a *bellum utrinque publicum* was necessary for the theory to work at all' (Mark Goldie, 'Edmund Bohun and "Jus Gentium" in the Revolution Debate, 1689-1693', *The Historical Journal* 20, no. 3 (1977): 577.)

⁶⁶ See Ascham, *Discourse*, chap. 5 for a detailed exposition of *de facto* principles.

⁶⁷ Ascham, *Discourse*, 24.

⁶⁸ *Ibid.*, 25.

⁶⁹ Ascham, *Bounds & Bonds*, 2-3.

after the civil wars had come to a head in the regicide in January 1649. While large parts of the work were identical with the *Discourse*, Ascham added a total of nine new chapters in the *Confusions*. The majority of these (seven) were additions to Part II, which dealt with questions of political obligation, especially in the wake of changes in government.

It has been widely noted that Ascham's reconfigured tract owed a significant amount to Thomas Hobbes. Specifically, Ascham appears to have become acquainted with (the English translation of) Hobbes's *De Cive* between writing the *Discourse* and the *Confusions*.⁷⁰ Among a range of Hobbes's ideas which inspired Ascham, a passage on the conditions under which political obligations ceased was particularly useful to his *de facto* argument.⁷¹ In essence, Hobbes had argued that subjects could be 'releas'd from [their] bonds of obedience', among other ways, through conquest. In fact, some of Hobbes's earlier critics had lamented this particular proviso and Ascham's exploitation of it must have felt to them as if their prophecy had come true.⁷² In the case of the *Confusions*, it moved Ascham to introduce a conceptual distinction.

Ascham had tentatively distinguished between 'Warre for Dominion' and 'Warre for Possession' in the *Discourse* and now developed this line of thought in the *Confusions*.⁷³ Specifically, he elaborated a distinction between '*over-running and the conquering of a Countrey*' and between '*Conquest and Victory*'.⁷⁴ Essentially, the argument was that mere 'over-running' of a country 'changes no property nor right'. 'Conquering', however, did institute those changes 'if (as Grotius and Mr. Hobbes say)

⁷⁰ Hobbes and this treatment of conquest will be discussed in detail below (Section IV). On Ascham's adoption of Hobbesian ideas see Malcolm, 'General Introduction', 66–73; Parkin, *Taming the Leviathan*, 72–74; Skinner, *Visions*, 3: 232 ff., 276–81.

⁷¹ The passage in *De Cive* is Chapter 7, Section 18.

⁷² Edward Hyde and John Bramhall had criticised Hobbes for this part of his theory. Hyde's initial criticism was directed at the corresponding part of *The Elements* (II.ii.12–15); see also Parkin, *Taming the Leviathan*, 23 f., 41 ff., 71 ff.

⁷³ Ascham, *Discourse*, 24.

⁷⁴ Ascham, *Confusions and Revolutions*, 119.

there be a dereliction of command in the person of whom we speak, or if the country be so subdued, that the Conquerors can no longer be resisted, and after the subjects have used all their endeavours to oppose such a new power'.⁷⁵ These conditions explicitly echoed Hobbes's from *De Cive*. Hobbes, in turn, would directly respond to Ascham's distinctions in the 'Review' of the *Leviathan*, as will be shown below.

Conversely, 'Victory' was the outcome of war which merely affected the government, leaving the political structures and laws unaltered. In Ascham's definition, 'Victory is an effect of war, undertaken onely for Dominion, and the possession of the former power, as it resided in the person or party governing.' By contrast, 'Conquest' was an 'effect of warre, undertaken for Dominion, and for the possession of the whole'.⁷⁶ Ascham admitted that the two may appear similar at first sight, 'but the difference which is betwixt them in their causes, and in their chiefe effect' became visible 'when in a case of Conquest every private man loses his estate'.⁷⁷ Employing the Grotian argument of a divided nation in the state of civil war again, Ascham explained that the 'Right of Warre betwixt those who divide a whole Kingdome, if it end clearly to the Reduction of one party, is not called so properly conquest as victory'.⁷⁸ The crucial difference, according to Ascham, was that whereas conquest brought about wholesale change, abrogating laws and upending subjects' daily lives, victory had more limited consequences. In the wake of victory, there was a change in government but existing laws remained unchanged as did the people's everyday lives.

Based on this distinction, Ascham argued that parliament's seizure of power in the civil wars had constituted victory, not conquest.⁷⁹ His choice to use a language of victory,

⁷⁵ Ibid.

⁷⁶ Ibid., 120.

⁷⁷ Ibid.

⁷⁸ Ascham, *Bounds & Bonds*, 6.

⁷⁹ See, Barducci, *Hugo Grotius*, 38 ff.

rather than conquest, Ascham conceded, also stemmed from ‘the hatred every one bears to it’.⁸⁰ His attempt to present parliament as victors, rather than conquerors, was rhetorically and politically shrewd. It allowed Ascham to avoid a tainted language of conquest, which had been cultivated as parliamentary oppositional language during the preceding decades, in his endeavour to defend the new regime. For Ascham, it was thus victory which had put parliament into power and which, as a result, made obedience to parliament (and usurpers generally) legitimate.

In Ascham’s formulations, resistance was no longer based on an inherent right of the people or those of inferior magistrates, but successful resistance was *ex-post facto* presented as the outcome of a just public war. Ascham then creatively recast a language of conquest into one of possession. Parliament were not conquerors but became victors instead. As conquest reared its ugly head, Ascham focused on the possession of power, rather than its acquisition, thus trying avoid discussions of conquest. This move allowed him both, to acquit parliament’s initial insubordination by hiding it behind the successful outcome of the war and to argue for the lawfulness of obeying the new regime based on its undoubtable possession of power.⁸¹

Arguably, it was thus Ascham’s reconfiguration and recasting of some central arguments that let modern historians read a coherent theory of conquest back into Grotius’s work. Rather than saying that Ascham lifted a Grotian theory of conquest out of the Dutchman’s work, it might be more apt to argue, as Richard Tuck did, that ‘Ascham’s analysis was close to at least the spirit of Grotius’.⁸² On the back of this,

⁸⁰ Ascham, *Bounds & Bonds*, 6.

⁸¹ John Wallace notes that Ascham’s adaptation of Grotian ideas ‘afforded him a vocabulary by which “conquest” became known as “possession”, and was therefore deprived of the aura of Nimrodic violence which surrounded it in the *jus gentium*’ (*Destiny His Choice*, 35–36.) Marco Barducci also comments on Ascham’s distinction between conquest and victory, see *Order and Conflict*, 71–72.

⁸² Tuck, *Philosophy and Government*, 256.

Ascham was able to build his *de facto* case for obedience and subsequently introduced a conceptual distinction between conquest and victory. Crucially, victory left laws and subjects' daily lives unchanged while conquest abrogated laws and brought comprehensive change beyond installing a new government.

Across his various publications at the time, Ascham did not defend the legality or judge the quality of the government's claim to power. Rather, he offered subjects the means to justify their obedience. Focussing on possession of power meant they did not have to concern themselves with deeper questions of the legality of the same. In other words, Ascham articulated a *de facto* theory that did not aspire to address *de jure* concerns. This set him apart from the ideas of Marchamont Nedham. Where Rous had looked past conquest altogether in his articulation of a *de facto* justification of obedience and Ascham had sought to explain its importance away, Marchamont Nedham accepted conquest as a legitimate foundation of sovereignty.

Nedham was a journalist and pamphleteer who had sided with both royalists and parliamentarians during the civil war which has earned him a characterisation of 'unprincipled turncoat'.⁸³ After the establishment of the commonwealth, Nedham was imprisoned for his royalist views and propaganda but upon being released in late 1649 he took the Engagement in November and forthwith wrote for the parliamentary cause. In May 1650 he published the most elaborate account of his argument, *The Case of the Commonwealth of England, Stated*.

His ideas are of interest as he constructed *de jure* arguments, defending the government's rightful claim to power, not just obedience, by invoking conquest. He thus

⁸³ See Joad Raymond, 'Nedham, Marchamont (bap. 1620, d. 1678)', *ODNB*. See also Blair Worden, *Literature and Politics in Cromwellian England: John Milton, Andrew Marvell, Marchamont Nedham*, 2nd ed. (Oxford: Oxford University Press, 2009), chap. 1.

presented the most extreme form of *de facto*ism, and the only one openly endorsing conquest as an effective cause of sovereignty. He built his arguments on the foundations laid by Rous and Ascham, that is to say on *de facto*ist premises, but derived more far-reaching conclusions from them.⁸⁴ In the process, he explicitly invoked conquest rhetoric to support his claims where Rous and Ascham had shied away from doing so. While also arguing from possession, that is from a *de facto*ist premise, his arguments presented a departure from previous *de facto*ism in their open use and endorsement of conquest to justify legitimate claims to power.

He agreed with more conventional *de facto* views that obedience was due to governments irrespective of how they have acquired their positions for ‘those whose title is supposed unlawful and founded merely upon force, yet being possessed of authority, may lawfully be obeyed. Nor *may* they only, but they *must*’.⁸⁵ Not only could force create political obligation, however, but it constituted legitimate sovereignty: ‘The consequence is clear likewise that the whole of kingly authority being by military decision resolved into the prevailing party, what government soever it pleases them next to erect is as valid *de jure* as if it had the consent of the whole body of the people’.⁸⁶ Specifically, this meant that ‘the present prevailing party in England have a right and just title to be our governors; and that this new government erected by them, to the subversion of the old, is as valid, *de jure*’.⁸⁷

⁸⁴ For Nedham’s use of conquest and his indebtedness to Rous and Ascham, see also Philip A. Knachel, ‘Introduction’, in *The Case of the Commonwealth of England, Stated*, by Marchamont Nedham, ed. Philip A. Knachel (Charlottesville, Va.: University Press of Virginia, 1969), xxv–xxix.

⁸⁵ Marchamont Nedham, *The Case of the Commonwealth of England Stated, or, The Equity ... and Necessity of a Submission to the Present Government*, 2nd ed., with additions., 1650, 16.

⁸⁶ *Ibid.*, 19.

⁸⁷ *Ibid.*, 24.

As far as the foundations of governments were concerned, Nedham held ‘the power of the Sword to be the original of the first Monarchy, and indeed the first Politicall Form of Government that ever was’.⁸⁸ The seizure of power through conquest, as seen in the civil war, in other words, was nothing out of the ordinary and needed no further justification or explanation. Nor did such a conquest, particularly when arising out of civil war, require further consent or compact, Nedham explained. Popular consent may be a requisite in peaceful times but ‘in a Civil War the case is altered, when the controversie touching Government is decided by the Sword: For, *ipso facto* the Sword creates a Title for him, or those that bear it, and installs them with a new Majesty of Empire, abolishing the old’.⁸⁹

In support of his views, Nedham drew on the ideas of both Hugo Grotius and Thomas Hobbes. He explicitly cited two arguments from Grotius’s *De Iure Belli*, for example. When explaining the power acquired by conquerors, Nedham argued that ‘the Victors [were] allowed (*Jure gentium*) to use all means for securing what they have gotten, and to exercise a right of Dominion over the *Conquer'd Party*’.⁹⁰ Furthermore, Nedham cited the Grotian argument, previously also employed by Ascham, that a state could be considered as two separate entities during a civil war. At the end of the conflict, the victor would thus rule by right of war which meant ‘That the whole Right of Kingly Authority [was] by military decision resolved into the prevailing Party, what Government so ever it pleases them next to erect, is as valid *de Jure*, as if it had the Consent of the whole body of the People.’⁹¹

⁸⁸ Ibid., 6. This was echoed in the title of the second chapter: ‘That the Power of the Sword Is, and Ever Hath Been, the Foundation of All Titles to Government’.

⁸⁹ Ibid., 23.

⁹⁰ Nedham, *Case of the Commonwealth*, 16. This argument is directly taken from Grotius, *De Jure Belli* (I.iii.5).

⁹¹ Nedham, 21.

Nedham also explicitly invoked Hobbesian ideas. *De Corpore Politico*, an English version of the second part of Hobbes's *The Elements* had become available in May 1650, that is to say after the first publication of Nedham's *Case*. Nedham included excerpts from Hobbes's work in the second edition of the *Case*, published later in 1650.⁹² Turning Hobbes's arguments against the royalist cause, in support of which Nedham (and others) were convinced they had been designed, gave him particular joy: 'No man', he rejoiced, 'may triumph or cry a victory more honourably than myself if I can foil our adversaries with weapons of their own approbation'.⁹³ Nedham was especially keen to use Hobbes's assertion that conquest could release subjects from their previous political obligations, thus enabling the formation of a new political state.⁹⁴ The passages he used corresponded closely to the section of *De Cive* Ascham had appropriated for very similar purposes and Nedham summarised the Hobbesian position with the claim 'That the Power of the Sword gives Title to Government'.⁹⁵ Both these latter assertions, that consent was unnecessary in the making of political authority and that the power of the sword itself was a sufficient claim to power, misconstrued Hobbes's position, as he himself would come to point out in *Leviathan*.⁹⁶

Rous, Ascham and Nedham were some of the most vocal and prominent defenders of the new government. The *de facto* theory that emerged from their work placed a firm emphasis on the possession, rather than the origin, of power. In Rous's case, this meant that he avoided using a language of conquest altogether. Ascham sought to side-step

⁹² For Nedham's use of Hobbes, see Parkin, *Taming the Leviathan*, 78–79.

⁹³ Nedham, *Case of the Commonwealth*, 103. Nedham previously and subsequently used Hobbesian ideas in his articles for *Mercurius Politicus*, see for example *Mercurius Politicus*, No. 21, (24–31 Oct 1650): 342–3; No. 34 (23–30 Jan 1651): 551–2.

⁹⁴ See Thomas Hobbes, *De Corpore Politico; or, The Elements of Law, Moral & Politick*. (London, 1650), 95–96.

⁹⁵ Nedham, *Case of the Commonwealth*, 103.

⁹⁶ See also Parkin, *Taming the Leviathan*, 88.

deeper conquest debates by introducing a conceptual distinction between conquest and victory, declaring the former irrelevant to the case of the English civil war. Nedham was less concerned about the implications of conquest, as he included it, in its raw and unqualified form, as a possible origin of legitimate authority.

Much of the modern literature has focused on the defenders of the Engagement and these *de facto* theorists in particular. Beyond these more prominent writers of the Engagement controversy with their arguably rather one-dimensional arguments, defending the lawfulness of obedience (or even sovereignty, in Nedham's case), there was a host of authors who wrote in favour of as well as in opposition to the Engagement and who considered the role of conquest in the process.⁹⁷

III – CONQUEST IN NON-*DE FACTO* AND ANTI-ENGAGEMENT THOUGHT

The creation of the commonwealth on a foundation of military conquest gave rise to further reflections on the implications and nature of conquest rights. As opponents of the Engagement, or merely of the *de factoists'* defence of the same, voiced their criticism, a debate unfolded which came to formalise central theoretical issues surrounding conquest. The dynamic behind this development, as well as some of its topics, was comparable with the 1642/3 pamphlet wars.

De factoist defenders of the Commonwealth had been intent on keeping potentially problematic ideas of conquest off the agenda in line with their consequentialist defence of

⁹⁷ Many of the publications of the period were direct or indirect responses to Ascham and Nedham, also see Skinner, *Visions*, 3: 300.

obedience. Besides the *de facto*ists, there were at least two more discernible groups of pamphleteers who contributed to the Engagement controversy, both of which added to debates about conquest. One was made up of supporters of the Engagement who were unhappy with the neglect of the normative dimension of the *de facto*ists' focus on mere possession of power (rather than the conditions of its acquisition). The other was a group of anti-Engagers who deemed the regime, as well as obedience to it, illegitimate and sought to qualify or even reject conquest rights.

Collectively, their debates in the wake of parliament's military conquest gave rise to a field of conquest thought defined by recognisable categories and based on shared parameters. This development was structurally similar to the dynamics of the 1642/3 pamphlet wars. Adverse views of conquest were articulated in a series of pamphlets, often as direct responses to the opposition's publications. The result was a growing theoretical sophistication in conquest arguments amid the emergence of categories within which the nature and extent of conquest was debated, as this section will demonstrate. After 1649, arguments, of course, were used for ends diametrically opposed to those of 1642/3. Ian Smart perceptively noted that arguments familiar from the early 1640s, including conquest, 'now justified the acceptance of drastic change in the form of government brought about by military force, yet such an alteration was the very activity of which Charles I had been accused in 1642 and which, according to the parliamentary side's apologists, justified resistance to him.'⁹⁸

At either time, the overarching question whether conquest could create a title was not a monolithic question with a binary yes or no answer. Rather, writers addressed a set of conditions qualifying conquest and assessed the current situation against them to reach a verdict on whether obedience to the new government was lawful. Specifically, five

⁹⁸ Smart, 'Edward Gee', 122–23.

recurring themes, or categories, can be identified with respect to which the majority of pamphlets considered conquest rights as the potential underpinnings of political sovereignty and legitimacy. These were (i) whether conquest was the expression of the divine will, (ii) whether consent could ratify conquest, (iii) whether conquest could be ratified by prescription, (iv) whether a ruler's surrender ratified conquest and (v) whether conquest as a result of just war could bestow a lawful title. These categories shaped the thought and publications of both, supporters and opponents of the Engagement as they traded rhetorical blows over the correct understanding of conquest and its place in the creation of political obligation.⁹⁹ A survey of these pamphlets and their respective discussion of conquest in line with these categories will therefore demonstrate their increasing theoretical sophistication, their conceptual links with previous debates as well as their role in shaping future conquest debates.¹⁰⁰

That conquest could be the rightful manifestation of the divine will and thus lead to legitimate sovereignty, was a commonplace in mid-seventeenth-century thought.¹⁰¹ Supporters of the commonwealth, accordingly, were at pains to reconcile God's will with the bloody events of the civil war; or, to put it differently, to present conquest as a plausible expression of the divine will. The anonymous *Logical Demonstration*, for example, exhibited a nuanced take on the providential dimension. The power and authority of governments were always ordained by God. It was the means of acquiring them and the title and form through which they were dispensed that were man-made. This

⁹⁹ Not every publication considered each of these topics. Most of their arguments, however, fell into one or more of these fields.

¹⁰⁰ For the precedent of a pamphlet exchange shaping conquest discourse, see also Chapter 3. The Conclusion & Epilogue will treat the use of the notions of conquest that emerged throughout the 1640s and -50s in the context of 1688.

