

I. HISTORY AND IDEOLOGY IN THE  
ENGLISH REVOLUTION<sup>1</sup>

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IDEOLOGICAL arguments are commonly sustained by an appeal to the past, an appeal either to see precedents in history for new claims being advanced, or to see history itself as a development towards the point of view being advocated or denounced.<sup>2</sup> Perhaps the most influential example from English history of this prescriptive use of historical information is provided by the ideological arguments associated with the constitutional revolution of the seventeenth century. It was from a propagandist version of early English history that the 'whig' ideology associated with the Parliamentarians—the ideology of customary law, regulated monarchy and immemorial Parliamentary right—drew its main evidence and strength. The process by which this 'whig' interpretation of history became bequeathed to the eighteenth century as accepted ideology has of course already been definitively labelled by Professor Butterfield, and described in his book on *The Englishman and his History*.<sup>3</sup> It still remains, however, to analyse fully the various other ways in which awareness of the past became a politically relevant factor in English society during its constitutional upheavals. The acceptance of the 'whig' view of early English history in fact represented only the triumph of one among several conflicting ideologies which had relied on identical historical backing to their claims. And despite the resolution of this conflict by universal acceptance of the 'whig' view, the 'whigs' themselves were nevertheless to be covertly influenced by the rival ideologies which their triumph might seem to have suppressed. It is the further investigation of the complexity and interdependence of these historical and ideological attitudes which will be attempted here.

<sup>1</sup> The final form of this paper owes much to discussion with Mr Peter Laslett, of Trinity College, Cambridge, to whom I am greatly indebted both for general encouragement and for scholarly advice.

<sup>2</sup> The same ideology may of course draw on other sources, particularly on the society's less conscious reflexions about its own structure. For a remarkable attempt to analyse this type of source—for the same ideology as discussed here—see C. B. Macpherson, *The Political Theory of Possessive Individualism, Hobbes to Locke* (Oxford, 1962).

<sup>3</sup> H. Butterfield, *The Englishman and his History* (Cambridge, 1944). To avoid any repetition I assume familiarity in what follows with the ideological position which (following Professor Butterfield's analysis of it) I call simply 'whig'.

The historical appeal of the 'whigs' from the continuity of past rights to the nature of present right was itself not without its problems of historical interpretation. The historiography appeared to contain a critical anomaly in the fact that the continuity of ancient rights through English history had apparently been completely disrupted already, at the time of the Norman Conquest. The need for the 'whigs' to account for and dispose of this anomaly was to turn the question of the rights of a conqueror into the pivotal issue throughout the whole range of the ensuing ideological debate. The Norman Conquest might have appeared at first blush as an example of legitimate rule founded on no better title than the success of force and fraud. But the ingenuities of the 'whig' interpretation were to ensure that no such inappropriate lessons about the uses of power were to be drawn. And so there came to be enshrined in the accepted historiography a notable paradox: the 'whig' interpretation of the Norman Conquest, so influential that it could unite in agreement the Republican Sydney<sup>4</sup> with the common lawyer Coke,<sup>5</sup> so important that it was to appear to Blackstone<sup>6</sup> to reveal the cornerstone of English liberties, actually depended on denying that such a conquest had ever taken place.

The elaboration of this aspect of 'whig' historiography was to become the preoccupation of English legal and political writers for over a century.<sup>7</sup> The insistence of the Parliamentarians on the immemorial antiquity of the House of Commons, their assurance that the Norman Conquest had caused no interruption of Saxon liberties, can be traced back into the reign of Elizabeth<sup>8</sup> and forward into the eighteenth century.<sup>9</sup> The 'unending denials' that the Conquest 'had caused any change in the essential character of the law'<sup>10</sup>

<sup>4</sup> For Sydney's denial of the Norman Conquest, see 'Discourses Concerning Government', *The Works of Algernon Sydney* (London, 1772), pp. 325–6.

<sup>5</sup> For Coke's classic formulation of the theory of continuity, see *Preface to Eighth Report in George Wilson, ed., The Reports of Sir Edward Coke* (revised ed., 7 vols., London, 1777).

<sup>6</sup> Blackstone's account of the 'gradual restoration of that antient constitution, whereof our Saxon forefathers had been unjustly deprived' comes in the final chapter, 'Of the Rise, Progress and Gradual Improvement of the Laws of England', in *Commentaries on the Laws of England*, ed. with notes by Edward Christian (4 vols., London, 1803), iv, 407–43.

<sup>7</sup> The complexities of this process have been the subject of several notable studies. For the evolution of historical scholarship, see D. C. Douglas's definitive account in *English Scholars* (London, 1939). See also S. Klinger, *The Goths in England* (Cambridge, Mass., 1952). For analysis of ideological implications, see Christopher Hill, 'The Norman Yoke', *Puritanism and Revolution* (London, 1958), pp. 50–122, and J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge, 1957). I disagree with both Mr Hill and Dr Pocock on several essential issues, but it will readily be seen how much I owe to both these brilliant and scholarly contributions.

<sup>8</sup> The imprisonment by the House of Commons in 1581 of Arthur Hall, who had mocked their claim to be a 'new person in the Trinity', has been regarded as 'perhaps the most significant sign of the new spirit in parliament'. See G. R. Elton, *England under the Tudors* (London, 1955), p. 320.

<sup>9</sup> In 1714, for example, it still seemed polemically worthwhile to republish Fortescue's Treatise of 1471 *On the Governance of the Kingdom of England*, and for the editor to underline in his preface the lesson of the supremacy of the immemorial law. See John Fortescue-Aland, 'Preface' to *The Difference Between an Absolute and a Limited Monarchy* (London, 1714).