¹⁰¹ See also Chapter 3; Knachel, 'Introduction', xxvi.

meant that ‘if any usurp Government, and confirm their Usurpation by Conquest, their Usurpation and Conquest is not Gods Ordinance, but their Acts of Government, ordered to the right ends of Government, are Gods Ordinance, and to be obeyed.’¹⁰² The act of conquest was not God’s choice; yet, the resulting government was still fulfilling a divine task all the same. Appeals to divine right could not exonerate acts perpetrated as part of the conquest. Nevertheless, ‘[t]hat the present Establishment is the determination, or the result of a determination of providence, few will deny.’¹⁰³

While there are obvious difficulties in judging God’s approval of any particular government or the way it had been installed, expressions of consent would appear to be a more tangible criterion. In *The oath of allegiance and the national covenant proved to be non-obliging* Samuel Eaton, presented a combination of arguments from providence and conquest, touching on consent in the process. Entangling arguments for parliamentary supremacy and thoughts on the nature of conquest, Eaton mused that parliament had to be supreme because they had effectively given William I his throne. With a view to the present situation this meant that ‘The Kings Ancestors came by Conquest, and if rightfully Enthroned in Regal Power, then the Title by Conquest it seems is good.’¹⁰⁴ But, Eaton believed, those who had previously championed these arguments, would no longer stand up for them in the present circumstances. Given the changed situation, they would no longer accept conquest as an unmitigated source of right. Although he supported the new government, Eaton was in agreement. He admitted that: ‘nor dare I grant it [power

¹⁰² *A Logical Demonstration of the Lawfulness of Subscribing the New Engagement or Promise to Be True ... to the Common-Weal* (London, 1650), 5. The author endorsed *de facto* views. With reference to Romans XIII, he held that even ‘if the Title of the present Government were worse then ‘tis, yet being in full possession [...] Subjection and Fidelity were due to it’ (4).

¹⁰³ *Logical Demonstration*, 5.

¹⁰⁴ Samuel Eaton, *The Oath of Allegiance and the National Covenant Proved to Be Non-Obliging* (London, 1650), 3.

through conquest] without the consent of the Representatives in Parliament. Therefore, it is that Kings themselves, when they have got the Crown by the Sword, have desire to hold it by Consent of Parliament, and their Acts for it.’¹⁰⁵ Parliamentary consent was necessary to ratify any government’s place in power.

Also addressing matters of consent, the anonymous pamphlet *The Grand Case of Conscience* targeted the *de facto* defence of the new regime. It observed that

‘[s]hould we grant that men assuming to themselves the place and power of Magistrates, by what right or means soever they came by it, must be obeyed, surely it would be the greatest inlet to tyranny in the world, and the speediest means of destroying states that could be invented.’¹⁰⁶

Yet, the author conceded that conquest gave victors a temporary power. This, however, fell short of establishing a *de jure* claim. ‘Conquest [was] no true Title, nor durable tenure any longer then strength can keep it.’ But it could be ratified: ‘compact upon that Conquest, gives a title to the Conquerour, and engageth submission from the other party to those rules resolved.’¹⁰⁷ In other words, consent subsequent to a conquest could indeed legitimise the power begotten by force. Eaton and the author of the *Grand Case of Conscience* were thus in agreement about the possibility of conquest-based authority. Where they differed, was their interpretation of the facts. Yet, what remained was a shared framework within which questions of conquest were discussed. Consent thus remained a contentious topic. The previous chapter demonstrated how it was used by parliamentarians to undermine royalist attempts to derive the monarch’s sovereign power from the Norman Conquest.

¹⁰⁵ Ibid., 47.

¹⁰⁶ *The Grand Case of Conscience Stated, about Submission to the New and Present Power, or, An Impassionate Answer to a Modest Book Concerning the Lawfullness of Submitting to the Present Government*, 1649, 3.

¹⁰⁷ Ibid., 5.

In cases where tangible signs of consent were absent, the notion of prescription gained relevance. Long-held possession, of territory or power, could be interpreted as tacit consent. In the context of the Engagement, the notion only featured peripherally, for obvious reasons: the practical relevance after a very recent military victory was negligible. Yet, several authors, including Ascham, expressed the opinion that no length of time could retrospectively rectify what was built on corrupt foundations.¹⁰⁸ Arguing against the Engagement, Nathaniel Ward, conversely, found that prescription could indeed legitimise governments initially conceived by conquest. Conquest-based rulers had no lawful authority, ‘till they have some years on their back’.¹⁰⁹

Two further elements were connected to the ceasing of sovereign power in cases of conquest. The first position examined whether conquest gained legitimacy if the (soon to be) vanquished ruler surrendered of his own volition, thus freeing the way for his subjects to enter a new bond of subjection. The author of *A Briefe Resolution*, for example, considered the possibility of ‘dedition’, or ‘yeilding or resigning up of ones Right’, interlaced with elements of consent. While private individuals could voluntarily transfer rights, rulers were forbidden from doing so.¹¹⁰ The only scenario in which they could pass on their public power to another group or individual was with ‘tacit or expresse consent of the People.’ In such cases, the ruler’s right was ‘transferred by the joynt yielding of the King and his Subjects.’ Crucially, in cases where rulers – with the consent of their

¹⁰⁸ Ascham, *Discourse*, 23.

¹⁰⁹ [Nathaniel Ward], *Discolliminium. Or, A Most Obedient Reply to a Late Book, Called, Bounds & Bonds* (London, 1650), 7. For the attribution of authorship in this as well as following cases in this section, unless otherwise stated, see Wallace, ‘The Engagement Controversy’.

¹¹⁰ *A Briefe Resolution, of That Grand Case of Conscience (Necessary for These Times) Concerning the Allegiance Due to a Prince Ejected by Force out of His Kingdome, and How Farre the Subjects May Comply with a Present Usurped Power* (London, 1650), 3.

subjects – thus surrendered their rights, this also freed their subjects of all demands of allegiance:

‘The Kings yielding is an absolution of the Subjects from the allegiance formerly due to Him by them, and so makes it lawfull for them to yeild the same to another, and when ‘tis thus free and lawfull for them, the intervention of their owne act also becomes obligation on them to submit to that Person so yeilded to.’¹¹¹

In cases of involuntary submission of the king, however, no right was transferred and it remained legitimate for the king to try and restore his lost right and position. In such cases the subjects’ submission could only ever be temporary. They were not allowed, for example, to ‘doe any thing which shall prejudice that future claime [of the rightful heir/king], or blemish his royalty, such as are taking new Oaths of Allegiance [...] Engagements to the usurped power &c.’¹¹² While a temporary submission, presumably out of motives of self-preservation, was permissible, they were not to ‘acknowledge [...] the lawfulness of the present usurped Power.’¹¹³ Nor could such usurped power acquire legitimacy through the passage of time.

Such cases of involuntary submission the *Briefe Resolution* sought to address by invoking a notion of international law and just war; in this approach it was not alone. With respect to the extent and nature of power gained through conquest, the author of the *Briefe Resolution* held that ‘all Victory doth *not* give a right to the Conqueror, but onely when the Warre being founded on a just Cause, [and] that just Cause hath thus been blesst with victory.’¹¹⁴ There could, however, never be a just war if it was initiated by the subjects against their own sovereign. Even if they were successful, the author continued,

¹¹¹ Ibid., 4.

¹¹² Ibid., 5

¹¹³ Ibid., 5-6.

¹¹⁴ Ibid., 2, my emphasis.

this would neither take away the ruler's right, nor bestow one on the aggressors.¹¹⁵ Similarly, Ward in the *Religious Demurrer* spoke of 'absolute Conquest, which is a kinde of title, *jure gentium*' and could under certain conditions create a right to command and complementary duty to obey.¹¹⁶ Without a basis in a just war, however, conquest could not confer a right, as two ways of acquiring power, in particular, were 'universally unlawfull': 'That which is gotten by meer usurpation [and] that which is purchast by meer Conquest without any due Title'.¹¹⁷

These pamphlets, which verbalised their considerations of conquest rights with reference to one or more of the categories in which conquest was now being discussed, from divine-right conquest to questions of consent, were flanked by more extreme views on either side. On one end of the spectrum, this was a blunt form of *de facto*ism in which conquest was presented as an inevitable historically recurring phenomenon which created political realities but did not require further debate. This was most succinctly and poetically expressed in Fletcher's *Mercurius Heliconicus* in 1650. Fletcher observed that

'Crownes were but gallant robberies at first
And Conquerors heroick theeves that durst
Attempt the worlds inslaving, why should we
Repine then to behold a Monarchy'¹¹⁸

Echoing the same views, albeit less eloquently, and responding to the common objection that the current regime was unlawful because of its origins, another pamphlet held that

¹¹⁵ Ibid., 2-3; 'Therefore if that Party whose Cause is unjust, shall yet prevaile and prove succesfull, [...] I say, that there is no Right acquired by this: For, tis a mistake to thinke that this is the meaning of *Jus Victoria*, the *Right of Victory*' (3).

¹¹⁶ Nathaniel Ward, *A Religious Demurrer, Concerning Submission to the Present Power* (London, 1649), 6.

¹¹⁷ Ward, *Discolliminium*, 8.

¹¹⁸ R. F[letcher], *Mercurius Heliconicus. Or, The Result of a safe Conscience*, (London, 1650), 3. For Fletcher and the attribution, see also Adriana Mccrea, 'Reason's Muse: Andrew Marvell, R. Fletcher, and the Politics of Poetry in the Engagement Debate', *Albion* 23, no. 4 (1991): 655–80.

‘all Governments in their beginnings might be denied, which have allwayes been thus established, and the Sword committed to the publike Ministers, or Ministers of State, to cut off all who shall goe about to overthrow the Government; if this Plea [of unlawful origins] therefore be admitted, no Government could lawfully have been obeyed.’¹¹⁹

In fact, he went on, the present case could not be solved in any way but a conquest:

‘it was impossible for any man to have expected any other [resolution], for if either part prevail'd, it must be by the Sword, that being once appealed unto; especially if we consider the malice and trechery of the Enemy, which would suffer no safety, longer than they could be kept at the Swords point.’¹²⁰

Similarly, another pamphlet argued that ‘few Kingdomes in Europe have beene so begun [by election], or indeed otherwise then by conquest.’¹²¹

On the other end of the spectrum Edward Gee, for example, refuted conquest rights and criticised *de facto* defences of the new regime. A vociferous critic of the Engagement, the Presbyterian Gee had been a supporter of the parliamentary cause during the civil wars but disagreed with the more radical turn in 1648/9, including the regicide and the ensuing Engagement.¹²² He attacked *de facto*ist defenders of the new regime and their uses of conquest language. He noted: ‘*The last of their reasons, and that which brings up the reare and serves when all Arguments besides are put to the worse, is that of Conquest.*’ Anyone looking to satisfy their conscience when taking the Engagement, would find no solace in turning to conquest, Gee suggested, as ‘meere force is no warrant.’ Instead, anyone relying on the power of the sword would sooner or later feel the consequences:

¹¹⁹ G[eorge] W[ither], *Respublica Anglicana or The Historie of the Parliament in Their Late Proceedings* (London, 1650), 42 [mispaged 4].

¹²⁰ *Ibid.*

¹²¹ *The Exercitation Answered* (London, 1650), 44. This sentiment could also be found in Francis Osborne, *A Perswasive to a Mutuall Compliance under the Present Government* (Oxford, 1652). See also Burgess, ‘Usurpation, Obligation and Obedience’, 533.

¹²² See also S.J. Guscott, ‘Gee, Edward (bap. 1612, d. 1660)’, *ODNB*. For his political thought, see Smart, ‘Edward Gee’.

‘they that will needs build a Title on force, will bee answered with no other reason, but that of their owne mood and figure, to wit, force.’¹²³ His concern about the use of conquest arguments thus echoed the fears William Bridge had articulated.¹²⁴ Gee repeatedly warned that institutionalising conquest rights would ultimately lead to anarchy, ‘If violent occupation made a right then it were lawfull for any, that could make a sufficient strength for it, to rise up in Arms, invade, and seise on any Kingdome or Territory, he can prevail over; yea to kill and destroy men and Countreys for Empire and Dominion’.¹²⁵ Targeting the *de facto*ists, and Ascham in particular, Gee warned that their positions would achieve outcomes contrary to the ones they desired. While Ascham claimed to strive for stability, Gee suggested that his ideas were a high road to ‘insurrection and sedition’.¹²⁶

These pamphlets and treatises testify to the gradual formalisation of conquest discussions as they were being conducted with reference to shared and recognisable categories. While each of the contributors was pursuing a practical purpose with their publication – supporting or attacking the Engagement – they collectively exhibited a tendency of moving beyond the example at hand. Instead, they were interested in deriving more universal insights into the process and consequences of conquest. To this end, they addressed questions of conquest and (i) the divine will, (ii) the role of consent, (iii) prescription, (iv) rulers’ voluntary surrender and (v) conquest as a legitimate outcome of

¹²³ Edward Gee, *A Plea for Non-Scribers*, 1650, ‘Appendix’, 38.

¹²⁴ Bridge, *Wounded Conscience Cured*, 26.

¹²⁵ Edward Gee, *An Exercitation Concerning Usurped Powers: Wherein the Difference Betwixt Civill Authority and Usurpation Is Stated*, 1650, 13. For reiterations of this argument, see also Edward Gee, *A Plea for Non-Scribers*, 28.) For a later iteration, Edward Gee, *The Divine Right and Original of the Civill Magistrate from God* (London, 1658), 293.

¹²⁶ *A Second Part of the Religious Demurrer ... Or, an Answer to a Tract Called The Lawfullnesse of Obeying the Present Government*. (London, 1649), 6.

a just war. This catalogue of concerns represented the nodes of the nascent parameters of conquest discourse.

This theoretical turn and the identifiable categories also did not stay hidden from one contemporary observer. Edmund Ghest's *An Impartial Disquisition, how far CONQUEST gives the Conqueror a TITLE* was a curious pamphlet which thus far seems to have been overlooked in all key literature on conquest and the civil war and Interregnum although it speaks directly to some the issues at stake.¹²⁷ Ghest's pamphlet not only rejected conquest as the basis for any legitimate title but also reads like a summary of the Engagement debates.¹²⁸ Ghest refuted the most common arguments one by one. To do so, he addressed some of the most prevalent arguments, grouping them into categories closely resembling the ones just identified. His work thus strengthens the impression that conquest was developing into a field of thought with set parameters.

The *Impartial Disquisition* was published in print around 1688. Its usefulness in the context of the 'Glorious Revolution' seems obvious since it was a time when there was renewed interest in all things conquest amidst the arrival of a foreign ruler on the English

¹²⁷ Edmund Ghest, *An Impartial Disquisition, How Far Conquest Gives the Conqueror a Title* (London, n.d.). Two of the otherwise rare mentions are in Howard Nenner, *The Right to Be King: The Succession to the Crown of England, 1603-1714* (Chapel Hill: University of North Carolina Press, 1995), 197, 204; Raymond, *Pamphlets and Pamphleteering*. Raymond speculates that it was first written around 1647 and not published until forty years later (368).

¹²⁸ Ghest himself has been accorded equally little attention. He does not have an entry in the *ODNB*. One of the surviving printed copies of his *Impartial Disquisition* at the Bodleian is included in a number of tracts bound together [D 1.6(6) Linc.] and carries a handwritten remark on the title page that suggests Lionel Gatford was the author of the abstract. Gatford was a royalist clergyman, published a handful of tracts during his lifetime. In neither of the two more overtly political ones, *An Exhortation to Peace* (1643) and *Englands Complaint* (1648) did he discuss conquest. While it is entirely absent from the *Complaint*, there is a fleeting reference in the *Exhortation* as Gatford rhetorically asked 'what is victory or conquest, but the subduing and bringing into subjection those that oppose and resist?' (Lionel Gatford, *An Exhortation to Peace*, 1643, 5.)

throne.¹²⁹ There is strong evidence, however, that the original version sprang from the troubles of the early Interregnum. The title page of the seemingly only extant print version, published in 1688, clarified that it was ‘an abstract of a Treatise’ written ‘when the Usurpers over Charles the Martyr pretended a Title by Conquest.’ Furthermore, among Archbishop Sancroft’s personal documents from the period of the civil war, there is a handwritten summary of Ghest’s work. The text of Sancroft’s notes is identical with that of the printed publication of 1688.¹³⁰ At the end of his excerpts the archbishop noted that ‘This is p[ar]t of a larger Treatise, written by Mr Ghest, a Suff. Min^r, during y^e Great Rebellion, after the K[in]g was beaten out of y^e Field: transcribed from his own Original MS by Way of Epitome.’¹³¹ It would appear plausible, therefore, that Sancroft’s handwritten notes formed the basis of the printed version published in the context of the arrival of William II. In either case, the work is of interest with regard to conquest debates surrounding the Engagement (which was also the most likely context in which it was written).¹³²

Ghest’s tract itself was divided into seven chapters, all of which seem to respond directly to cases argued in the pamphlets above. The first and fundamental assertion was that ‘Conquest is no sufficient Title to Rule; for then all Conquerors are lawful Princes.’¹³³ As many before (and after) him, Ghest was concerned about the effect it would have if all power of the sword was declared legitimate and lawful, especially in light of the

¹²⁹ The use and adaptation of existing theories of conquest in the context of 1688 is the subject of the Conclusion & Epilogue.

¹³⁰ Bodleian, *MS Tanner* 459, 53–60.

¹³¹ *Ibid.*, 60.

¹³² Sancroft himself refused the Engagement and transferred his allegiance to Charles II. For the moral and political implications of (not) taking the Engagement, especially for royalists and Episcopalians, see also Edward Vallance, ‘Oaths, Casuistry, and Equivocation: Anglican Responses to the Engagement Controversy’, *The Historical Journal* 44, no. 1 (2001): 59–77.

¹³³ Ghest, *Impartial Disquisition*, 1.

numerous tracts trying to argue that plenary possession through conquest was sufficient for a legitimate regime.