<sup>10</sup> Pocock, *The Ancient Constitution*, p. 42.

became indeed the intellectual backbone of the Parliamentary Revolution, and hence with the Parliamentary triumph became regarded as incontestable fact.

Despite its crass tendentiousness, this 'whig' interpretation of the Norman Conquest was to be assured of its success by the fact that (ideologically speaking) the argument possessed the peculiar merit of having unanswerable force. Just as no Parliamentarian could allow that William I had made a conquest of England (since this would have been to mark the English monarchy with the 'indelible stain of sovereignty'),<sup>11</sup> so also no Royalist could allow an argument by conquest either (since this would have been to concede the right of a usurper to allegiance, and so to leave Charles I no case against Cromwell). What every Parliamentarian asserted, no Royalist could deny.<sup>12</sup> The attempt to construct a Royalist counter-historiography was a late and doomed development. It was to receive no systematic articulation until the 1680's, when the researches of Dr Brady, the learned and staunchly Royalist Master of Caius College, Cambridge, finally proved that the origins of the Commons' writ could be traced no further back than the feudal summonses of 1265. Even at this stage, however, the promise of a Royalist historiography was to be frustrated. Although historically impeccable, Brady's conclusions allowed an inevitably strong bias towards the most absolutist pretensions of the Stuart monarchy. The Parliamentarians' bogus history was thus able to gain its final ascendancy, for all arguments tending to absolutism became automatically outlawed at the conclusion of the political revolution in 1688.<sup>13</sup>

This account, however, of the universal acceptance of 'whig' ideology only points to a further paradox—a paradox which has been left confessedly unresolved in all discussions of seventeenth-century historical thought. The account suggests not an answer but a further question about the nature of seventeenth-century ideological debate: 'why did the Parliamentarians find it necessary so regularly and consistently to attack a view which nobody held?'<sup>14</sup> No Royalist until very late in the century made use of English history to argue the rights of a conqueror. And yet even the most emancipated political writings went on including heated refutations of the Conquest argument. Locke still felt the need to include in his *Second Treatise* a special chapter on the point—an obligation which his editor has felt at a loss to explain.<sup>15</sup>

<sup>11</sup> *Ibid.* p. 53.

<sup>12</sup> Existing studies make an important mistake at this point, in assuming earlier Royalists used Conquest arguments. Kliger wrote of 'Royalists who urged that the monarch had absolute power by title of conquest' (p. 134), but discussed only one, who did not in fact do so. Hill (p. 62 n.) noted the error, but his text remains misleading (pp. 61–3) and incorrect on Filmer (p. 87). Pocock pointed out this type of mistake (p. 54), but made another in confusing the legitimists' with the *de facto* theorists' use of the argument. See below, fn. 81.

<sup>13</sup> On Brady, and political danger of his position after 1688, see J. G. A. Pocock, 'Robert Brady, 1627–1700', *Cambridge Historical Journal*, x (1951), esp. pp. 202–3.

<sup>14</sup> Hill, *op. cit.* p. 62 n.

<sup>15</sup> P. Laslett, *Locke's Two Treatises of Government* (Cambridge, 1960), p. 403 n.

Sydney still insisted in his *Discourses on Government* on fathering on to Filmer the assertion (which he had never in fact made) that there had been a conquest, only in order to deny it.<sup>16</sup> The paradox has remained: 'the English populist writers of the seventeenth century, including Milton, Locke and Sidney, all wrote as if the defenders of kingship and absolutism had argued from conquest, but in fact they did not'.<sup>17</sup>

The explanation is that the received view of the Conquest argument, as a claim 'refuted times without number, but very seldom actually made',<sup>18</sup> is itself based on an incomplete analysis of the structure of ideas within which the concept was being used. The debate between 'Parliamentary' and 'Royalist' history in fact represented only one of several divergent perspectives in which the significance of the Conquest was discussed. It can be shown that the concept continued to be written about uncontentionally, in a much more purely historical context; and that it also continued to be debated at a more purely theoretical level, at which the historical evidence was used less as an argument in itself than as a means of endorsing more abstract political claims. An attempt to anatomize these divergent discussions of the Norman Conquest and its significance will reveal the suppressed elements of the political quarrels and speculations out of which the accepted 'whig' ideology was to be distilled. It may also claim to be the means of resolving the paradox which has been left over by the existing, and in this respect more partial, studies of the historical debate.

It is in fact scarcely surprising to find the 'whigs' continuing to attack a view to which none of their opponents seemed to subscribe. For it could only have been within the confines of the 'Royalist' and 'Parliamentary' axis of historical debate that the 'whig' denial of the Conquest could ever have looked at all persuasive. It was quite clearly bogus as history. Historians writing with one eye on an embattled view of the political situation might have had their reasons for wishing to share in the fabrication. But all the evidence, uncontentionally viewed, still pointed unquestionably to the fact that there had been a complete conquest in 1066, which had annulled the Saxon institutions of government; that a new law had been enforced by the will of the Conqueror; and that, so far from this process being checked by any Parliamentary continuity, there was no evidence that the existing form of Parliament could be traced to a time any earlier than the thirteenth or possibly the twelfth century.

Historians who continued to write in an unembattled spirit of inquiry were thus perpetually, though innocently, liable to subvert the entire 'whig' historiography, by continuing to repeat these unmistakable facts. The con-

<sup>16</sup> For Sydney's attack on Filmer's supposed use of Conquest argument, see *Works*, p. 79, and p. 188, where he is invidiously compared even to Hobbes. For Filmer's own attack on Conquest theory, see *Patriarcha*, ed. P. Laslett (Oxford, 1949), p. 270.

<sup>17</sup> Laslett, *Locke*, p. 403 n.

<sup>18</sup> Pocock, *The Ancient Constitution*, p. 149.

continuation of historical writing at this level is a factor which has been overlooked. The 'whigs' themselves, however, could scarcely have remained unaware of the threat which the sheer naïveté of such historians constituted. For it can be shown that in the conclusions of such historians the 'whig' historiography continued to be ignored, and later even to be directly challenged.

The self-conscious counter-attack by historians on the historical absurdities entailed by the 'whig' concept of an Ancient Constitution was to be a very important but a belated development. It was to be mounted chiefly by eighteenth-century historians of the Scottish school—by Hume, for example, and Robertson, and Millar—who were to treat the 'whig' concept of continuity as a *locus classicus* of sociological ineptitude in the analysis of a Society.<sup>19</sup> They saw that to foist the sophistications of representative democracy on to the 'barren and rude' age of the Saxons was to fail in intellectual sympathy, and that to insist on their continuity beyond the Conquest was to fail in historical realism.

Hume was especially concerned to emphasize instead the 'complete subjection'<sup>20</sup> of the English in 1066, since he treated the Conquest as the start of a new epoch, as a point at which to mark off from each other two very different societies. The government of the Saxons, so far from enshrining the liberties of the Ancient Constitution, had been 'very little advanced beyond the rude state of nature'.<sup>21</sup> 'The pretended liberties of the time', Hume added (in direct reference to the prevailing mythology), were no more than 'an incapacity of submitting to government'.<sup>22</sup> There was indeed nothing at all special about early English government: as Millar and Robertson both agreed, the Saxons acted 'with the same destructive spirit, which distinguished the other barbarous nations'.<sup>23</sup> Millar similarly destroyed the 'whig' claim that Saxon liberties survived the Conquest by showing that no such liberties could ever have existed in so 'barren and rude'<sup>24</sup> an age, when most of the population were still 'either slaves, or tenants at will of their master'.<sup>25</sup> There was indeed nothing at all in Saxon government 'calculated . . . to secure the liberty and the natural rights of Mankind'.<sup>26</sup>

<sup>19</sup> I owe this information originally to Mr Duncan Forbes, who is preparing a study of this whole group of writers. See also his "'Scientific" Whiggism: Adam Smith and John Millar', *The Cambridge Journal*, vii (1954), 643-70.

<sup>20</sup> David Hume, *The History of England* (8 vols., Oxford edn., 1826), I, 251. Volume originally published 1762.

<sup>21</sup> Hume, *op. cit.* III, 266, from section 'Remarks on the progress of science and government', summarizing his views down to point of coming of Tudors.

<sup>22</sup> *Ibid.*

<sup>23</sup> William Robertson, 'A View of the Progress of Society in Europe', *The History of the Reign of the Emperor Charles V* (3 vols., London, 1769), I, 197.

<sup>24</sup> John Millar, *An Historical View of the English Government* (4 vols., London, 1812 edn.), I, 6.

<sup>25</sup> *Op. cit.* II, 376.

<sup>26</sup> *Ibid.*

It was the fact of the Conquest itself which, as Hume said, for the first time 'put the people in a situation of receiving slowly, from abroad, the rudiments of science and cultivation'.<sup>27</sup> There could be no doubt, moreover, that the source of this change had lain in a conquest by the Normans 'entirely supported by arms',<sup>28</sup> which had 'rendered them extremely absolute'.<sup>29</sup> William I 'totally subdued the natives' and 'pushed the rights of conquest. . . to the utmost extremity against them'.<sup>30</sup> Both Millar and Hume added, moreover, that although one might make 'a dispute of words' over the Conquest, it was still clearly a conquest in the vital sense that it did not retain, but entirely changed, the existing constitutional arrangements.<sup>31</sup>

The Scottish 'sociological' history represented, however, a much later, more sophisticated, and not entirely unembattled point of view.<sup>32</sup> The seventeenth-century chroniclers were largely innocent of any such commitment. Their acceptance of the Norman Conquest was an acceptance of what they saw as brute historical fact. The most famous example of this attitude was of course to be provided by Hobbes. In *Behemoth*, his chronicle of the Long Parliament, he included in the second Dialogue a consideration of 'the ground and original of that right' which the Lords and Commons were to 'pretend to' in the course of the Civil War.<sup>33</sup> He traced the source of existing constitutional arrangements mainly to the time of the Normans and to their conquest of England. For as he added later in the work, 'King William the Conqueror had gotten into his hands by victory all the land in England' at that time, from which he was able to make such arrangements as he wished.<sup>34</sup>

It has been supposed that Hobbes's treatment was unique, or at least uncharacteristic, in seventeenth-century historical thought.<sup>35</sup> It is clear, however, that his view fitted with a well-marked and by no means particularly sophisticated historical tradition. Even the briefest chronicles of the time found space to point out and to give prominence to the undoubted 'Conquest' in 1066, by 'a people fierce and valorous', which far from confirming the existing land-system had in fact 'laid the foundation' for a new monarchy, 'by changing laws, disinheriting of nobles, and bestowing the land revenues' on the Normans.<sup>36</sup> The supposed election of William was a 'pretence'.<sup>37</sup> William

<sup>27</sup> Hume, *op. cit.* I, 204.