The next two chapters were dedicated to refuting links between conquest and providence or even conquest as a direct expression of divine design. Neither was violence permissible, nor could military victory be acceptable as ‘God’s donation immediate.’ Again, the concern was that retrospectively appealing to God for approval of their *fait accompli* would open the floodgates and make any violent overthrow permissible; ‘if every attempt crowned with success, proves that God gives a right, then he, who destroys the true Religion, and sets up a false’ would ultimately be able to claim God’s approval too. Ghest therefore warned: ‘to say, he approves whatever he permits, is blasphemy’.¹³⁴

Chapter four dealt with arguments that a just war had the capacity to give a just title. His target here was clearly Grotius and Grotian ideas as found throughout the works of Ascham and others. Ghest observed that (just) wars could only be declared by sovereign rulers; he bemoaned that this criterion had not been fulfilled in the case of the civil war. Nor, did he argue, could they really invoke a (Grotian) law of nations, as some had done.¹³⁵ Mockingly, Ghest demanded: ‘Shew us this Law of Nations, where is it, or how is it morally possible, that all Nations should meet to give it’.¹³⁶

The next section on conquest and consent was the longest of the pamphlet, accurately reflecting the weight it had been given in other tracts of the time. Ghest herein rejected the idea that the people’s consent could *ex post facto* legitimise a conqueror’s rule. ‘It is a kind of destiny upon people’, he warned, ‘that their name is used, their benefit pretended, their power to create right to govern magnified, and all to their hurt.’¹³⁷

¹³⁴ Ibid., 3.

¹³⁵ For example Ward, *A Religious Demurrer*.

¹³⁶ Ghest, *Impartial Disquisition*, 4.

¹³⁷ Ibid. He explained that the only situation in which the people were able to transfer or give any authority in the first place, was in elective kingdoms.

Subsequently, Ghest addressed another assertion: the notion of kings (voluntarily) surrendering their right to rule. Again, he stood firm in his conviction that conquest through this back door could not give title. Divinely ordained kings could only be released by God himself, patriarchal ones could not stop being their children's father and hereditary ones had no power to alter their succession/ line of heirs.

Lastly, Ghest addressed the question whether an extended period of possession would make the power lawful. Once more, he outright rejected the proposition as he observed found it 'absurd to think, that prescription can justifie wrongs'.¹³⁸ While obstacles, such as heirs, may fade, time itself could never confer a title.

The forceful overthrow of the monarchy, that is to say parliament's military conquest, left deep traces in the literature discussing conquest in its wake. As the violent nature of the regime change was undeniable, it is perhaps no big surprise that questions of conquest were at the forefront of many writers' minds. The debates over the nature and place of conquest which grew out of the Engagement controversy thus formalised discussions of conquest rights. The practical experience of a military conquest on English soil had necessitated English political pamphleteers to rethink conquest's role in the formation of political obligation. Their resulting debates, conducted across a series of pamphlets, produced theoretical categories within which the inquiry into conquest rights could be pursued. Ghest's tract appears to have digested the central strands of this debate and as a result offered an uncommon, if not unique, overview of the variety of conquest arguments which populated the political discourse in the late 1640s and early 1650s.¹³⁹

¹³⁸ Ibid., 8.

¹³⁹ As pointed out above, Ghest's treatise, even in its abridged form, was the most comprehensive treatment of questions of conquest, touching on nearly every set of arguments invoked in its favour by 1650. It would therefore be invaluable to locate the full version of the work.

The uses of conquest theory, as for example surveyed in Ghest's *Disquisition*, prompted another significant response at the end of the Engagement controversy. In his famous *Leviathan*, Thomas Hobbes set out to correct what he perceived as misunderstood notions of conquest.

IV – CONQUEST THEORY IN HOBBS'S *LEVIATHAN*

Recognisable categories of conquest theory had emerged in the pamphlets and treatises throughout the civil war and the Engagement but Hobbes was not satisfied with what he had read. He complained that despite 'divers English Books lately printed [...] the Civill warres have not yet sufficiently taught men, in what point of time it is, that a Subject becomes obliged to the Conqueror; nor what is Conquest; nor how it comes about, that it obliges men to obey his Laws'.¹⁴⁰ One of the 'divers English Books' in question was most likely Ascham's *Confusions and Revolutions*.¹⁴¹ After his ideas had been (mis)appropriated by some of the most prominent *de facto* theorists, it is easy to see why Hobbes's *Leviathan* has been viewed in the context of the Engagement controversy by Skinner and others.¹⁴² It is undeniable that *Leviathan* addressed many of the topics also discussed in the pamphlets of the Engagement controversy. A closer inspection, however, makes it plausible that two of the most prominent of them – conquest theory and the link

¹⁴⁰ Hobbes, *Leviathan*, iii, 1133.

¹⁴¹ Malcolm, 'General Introduction', 70. Malcolm finds that there can be 'very little doubt' that Ascham was Hobbes's main target; the other plausible candidate was Nedham's *Case of the Commonwealth*. See also Skinner, *Visions*, 3: 302–7.

¹⁴² Most prominently, this view has been advanced by Quentin Skinner in his articles and chapters: 'History and Ideology'; 'Ideological Context'; 'Conquest and Consent'. Updated versions of each of these, some with different titles, are included in Skinner, *Visions*, 3: 238–307. See also Parkin, *Taming the Leviathan*, 88.

between protection and obedience – were not exclusively developed in response to the Engagement.¹⁴³ While Hobbes’s language may have corresponded closely on a rhetorical level with the Engagement debates, his ideas possessed deeper roots, antedating the problems of the commonwealth.¹⁴⁴

With respect to conquest theory in particular, *Leviathan* seems to have been an intervention in a discourse which Hobbes seemed to think was missing the point. He had likely followed the unfolding discourse around notions of conquest, probably since the early 1640s and considered the moment opportune to intervene since the Engagement debates, in his view, rested on conceptual misunderstandings.¹⁴⁵ After the contours of a theoretical framework for enquiries into conquest had emerged first in the pamphlet wars of 1642/3 and more recently in the debates between supporters and opponents of the Engagement, Hobbes considered it necessary to clarify some of the central conceptual elements left unclear in these debates. Rather than developing his concepts in response to the Engagement debates, then, *Leviathan* represented a reiteration and refinement of considerations of conquest Hobbes had cultivated at least since *The Elements of Law* (1640).

¹⁴³ Noel Malcolm, for example, recently cast doubt on the orthodox placement of Hobbes alongside *de facto* theorists of the Engagement, see ‘General Introduction’, 67–68.

¹⁴⁴ Noel Malcolm argues that ‘on the central issues of conquest, consent, and obedience, there are not many textual links that can be strongly established between *Leviathan* and the Engagement tracts. It might be thought that, even if Hobbes’s basic argument about the “mutuall Relation between Protection and Obedience” long pre-dated these [Engagement] disputes, his choice of that particular phrase was a deliberate attempt to chime with the pro-Engagement writings of 1649–50, in which similar phrases were sometimes used’ but ‘This chiming, if such it was, might have been largely verbal’ (‘General Introduction’, 67–68.)

¹⁴⁵ *Leviathan* itself, published in 1651, was the last in a series of publications of Hobbes’s political works in the years following the regicide. *The Elements of Law* had only circulated in manuscript in 1640 but was published (in English) in two parts in 1650. Likewise, an English version of *De Cive* (under the title *Philosophicall Rudiments Concerning Government and Society*) was published in spring 1651 (see, Skinner, *Visions*, 3: 303.)

Hobbes, as we saw, had tentatively begun to develop conquest arguments in *The Elements* and *De Cive*.¹⁴⁶ In both works Hobbes had explained that authority could be founded in conquest and pointed out that a decision predicated on fear was nonetheless binding. In *Leviathan*, Hobbes picked up the threads from these two earlier works. The idea of conquest featured prominently in two places in the work of 1651. Chapter twenty, ‘*Of Dominion PATERNALL, and DESPOTICALL*’, elaborated on the political-theoretical view which Hobbes had begun to articulate in the 1640s, while the more polemical and topical afterword to the entire work, ‘*A REVIEW, and CONCLUSION*’, emphasised the importance of conquest theory and placed it in the more immediate context of the civil war (and its aftermath).¹⁴⁷ The aim of the following overview of conquest theory in *Leviathan* is to demonstrate that the *Review* was a restatement and polemical clarification of the theory developed in Chapter 20, necessitated by the events and publications of the Engagement.¹⁴⁸ Chapter 20, it will be suggested, was a response to a broader range of authors and their (in Hobbes’s view mistaken) notions of conquest, whereas the *Review* was a more direct response to Ascham, and perhaps Nedham. Whereas Hobbes has been portrayed as espousing *de facto*ism in *Leviathan*, relating his views of conquest to those of the 1642/3 period as well as the anti-Engagers, will demonstrate that his ideas were in fact further removed from *de facto* thought than might seem at first sight.¹⁴⁹

¹⁴⁶ See Chapter 3 for a discussion of these two works.

¹⁴⁷ A *REVIEW*, and *CONCLUSION* will henceforth be referred to as *Review*.

¹⁴⁸ See Hoekstra’s discussion of the contemporaneous meaning of ‘Review’, outlining that this could either mean a ‘recapitulation’ or a ‘revision’ (Hoekstra, ‘De Facto Turn’, 35.) The argument here is that with respect to conquest and the obligation it creates, it was the former, rather than the latter.

¹⁴⁹ Quentin Skinner, for example, argued that Hobbes’s *Leviathan* should be read as a contribution to the Engagement debate, see Skinner’s 1972 essay ‘Conquest and Consent’. The argument is also included in the updated version found in Skinner, *Visions*, 3: 302–7. In a different essay in the same volume Skinner corrects his earlier view as he notes that while ‘there are important similarities’ between Hobbes and the *de*

By the time Hobbes published *Leviathan* in 1651 the depiction of the commonwealth by acquisition had evolved since his account in *The Elements*, the underpinning principles, however, remained the same.¹⁵⁰ In *Leviathan*'s twentieth chapter Hobbes covered the creation of commonwealths by acquisition. The rights and duties in commonwealths by institution and those by acquisition, Hobbes explained, were identical: 'the Rights, and Consequences of Sovereignty, are the same in both'.¹⁵¹ The difference was merely that the driving force behind a commonwealth by acquisition was a fear of the conqueror, rather than one of fellow men.¹⁵² Commonwealths by acquisition in particular referred to rulers whose claims arose out of conquest. Hobbes explained:

'Dominion acquired by Conquest, or Victory in war, is that which some Writers call DESPOTICALL [...] And this Dominion is then acquired to the Victor, when the Vanquished, to avoyd the present stroke of death, covenanteth either in express words, or by other sufficient signes of the Will, that so long as his life, and the liberty of his body is allowed him, the Victor shall have the use thereof, at his pleasure. And after such Covenant made, the Vanquished is a SERVANT'¹⁵³

The crucial element of this argument was the moment in which a bond between the vanquished and the conqueror was created, or, in other words, when political obligation arose. The decision to 'avoyd the present stroke of death' constituted a sufficient indication of consent, in Hobbes's view. Life under the new government was a choice

facto theorists, 'this reading makes too little of the fact that, in the basic premises of his political theory' Hobbes was in fact closer to some of the opponents of the *de facto* theorists than he was to Ascham or Nedham (Ibid., 232).

¹⁵⁰ See, Malcolm, 'General Introduction', 32ff. On the novelty and importance of conquest thought in *Leviathan* see also Sarah Mortimer and David Scott, 'Leviathan and the Wars of the Three Kingdoms', *Journal of the History of Ideas* 76, no. 2 (2015): 265–66.

¹⁵¹ Hobbes, *Leviathan*, ii, 306.

¹⁵² Again, Hobbes pointed out that choices made out of fear were nonetheless binding. Otherwise, Hobbes held, 'no man, in any Common-wealth, could be obliged to Obedience' (*Leviathan*, ii, 306).

¹⁵³ Hobbes, *Leviathan*, ii, 312.

vis-à-vis death, which would be the alternative, and thus implied at least tacit consent. Because the matter of consent had been such a contested topic, both in the 1642/3 as well as for some of the anti-Engagers (who wanted to preserve consent whilst the *de facto* thinkers wilfully neglected it), Hobbes reiterated that ‘It is not therefore the Victory, that giveth the right of Dominion over the Vanquished, but his own Covenant. Nor is he obliged because he is Conquered [...] but because he cometh in, and Submitteth to the Victor’.¹⁵⁴ While Hobbes was eager to point out the importance of consent, he was equally adamant to emphasise that whilst it was constitutive in the creation of political obligation, it could not place any formal constraints on the power of the sovereign. Instead, ‘the Rights and Consequences of [...] *Despotically* Dominion, are the very same with those of a Sovereign by Institution [...] the Sovereign is absolute over both alike; or else there is no Sovereignty at all’.¹⁵⁵

The two points Hobbes emphasised in Chapter 20, then, were that conquest was compatible with consent, and that consent could not be used to delimit the authority resulting from conquest. Both of these issues had been fiercely debated in the pamphlet exchanges of 1642/3. It thus appears conceivable that the clarifications Hobbes provided in *Leviathan*, especially vis-à-vis *The Elements* and *De Cive*, were aimed at the royalist-parliamentarian debates over conquest and consent during the earlier period of the civil war. His reiteration of the absoluteness of the power conquest begets, moreover, could be read as a response to Digges, who employed a Hobbesian notion of conquest but restricted the resulting power in line with his constitutional royalism. The detail with which Hobbes discussed conquest in *Leviathan* set the work apart from both *The Elements* and *De Cive*.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid., 314. Sovereignty had to be absolute, regardless of the form of government. Hobbes explained ‘that the Sovereign Power, whether placed in One Man, as in Monarchy, or in one Assembly of men, as in Popular, and Aristocraticall Commonwealths, is as great, as possibly men can be imagined to make it’ (Ibid., 320).

The germs of his later articulation were present in the two earlier works, but *Leviathan* provided more detail and nuance.¹⁵⁶

On this reading, the clarifications of Chapter 20 were aimed at the conceptual misunderstandings Hobbes identified in the 1642/3 debates. Since these appeared to persist, albeit in slightly different manifestations, during the Engagement, and because Hobbes's ideas were used during this latter period, it became necessary to address the *de facto*ists, like Ascham and Nedham, directly in the *Review*. Conquest had become a widely-used and fiercely debated notion in the eleven years between *The Elements* and *Leviathan* and consent had been a constant companion and adversary. In Hobbes's view this was a much-misunderstood relationship and one which it was high time to put in its proper place.

At the very end of *Leviathan* Hobbes thus included the *Review*. The *Review* has proven enigmatic to Hobbes's contemporaries and modern scholars alike and has given rise to speculations concerning Hobbes's political theory and allegiance.¹⁵⁷ In the *Review*, Hobbes, out of all the topics addressed in the main text, elaborated on the details of conquest theory, which he claimed had been so agonisingly misunderstood despite the practical experience of the civil war.¹⁵⁸ While Hobbes had probably begun writing his

¹⁵⁶ Noel Malcolm noted that 'the whole treatment of conquest is a major feature of *Leviathan*' and specifically pointed out the explicitness with which Hobbes treated military conquest in the *Leviathan* compared to his two earlier works (Malcolm, 'General Introduction', 33.)

¹⁵⁷ For one of the best overviews of the modern debates, see again Hoekstra, 'De Facto Turn'. Hoekstra identifies three main modern interpretations of the *Review*. The first sees the *Review* as Hobbes's abandonment of the royalist cause, the second presents Hobbes as a *de facto* theorist whose political theory was in line with the ideas articulated in the *Review* and a third strand focuses on the role of consent required to ratify authority.

¹⁵⁸ For discussions of the *Review* & Conclusion and its importance for *Leviathan*, see for example Richard Tuck, 'Introduction', in *Leviathan*, by Thomas Hobbes, ed. Richard Tuck, Rev. student ed. (Cambridge: Cambridge University Press, 1996), xi–xii; Malcolm, 'General Introduction', 65–82; Hoekstra, 'De Facto Turn'.

magnum opus in earnest in the autumn of 1649, some of the subsequent discussions and central topics of the Engagement debates are clearly reflected in the *Review*.¹⁵⁹ The *Review* testified to the importance of contemporary events and summarised some of Hobbes's reasons for writing the book. Here, he outlined that *Leviathan* had been 'occasioned by the disorders of the present time [...] and without other designe, than to set before mens eyes the mutuall Relation between Protection and Obedience'.¹⁶⁰ While Hobbes thus appeared to principally agree with previous authors, such as Ascham, regarding the causal link between protection and obedience, the same cannot be said with regard to his understanding of conquest.¹⁶¹ Since conquerors were among those who were owed obedience in return for protection, Hobbes specifically singled out this particular aspect.

Hobbes's ideas, as has been shown, had been variously received and at times appropriated during the civil war and Interregnum, above all by Ascham and Nedham for their respective iterations of *de facto*ism.¹⁶² Ascham, in response to Hobbes's *De Cive*

¹⁵⁹ Malcolm suggests that Hobbes began writing the *Leviathan* in autumn 1649. ('General Introduction', 1–12.) On a number of occasions Hobbes himself claimed to have started on *Leviathan* as early as the mid-1640s (Ibid., 10–11) but Malcolm plausibly argues that it is unlikely this early phase comprised more than note taking and planning, and not a full-fledged idea of the work in its final form. Richard Tuck argues that Hobbes completed the work following the royalist defeat at Dunbar in September 1650 (Tuck, 'Introduction to *Leviathan*', x–xii. See also Glenn Burgess, 'Contexts for the Writing and Publication of Hobbes's *Leviathan*', *History of Political Thought* 11, no. 4 (1990): 675–702.

¹⁶⁰ Hobbes, *Leviathan*, iii, 1141.

¹⁶¹ Hobbes's argument concerning the link between protection and obedience was not new in *Leviathan* and was thus not just a specific response to the Engagement. It appears that one of the earliest articulations of the principle was Edward Coke's in 'Calvin's Case', see also above, Chapter 2. For Coke's argument, see David Martin Jones, 'Sir Edward Coke and the Interpretation of Lawful Allegiance in Seventeenth-Century England', *History of Political Thought* 7, no. 2 (1986): 321–40. For the roots of the idea in Hobbes's thought, preceding the Engagement, see also Malcolm, 'General Introduction', 65 ff.

¹⁶² See above, Section II, see also Parkin, *Taming the Leviathan*, 72–74, 78–79. On the links between Hobbes and Ascham, see Malcolm, 'General Introduction', 65–82; Hoekstra, 'De Facto Turn', 56; Parkin, *Taming the Leviathan*, 73.

had articulated distinctions, as he called it, ‘*betwixt the over-running and the conquering of a Country, and [...] betwixt Conquest and Victory*’.¹⁶³ His argument, in a nutshell, was that conquest was an act that changed the political structures and law of the country conquered, whereas victory was a forceful replacing of the government, leaving intact the underpinning political structures. In Ascham’s theory, parliament’s seizure of power was a ‘victory’, rather than a ‘conquest’. This victory was the direct and effective cause for parliament’s power; the possession of which, in turn, sufficed to legitimise obedience, even if the origins of power were unlawful.

Marchamont Nedham had even gone one step further. He openly endorsed conquest as an effective cause of *de jure* authority. In the process, he had explicitly invoked Hobbes’s *De Corpore* to make his point that ‘That the Power of the Sword gives Title to Government’.¹⁶⁴ Like Ascham, Nedham derived power directly from the act of conquest without mediating consent. In his argument, however, this did not only permit legitimate obedience but even granted fully lawful sovereignty to the usurper.

In the *Review*, Hobbes elaborated on his idea of conquest in a vocabulary strikingly reminiscent of the *de facto*ists and Ascham’s in particular. He explained the mechanism by which such subjection occurred. In particular, he was adamant about the necessity of consent:

‘Conquest, is not the Victory it self; but the Acquisition by Victory, of a Right, over the persons of men. He therefore that is slain, is Overcome, but not Conquered: He that is taken, and put into prison, or chained, is not Conquered, though Overcome; for he is still an Enemy, and may save himself if hee can: But he that upon promise of Obedience, hath his Life and Liberty allowed him, is then Conquered, and a Subject; and not before’.¹⁶⁵

¹⁶³ Ascham, *Confusions and Revolutions*, 119.

¹⁶⁴ Nedham, *Case of the Commonwealth*, 103.

¹⁶⁵ Hobbes, *Leviathan*, iii, 1134.

Such forms of consent which were necessary to ratify conquest-based authority could also take subtle forms, as consent ‘may be either expresse, or tacit: Express, by Promise: Tacite, by other signes’; for example by accepting a new ruler’s protection.¹⁶⁶ ‘So that *Conquest* (to define it)’, Hobbes concluded, ‘is the Acquiring of the Right of Sovereignty by Victory. Which Right, is acquired, in the peoples Submission, by which they contract with the Victor, promising Obedience, for Life and Liberty.’¹⁶⁷ Conquest, or victory, itself, in other words, did not constitute authority. The subjects’ consent, whether it be tacit or explicit, was indispensable.

One peculiarity of this articulation of conquest-based sovereignty is the direct covenant Hobbes introduces between the vanquished and the victor. He had previously been adamant that the sovereign could not be party to the covenant for this would seemingly create obligations for them, thus limiting their power.¹⁶⁸ It was thus that the sovereign’s particular status derived from the fact that in a commonwealth by institution the covenant was made by ‘every man with every man’.¹⁶⁹ The people formed a body politic which subsequently submitted to the sovereign; the sovereign, however, was outside and above the covenant and could thus not be held accountable.¹⁷⁰ This would seem to be undermined in the case of a direct contract as articulated here. Indeed, it has been argued that this form of covenant was incompatible with Hobbes’s political theory.¹⁷¹ One simple solution to this structural conundrum, however, could lie in the

¹⁶⁶ Ibid., 1135.

¹⁶⁷ Ibid.

¹⁶⁸ Hobbes, *Leviathan*, ii, 260.

¹⁶⁹ Ibid.

¹⁷⁰ ‘Because the Right of bearing the Person of them all, is given to him they make Sovereigne, by Covenant onely of one to another, and not of him to any of them; there can happen no breach of Covenant on the part of the Sovereigne.’ Thus, the sovereign could commit ‘Iniquity; but not Injustice’ (Hobbes, *Leviathan*, ii, 266, 270).

¹⁷¹ Deborah Baumgold, ‘When Hobbes Needed History’, in *Hobbes and History*, ed. G. A. J. Rogers and Tom Sorell (London: Routledge, 2000), 25–43; Arihiro Fukuda,

view that the sovereign's obligation as party to the contract is fulfilled the moment they grant the subjects their lives. Subsequently, the sovereign resumes the elevated position of absolute power and right; the subjects' obligation may still be conditional on the protection received, but no case can be brought against the sovereign as long as the state exists and protects, thus leaving the sovereign's absolute power intact.

Hobbes's *Leviathan*, the main text as well as the *Review*, can thus be understood as a response to uses of conquest theory in the years preceding it. This encompassed both general uses of conquest which Hobbes considered mistaken and too important to leave them uncommented as well as direct uses and appropriations of his own ideas, as was the case in the works of Digges in 1643 and Ascham and Nedham in 1649/50. If Hobbes did have his eye on both pamphlet exchanges (1642/3 and 1649/50), this would also support the idea that his theory of conquest, coming to full fruition in the *Leviathan*, grew out of the political events of the near-decade preceding *Leviathan*, rather than (just) the Engagement.

Hobbes's articulations of conquest theory throughout this period were occasioned by political events and developments. Yet, his theory attained a deeper theoretical insight into the origins of political obligation that lay beyond its roots in one particular event or another. Despite the changing fortunes of royalist and parliamentary causes over the years during which Hobbes's developed his theory of conquest, the central tenets of the theory remained the same. The perennial problem with appeals to conquest right, namely that it could be appropriated by more or less any victorious party and ideology, also showed in Hobbes's case. In the early 1640s, Digges had used Hobbesian ideas in the

Sovereignty and the Sword: Harrington, Hobbes, and Mixed Government in the English Civil Wars (Oxford: Clarendon Press, 1997), chap. 4.

name of the royalist cause, whereas a mere seven years later, Hobbes's conquest theory was put to use by *de facto* theorists defending the new republic. Hobbes's theory, however, had not changed; Hobbes was not a turncoat.¹⁷² Although Hobbes's articulations of conquest owed their genesis to the political circumstances at the time of their writing, the theory itself transcended the context from which it arose. As part of his endeavours to formulate a science of politics, Hobbes was predominantly interested in the mechanics of power and sovereignty and examined conquest as one practically relevant example. His theory of conquest (and political obligation more generally), therefore, could be subject to different interpretations and uses at different moments in time. While Hobbes had a personal preference for monarchy over other forms of government, his fundamental aim to bring about stability and peace required the support of an existing government over ideological yearnings that would lead to anarchy and war.¹⁷³

V – CONCLUSION

Given the way in which parliament had acquired its position of power, conquest was at the centre of political debates during the first years of the commonwealth. On one side of the Engagement controversy, a number of *de facto* theorists sought to circumvent

¹⁷² The view that Hobbes's publication of *Leviathan* was concomitant with a change of allegiance can be found both among modern historians and Hobbes's contemporaries. For modern examples, see Tönnies, 'Preface', xi n. 1; Tuck, 'Introduction to *Leviathan*', ix. Contemporary examples included Edward Hyde and Gilbert Burnet. Burnet claimed that Hobbes had 'writ his book [*Leviathan*] at first in favour of absolute monarchy, but turned it afterwards to gratify the republican party' (quoted in Hoekstra, 'De Facto Turn', 36.)

¹⁷³ For Hobbes's preference for monarchy, see *Leviathan*, ii, 288-294. For Hobbes's desire for peace and stability, see also Hoekstra, 'De Facto Turn', 73.

conquest arguments in their quest to derive legitimate obedience from possession of power, rather than justifying the means by which it was acquired. On the other, anti-Engagers directed the spotlight back at normative issues by focusing on the acquisition of power through conquest and the conditions under which it could create political obligation, in their views. In the process, their debates produced a more systematic field of conquest thought, as a number of shared central categories emerged with respect to which conquest was being considered. Out of a number of strands three that stood out in particular, were those of (i) *de facto* accounts of conquest, (ii) conquest in just war and (iii) conquest qualified through consent.

De facto accounts of conquest held that the mere act of conquest permitted at least obedience to the government, if not constituting legitimate authority altogether. When attempting to circumvent constitutional problems of previous accounts of resistance theory, writers floated notions of legitimate conquest through the concept of the *jus gentium*, at the end of which conquest could be the culmination of just war and thus a legitimate source of sovereignty. Finally, conquest could be accepted as the foundation of sovereignty if it was subsequently qualified through acts of parliamentary or popular consent to blunt its otherwise absolutist consequences. This latter strand in particular had roots reaching back at least to the early 1640s, as the previous chapter demonstrated.

The next, and final, part of this thesis will be the Conclusion & Epilogue, which will focus on the Revolution of 1688/89. As previously mentioned in the Introduction, the idea of conquest was subject to cyclical changes in prominence and importance in public discourse. During the remaining years of the Interregnum, for example, conquest was not

one of the more popular arguments invoked in defence of the regime.¹⁷⁴ This was the case despite Cromwell's military missions to Scotland and Ireland. This absence further supports the insight that there was a set of ideas of conquest which were specific to domestic political discourses, rather than being generated by military pursuits in the international arena. And perhaps political writers had also learned the lesson that conquest theory would always favour those in power, rather than granting a stable basis for sovereignty. Similarly, conquest ideas were largely absent from the political thought of the Restoration. This, however, did not stop conquest ideas from resurfacing in the context of 1688. The discourses of conquest which unfolded during the debates surrounding 1688, moreover, correlated with those which had developed over the first half of the century, as traced in this and the preceding three chapters. The final part, the Conclusion & Epilogue, will highlight these parallels.

¹⁷⁴ There were some exceptions. Particularly, these can be found in pamphlets responding to Thomas Hobbes's account of conquest in the years following the publication of *Leviathan*. These for example included John Hall, *Of Government and Obedience, as They Stand Directed and Determined by Scripture and Reason*. (London, 1654); Thomas White, *The Grounds of Obedience and Government*. (London, 1655); Michael Hawke, *Killing Is Murder, and No Murder, or, An Exercitation Concerning a Scurrilous Pamphlet of One William Allen, a Jesuitical Impostor, Intituled, Killing No Murder* (London, 1657). For details of Hobbes's reception during this period, see also Parkin, *Taming the Leviathan*, chap. 3. Pocock notes that while the Interregnum witnessed 'the first signs of a royalist reaction in the field of historiography' this 'did not lead to radical reassessment of the whole subject' (*Ancient Constitution*, 148).

Conclusion & Epilogue

I – LATE SEVENTEENTH-CENTURY IDEAS OF CONQUEST: THE LONG SHADOW OF THE 1640s

Over the half-century following James I's accession nuanced accounts of conquest emerged from the political debates of the period. What had been conquest talk at the beginning of the century developed into conquest language by the end of the civil wars, conquest polemics were turned into conquest theory. The theories of conquest which had developed over this span of fifty years had a lasting impact and were ultimately put to practical use again in the political debates surrounding the events of 1688/89 as William of Orange came to replace James II on the English throne.

This *Conclusion & Epilogue* will briefly retrace and summarise the developments of ideas of conquest as examined throughout the main body of this thesis. It will then consider the discourse surrounding the Revolution of 1688/89, showing how the strands of conquest theory which had been developed over the preceding century, came to be applied practically in this context. An examination of the conquest ideas that predominated between 1688 and 1693, it will be shown, reflects the development of conquest thought between 1603 and 1651. One observer at the end of the century explicitly complained that supporters of the Revolution of 1688 relied on 'Arguments, taken out of Parsons the Jesuite, and from the Rebels in the Year 42, and from the

Advocates of Cromwell's Usurpation'.¹ This neatly captures three of the essential moments visited in this thesis.

Conquest ideas that sprang from the time of the civil war of the 1640s were of particular use in the context of the Revolution of 1688/89. The situations, although separated by forty-odd years, were comparable as the respective revolutions witnessed upsets to the regular line of succession as rightful monarchs were unseated.² A set of political arguments, including those of conquest, was thus applicable in both situations. Some ideas shaped in the 1640s were directly and explicitly recycled in the context of 1688. This can be seen in the republication of pamphlets originally composed during the civil war whose arguments were valuable again in the wake of the Williamite accession. Among the list of republished civil war pamphlets were Hunton's *Treatise of Monarchy* (originally published in 1643, republished in 1689), Ascham's *Discourse* (originally published in 1648, republished anonymously as *A Seasonable Discourse* in 1689) and Edmund Ghest's *Impartial Disquisition* (unpublished at the time of its writing, which was probably 1647, first published in print in 1689 or 1690), all of which are familiar from Chapters 3 and 4, above.³

¹ Thomas Wagstaffe, *An Answer to a Late Pamphlet Entitled, Obedience and Submission to the Present Government ... with a Postscript in Answer to Dr. Sherlock's Case of Allegiance* (London, 1690), 1.

² Some of the differences between the situations will be addressed below. Most importantly, the civil wars saw a challenge to the throne from within the country, whereas in 1688 a foreign sovereign laid claim to the English crown. The international dimension of the later conflict made just war arguments more applicable.

³ For an extensive list of pamphlets issued during the Oath of Allegiance controversy of 1688/89, see Mark Goldie, 'The Revolution of 1689 and the Structure of Political Argument: An Essay and an Annotated Bibliography of Pamphlets of the Allegiance Controversy', *Bulletin of Research in the Humanities* 84, no. 4 (1980): 473–564. Republications are listed separately (522–3). Goldie lists the *Seasonable Discourse* as a republication of Ascham's *Confusions and Revolutions*; it is, however, a republication of the earlier *Discourse* of 1648; Ascham's *Confusions* were an overhauled version of his *Discourse* and featured an additional nine chapters, none of which were included in the 1689 republication.

The works of Ascham and Ghest are of particular interest, as they contained some of the theories of conquest that came to feature most prominently in the aftermath of 1688/89. Their republication was thus a tangible link between the articulation of conquest theories in the 1640s and their use in 1688/89. Theories of conquest which came to be used in political discourse between 1688 and 1693, in other words, had been forged throughout the first half of the century and especially in the 1640s. Political actors employing conquest theories to discuss questions of sovereignty at the end of the century thus stood on the shoulders of their predecessors.

This thesis has traced discourses of conquest, their development and their political use during the seventeenth century. Three central strands of conquest thought which grew out of the debates accompanying the events of the period between 1603 and 1651 were identified. These three strands of conquest thought reappeared in the political debates in the wake of 1688.⁴ The first strand was a legal-historical account which derived absolute power and indefeasible right from the occurrence of past conquests. Central to this strand of thinking were interpretations of 1066 and their potential contemporaneous consequences. Crucially, however, this argument was rarely advanced as a positive defence of royal absolutism during the first half of the seventeenth century. Instead, during this period opposition to this view was more widespread than its actual articulation. Chapters 1 & 2 described the emergence of this development, which has become known as ancient constitutionalism. These two chapters, moreover, demonstrated that this dynamic somewhat resembled a ‘straw man’ argument, that is to say that in an effort to curb looming Jacobean absolutism, its opponents developed a disproportionate focus on ideas of conquest and identified them as their main target in response to which

⁴ See also Goldie, ‘Edmund Bohun’. Goldie identifies different types of conquest arguments in the debates of 1688. The article is discussed in more detail below.

they could position their own political and constitutional arguments. The legal-historical strand could thus, depending on the interpretation of history, be used flexibly by defenders and opponents of absolutism – either to show a direct line from 1066 to contemporary rulers or to deny the same. In the context of 1688, it was used in an attempt to delegitimise the revolution and defend James II's claim to the throne by deriving his right from the Conquest of 1066. This would automatically preclude any appeal to resistance rights and thus invalidate the Revolution of 1688/89.

The second and third strands of conquest thought developed out of the debates surrounding the English civil wars. The previously elusive straw version of royalist-absolutist conquest rights which the anti-absolutists had so vigorously attacked since the beginning of the century, ultimately materialised at the outset of the civil wars in 1642. Defenders of the crown began to draw on conquest arguments in their attempts to buttress the king's position amid parliamentary attacks. Chapter 3 outlined this development in detail and in the process showed how the notion of consent was elevated into the role of conquest's most effective counterpart as parliamentarians sought to place conceptual, rather than historical limits on conquest right. In the parliamentary argument, consent was necessary and constitutive in the formation of sovereignty, thus placing a limit on the resulting power. In the royalists' view, consent was a secondary element, ratifying conquest but not equipped with the power to theoretically delimit the power it generated. These two accounts were ultimately picked up and transcended by Thomas Hobbes, who made consent an indispensable ingredient for the creation of sovereignty out of conquest without letting it limit the resulting power. In the wake of the Revolution of 1688/89, the role of consent for conquest-based power was debated again with a surreptitious use of Hobbesian conquest theory.

Finally, a third strand which emanated from the civil war or, more specifically, the Engagement debates, was that of conquest as the culmination of a just war. By 1650/1, this had been a makeshift version of conquest rights, built on a foundation of Grotius's considerations of the rights of war. Anthony Ascham, the most prominent proponent of these ideas at the time, sought to apply just war arguments to the civil war, thus interpreting the initial Grotian criteria rather liberally, as Chapter 4 showed. His account provided Engagers with the means to circumvent otherwise categorically upheld non-resistance doctrines as conquest was turned from an act of aggression into an extension of a right to self-defence, when presented as a legitimate outcome of a just war. In Ascham's language, moreover, this legitimate form of resistance was presented as victory, rather than conquest, thus further seeking to dispel the dark clouds of aggressive absolutism otherwise lingering over the idea of conquest. In the context of 1688, this specific version of *jus gentium* conquest rights became one of the most prominent arguments to defend regime change and one that highlighted the parallels between arguments forged in the civil wars and those deployed in 1688 in particular. Almost forty years after Ascham's first adaptation of Grotian just war arguments for English purposes, this time the political circumstances conformed more closely to the criteria as outlined by Grotius.

Throughout the Interregnum and Restoration period, conquest arguments were appealed to less often. This waning of conquest rhetoric corresponded with practical political needs at the time: after the Engagement debates had faded, the new regime had every interest in containing further disputes about its claim to power and its legitimacy. Moreover, remaining absolutist connotations made conquest unattractive during the Restoration period, too.

Conquest ideas returned at the end of the 1680s.⁵ When they resurfaced, they appeared in the recognisable semblances which had principally developed throughout the first five decades of the century as identified above: legal-historical, consent-qualified and as a consequence of just war. As some of the challenges in justifying political sovereignty after 1688/89 were comparable to those of the aftermath of the civil war, so were the uses of and approaches to conquest ideas in the two contexts. The concepts which were developed over the first half of the century, were thus readily available for political actors at the end of it.

Contemporary observers noted the importance of conquest ideas in the context of the Revolution of 1688/89. One reported that ‘Conquest [...] is become a very great modern Point’ and others found that conquest was the most useful argument to convince non-jurors to take the oaths of allegiance under King William and Queen Mary.⁶ Only a few works of modern scholarship have recognised the importance of conquest for the years immediately following 1688. In one of them Mark Goldie, for example, finds ‘abundant evidence that conquest theory was influential and widely used in the Revolution debate’.⁷ Similarly, M.P. Thompson noted that the idea of conquest ‘played a very important role in reconciling Englishmen to the new regime’.⁸ Goldie focuses on the contribution of Tory publicist Edmund Bohun, who offered a defence of the new regime based on a conquest right which was the legitimate outcome of a just war, as suggested by Grotius’ in his *De Iure Belli*. Goldie argues that Bohun’s use of just-war conquest

⁵ For some conquest discussions at the beginning of the 1680s, see Pocock, *Ancient Constitution*, chap. 8.