<sup>28</sup> *Ibid.* 251.

<sup>29</sup> *Ibid.* 99.

<sup>30</sup> *Ibid.* 251.

<sup>31</sup> Millar, II, 9. Millar gave a historiography (II, 9–11) of the Whig view, and was himself cautious about stating 'whether the accession of this monarch is to be considered in the light of a real conquest'. But he was certain of the 'considerable changes' it brought.

<sup>32</sup> Hume, for example, confessed in brief *Autobiography* preceding vol. I of the *History* that he chiefly had in mind 'the misrepresentations of faction' when he embarked on his study.

<sup>33</sup> Thomas Hobbes, 'Behemoth', *The English Works*, ed. Sir William Molesworth (11 vols., London, 1839–45), VI, 258. Hereafter cited as *E.W.*

<sup>34</sup> *E.W.* VI, 312.

<sup>35</sup> See fn. 113, below.

<sup>36</sup> Anonymous, *A Brief Chronology of Great Britain* (n.p., n.d.) Single-sheet folio, *Thomason Tracts*. In this and all subsequent quotations from seventeenth-century sources, the original form has been preserved, except for omission of capricious use of italics.

<sup>37</sup> Robert Parsons, *A Treatise concerning the Broken Succession of the Crown of England*



'got his right by his Sword',<sup>38</sup> and it was variously pointed out that he had 'behaved himself as a Conqueror indeed',<sup>39</sup> or that he had 'practised the licentious powers of an insolent Conqueror'.<sup>40</sup> One chronicler even appealed to the fact that 'we all know' that 'the first jus, or right of his title . . . was by meer conquest'.<sup>41</sup> All agreed that his power was in short based on having 'subdu'd' England 'with one Blow'.<sup>42</sup>

William's status as Conqueror was proved, moreover, not only by the fact that he ruled with a 'stiff and rigorous hand',<sup>43</sup> 'as a Conqueror, with more policy than by profitable laws',<sup>44</sup> but also by the fact that he abolished the existing English constitution and laws. The accounts of this rigour varied. Baker's chronicle gave an account in which (as the gloss remarked) William 'useth his Conquest moderately'.<sup>45</sup> The *Breviary* ascribed to Sir Walter Raleigh had similarly spoken of William 'examining' the English laws, 'whereof some he abrogated, and some allowed'.<sup>46</sup> Most of the chronicles, however, made a much more positive (though obviously still unconscious) assault at this point on the 'whig' bastion of immemorial law. The work which has been described as 'the first text-book'<sup>47</sup> on the Norman Conquest, for example, gave a very highly coloured account of the collapse of the Ancient Constitution under the Conqueror's sword. The 'ancient lawes and policies of State were dashed to dust; all lay crouched under the Conqueror's sword, to be newly fashioned by him, as should bee best fitting for his advantage'.<sup>48</sup> The chronicles of Martyn and of Wood were both to follow the same sort of account. According to Martyn, writing in 1615, William I became 'sole Lord and Sovereigne of each whole Kingdome', 'ruled it as a Conqueror', and

(London, 1655), p. 87. Title-page gives no author. For ascription, see D. Wing, *Short Title Catalogue* (3 vols., Columbia, 1945-51), III, 16.

<sup>38</sup> Anonymous, *The True Portraiture of the Kings of England* (n.p., n.d.), p. 13. Wing ascribes to Henry Parker, dates to 1650. Ascription seems incorrect: Parker signed the preface, but disowned the book.

<sup>39</sup> *Ibid.* p. 17.

<sup>40</sup> William Martyn, *The Historie, and Lives, of Twentie Kings of England* (London, 1615), p. 6. Reached third edition by 1638, though James I had greatly disliked it. On Martyn (1562-1617) see *Dictionary of National Biography*.

<sup>41</sup> *The True Portraiture*, p. 11.

<sup>42</sup> Sir Walter Raleigh, *An Introduction to a Breviary of the History of England*, p. 21. First published 1693. Ascription regarded as apocryphal even at time: Hearne remarked tersely, 'I do not look upon this Thing as Sir Walter Raleigh's.' See *The Remarks and Collections of Thomas Hearne* (11 vols., Oxford, 1885-1921), x, 198.

<sup>43</sup> John Hayward, *The Lives of the III Normans, Kings of England* (London, 1613), p. 82. Title-page gives only initials. For ascription, see Douglas, *English Scholars*, p. 149.

<sup>44</sup> Martyn, *op. cit.* p. 3.

<sup>45</sup> Sir Richard Baker, *A Chronicle of the Kings of England* (London, 1643), p. 23. 'The standard work' at time on early English History according to F. M. Powicke, 'Notes on Hastings Manuscripts', *The Huntington Library Quarterly*, III (1938), p. 260. The Histories of both Martyn and Baker were still popular in 1650's. See W. London, *A Catalogue of the most Vendible Books in England* (London, 1657).

<sup>46</sup> *The Breviary*, p. 57.

<sup>47</sup> D. C. Douglas, *The Norman Conquest and British Historians* (David Murray Lecture, Glasgow, 1946), p. 6, speaking of Hayward's *Lives*.

<sup>48</sup> Hayward, *op. cit.* p. 91.