⁶ Samuel Johnson, *Notes upon the Phoenix Edition of the Pastoral Letter* (London, 1694), 33; Edmund Bohun, *The Diary and Autobiography of Edmund Bohun*, ed. S. Wilton Rix (Beccles, 1853), 105.

⁷ Goldie, ‘Edmund Bohun’, 570. See also Goldie, ‘The Revolution of 1689’.

⁸ M. P. Thompson, ‘The Idea of Conquest in Controversies Over the 1688 Revolution’, *Journal of the History of Ideas* 38, no. 1 (1977): 36. See also Nenner, *Right to Be King*, 157–61, 200–207.

rights was the most pervasive notion of conquest in the post-1688 period and differed markedly from previous divine right and legal-historical conquest accounts.⁹ Yet, other accounts of conquest theory continued to be deployed and even Bohun's Grotian account was not entirely new. Where Goldie emphasises the use that the supporters of the Revolution made of conquest ideas, Thompson points out the unlikely juxtaposition of pro- and anti-Revolutionary publications having recourse to the same set of basic arguments in their efforts to support opposite causes.¹⁰ Goldie and Thompson's pieces are both perceptive and bring out the role conquest arguments played in 1688. However, both create the impression that conquest thought between 1688 and 1693 was more or less a self-sufficient set of ideas.¹¹ Against the background of the political debates of the first half of the century, though, it becomes evident that there are conceptual links between the late seventeenth-century ideas and their predecessors. Theories of conquest which sprang from the political debates since the accession of James I provided the political actors of 1688 with a conceptual toolkit of conquest rhetoric. An examination of the ideas of the half-decade following 1688, therefore, reveals the legacy of conquest ideas which had developed throughout the first half of the seventeenth century. Highlighting the intellectual debts the later period has to the earlier one and pinpointing the parallels in their uses of conquest ideas, will be the task of the ensuing epilogue.

⁹ Goldie, 'Edmund Bohun', 569–70.

¹⁰ Thompson particularly illustrates his point with reference to the works of Jeremy Collier who used conquest arguments to oppose the Revolution. Collier will be treated in more detail in Section V.

¹¹ Goldie does point out Anthony Ascham's use of Grotius's ideas during the Engagement controversy, Goldie, 'Edmund Bohun', 577.

II – 1688: ENGLAND CONQUERED, AGAIN?

In the third year of his reign, James II of England was concerned that he might be removed from his throne by a foreign invasion and conquest. The king issued a proclamation in which he alerted his subjects that ‘a great and sudden Invasion from Holland with an Armed Force of Foreigners and Strangers, will speedily be made in a Hostile manner upon this Our Kingdom’. He declared ‘that no less Matter by this Invasion is proposed and purposed, than an Absolute Conquest of these Our Kingdoms, and the utter Subduing and Subjecting Us and all Our People to a Foreign Power’.¹² James’s warning of an imminent foreign conquest could hardly have been starker.

The king’s gloomy declaration was issued in response to an invitation extended to William of Orange to replace James II on the English throne. The invitation, whose authors have become known as the Immortal Seven, was sent to William on 30 June 1688.¹³ In it, the authors expressed fears that James was eroding the liberties of his own subjects. The situation was dire enough for them to willingly expect deliverance at the hands of a foreign prince. The invitation repeatedly encouraged and assured the Prince of Orange that should he decide to land in England with the support of an army, he could expect substantial support and virtually be assured of victory. Amid all the

¹² *Memorials on Both Sides, from the Year 1687, to the Death of King James II. With Divers Original Papers Never before Publish’d, Useful for Such as Desire to Be Fully Inform’d in the True State of the Revolution and the Birth of the Pretender* (London, 1711), 8.

¹³ The group of authors was comprised of William Cavendish, fourth Earl of Devonshire, Henry Compton, Bishop of London, Richard Lumley, Baron Lumley, Thomas Osborne, first Earl of Danby, Edward Russell, Henry Sidney, and Charles Talbot, twelfth Earl of Shrewsbury. See Grant Tapsell, ‘Immortal seven (act. 1688)’, *ODNB*.

encouragement, the authors admitted that some ‘difficulties’ lay ahead.¹⁴ As it turned out, these difficulties would be less of a military nature but rather in the field of political arguments about the rightfulness of William’s arrival on English soil and his eventual accession to the English throne.¹⁵

Faced with the accusation of planning a conquest, William, in turn, felt the need to clarify his intentions. In his ‘Additional Declaration’, he explicitly disavowed any intentions of conquest. As William was aware of the accusations that he was allegedly planning ‘to Conquer and Enslave the Nation’ he ‘thought fit to adde a few words’ and explicitly stated that he was not pursuing ‘a wicked attempt of Conquest’.¹⁶ William’s explicit disavowal of conquest intentions did not go unnoticed or, for that matter, unchallenged. The fear of a foreign invasion was still palpable. One commentator questioned what William’s arrival would mean for all those who had not invited him to England, since ‘He that conquers the King, conquers England; for His are the People, who has the Crown’. Since conquest, however, did not automatically assure obedience, the only way for William to defend his title would be by the sword and ‘His defective Title will require a Stronger Army to support it.’¹⁷ Another pamphlet lodged similar complaints. Its author cast doubt over William’s attempts to distance himself from conquest designs and his repeated assurances that his army was incapable of it. Even if

¹⁴ The whole ‘Letter of Invitation to William of Orange’ can be found in Andrew Browning, ed., *English Historical Documents, 1660-1714* (London: Routledge, 1996), 110–12.

¹⁵ On the ‘Invitation’, see also Kishlansky, *A Monarchy Transformed*, 277 ff.

¹⁶ King of England William III, *The Declaration of His Highnes William Henry, by the Grace of God Prince of Orange, &c. of the Reasons Inducing Him, to Appear in Armes in the Kingdome of England, for Preserving of the Protestant Religion, and for Restoring the Lawes and Liberties of England, Scotland and Ireland* (The Hague, 1688), 10. The initial *Declaration* was issued on 10 October 1688, the *Additional Declaration* added exactly two weeks later, on 24 October 1688. William landed in Torbay on 5 November 1688.

¹⁷ *Some Reflections upon His Highness the Prince of Oranges Declaration* (London, 1688), 12.

the Dutch army was insufficient, William would still have a claim to anything won in his name, even if by English soldiers; 'For the General wins the Battel, who ever Fight it [and] Victory and Conquest are but two Names for one thing'. The author further noted that since William had 'no Right to Act here by Law, he must of necessity Act by Right of Conquest.'¹⁸

Irrespective of these concerns and just over ten days after his explicit denial of conquest intentions, William sailed to England and landed at Torbay on 5 November 1688. Whether he arrived as a conqueror, as James had warned, or as a liberator, as William himself had suggested, became the subject of intense debates over the ensuing years. James, whose support was dwindling, fled to France at the end of December 1688. Meanwhile, William was offered the crown as *de facto* king in London.¹⁹ He refused the offer of a *de facto* title and was eventually proclaimed King of England in February 1689 and crowned two months later.

After William had thus assumed the position on the throne, the political nation, yet again, debated the legitimacy and rightfulness of its ruler. While parliament's official declaration (from February 1689) stipulated that James had 'abdicated', thus leaving the throne 'vacant', justifications of, and attacks on, the new regime employed a range of arguments, among which conquest was one of the most obvious and prominent ones, given William's arrival in England with an army.²⁰ One observer adequately described this scrambling for justifications to support the new regime as he noted that England was 'intirely unsettled, as to the Government. The King's Title and the Legality of it, are [...]

¹⁸ *The Prince of Orange His Declaration: Shewing the Reasons Why He Invades England. With a Short Preface, and Some Modest Remarks on It* (London, 1688), 30.

¹⁹ See, Tim Harris, *Revolution: The Great Crisis of the British Monarchy, 1685-1720* (London: Allen Lane, 2006), 312–14.

²⁰ *Commons Journals*, x, 18–19. For an overview of justification strategies, see also Harris, *Revolution*, chap. 8.

publicly disputed, and with [...] little Fear of Punishment'.²¹ The author observed how William's supporters advanced arguments, 'one while to prove that he is King by Conquest, another while to prove that he is King by an immediate Providence of God'.²² Conquest arguments in particular came to be among the most useful and prominent arguments throughout the years following 1689.

It was as part of an 'explosive pamphlet debate' that these arguments were aired, attacked and defended.²³ As previously noted, conquest theory was articulated in three distinctive ways. It was presented as the outcome of just war, thus constituting a legitimate claim to power. It was used in conjunction with notions of consent which were either designed to appease those concerned over arbitrary absolutism or to make taking the oath of allegiance and thus submitting to a Williamite conquest more palatable to non-jurors. Ultimately, conquest was also explored in a traditional legal-historical fashion, making 1066 a staple in the rhetorical fight against the Revolution. Ultimately, in 1693, parliament viewed ideas of conquest as dangerous and moved to ban the use of conquest language with reference to William's right to the throne, condemning and publically burning works that had done so in the meantime.²⁴ In the five years between 1688 and 1693, however, there was rich conquest discourse discernible among the political pamphlets. The latter will be explored in the following sections, beginning with pamphlets advocating submission to a new government whose right to rule was founded in conquest at the end of a just war. This will highlight how the Engagement controversy and the Oath of Allegiance debates presented comparable political challenges which could be (and were) met with similar sets of conquest arguments.

²¹ *Some Short Considerations Concerning the State of the Nation* (London, 1692), 10.

²² *Ibid.*, 11.

²³ Goldie, 'Edmund Bohun', 569.

²⁴ William Cobbett, ed., *The Parliamentary History of England, from the Earliest Period to the Year 1803*, vol. 5 (London, 1806), col. 756.

III – CONQUEST AND JUST WAR

The idea that William could claim his title through a legitimate conquest at the end of a just war was one of the most widely used arguments to defend William's sovereignty in the aftermath of 1689. Two of the most prominent exponents of this line of argument were Gilbert Burnet and Edmund Bohun. Burnet, later bishop of Salisbury, declared that the 'Prince of Orange had a just cause of War' against James II, thus making his conquest a legitimate base for this claim to power.²⁵ Burnet, who had spent the majority of James II's reign in European exile, was closely associated with the Prince of Orange even before the latter's accession to the English throne. During his time on the Continent, he had become acquainted with the Prince and Princess of Orange and frequented their court in The Hague. During this time, Burnet regularly debated English affairs with the couple and was eventually appointed as the prince's personal chaplain on the eve of his departure to England.²⁶

The *jus gentium*-inspired conquest arguments Burnet, and also Bohun, advanced betrayed an undeniable Grotian influence and thus showed parallels also with some of the ideas propagated by Ascham.²⁷ Structurally, the situation in 1689 was not dissimilar from the Engagement controversy some forty years before. Crucially, both were characterised by the violent acquisition of power and the concomitant dilemma, at least for some, of being urged to swear an oath of allegiance where a previous one was still in place. Accordingly, the two contexts exhibited comparable uses of conquest arguments since their political usefulness in circumventing dictums of non-resistance and the resolution

²⁵ Gilbert Burnet, *A Pastoral Letter ... Concerning the Oaths of Allegiance and Supremacy to K. William and Q. Mary* (London, 1689), 19.

²⁶ See also Martin Greig, 'Burnet, Gilbert (1643-1715)', *ODNB*.

²⁷ On the republication of Ascham's work in the context of 1688/9, see above and Goldie, 'The Revolution of 1689', 522–23.

of previous oaths was evident to political actors in both situations. The question of how far Burnet, Bohun and others borrowed directly from Grotius or received their ideas mediated through Ascham, will be tackled below. That they had been inspired by one or the other, however, is the inescapable conclusion when consulting their works.

In May 1689 Burnet published his *Pastoral Letter* in which he argued that the divinely sanctioned possession of power, following a just war, commanded allegiance from the subjects, thus urging that William ought to be accepted as king. The ‘just cause of War’ based on which William had intervened against James, confirmed the legitimacy of the former’s power.²⁸ That the acquisition of power by means of such a just war constituted effective authority, could not be denied ‘even according to the highest principles of Passive Obedience’.²⁹ Burnet further explained that when ‘a War [was] begun upon just and lawful grounds [...] it is the uncontroverted opinion of all Lawyers, That the success of a just War gives a lawful title to that which is acquired in the Progress of it’.³⁰ Since James, in Burnet’s view (and that of the Commons), had ‘both abandoned his People, and deserted the Government, all his Right and Title did accrue to the King, in the right of a Conquest over him’.³¹

The attempt to present William and Mary as rulers based on a right of conquest stemming from a just war was aimed at non-jurors in particular. Accepting this argument would allow them to uphold their belief in the doctrines of non-resistance and passive obedience. If they merely followed a superior power that had acquired its claim in a just war, they could not be accused of supporting rebellion.³² Burnet himself reflected in

²⁸ Burnet, *Pastoral Letter*, 19.

²⁹ Ibid., 20.

³⁰ Ibid., 20–21.

³¹ Ibid., 21.

³² Ascham’s aim to forge a conquest theory from Grotian theories followed the same rationale, see Chapter 4.

hindsight that ‘the greatest part of the Clergy had entangled themselves so far, with those strange conceits of the divine right of Monarchy, and the unlawfulness of resistance in any case: And they had so engaged themselves, by asserting these things so often and so publicly, that they did not know how to disengage themselves in honour or conscience.’³³ The only, or at least most elegant solution, Burnet declared, was to accept the Prince of Orange’s right by conquest, thus avoiding potentially delicate questions of adherence to doctrines of non-resistance and passive obedience. ‘A notion was started, which by its agreement with their other principles had a great effect among them, and brought off the greatest number of those who came in honestly to the new government.’ This ‘notion’ held that ‘The Prince had a just cause of making war on the King. In that most of them agreed. In a just war [...] success is considered as the decision of heaven. So the Prince’s success against King James gave him the right of conquest over him.’³⁴

When parliament cracked down on conquest language in public political discourse some years later (in 1693), it identified in Burnet the original architect of the just war argument and Burnet’s contemporaries appeared to think likewise. Samuel Johnson, clergyman and celebrated Whig pamphleteer, for example, noted that after the possibility of King James’s desertion had dominated debates, ‘there was need of a new Contrivance, and so Conquest was started; and it was asserted in the *Pastoral Letter*, that the King had a Right to the Crown by Conquest’.³⁵ Burnet was accused of being ‘the inventor of the

³³ Gilbert Burnet, *Bishop Burnet’s History of His Own Time*, vol. 2 (London, 1753), 580.

³⁴ Ibid.

³⁵ Samuel Johnson, *An Argument Proving That the Abrogation of King James by the People of England from the Regal Throne, and the Promotion of the Prince of Orange, One of the Royal Family, to the Throne of the Kingdom in His Stead, Was According to the Constitution of the English Government and Prescribed by It* (London, 1692), 21. John Lowthorp similarly observed that Burnet’s use of the argument had been ‘the first time we have heard the Right of Conquest Pleaded’ (John Lowthorp, *A Letter to the Bishop of Sarum: Being an Answer to His Lordships Pastoral Letter* (n.p., 1690), 21.

notion of their majesties being Conquerors', as principally expressed in his *Pastoral Letter* and his pamphlet was publically burned as a result.³⁶ Mark Goldie observed, however, that Burnet's *Pastoral Letter* was preceded over a month by Tory publicist Edmund Bohun's *History of the Desertion*.³⁷ While it appeared to Burnet's contemporaries that his work was the starting point for a defence of the new regime based on a doctrine of just war, and in turn just conquest, Bohun articulated a similar case earlier and in any case more elaborately than Burnet.

Bohun, who became press licenser in August 1692, had been an active contributor to the political debates emanating from the Revolution before his appointment. In his *History of the Desertion* (1689), he first presented his case for viewing the Revolution as an instance of just war. Regarding the Prince of Orange and his actions, he explained that 'if ever Man had a just cause of War, he had; and that creates a Right to the thing gained by it: the King by withdrawing and disbanding his Army, yielded him the Throne'.³⁸ Bohun developed this idea of a just war, as the basis for the new regime's claim to power, in more detail over a number of publications.³⁹ Throughout, the underlying message was that the 'Prince had a just Cause to make War upon James II and if he was conquered by him, he has as good Right to our Allegiance, on that score, as ever any conquering Prince had'.⁴⁰

³⁶ Cobbett, *Parliamentary History of England*, 1806, vol. 5, col. 756. Parliament's decision of January 1693 is discussed in more detail below.

³⁷ Burnet's *Pastoral Letter* dates from 15 May 1689, whilst Bohun's *History of the Desertion* is dated 6 April of the same year, (see Goldie, 'Edmund Bohun', 582–83.)

³⁸ Edmund Bohun, *The History of the Desertion* (London, 1689), 111.

³⁹ His work also appears to have resonated with his contemporaries. Bohun captured a mood that was shared by many and inspired others to respond (overwhelmingly supporting his view). Thomas Long's *A resolution of certain queries concerning submission to the present government*, (London, 1689), for example, was published only two days after Bohun's *History* and included a detailed 'Postscript' concerned with Grotius's just war arguments, (Goldie, 'Edmund Bohun', 582 n. 81).

⁴⁰ Edmund Bohun, *The Doctrine of Non-Resistance or Passive Obedience* (London, 1689), 5.

Bohun argued for an authority which elicited allegiance as a result of a conquest at the end of a just war. As the full title of this work of 1689, *The doctrine of non-resistance or passive obedience, no way concerned in the controversies now depending between the Williamites and the Jacobites*, suggests, his intention was the same as Burnet's: to provide a rationale for conscientious believers of the principles of non-resistance and passive obedience. Many of them had refused to take the oaths of allegiance as they thought it would imply rebellious behaviour. Like Burnet, Bohun targeted these non-jurors. He reasoned that conquest arguments were uniquely suited 'to bring over the non-swearers to the present government; because I have observed many of them yield more readily to the arguments from conquest than to any other'.⁴¹

Bohun, moreover, discussed the theoretical dimensions of just wars and under which circumstances they could create political obligation: 'every Conquest will perhaps not create a just and good Title, but here it is confessed the present King had the most just cause to make a War upon James the Second, that ever Man had'.⁴² Bohun referred to the 'Law of Nations' which, in his view, regulated the criteria of a just war. He distinguished between mere rebellion and a genuine just war as 'Every Man has not the Right of making a Conquest: a Subject that rebels against his Prince is but a Victorious Traytor if he prevail'.⁴³ In the particular case of 1688/89, however, Bohun argued that William could refer to a just cause and that James's former subjects, in turn, had the right to transfer their allegiance. Such a transfer was justifiable, not least because of their situation of 'utmost Extremity'. Under the given circumstances, 'All that did withdraw from the Service of the late King, when they saw he was resolved on these illegal exorbitant

⁴¹ Bohun, *Diary*, 105.

⁴² Bohun, *Doctrine of Non-Resistance*, 25.

⁴³ *Ibid.*, 26.

Courses, are not to be blamed'.⁴⁴ The occurrence of a just conquest exonerated those pledging allegiance to the new regime without implicating them for rebellion.

The challenges Williamite supporters faced in their attempts to defend his authority, and the oath of allegiance, were comparable, on some levels, to those faced by the supporters of the Engagement roughly forty years before. Similar aims under similar conditions perhaps unsurprisingly made similar conquest arguments useful across both situations. Ascham had looked to Grotian theory and had tried to adapt the Dutchman's rights of war to a civil war. When Burnet, Bohun (and others) thus constructed a just-war conquest defence of the Prince of Orange's power, they similarly turned to Grotius. Arguably, they may have had an easier brief, considering they defended the arrival of a foreign ruler who arrived in England with his army, rather than a purely domestic rebellion. Whereas Burnet scarcely offers any direct insight as to whether he took his ideas from Grotius, Bohun openly admitted his indebtedness.

Bohun's *Diary* testifies to his familiarity with Grotius's *De Iure Belli* by 1677.⁴⁵ Bohun sought to extrapolate a theory of conquest from Grotius's work that was applicable in the context of the Revolution of 1688. He followed the Dutch jurist closely, resting his fundamental argument on *jus gentium* premises and Grotius's criteria of when a war counted as 'just'.⁴⁶ Compared with Ascham, Bohun's use of the Grotian just war argument was more suitable and convincing. The conditions in the aftermath of the 1688 revolution meant that the Grotian principles were more straightforwardly applicable. Ascham had to stretch some of the criteria for a just war to make them fit the civil war

⁴⁴ Ibid., 8.

⁴⁵ Bohun, *Diary*, 2. The entry for 12 March 1677 focused on Bohun's reading of Henry Henninges' *De Summa Imperatoris*, which he compared to Grotius's *De Iure Belli*.

⁴⁶ Bohun, *Doctrine of Non-Resistance*, 25–26.

scenario. One basic condition, Grotius had stipulated, was the involvement of two sovereign entities. Where this was rather straightforwardly recognisable in a war between William of Orange and James II, it required some good will to accept that the parliamentary army under Cromwell fulfilled this criterion. Ascham's case for a just-war conquest argument during the civil war was thus visibly constructed from Grotian building blocks but required the acceptance of the argument that a nation during a civil war could temporarily be seen as two separate sovereign entities. Constructing a similar argument, given the different circumstances, was therefore easier for Bohun.⁴⁷

Bohun did not explicitly refer to Ascham in his writings. It is possible, however, that the publicist was indeed familiar with Ascham's arguments as advanced forty years earlier. The structural similarity between the situation of the Engagement debates in the 1640s and –50s and that of the aftermath of 1688 was not lost on William's new English subjects. Ascham's original *Discourse* (1648) was posthumously reissued in 1689 as *A seasonable discourse where in examined what is lawful during the confusions and revolutions of government*. On the title page, the work was advertised as having been 'written some Years since' but 'very seasonable to the present State of Affairs'.⁴⁸ Bohun's arguments recognisably followed similar patterns as those advanced by Ascham during the Engagement period. Whether Bohun was directly following Ascham or not, the way for just war arguments had been paved, at least in part, by their development in the wake of the civil war.

Bohun and Burnet may have been two of the more famous representatives of just war defences of the new regime, but they were far from the only ones. Discussions over

⁴⁷ For Ascham's use of Grotian ideas to fashion his own theory of conquest, see Chapter 4.

⁴⁸ Antony Ascham, *A Seasonable Discourse Wherein Is Examined What Is Lawful during the Confusions and Revolutions of Government* (London, 1689).

the nature and validity of occurrences of 'just conquest' featured in a wide range of pamphlets. Burnet accordingly remarked that the notion that there had been 'a conquest over king James, and that conquests in a just war gave a good title' had become a 'received opinion among lawyers'.⁴⁹ The circle of writers subscribing to just war arguments, however, was not restricted to lawyers. During the five years following 1688, a number of pamphlets more or less openly advanced notions of a Williamite just conquest in order to justify obedience to the new regime.

While Burnet's *Pastoral Letter* was banned and burned in 1693, William Lloyd's *God's Ways*, which advanced a similar line of argument, only just escaped the flames. Lloyd, bishop of St Asaph at the time of the Revolution and later bishop of Worcester, was of the view that James II had abandoned the throne and forfeited his right. Accordingly, Lloyd had taken the oaths of allegiance early on and remained a supporter of William and Mary. Throughout his *God's Ways*, Lloyd relied explicitly on Grotian arguments to make his case for a just conquest at the end of a just war. Lloyd was a prominent early supporter of the Prince of Orange and joined the sizeable choir of voices advocating an acknowledgement of the new regime based on its foundations in conquest resulting from a just war. He unequivocally diagnosed that William's seizure of the throne was 'a Just War which is made upon Just and sufficient Cause, so the Effect of such a War being a Conquest, is Just'.⁵⁰ There was no doubt in Lloyd's mind that '[t]he Right of a Conquest [is] so clear when the Justice of the War is certain'.⁵¹ When a conquest was

⁴⁹ H. C. Foxcroft, ed., *A Supplement to Burnet's History of My Own Time* (Oxford: Clarendon Press, 1902), 387–88.

⁵⁰ William Lloyd, *A Discourse of God's Ways of Disposing of Kingdoms*. (London, 1691), 49.

⁵¹ *Ibid.*, 59. Even in cases when the causes of the war were less virtuous, possession and a stable government should let a conquered people incline to accept the conquest as the foundation of the new order (59–60).

thus the outcome of a just war, 'it gives a Right, and then there is no Usurpation', Lloyd concluded.⁵²

Where Bohun and Lloyd openly and frequently used Grotian arguments in their own work, yet another pamphlet made its conceptual foundations even more explicit. *The proceedings of the present Parliament justified by the opinion of the most judicious and learned Hugo Grotius*, published anonymously in 1689, consisted of a list of passages from *De Iure Belli* compiled and annotated with a view to vindicating the Convention's actions and William's government. Interestingly, the author specifically rejected arguments which gave James a right to the throne through conquest in the first place. While 'many have pretended' that the English monarchy's authority reached back to its Norman re-founding, this was insufficient to override William's right based on just war.⁵³

Another anonymous pamphlet, *An answer to a letter to a bishop concerning the present settlement and the new oaths* (1690), dedicated an entire section exclusively to discussing conquest rights, accepting the argument that conquest could release subjects from their obedience, which the author attributed to Ascham, while remaining sceptical as to whether William's seizure of power qualified as a conquest. Thomas Long's *A Resolution of Certain Queries Concerning Submission to the Present Government* featured a discussion of Grotius's view of the rights of war and conquest and an appended 'Postscript' examining the relevance of just war arguments for assessing the rivalling claims of James II and William III. Long cited passages from Grotius's *De Iure Belli* throughout to support his arguments.⁵⁴ Discussions of conquest theory in conjunction

⁵² Ibid., 58.

⁵³ *The Proceedings of the Present Parliament Justified by the Opinion of the Most Judicious and Learned Hugo Grotius*, (London, 1689), 6–8. Who the 'many' invoking the Norman Conquest were remained unclear. One author making this claim was Jeremy Collier whose work is discussed below.

⁵⁴ Thomas Long, *A Resolution of Certain Queries Concerning Submission to the Present Government* (London, 1689).

with just war thus featured in a considerable number of pamphlets at the time, as it remained one of the most effective defences of the new regime.⁵⁵

Arguments for obedience to the Williamite regime based on a notion of just conquest were thus pervasive in the later 1680s and early –90s. Many authors' conceptual debt to Grotius was clear and made explicit. The influence of Ascham's work is harder to determine, although the applicability of his interpretation of Grotius's work was obvious, not least from the republication of his *Discourse*.

A brief detour away from just war arguments, may suggest some further Aschamite influence, however. In his *Confusions*, Ascham had not only constructed a view of conquest as the legitimate source of obedience in the aftermath of a just war but he had also sought to differentiate conceptually between what he called 'conquest' and 'victory'.⁵⁶ In this distinction, victory culminated in the mere replacement of a government, whereas conquest was more far-reaching as it affected the laws and political institutions of a country. This Aschamite distinction may also have been at the back of Bohun and Burnet's minds when they argued that William had a conquest right, but merely to a limited conquest. Burnet, for example, suggested that 'the Prince's success against King James gave him the right of conquest over him.' At the same time, '[h]is success was indeed no conquest of the Nation; [...] So that, with relation to the people of England, the Prince was no conqueror'.⁵⁷ Burnet claimed that this distinction had been misunderstood by some who criticised conquest arguments as 'some began to find fault

⁵⁵ *A Letter to a Bishop* which made passing references to the possibility that William and Mary held their title legitimately through just conquest (*A Letter to a Bishop Concerning the Present Settlement, and the New Oaths* (London:, 1689).) A response to Lloyd's *God's Ways* criticised Lloyd's use of 'just conquest' (*Animadversions on a Discourse Entituled, God's Ways of Disposing of Kingdoms* (London, 1691), 20.) For further occurrences of *jus gentium* arguments, see Goldie, 'Edmund Bohun', 572 n. 21.

⁵⁶ Ascham, *Confusions and Revolutions*, 119. See also Chapter 4.

⁵⁷ Burnet, *Bishop Burnet's History of His Own Time*, 2:580–81.

with a notion by which some divines had urged obedience to the present government; that there was a conquest over king James, and that conquests in a just war gave a good title.’

Burnet observed that

‘some had carried [this] so far as to say, in all wars (just or unjust) conquests were to be considered to the conqueror; yet all these writers had taken care to distinguish between a conquest of the nation and a conquest of king James; the latter being only that which was pretended. That, as they said, gave the king all king James’s rights.’⁵⁸

Bohun, again, took a similar view. One of the main problems among those fearful of conquest right was that conquest was falsely ‘understood of the whole kingdom of England and of all in it’ rather than being confined to the throne and King James, who occupied it.⁵⁹ Charles Blount, whose work is discussed in more detail below, concurred. He highlighted the same difference as he explained that ‘[t]he Nation was never conquered since the Days of William the First, supposing that may be called such a Conquest. Nor is such a Conquest necessary to give the Victorious Prince a Right to the Throne of the Vanquished’.⁶⁰ Particularly in the case of William III, Blount argued that ‘[h]ad he conquered the Nation, he would have had a Right to somewhat else besides the Crown, viz. to our Laws, Liberties and Estates; and we should have been in a very ill Condition’.⁶¹ As things stood, however, the conquest had only affected James and did not extend to the whole nation, in Blount’s view.

This idea of a limited conquest was not without critics. Samuel Johnson, for example, complained about what he considered a new and convenient account of conquest

⁵⁸ Foxcroft, *A Supplement to Burnet’s History*, 387.

⁵⁹ Bohun, *Diary*, 112.

⁶⁰ Charles Blount, *King William and Queen Mary, Conquerors, or, A Discourse Endeavouring to Prove That Their Majesties Have on Their Side, against the Late King, the Principal Reasons That Make Conquest a Good Title ... Written with an Especial Regard to Such as Have Hitherto Refused the Oath, and yet Incline to Allow of the Title of Conquest, When Consequent to a Just War*. (London, 1693), 33–34.

⁶¹ *Ibid.*, 33.

rights limited to the ruler. In the pages of Burnet, Bohun and Blount's pamphlets he identified the 'new and unheard-of Conquests, of a King Conquered, and not one of his Subjects' which in the context of 1688 meant 'that King James alone was Conquered, and not the Nation'.⁶² Johnson found it implausible that according to this narrative of a 'new-fashioned Partial Conquest, of a King Conquered and his People Untouch'd' William could exert any credible claim to the English's obedience.⁶³

These views of a limited conquest as put forth by Burnet, Bohun and Blount, while conceptually problematic, did resemble the Aschamite distinction between victory in conquest which he had sought to establish in the *Confusions* and may thus testify further to his influence on the conceptions of conquest available during the debates of 1688/9.

One further, albeit minor, parallel between the oath of allegiance debates after 1689 and the civil war context was the combination of just conquest ideas with a providential dimension. This had been a tangible element in conquest arguments in the earlier 1640s as well as in the Engagement's *de facto* writings.⁶⁴ In the context of the oath of allegiance debates, one observer noted that William of Orange's supporters advanced arguments, 'one while to prove that he is King by Conquest, another while to prove that he is King by an immediate Providence of God'.⁶⁵ These two rhetorical strategies, however, were not mutually exclusive. While the emphasis on just conquest arguments had been a secular one, the combination with a divine dimension was a common one to make.⁶⁶

⁶² Johnson, *Notes upon the Pastoral Letter*, 39.

⁶³ *Ibid.*, 41.

⁶⁴ For the providentialist dimension of conquest thought, see Chapter 3 in particular. For an emphasis on the religious dimension to *de facto* thought, see Burgess, 'Usurpation, Obligation and Obedience'.

⁶⁵ *Some Short Considerations*, 11.

⁶⁶ Thompson notes that there were 'two forms' of just conquest arguments, one secular and one providential. While he is correct in observing that these occasionally 'overlapped or existed side by side in the same pamphlet', he does not appear to pick up

Bishop Lloyd may serve as one of the most eloquent examples of this line of argument. He held that ‘Conquest in such a [just] War is a decisive Judgment of God, and gives one a Right to the Dominions that he has conquer'd from the other’.⁶⁷ Effectively, for Lloyd God became the arbiter between the rivalling claims to the crown. As war was an appeal to God, the law of nations was the worldly dimension of Princes suing ‘one another in [God’s] Court’.⁶⁸ Defending the Revolution and the act of conquest upon which it was founded in providential terms was a useful strategy. The Prince of Orange had repeatedly declared his intentions to liberate England from the Catholic yoke imposed by James II. Not only had God blessed the Dutch mission with a ‘Protestant wind’, but his approval of the endeavour was also revealed in the conquest itself. As in previous contexts, conquest was thus interpreted as the worldly manifestation of the divine will. At the same time, this connection was met with criticism, as will be seen in more detail in section VI. Much of the criticism focused on the way in which retrospectively sanctioning conquest as an expression of the divine will was little less than political opportunism, potentially opening the door to further rebellion. One observer at the time, for example, critically pointed towards ‘dangerous Passages’ which subordinated divine right government to ‘the Rule of Convenience; and draw a Scheme of Divinity according to a Model of Politiques, which may be Vary'd and Chang'd as the Circumstances of publique Affairs, and Interest, require’.⁶⁹

Beyond justifications of the regime change and allegiance to the new king in terms of just conquest, there were further arguments from conquest resembling those that had been

on the *jus gentium* background of their secular manifestation (Thompson, ‘Conquest in 1688’, 39.)

⁶⁷ Lloyd, *God’s Ways*, 28.

⁶⁸ *Ibid.*, 31.

⁶⁹ Lowthorp, *A Letter to the Bishop of Sarum*, 9.

forged in the context of the civil war and its aftermath. Among them was a *de factoist* defence of sovereignty and a response which emphasised the importance of consent to validate conquests. A closer look at this strand of conquest thought will highlight the lasting influence of Thomas Hobbes's theory of conquest.

IV – CONQUEST AND CONSENT

Amid fears over the practical implications of acknowledging William's claim as a conquest, effectively leading to slavery, and in response to cruder attempts at defending the new regime as a *de facto* power, the notion of consent was used to qualify conquest arguments. This combination of consent and conquest resembled arguments previously made between 1642 and 1651. In particular, some publications in the context of 1688/9 betrayed a surreptitious use of the Hobbesian use of consent to validate conquest. Crucially, the authors endorsing a Hobbesian conquest theory, in which consent was necessary to create legitimate authority and obligation, outwardly sought to distance themselves from the still toxic public image of Hobbism, which was associated with might-makes-right *de factoist* views.

One of the most prominent advocates of *de factoism* in the aftermath of 1688, was William Sherlock. Throughout James II's reign Sherlock wrote numerous anti-Catholic works but had held on to the principles of passive obedience. In the wake of William's accession he refused to take the oaths of allegiance. This was not 'out of fondness for the Government of King James', as he explained, but 'out of pure Principles of Conscience'.⁷⁰

⁷⁰ William Sherlock, *The Case of the Allegiance Due to Sovereign Powers, Stated and Resolved* (London, 1691), preface.

Soon after being removed from his church offices in 1691, however, he changed his mind and subscribed to the oath that same year. Upon this change of mind, he also issued a justification of his decision specifically and the new government generally, *The Case of the Allegiance Due to Sovereign Powers*.

Sherlock supplemented his version of *de facto* arguments in *The Case* with a strong dose of providential justifications for the Revolution. More significantly for present purposes, however, consent was prominently reintroduced into conquest debates in response to his *de facto* arguments – thus creating a further parallel with Hobbes's conquest theory in *Leviathan*.

In *The Case of the Allegiance due to Sovereign Powers* (1691), Sherlock criticised the intricate debates about the new government's legitimacy, which had centred around matters of its legality. Instead of tending to legal details, Sherlock reduced the question at stake down to one of providentially sanctioned possession of power. Rather than venturing into the 'dark Labyrinths of Law and History', he suggested that allegiance was due to 'Government' and the 'Authority of God'. This meant that '[i]f God, when he sees fit, and can better serve the ends of his Providence by it, sets up Kings without any regard to Legal Right, or Humane Laws' obedience was nonetheless due to them.⁷¹ In other words, rather than differentiating between rightful and illegitimate power, the decisive factor for legitimate allegiance was found in the settled possession of power that was divinely ordained; '[t]he distinction between a King *de jure*, and a King *de facto*, relates only to Human Laws, which bind the subjects, but are not the necessary Rules and Measures of the Divine Providence'.⁷² It was within God's power to 'set over us a new King' which meant that allegiance to previous rulers expired, 'for when God transfers

⁷¹ Ibid., 2.