'erected sundrie Courts for the administration of his new Lawes'.<sup>49</sup> According to Wood, writing forty years later, 'this King (which is the use for Conquerours to do) abolishing forthwith all the Customs of the English Nation, and the greatest part of their Laws, brought in immediately his own Country fashions'.<sup>50</sup>

These conclusions did not, however, cause the chroniclers to subscribe at all to the characteristic Leveller view that the Law thus founded must therefore be denounced as invalid, as nothing better than the will of a tyrant. William's original right might have been based on a 'pretence', but God none the less confirmed the legality of the change, since He 'confirmed his offspring in the Crown more than these five hundred years'.<sup>51</sup> The author of the *Breviary* even suggested that the odium which marks a conqueror had been used to obscure William's great merits, for as he said 'this name of Conquest (which ever imports violence, and misery) is of so harsh a sound, and so odious in nature, as a people subdued seldom gives the Conquerour his due, tho' never so worthy'.<sup>52</sup>

The Conquest was to be accepted as an act of absolute power, and as the basis for a new law, by chroniclers throughout the seventeenth century.<sup>53</sup> Even the triumph of the 'whig' ideology and the attack on Brady's history after 1688 did not immediately supersede their innocent but complete subversion of the 'whig' historiography. A *New History of the Succession* written in 1690 still laid particular emphasis on the fact of the Conquest, and specifically attacked Spelman himself for having cravenly retreated into the claim that William 'non conquisivit', 'sed acquisivit' his right to the Crown. There had been no question at the time, it was claimed, that William I had become 'King of the stout English by force, and Conqueror of them in War; which is far different from a Purchaser of the Nation; and consequently very opposite to Sir Henry Spelman's interpretation'.<sup>54</sup> Nor was this view an isolated phenomenon: a *Medulla Historiae Anglicanae* which went through three editions between 1679 and 1687 had proclaimed the same view of William as a conqueror who had 'abrogated, for the most part, the ancient Laws of the Land';<sup>55</sup> a *Britanniae Speculum* of 1683 had argued the same case.<sup>56</sup>

<sup>49</sup> Martyn, *op. cit.* p. 3.

<sup>50</sup> Lambert Wood, *Florus Anglicanus* (London, 1657), p. 10. Not mentioned in Douglas, and Wood unknown to *D.N.B.*

<sup>51</sup> Parsons, *op. cit.* p. 87.

<sup>52</sup> *The Breviary*, p. 69.

<sup>53</sup> The time was spanned even in works of individual authors. Hobbes's discussions spanned thirty years, Ascham's forty. See below, fns. 126 and 133.

<sup>54</sup> Anonymous, *A New History of the Succession of the Crown of England* (London, 1690), p. 32 n.

<sup>55</sup> William Howell, *Medulla Historiae Anglicanae* (3rd edn., with continuation to 1684, London, 1687), p. 82. Reached twelfth edn. 1760. Published anonymously. Ascription in *D.N.B.*

<sup>56</sup> Anonymous, *Britanniae Speculum* (London, 1683). Cited Filmer with approval, attacked Hobbes in preface.



The chroniclers' recognition, moreover, that the Norman Conquest had been an act of absolute power was no mere accident of words: it was confirmed in each case by their treatment of the other issue crucial to the 'whig' interpretation, the dating of the origins of Parliament. It was essential to the Parliamentarians' case to claim that the summoning of the whole of Parliament, including the Commons, had been a right time out of mind. Even those, like Prynne,<sup>57</sup> who were disposed to dispute with the lawyers about the origins of the Commons, were still prepared to insist that the institution of Parliament itself must be immemorial. None of the chroniclers, however, seemed to show much belief in any such theory of continuity. They all accepted without question that the idea of a Parliament was an invention of (at earliest) the twelfth century.

It is a remarkable fact that the chroniclers' simple treatment of this issue was to bring them very close to the account given by the century's most learned commentator on Feudal Society, Sir Henry Spelman. Spelman had recognized 1066 as the starting-point of a new feudal form of society; he had correlated the emergence of the modern Parliament (which he dated to the mid-thirteenth century) with the decay of feudalism in its pure form.<sup>58</sup> The chroniclers, without a tithe of Spelman's learning, were to reach a conclusion factually very similar. Parliament, they agreed, was quite simply a royal invention. This was Hayward's conclusion in 1613, repeated almost verbally by Baker in 1643, and copied by both Martyn and Wood. It was Henry I whom they saw as having 'devised' Parliament and 'fashioned' it.<sup>59</sup> This was the first occasion of the 'convening of the several orders, which is now called a Parliament'.<sup>60</sup> Henry thus 'first instituted the forme of the high Court of Parliament', since 'before his time, onely certaine of the Nobilitie and Prelats of the Realme were called to consultation about the most important affaires of the state'.<sup>61</sup>

This was again very similar to the view of Hobbes in *Behemoth*. As he had accepted the evidence for the Conquest, so he also denied the evidence for the continuity of Parliament. 'I do not doubt', as he put it in the same section, 'but that before the Conquest some discreet men, and known to be so by the King, were called by special writ to be of the same council, though they were not lords; but that is nothing to the House of Commons.'<sup>62</sup> A Parliament in this full and proper sense never existed, 'for aught that I know', as Hobbes

<sup>57</sup> See discussion of Prynne's *Plea for the Lords*, in which Prynne made use of Filmer's arguments to attack Coke, in W. M. Lamont, *Marginal Prynne* (London, 1963), pp. 177-80.

<sup>58</sup> For this aspect of Spelman's thought, see Pocock, *The Ancient Constitution*, ch. v, esp. pp. 108-14.

<sup>59</sup> Martyn, *op. cit.* p. 23.

<sup>60</sup> Wood, *op. cit.* p. 24.

<sup>61</sup> Hayward, *op. cit.* pp. 283-4. This account was to be repeated word-for-word in Baker's *Chronicle*, p. 40.

<sup>62</sup> *E.W.* vi, 260-1.

goes on, 'till the beginning of the reign of Edward I, or the latter end of the reign of Henry III, immediately after the misbehaviour of the barons'.<sup>63</sup> Hobbes actually dated the emergence of the full Parliament to an even later time, which only emphasized his ignoring of any theory of continuity. Again there is nothing *sui generis* about the view; again it is close to the views of the most popular chronicles of the time.

The chroniclers' conclusions were obviously not based—as were Spelman's infinitely subtler investigations—on any knowledge of the comparative structures of feudal monarchies. They appeared simply to follow from recognizing that 1066 had represented a break in continuity, and the coming of a new law. But this meant that in one immensely important detail the chroniclers were enabled to reach a point of view more emancipated even than that of Spelman himself. For Spelman had still felt compelled to revert—anomalously enough, as has been seen—to the 'whig' position of denying that there could ever have been a 'real' conquest. He could visualize the origin of Parliament in the decline of feudalism, but never as the mere product of a monarch's will. It is a considerable irony that the chroniclers' lack of recognition of the issues at stake thus enabled them to reach a conclusion which was nevertheless a historically more correct account.

The old-fashioned chroniclers thus brought down, with unconscious violence, the twin pillars of the 'whig' historiography. They made no denial of the Conquest; they allowed no continuity from Saxon institutions. And by thus failing to fall in with the fashionable 'whig' interpretation, the chroniclers silently wrote themselves into the 'whigs' polemics. As long as they continued naïvely to accept the evidence for the Conquest, it clearly remained essential for the 'whigs' to issue refutations to all possible readers. It was thus in the interests of Monarchist, Republican, Liberal—as the writings of Filmer, Sydney and Locke sufficiently demonstrate—to sink other differences in converging on this point. It is indeed undoubtedly a measure of the predominant influence of 'whig' ideology that their bogus history managed to displace disinterested historical inquiry so thoroughly that the continued existence of this uncontentious but subversive historical view has itself been overlooked, even in works of modern scholarship.

The triumph of 'whig' ideology not only suppressed uncontentious historical narrative; it also contrived to outlaw rival ideologies which had made use of the same historical information to sustain their claims. For the assumption that the interpretation of early English history was relevant to deciding between rival political parties was almost universal in the ideological debates of the English Revolution. Political arguments were in fact characteristically historical in form. And the 'whig' view, that early English history showed a

<sup>63</sup> *E.W.* vi, 261.

continuity of Parliamentary right, was only one among several embattled conclusions drawn from the same source. It is again a measure of the eventual 'whig' predominance that this complexity in the conflict of ideas not only became suppressed in the politics of the age, but has again been almost completely ignored in works of modern scholarship. Yet the predominance of the 'whig' attitude did not go unchallenged at the time of its formulation in the Revolution. It was to be challenged both by one ideology which was more absolutist, and by another which was more radical. The radical aspect of the challenge has undoubtedly received due recognition—the challenge from the Levellers and kindred writers. The other aspect has received scarcely any attention—the challenge of a group of writers in the Interregnum who fully anticipated in effect the ideological content of the later 'Royalist' historiography associated with Brady.<sup>64</sup>

The discussion of the Norman Conquest in both of these cases was to attain a similar but novel conceptual level. Both attitudes were to a considerable extent emancipated from the central 'Royalist' and 'Parliamentary' preoccupations of the historical debate.<sup>65</sup> Both were articulated much more in the language of political rationalism, and reached the point where the historiography became political philosophy. They no longer treated historical evidence as itself carrying prescriptive force. They recognized instead, as Hobbes was to put it, that history can provide only 'examples of fact', but no 'argument of right'.<sup>66</sup> History still provided the essential framework for their political views, but only for the illustration of concepts which were also capable of being abstractly stated. The Norman Conquest was thus regarded not as the basis for political claims, but as an illustration of the nature—or abuses—of political power itself. The Conquest was still to provide a crucial test, however, in their accounts of the rights of the citizen and the obligations of the State. And despite the dogma that the 'whig' denial of the Conquest went virtually unchallenged, both of these divergent usages of the concept in fact depended either on emphasizing or on taking it for granted that a Conquest must certainly have taken place.

In the tracts of the Levellers<sup>67</sup> this was to produce a political temper dramatically more liberal than the Parliamentarians', although dependent on

<sup>64</sup> Both Kliger and Pocock claim to discuss 'historical' thought. Yet both speak prominently of Hobbes, and Pocock discusses the Levellers as well, although in both of these cases the use of historical information was a part of their interest rather than the matter of their exposition. I believe that the restriction of the discussion produces a confusion, and that it is thus worth emphasizing these distinct strands of thought.

<sup>65</sup> This is not only crucial historically—because it has been assumed that the 'doctrine justifying absolutism by conquest' was specifically 'Royalist' (e.g., Hill, *op. cit.* p. 87); it is also crucial methodologically—because it demonstrates the point that the theoretical positions were not mere post-factum justifications of political arrangements.

<sup>66</sup> *E.W.* vi, 259.