⁷² Ibid., 14. See also Thompson, 'Conquest in 1688', 41.

Kingdoms, and requires our Obedience and Allegiance to a new King, he necessarily transfers our Allegiance too'.⁷³ Sherlock endorsed these principles of providentially-justified conquest and its consequences but only infrequently used a direct language of conquest in *The Case*. Nonetheless, Sherlock did tackle common objections to conquest arguments, such as the comparison between usurpers and robbers. His pivotal argument was that personal matters could not be compared with the acquisition of government, which was entirely dependent on God's will. Pirates and robbers, for example, 'have force and violence, which every Man must submit to, when he cannot help it; but Sovereign Power is God's Authority, though Princes may be advanced to it by no honester means, than Thieves take a Purse.'⁷⁴ The honesty of rulers could not be a limiting factor, according to Sherlock, as he repeatedly pointed out that 'he is our King who is settled in the Throne in the actual Administration of Sovereign Power'.⁷⁵ Possession trumped legal rights of would-be rulers.

With his emphasis on the possession of power, rather than the legality of its acquisition, Sherlock appeared to align himself with the *de facto* tradition that had emerged in the context of the Engagement controversy. He was aware of the parallels that were bound to be drawn between his theory and the *de facto* arguments of the Engagers and that charges of Hobbism – still widely identified with *de facto* thought, despite Hobbes's attempts to distinguish himself from it in the *Review to Leviathan* – would be levelled against him. He therefore pre-emptively noted that anyone bringing forth this sort of charge 'do not understand Mr. Hobbs, or me'.⁷⁶ His attempt to pre-empt attacks for his supposedly Hobbesian thought, however, proved futile. Instead, Sherlock's

⁷³ Sherlock, *Case of the Allegiance*, 3.

⁷⁴ Ibid., 34.

⁷⁵ Ibid., 14.

⁷⁶ Ibid., 15. On the link between Sherlock and Hobbes, see also Parkin, *Taming the Leviathan*, 382–88.

submission to the Williamite regime and his attempt to provide a theory to justify his volte-face ‘offended just about everyone’.⁷⁷ On the one hand, non-jurors were appalled that he capitulated to the new regime, on the other, the Whigs thought his solution did not go far enough, leaving a potential back door for James to stake a claim in the future, leaving the current government with unstable *de facto* authority.

Sherlock’s *Case* was met with a considerable number of responses. One of these was authored by John Kettlewell, a nonjuring clergyman who took to composing polemical pamphlets after losing his vicarage for refusing to take the oaths. He specifically picked up on Sherlock’s notion of *de facto* rule and its implications for conquest in particular.⁷⁸ In *The Duty of Allegiance Settled upon its True Grounds* (1691), Kettlewell explored the importance of consent for conquest theory. Kettlewell attacked Sherlock’s notion of power which, Kettlewell held, Sherlock had taken from Hobbes. He singled out for criticism Sherlock’s supposed endorsement of ‘the mischievous Effects of Mr. Hobbs’s Notion of Power’ which in his view entailed ‘that whosoever has *Power* enough, has *Right* to seize as much, and to subdue as many as he pleases’.⁷⁹ Kettlewell sought the antidote to such unrestrained power, which could also spring from conquest, in the introduction of consent. While he principally accepted that conquest could set up

⁷⁷ Parkin, *Taming the Leviathan*, 384.

⁷⁸ Responses, among others, included: Jeremy Collier, *Dr. Sherlock’s Case of Allegiance Considered* (London, 1691); Samuel Johnson, *Remarks upon Dr. Sherlock’s Book, Intituled, The Case of Allegiance Due to Sovereign Princes* (London, 1690); John Kettlewell, *The Duty of Allegiance Settled upon Its True Grounds ... in Answer to a Late Book of Dr. William Sherlock* (London, 1691); Zachary Taylor, *Obedience and Submission to the Present Government* (London, 1690); Thomas Wagstaffe, *An Answer to Dr. Sherlock’s Vindication of The Case of Allegiance Due to Sovereign Powers* (London, 1692). A number of the responses specifically treated conquest theory; some of these will be dealt with in more detail below.

⁷⁹ Kettlewell, *The Duty of Allegiance Settled*, 53.

governments, he insisted that subjects gave form to government by adding ‘their own Consent’, also in cases of conquest.⁸⁰

Kettlewell’s attack on Sherlock’s and thus Hobbes’s supposed view of power relied on a misunderstanding of the latter’s account of the origins of sovereignty. It was thus not without irony when he set out to enlighten Sherlock by explaining that ‘Not [...] mere Force, or Conquest it self, gives Right; for Right is no more to be taken by Force, than Authority is; but the Consent and Submission of those who are conquered, may give it to him who conquered them.’⁸¹ This view of consent as constitutive for conquest right was distinctly reminiscent of Hobbes’s own explanations in the *Review*.

The addition of consent in instances of conquest typically raised the question of the circumstances under which consent was granted and whether it was equally valid if it was extracted under duress. Hobbes, as seen in Chapter 4, answered this affirmatively. In his view, the decision to submit to a conqueror, even when the only alternative was one’s death, was binding and created political obligation.⁸² Kettlewell, yet again, appeared to endorse this Hobbesian view. He argued that consent which was given after an act of conquest and under duress, nonetheless equipped a ruler with a legitimate claim. Despite the consent of defeated peoples ‘being forced [...] they might have refused it’. It remained entirely their choice to submit, regardless of the bleakness of the alternatives. It was for their

‘Love of Liberty, and on other accounts, [that] they were loth to come under it. But though they do come unwillingly to it, consent they do, and chuse to submit at last. And this, though not wholly

⁸⁰ Ibid., 31.

⁸¹ Ibid.

⁸² See above, Chapter 4; Hobbes, *Leviathan*, Chapter 20; ‘Review & Conclusion’. Sherlock’s view of consent in *The Case* had remained somewhat ambiguous. While he appeared to accept conquest as the manifestation of the divine will, he already hinted at the potential importance of consent without elaborating on its details; see Sherlock, *Case of the Allegiance*, 23–24.

free, but on Consideration to prevent a worse thing, is yet so much Freedom, as transfers things among Men'.⁸³

Kettlewell's view, pitched as anti-Hobbesian, thus represented some authentic elements of Hobbes's actual theory of conquest.

Sherlock, who had thus come under attack for his acceptance of the new regime and what was seen as blunt *de facto*ism, sought to vindicate himself and came to adapt his position on conquest by addressing the matter of consent.⁸⁴ Importantly, Sherlock was intent on distancing himself from the toxic charges of *Hobbism* which had been levelled against him. He expressly stated that he had, of late, been criticised by authors who 'pretend[ed] to Charge him with *Hobbism*'.⁸⁵ Through the introduction of consent, Sherlock hoped to dissociate himself from 'the popular stereotype of Hobbism as an uncomplicated *de facto* theory'.⁸⁶ His intended move away from *de facto* positions which were publically perceived as Hobbesian, paradoxically saw him, like Kettlewell, move closer to genuine Hobbesian theory.⁸⁷

Sherlock thus adapted his view of conquest as he explained that conquest was synonymous with the collapse of civil government. It meant that subjects reverted to the

⁸³ Kettlewell, *The Duty of Allegiance Settled*, 31.

⁸⁴ Notably in William Sherlock, *Their Present Majesties Government Proved to Be Thoroughly Settled, and That We May Submit to It, without Asserting the Principles of Mr. Hobbs* (London, 1691); William Sherlock, *A Vindication of The Case of Allegiance Due to Sovereign Powers* (London, 1691). Sherlock's *Vindication* was a response to Wagstaffe's *An Answer to a Late Pamphlet*, which itself had been a response to Taylor's *Obedience and Submission*. Wagstaffe, in turn, responded again to the *Vindication* with *An Answer to Dr. Sherlock's Vindication*. Kettlewell or his pamphlet were not named in Sherlock's *Vindication* or *Their Present Majesties*; his position on conquest and consent, however, appears to be very similar to Kettlewell's.

⁸⁵ Sherlock, *Their Present Majesties*, 3.

⁸⁶ Parkin, *Taming the Leviathan*, 387.

⁸⁷ For contemporary allegations of Hobbism, see for example Collier, *Dr. Sherlock's Case of Allegiance Considered*, 73–74; Timothy Wilson, *God, the King, and the Countrey, United in the Justification of This Present Revolution* (London, 1691), 12. For the links between Sherlock and Hobbes generally, see Parkin, *Taming the Leviathan*, 378–88; Goldie, 'The Reception of Hobbes', 600–601.

state of nature and thus allowed for the formation of a new administration. He contended that ‘Conquest is the death and dissolution of the Government, and dissolves the Contract, as the death of either Party does the Marriage-Vow’.⁸⁸ Instead of contradicting Hobbes, Sherlock tacitly endorsed his view as he elaborated that when ‘the Government is at an end’ subjects were ‘as much at liberty to submit to a Conquering Prince, as they were in the State of Nature’.⁸⁹ When elaborating on the conditions under which a new government could be established in a post-conquest state of nature, Sherlock came to emphasise the role of consent in particular.⁹⁰ He now foregrounded the indispensable need for consent in the process of instituting a legitimate government as he explained that ‘a free man can never be made another's subject, but by his own consent, or submission, either in his own Person, or by his Representative’.⁹¹ In the concrete case of conquest, this meant that

‘[b]y the fortune of War, I may become another Mans Prisoner, but he must have my own consent to make me his subject; by the fortune of War, a Foreign Prince or a Rebellious Subject may get possession of our whole Kingdom, Usurp the Crown, and have the full and quiet Administration of the Government, and as it is usually done, Claim our Obedience as his Subjects: But in Truth, he has no true Title to it; indeed, if the War was just, all the whole property is his until we enter into Conditions; but the Obedience of Subjects is not due from us, until we have declar'd, and acknowledg'd him to be our Sovereign; and this I may call a Reciprocal Obligation, which either may refuse.’⁹²

This was unmistakably Hobbesian in its emphasis on the granting of consent as the moment in which political obligation was created, binding subjects to their new ruler. In an equally Hobbesian move, Sherlock conceded that consent could be granted under duress and still remain binding ‘[w]hen Men are over-powered by Force, and must either

⁸⁸ Sherlock, *A Vindication of The Case of Allegiance Due to Sovereign Powers*, 14.

⁸⁹ Ibid., 13.

⁹⁰ See also Parkin, *Taming the Leviathan*, 387–88.

⁹¹ Sherlock, *Their Present Majesties*, 6.

⁹² Ibid.

submit to the Government, or suffer the Vengeance and Fury of an Usurping Nimrod'.⁹³ This meant that a conqueror's government which rested on forced consent was legitimate, for 'in a State of Nature Men may part with their Liberty, and submit to be governed by another; and such a Submission, with respect to themselves, gives a Right; for it is a voluntary Consent, tho' extorted by Force'.⁹⁴ Accepting protection after the old regime collapsed, leaving subjects exposed to the existential threats of the state of nature, made obedience to a conqueror legitimate as a means of guaranteeing self-preservation, thus constituting a rightful new government.

While Sherlock inched closer to an authentically Hobbesian position, he disingenuously misrepresented Hobbes's theory in order to suggest the opposite. Sherlock maintained that instead of following 'Mr. Hobbs his base Principle' which supposedly held that 'dominion is founded in Power', his own argument was that authority was sanctioned by

'Virtue of the Determination of our Representatives, which is lookt upon as the Act of the whole People, and includes the Consent of every Particular Person, which, as it appears by this discourse, is the only Visible means of conveighing a Sovereign Authority to any Person'.⁹⁵

While vilifying Hobbes as 'the Father of Lyes', Sherlock ended up endorsing the Malmesbury philosopher's very principles as he confirmed that 'The greatest Conqueror cannot Compel us to be his Subjects without our own submission; tho' he has Power over our Country, and our persons, yet he can lay no Obligation upon our Consciences to become his Subjects. This must be our own act, either in person, or by our Representatives'.⁹⁶ Peculiarly, Sherlock's incongruous attempt at distancing himself from

⁹³ Sherlock, *A Vindication of The Case of Allegiance Due to Sovereign Powers*, 13.

⁹⁴ Ibid.

⁹⁵ Sherlock, *Their Present Majesties*, 15.

⁹⁶ Ibid., 16.

Hobbes appears to have worked on his contemporaries, as he was hardly challenged on the introduction of consent into his conquest arguments.⁹⁷ Ironically, therefore, Sherlock strengthened Hobbesian conquest theory which relied on the combination of conquest and consent. Sherlock and Kettlewell hence both endorsed Hobbesian conquest theory while outwardly seeking to distance themselves from what was publically perceived as the Malmesbury philosopher's toxic legacy of *de facto*ism. After his emphatic clarification of the role of consent in cases of conquest in *Leviathan's Review*, it seems conceivable that Hobbes would have been pleased to see that his ideas survived and were of practical use in circumstances similar to the ones which had given rise to *Leviathan* – even if a misrepresentation of his ideas had to serve as the background against which Kettlewell and Sherlock could articulate their theories.

After the strand of conquest theory relying on arguments from just war, notions built around conquest and consent, then, were the second clearly discernible manifestation of conquest theory in the aftermath of 1688/89 which had its roots in the preceding decades.

V – LEGAL-HISTORICAL CONQUEST THEORY AND THE GHOST OF 1066

The third, and final, strand considered here is that of legal-historical notions of conquest. The majority of pamphleteers writing in the aftermath of 1688/89 used conquest theory as the means to justify the obedience to the new regime or even defend its sovereignty as legitimate. At least one anti-revolutionary thinker, however, approached the matter differently. Rather than arguing against conquest, Jeremy Collier, a nonjuring clergyman,

⁹⁷ See Parkin, *Taming the Leviathan*, 387–88.

employed it in support of his efforts to agitate against William III. In doing so, Collier revived and refined the legal-historical case for conquest which had briefly surfaced in its rare royalist guise during the early stages of the civil war and had otherwise long been considered conspicuously absent.⁹⁸ The fundamental ingredient of this line of argument was the derivation of the absolute power of the English monarchy from its medieval re-founding in 1066.

According to Collier, James II had left London and England under duress, thus never voluntarily vacating the throne or surrendering his claim to it. Consequently, William's accession to the same could only be seen as an act of usurpation and support for his kingship was tantamount to violating the doctrine of non-resistance. These views followed logically from Collier's understanding of the origin of government and the right and proper modes of succession.

Collier rejected contractarian accounts of the origins of government in favour of a view that emphasised paternal beginnings and hierarchies. In his possibly most significant pamphlet, *Vindiciae juris regii* (1689), he argued that proponents of contractarian versions of the origins of society did 'not comprehend the most Antient beginning of Government, viz. Paternal Authority and Conquest; in which Cases Men have not the liberty of Articling for Priviledges, but must submit to their Parents, and Conquerors'.⁹⁹ From those paternal origins, the only legitimate mode of succession was one based on divinely ordained heredity. In the case of the English monarchy, Collier continued, tracing this hereditary line back revealed unambiguously that 'the Kings of England hold their Authority by Conquest and Succession'.¹⁰⁰ Collier concluded that 'the Liberties of

⁹⁸ For the previous iteration of this argument, see Chapter 3.

⁹⁹ Jeremy Collier, *Vindiciae Juris Regii, or Remarques upon a Paper, Entitled, An Enquiry into the Measures of Submission to the Supream Authority* (London, 1689), 4.

¹⁰⁰ *Ibid.*, 6.

the Subjects are not founded upon the Reservations of an Original Contract. For a Conquered People must not pretend to make their own Terms. And therefore, their Priviledges are not of their own Creating, but Acts of Royal Favour, and Condescensions of Sovereignty'.¹⁰¹ On a practical level, this meant that 1066 continued to be the foundation of the English monarchy as the Norman invasion bore 'all imaginable Marks of an entire Conquest'.¹⁰²

At Collier's hands, the medieval conquest which had since been confirmed over the centuries, became a bulwark against rebellion. This use of conquest theory for a political cause diametrically opposed to that of the supporters of the Revolution highlights the versatility and double-edged nature of conquest theory. It should be added, moreover, that Collier circumvented this apparent contradiction by rejecting the view that the Prince of Orange's claim could be legitimated by an appeal to conquest in the first place. In response to Burnet, Bohun and others who had argued on the premise of a just war that culminated in a legitimate conquest, Collier sarcastically observed that those 'thinking their Consciences not safe [...], tell us, That they are either Conquered or Undone; and seem Uneasy, because they don't argue in Chains.'¹⁰³ He went on to launch a scathing attack highlighting the implausibility and inconsistency some of the conquest-based defences of the new regime exhibited. It is worth quoting the passage at length since it neatly combines points otherwise dispersed across a variety of pamphlets by conquest critics:

'In earnest, our Circumstances must needs be hard, when our best Friends, who were so nicely Apprehensive of the least Incroachment, desert us at this surprising Rate. Who would have thought that these Keepers of the Liberties of England, who

¹⁰¹ Ibid., 13.

¹⁰² Ibid., 11. 'Entire' for Collier meant that the 'Laws, and Tenures, and in some measure the Language of the Country, were changed' (Ibid.).

¹⁰³ Jeremy Collier, *Animadversions upon the Modern Explanation of II Hen. 7. Cap. I, or, A King de Facto* (London, 1689), 1.

declaim'd so heartily against Arbitrary Power, and gave God solemn Thanks for their Deliverance, should reverse their Devotions thus soon, plead against Magna Charta, and set all their Wits on work to make us as great Slaves as those in Turkey? For that this glorious Condition is the Consequence of Conquest, is a Truth so obvious to collect, that a very little Reasoning will make it undeniable. And as if Disputing and Printing against the freedom of their Country were not enough; to make all sure, they are pleased to ratify their Slavery with an Oath. That they do no less is apparent; for those that Swear to the new Establishment, upon the Principle of Conquest, Swear that the Laws of the Old Constitution are no longer in force. And that the present Possessors may turn them out of their Freeholds, and sell them to the West Indies without any Legal Injustice. For when a People are Conquered their Lives and Fortunes lye at the Mercy of the Conquerour. This Title makes his Sovereignty absolute, and his Will a Law'.¹⁰⁴

Collier touched on the two most obvious and most frequently voiced criticisms of conquest-based justifications of the new government: the discrepancy between the prince's own disavowal of any intention of conquest and his supporters' simultaneous use of the same as well as William's supposed role as liberator of an oppressed people vis-à-vis the absolute subjection, maybe even slavery, that were usually perceived to be the consequence of conquest.