<sup>67</sup> Many of these tracts have been re-published. I cite from the collection *Tracts on Liberty in the Puritan Revolution*, ed. W. Haller (3 vols., Columbia, 1934).

very much the same historical vocabulary.<sup>68</sup> The Levellers used Conquest theory as a means of denouncing all existing rule as an alien yoke laid on the free English, and of proclaiming instead the natural rights of the citizen. Perhaps the classic example of their reliance on the historical vocabulary is contained in Richard Overton's *Remonstrance of Many Thousand Citizens*.<sup>69</sup> Since the Norman Conquest 'this Nation hath been held in bondage all along ever since'.<sup>70</sup> There had undoubtedly been an 'unhappy Conquest' in 1066: 'Norman bondage' was its result.<sup>71</sup> The Conquest had brought to England the arbitrary introduction of the Normans' Laws, and their 'litigious and vexatious ways among us'.<sup>72</sup> It became commonplace with the radicals to point to the Conquest as an undoubted fact, and thus as the sullied source which made all subsequent government illegal.<sup>73</sup>

The Levellers typically used this historical description, moreover, as the lever for their most radical constitutional demands. The entire history of England since the Conquest revealed that kings had been failing to derive authority from its only natural and original source, 'the voluntary trust of the people'.<sup>74</sup> Lilburne was even to be attacked for excessive deference to the existing Law: 'Magna Carta', as Walwyn assured him, 'hath been more precious in your esteeme than it deserveth'.<sup>75</sup> History was relevant, as Overton agreed, only to denounce history. 'We remain under the Norman yoke of an unlawfull Power, from which we ought to free ourselves; and which yee ought not to maintaine upon us, but to abrogate.'<sup>76</sup> No government, in short, could ever come to be valid until all the marks of the Conquest had been washed away in an agreement of the people.

The identical historical vocabulary was also used, however, to almost opposite ends by writers on sovereignty who were not concerned to argue the moral basis of political rule or to speak at all about the citizens' rights. These writers can scarcely be identified as a self-conscious group or movement. They

<sup>68</sup> Little need be said of this here, since there is a brilliant anatomy specifically of historical and rationalist elements in Leveller thought in Hill, *The Norman Yoke*, pp. 75–82. For further elucidation of ideological directions of their thought, see Macpherson, *Possessive Individualism*, ch. III. The best recent scholarly study is H. N. Brailsford, *The Levellers and the English Revolution* (London, 1961).

<sup>69</sup> Reprinted and ascribed to Overton in Haller, op. cit. III, 349–70. For discussion of other attributions, see P. Zagorin, *A History of Political Thought in the English Revolution* (London, 1954), p. 22 n.

<sup>70</sup> Haller, op. cit. III, 354.

<sup>71</sup> Ibid. p. 369.

<sup>72</sup> Ibid. p. 365.

<sup>73</sup> For widespread adoption of same idea, in radical news-sheets, see W. Schenk, *The Concern for Social Justice in the Puritan Revolution* (London, 1948), pp. 67–9.

<sup>74</sup> Haller, op. cit. III, 363.

<sup>75</sup> William Walwyn, *Englands Lamentable Slaverie* (1645), cited from Haller, op. cit. III, 315. But Lilburne did use the Conquest argument, although his views have usually been misleadingly assimilated to those of the Common lawyers. M. A. Gibbs, *John Lilburne the Leveller* (London, 1947), assumed Lilburne 'closely copied' Coke (p. 131). But for an excellent account see Brailsford, op. cit. ch. VII.

<sup>76</sup> Haller, op. cit. III, 363. Overton also restated this attack in *The Commoners Complaint*, discussed in Haller, I, 112–13 and reprinted in III, 373–95.

have indeed received almost no recognition at all, and will need proportionately more attention here.<sup>77</sup> But they can be recognized by their use of Conquest theory in the service of a characteristic and emancipated argument about the concept of power itself.

The fundamental and historically-minded assertion of these writers was that no Government could ever survive an examination of its original right to rule. It was frequently claimed, for example, by Anthony Ascham—who has been regarded as the most significant of these theorists<sup>78</sup>—that the right to rule was ‘a thing always doubtful’, and that it ‘would be ever disputable in all Kingdoms, if those Governours who are in possession should freely permit all men to examine their Titles’.<sup>79</sup> To put it—as Marchamont Nedham did—even more brutally, ‘the Power of the Sword is, and ever hath been the foundation of all Titles to Government’.<sup>80</sup> The history of politics ever since the time of Nimrod, the first politician, was thus characteristically seen as mainly the history of conquests and subordination. But whereas the Levellers had used this point to denounce all existing states, these theorists used it rather to demonstrate that it would be pointless to look for a ‘rightful’ basis to any state.<sup>81</sup> All history demonstrated, or confirmed the suspicion, that conquest

<sup>77</sup> The only available introduction consists of brief paraphrases in Zagorin, *A History of Political Thought in the English Revolution*, pp. 64–77, full of interesting references, but too short and insufficiently analytic to be very illuminating. J. M. Wallace has, however, just produced a meticulous and invaluable bibliography for some of these writers, and for their critics, unfortunately too recently to be used here. See ‘The Engagement Controversy 1649–1652’, *Bulletin of the New York Public Library*, LXVIII (1964), 384–405. Wallace has also pointed out the relevance of these writers to the discussion of side-changing after 1649 in ‘Marvell’s Horatian Ode’, *Publications of the Modern Language Association of America*, LXXVII (1962), 33–45.