Collier's use of conquest theory to derive the powers of an absolute English monarchy, tracing its historical foundations back to the Norman invasion also demonstrates the rare but unmistakeable use of the strand of legal-historical conquest theory. This type of royalist conquest thought, which had struck Laslett, Pocock and Skinner as elusive, could already be seen in the early years of the civil war and, before, as the target of Coke and other ancient constitutionalists' writings. Collier's use of it attests to the continuing existence and relevance of this particular manifestation of conquest theory.

¹⁰⁴ Ibid.

VI – CHARLES BLOUNT AND THE OFFICIAL BAN OF CONQUEST LANGUAGE IN 1693

This thesis has shown that whenever conquest arguments were deployed in support of a government, its critics were not far behind. In the wake of the Revolution of 1688/89, it was no different. This time, conquest opposition even culminated in the official ban of conquest justifications for William and Mary's power in 1693. This section offers a concise overview of the opposition to conquest arguments in the oath of allegiance debates, once again highlighting the parallels with this instances in previous situations in the context of the civil war. A brief excursion into the events of 1693 which culminated in a parliamentary injunction against conquest arguments with respect to William and Mary's right to rule will highlight the high public profile conquest had acquired over the ninety-year period considered in this dissertation (1603-1693) and will at the same time form the final episode of this thesis.

The most widely shared fear which drove anti-conquest thought, not just in the late 1680s and early -90s, and probably contributed to its official ban in 1693, grew out of a *de facto* understanding of conquest. While some had sought to counteract this set of concerns by qualifying conquest through consent, as seen above, this did little to allay anxieties over conquest effectively entrenching a right of the strongest. Especially in conjunction with a providential underpinning, for example found in Sherlock's work, conquest was critically seen as an indiscriminate right to confer power on usurpers, amounting to little more than 'permissive providence', as one author at the time put it.¹⁰⁵

¹⁰⁵ Wagstaffe, *An Answer to Dr. Sherlock's Vindication*, 145.

Condemnations of conquest theory also went beyond criticism of its supposed religious justifications. More secular political implications of tapping into the pool of conquest arguments were troubling to some, too.

To begin with, the inescapable irony of William distancing himself from any design of conquest while nearly all of his supporters had recourse to exactly that notion, was frequently highlighted. John Lowthorp, for example, warned of acknowledging ‘the Right of Conquest, and that Glorious Appendage, Absolute Power (at the very Name whereof we have been so long frightened out of our Wits) in one, who never Claim'd it.’¹⁰⁶ He added that ‘This *Plea* [of conquest right] was never mov'd by the *Prince* himself, or any of his Friends, in either House of the *Convention*’ since it would have stood in contradiction to his proclaimed role as England’s liberator.¹⁰⁷ Lowthorp thus demonstrated an awareness of the discrepancy between the Prince of Orange’s own justifications and those advanced by his supporters as well as a historical consciousness of the backstory of conquest language in English politics.

Like Lowthorp, Robert Ferguson perceptively noted the unlikely prominence conquest arguments in support of William’s rule had acquired.¹⁰⁸ Ferguson, pamphleteer and notorious conspirator, had initially supported William’s claim to the throne but turned against the new king and queen after he felt they had reneged on their initial promises. He deemed it impossible that William had come ‘to be King by a lawful Conquest in a just War; seeing that is not only disclaimed by himself, and reprobated by the parliament, but because the offering to establish his Title upon that Foundation, and to justify it by that *Plea*’ would contradict his very claim that he was pursuing a quest to liberate, rather

¹⁰⁶ Lowthorp, *A Letter to the Bishop of Sarum*, 21. Lowthorp’s background appears to be underexplored; he does not have an *ODNB* entry.

¹⁰⁷ *Ibid.*

¹⁰⁸ See for example Ferguson, *A Brief Account*, 12.

than enslave, England.¹⁰⁹ Similarly, an anonymous pamphleteer noted that anyone ‘who asserts the Prince came to make a Conquest, is guilty of malicious Insinuations against King William’ who had expressly ruled out being involved in an invasion or conquest.¹¹⁰

Beyond the rhetorical discrepancies, the political implications of subscribing to conquest arguments were probed. Samuel Johnson, again, criticised attempts to satisfy principles of passive obedience by invoking conquest. ‘These wretched Inventions of *Usurpation, Conquest, and Desertion*, were found out merely to cover the Doctrine of Passive Obedience’, he complained.¹¹¹ George Hickes, a nonjuring bishop and close friend of John Kettlewell, described conquest as the idea ‘that unsettles the Foundations of the Earth, and gives a liberty to every bold-Usurper that invades the Crown’. Invoking conquest rights to support a *de facto* ruler, Hickes found, ‘adds Affliction to the Misery of unfortunate Kings, and flatters the prosperous Traitor, as if he were the Darling of Heaven’.¹¹² A faint echo of William Bridge’s warning, issued in 1642, that conquest right was tantamount to an official version of the right of the strongest, can be heard in these lines.¹¹³

Whereas Hickes was anxious about the general consequences of granting conquest a place in justifications of governments’ authority, others voiced concerns and criticism

¹⁰⁹ Ibid., 67.

¹¹⁰ *An Answer to a Letter to a Bishop: Concerning the Present Settlement and the New Oaths* (n.p., 1690), 41. This pamphlet is remarkable for expressly dedicating an entire section, spanning sixteen pages, to conquest. The main argument with respect to the events of 1688, as the quote above suggests, was that England ‘cannot acknowledge it a Conquest’ (Ibid, 40). The author further rejected the distinction between a conquest of the king specifically, as opposed to the nation in general and concludes by rejecting just war arguments as he found that the criteria according to which the conquest was supposedly an outcome of just war were not satisfied in his view.

¹¹¹ Johnson, *An Argument Proving*, 11.

¹¹² George Hickes, *An Apology for the New Separation* (London, 1691), 6.

¹¹³ For William Bridge’s warning, see his *Wounded Conscience Cured*, 26.

specific to the Williamite appropriation of power. Robert Ferguson, for example, agitated against William, complaining that the new king had

‘since his Election to the Thrones of these Kingdoms, assumed the confidence to Publish by his Mercenary Scriblers, as well as to assert by severall others of his Sychophant Pensioners, that his Title over us is founded and Established in Conquest; and That he hath a Right to rule over us as so many subdued Vassals’.¹¹⁴

Ferguson was apprehensive about the status he and his compatriots would acquire if a conquest was to be recognised. Acknowledging William’s arrival as a conquest, he pointed out, would ‘put us into the State of Slaves instead of Subjects, and to make us enjoy all we are and have by his Pleasure and Will, and not to have any Property in them by our antient Laws’.¹¹⁵ The fear and dissatisfaction speaking from these lines reached their highest point 1693, when parliament officially issued an injunction against conquest language in publications concerned with William and Mary’s right to the throne.

Discourses of conquest were ubiquitous in the political debates of the half-decade after 1688. It was alternatively endorsed as the best grounds on which to rest the new king’s claim to power and rejected as an insufficient power base. With this in mind, the events of 1693 may come as a surprise. The episode which shall here briefly be considered, arguably encapsulated the moment when conquest thought reached its peak prominence in seventeenth-century political discourse and, perhaps because of it, also came to an abrupt end. The importance and influence conquest theory had acquired in the years following 1688 can be gleaned from the events which unfolded early in 1693 and which brought debates about conquest theory to a temporary head.

¹¹⁴ Ferguson, *A Brief Account*, 12.

¹¹⁵ *Ibid.*, 67.

In January 1693 Charles Blount, author of a variety of political and non-political tracts, anonymously published a polemical pamphlet under the title *King William and Queen Mary, Conquerors*.¹¹⁶ Blount advanced the notion, as the title suggested, that William and Mary could claim the English throne by a right of conquest, established in the preceding just war with James II. Generally, the content of the pamphlet was relatively moderate, arguing that conquest could oblige subjects if the new rulers were able to protect them, qualifying at the same time that conquest was only permissible under particular conditions. Throughout, the ideas advanced by Blount demonstrated his intellectual debt to Grotius and Hobbes, whose influence was visible in the passages on criteria justifying conquest and those linking protection with obligation.

Blount was aware of the preceding attempts that had been made to defend the new rulers' rights based on arguments from conquest; he conceded that '[t]he Argument I make use of, hath indeed been lightly touched upon by some others'.¹¹⁷ The very argument in question was the view that '[t]he Prince of Orange (and Mary) had a just cause of war against James – and in cases of just war, any conquest gives just title'.¹¹⁸ Blount highlighted the practical value of conquest arguments since 'several, who are not yet satisfied with any thing that hath been hitherto offered, do declare, That if it could be made appear that their present Majesties have on their side all the Right of Conquest, they would entirely submit to the Government, and take the Oath'.¹¹⁹ Like others, Blount believed that conquest offered a way to support the new regime without violating the principles of non-resistance. Blount's fundamental claim was thus that 'Conquest is in this their Majesties Case a good Title'.¹²⁰ He considered it sufficiently established that 'their

¹¹⁶ Blount, *King William and Queen Mary, Conquerors*.

¹¹⁷ Ibid., 'preface'.

¹¹⁸ Ibid., 3.

¹¹⁹ Ibid.

¹²⁰ Ibid., 43.

Majesties had a just Quarrel against K. James, and that the Success they have had against him, amounts, as to Matter of Right, to a Conquest over him'.¹²¹ The conquest even granted William and Mary a *de jure* title: 'The Subject is justified in swearing, and paying Allegiance to them, and that as to Princes *de jure*. For they have on their side all the Right of Conquest consequent to a just War.'¹²²

The publication of Blount's *King William and Queen Mary, Conquerors* caused a political scandal. The defence of William's government and the means through which it had come into power had frequently rested on ideas of conquest. Yet, it was Blount's work that led to official recriminations. At the time when Blount's pamphlet was published, Edmund Bohun occupied the position of press licenser. When Bohun decided to authorise the publication of the pamphlet carrying a bold title but effectively not advocating anything more radical than other publications before, he did not foresee the palpitations the publication would send the heart of the political nation into; he 'never expected any displeasure' from publishing Blount's pamphlet, he confessed.¹²³

Looking back at the events of early 1693, Bohun later recalled the full extent of the political fallout that followed his decision to publish Blount's piece. Bohun deemed it fit for publication after he had read it 'with incredible satisfaction; finding it well written, close argument, modest and full of reason'. He shared Blount's hope that the ideas advanced in the work 'could not faile to satisfie great numbers of the non-swearers' and he 'knew [that] several of them had been won over to take the oaths and submit upon that hypothesis [of conquest]'.¹²⁴ Instead of eliciting the positive reaction Bohun had hoped for and anticipated, however, the pamphlet led to controversy.

¹²¹ Ibid.

¹²² Ibid., 53.

¹²³ Bohun, *Diary*, 102.

¹²⁴ Ibid., 101.

The pamphlet, branded seditious by some, was discussed in the Commons at the end of January 1693. Bohun had to appear in front of Members of Parliament to explain his decision to go ahead with the publication. He remained adamant that the arguments found in Blount's pamphlet were insightful rather than subversive. In fact, he claimed, accurately, that the type of conquest theory linked to just war had been frequently invoked by previous publications. Conquest justifications 'had been treated of very often before and had been licensed without any exception.'¹²⁵ The volumes of pamphlets discussed above would appear to vindicate Bohun's impression. His view, however, was met with little sympathy and he was removed from his position as press licenser.

The Houses of Parliament subsequently issued a joint declaration in which they officially condemned Blount's *King William and Queen Mary, Conquerors*. In their eyes the pamphlet contained 'assertions of dangerous consequence to their majesties, to the liberties of the subject, and to the peace of the kingdom'. Consequently, the pamphlet was to be burned 'by the hand of the common hangman'.¹²⁶

The reasons why specifically Blount's pamphlet, which had been licensed by Bohun, was met with such hostility remain unclear. Three possibilities appear conceivable. The first possibility is that the title of Blount's pamphlet was perceived as more incendiary than previous publications, especially with its explicit and overt reference to the king and queen as conquerors. Other pamphlets had in effect made similar arguments, but there remains a fine rhetorical difference between maintaining that a right of conquest was underpinning William and Mary's claim to rule and calling the pair outright conquerors.

¹²⁵ Ibid., 103.

¹²⁶ Cobbett, *Parliamentary History of England*, 1806, vol. 5, col. 756.

Second, it has been claimed that Blount's pamphlet was a trap for Edmund Bohun, who licensed it at the time. Bohun himself was the first to suspect a conspiracy against his person when he speculated in his *Diary* that the aim of the inquiry was none other than to 'get me ruined'.¹²⁷ This view, in which Blount's pamphlet had been designed to justify Bohun's dismissal, was subsequently perpetuated by Thomas Macaulay's summary of the episode in his *History of England*. He found it 'impossible to doubt that [Blount's] object was to ensnare and to ruin Bohun' in the 'wicked scheme' of submitting his pamphlet for publication.¹²⁸

The third – and perhaps the most plausible – possibility is that Blount's pamphlet was indeed unexceptional but was a victim of the timing of its publication. On this account it would merely have been the final straw after a number of previous pamphlet had already suggested that William and Mary had a right based in conquest. Blount, then, may simply have published the final pamphlet that highlighted to parliament the need to take action against what it considered a seditious view of the king and queen's position. Indeed, this last view is supported by the fact that two further tracts underwent closer scrutiny at the time.

The parliamentary inquiry into Blount's pamphlet also resulted in the spotlight being directed at William Lloyd's *God's Ways* and Gilbert Burnet's *Pastoral Letter*. In the end, Burnet was singled out as 'the inventor of the notion of their majesties being Conquerors'. Accordingly, The *Pastoral Letter* was to be burned alongside Blount's, whereas Lloyd's work remained exempt from the injunction.¹²⁹ Parliament declared that

¹²⁷ *Diary*, 103.

¹²⁸ Thomas Macaulay, *The History of England from the Accession of James the Second*, vol. 6 (London: Longman, Brown, Green, Longmans, & Roberts, 1858), 367.

¹²⁹ Cobbett, *Parliamentary History of England*, 1806, vol. 5, col. 756. See also 23 January 1693, *Journal of the House of Commons*, vol. 10, n.d., 786–87. Burnet himself later lamented that 'it looked somewhat extraordinary that I, who perhaps was the greatest assertor of public liberty, from my first setting out, of any writer in the age,

‘the assertion of king William’s and queen Mary’s being king and queen by conquest was highly injurious to their majesties, and inconsistent with the principles, on which this Government is founded, and tending to subversion of the rights of the people’.¹³⁰

Bohun and Burnet, the two culprits at the centre of parliamentary scrutiny, unexpectedly found themselves in the eye of the storm. Bohun admitted that he had been oblivious towards the ‘hot debate in the house upon the notion of conquest’.¹³¹ Equally, Burnet only appreciated in retrospect that in parliament ‘some began to find fault with a notion by which some divines had urged obedience to the present government; that there was a conquest over king James, and that conquests in a just war gave a good title’.¹³² Bohun suggested that his own surprise stemmed from the fact that the debates in parliament on matters of conquest ‘had never appeared in their public votes’.¹³³

These very debates and the decision they prompted, highlight the systemic problem of conquest theory: it was expedient as a means to circumvent doctrines such as non-resistance and passive obedience but it could never be endorsed by an institution of government. Acknowledging conquest theory as an official doctrine would reduce any right to sovereignty to a right of the strongest.¹³⁴ Looking back on the events surrounding the publication of Blount’s book, Bohun in his *Diary* suggested that he, at any rate, had only used conquest as a means to avoid other conceptual problems. In truth, he claimed, he ‘suffered for the queen’s hereditary right to the crown, the doctrine of passive

should be so severely treated as an enemy to it (Foxcroft, *A Supplement to Burnet’s History*, 388.)

¹³⁰ Cobbett, *Parliamentary History of England*, 1806, vol. 5, col. 756.

¹³¹ Bohun, *Diary*, 110.

¹³² Foxcroft, *A Supplement to Burnet’s History*, 387.

¹³³ Bohun, *Diary*, 110.

¹³⁴ Goldie notes that ‘[t]he Commons expressed predictable and conventional horror at the use of force as a legitimiser of government but it well knew that it was condemning not a unique aberration but a popular argument’ (‘Edmund Bohun’, 574).

obedience, and the natural allegiance of the subject to the crown: the pretence was conquest to make a noyse with, and to raise a cry.¹³⁵

During moments of political upheaval and crisis throughout the seventeenth century, then, the idea of conquest was rejected, appropriated, and shaped into a routine concept of English political thought. Its changing fortune, historical, and political significance are perhaps best encapsulated in the words of Daniel Defoe's *True-Born Englishman*:

‘The great Invading Norman let us know
What Conquerors in After-Times might do.
To ev'ry Musqueteer he brought to Town,
He gave the Lands which never were his own.
[...]
And here begins the Ancient Pedigree
That so exalts our Poor Nobility:
'Tis that from some French Trooper they derive,
Who with the Norman Bastard did arrive
[...]
The silent Record blushes to reveal
Their Undescended Dark Original.
But grant the best, How came the Change to pass;
A True-Born Englishman of Norman Race?
A Turkish Horse can show more History,
To prove his Well-descended Family.
Conquest, as by the Moderns 'tis exprest,
May give a Title to the Lands possest
But that the Longest Sword shou'd be so Civil,
To make a Frenchman English, that's the Devil.¹³⁶

These lines aptly reflect the transition of conquest discourse from a language which considered the contemporary impact of England's past, to a vocabulary of political theory that was used to explore the underpinnings of political sovereignty and power. The series of moments across which this development of conquest discourse materialised were not only tied together by the use of conquest language, they were also all marked by

¹³⁵ Bohun, *Diary*, 119.

¹³⁶ Daniel Defoe, *The True-Born Englishman: A Satyr*, 1700, 12–14. This edition from 1700 included an asterisk and a marginal note to explain that ‘the Moderns’ idea of conquest was that of *de factoism*, as the note referred to ‘Dr Sherl. *De Facto*.’

underlying political uncertainty and instability; be it the transition from one dynasty to another, civil war and the abolition of the monarchy, or a less violent revolution culminating in the coronation of yet another foreign ruler. In other words, what the moments identified in this thesis had in common, is that they were all situations in which sovereignty was contested. As a consequence of the disputes which shaped them, conquest developed into a concept that was used to explore different accounts of sovereignty and their implications. The specific versions of conquest theory that resulted, owed their idiosyncratic characteristics to the contexts from which they arose. That is to say, a set of practical political problems gradually led to the articulation of abstract theoretical accounts of conquest.

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