<sup>78</sup> Ascham is the one theorist of the group to gain separate treatment. Denounced in I. Coltman, *Private Men and Public Causes* (London, 1962), pp. 197–239, defended by J. M. Wallace in *The Journal of the History of Ideas*, XXIV (1963), 150–4. The interpretation attempted here differs from the accounts given by both these writers. See also paraphrase in Zagorin, *op. cit.* pp. 64–7. Ascham ‘inextricably confuses right and power’ according to Zagorin (p. 66), who does not mention the historical dimension of Ascham’s thought.

<sup>79</sup> Anthony Ascham, *A discourse: wherein is examined, what is particularly lawfull during the confusions and revolutions of governments* [sic] (London, 1648), pp. 11–12. Re-issued 1649 with nine new chapters and title abbreviated to *Of the confusions and revolutions of governments* [sic].

<sup>80</sup> Marchamont Nedham, *The case of the common-wealth of England stated* (London, n.d.), p. 6: title of second chapter. Nedham had a proverbially chequered career as pamphleteer, on which see Zagorin, *op. cit.* pp. 121–7. It misled Kligler into assimilating Nedham’s views, mistakenly, to those of the anti-Normanists, pp. 142–3.

<sup>81</sup> Their attitude is thus distinct from the occasional glances at Conquest theory in writers like Henry Ferne. Pocock (pp. 149–50) assumed Ferne used the argument in same way as Hobbes, and that such use was entirely ‘untypical’. Both claims incorrect. Hobbes’s view was both mirrored and anticipated in the historical vocabulary used by the writers on Sovereignty under discussion. Ferne’s view, however, in *The Resolving of Conscience* (Cambridge, 1642)—to which Pocock must be presumed to be referring—was that no right of conquest could ever be allowed against a legitimate ruler (sections III and IV). It was precisely this type of claim that the writers on Sovereignty were concerned to attack. E. Elcock, for example, in *Animadversions on a book, called, A plea for non-scribers* (London, 1651), specifically named Ferne as a holder of false principles of passive obedience (p. 61).

was simply one of the most usual ways in which governments derived their power. To appeal from the rights of a conqueror to some higher right would not be to clarify the question of allegiance but to make it impossible to answer. As George Wither put it (in a phrase later to be strikingly echoed by Hobbes), 'if this Plea therefore be admitted, no Government could lawfully have been obeyed'.<sup>82</sup> 'Few kingdomes in Europe', as another writer remarked, in a typically sweeping appeal, 'have beene so begun, or indeed otherwise then by Conquest.'<sup>83</sup>

It was typical of these writers to dissemble the force of this scepticism under a cloak of conventional Christian obedience. 'It is no part of our Christian Profession', as one of the most prolific of these theorists frequently pointed out, 'to become Judges of the Great Ones of this World, in respect of their Rights and pretensions to Power.'<sup>84</sup> Even if 'the Sword or supreme power', as another agreed, may be held by a usurper, this must still be regarded as 'truly the ordinance of God', for otherwise it could never have happened.<sup>85</sup> Their reliance on this providential appeal seems, however (as they would doubtless have wished), to have been overstated by their commentators.<sup>86</sup> It masks in fact an essentially rationalist conception of political obligation. To obey always the Powers that Be is in effect to claim, as many of them put it (in a phrase again to be strikingly echoed by Hobbes), a 'mutual relation of Protection and Allegiance'<sup>87</sup> as the criterion for obligation. If the so-called legitimate power is then conquered, and the people rendered 'unable to maintain their former Government, and Governors, as the Governors to defend and protect their people', then 'we count it lawfull for a people to make the best conditions they can with the Conquerors, to desire protection from them, and promise subjection to them'.<sup>88</sup> They recognized, moreover, that the tests of allegiance were not themselves revealed, but had to be discovered by applying this rule, 'agreeable' (as they claimed it to be) 'to sense, to reason, and to

<sup>82</sup> George Wither, *Respublica Anglicana* (London, 1650), p. 42. Title-page gives initials only. For ascription, and long notice of Wither (1588–1667), see *D.N.B.* Hobbes remarked that 'there is scarce a commonwealth in the world, whose beginnings can in conscience be justified'. *E.W.* III, 707.

<sup>83</sup> Anonymous, *The exercitation answered* (London, 1650), p. 46 (mispaginated 44).

<sup>84</sup> John Dury, *Considerations concerning the present Engagement* (London, 1649, 3rd edn., 'enlarged', 1650, quoted here), p. 11. For Dury's biography, and bibliography (including this ascription), see J. M. Batten, *John Dury* (Chicago, 1944). Includes (pp. 213–22) complete list of Dury's works.

<sup>85</sup> *The exercitation answered*, p. 30.

<sup>86</sup> Coltman for example speaks of Ascham as having a 'vision of man as a victim', p. 237, which seems to me to ignore his concern with rational political calculation.

<sup>87</sup> N.W. *A discourse concerning the Engagement* (London, 1650), p. 11. Hobbes said of *Leviathan* that it was written 'without other design than to set before men's eyes the mutual relation between protection and obedience' (*E.W.* III, 713). This characteristically Hobbesian conclusion was commonplace with these writers—used by Ascham also in *The Bounds and Bonds*, p. 26, and in *The Northern Subscribers Plea, Vindicated*, p. 23.

<sup>88</sup> Anonymous, *Conscience puzzel'd* (1650), p. 7



Conscience'.<sup>89</sup> As John Rocket explained, 'we must distinguish betwixt what is humane, and what is divine' in God's ordinance.<sup>90</sup> The subject is committed to investigating as well as to accepting the Powers that Be, to ensure that they do in fact maintain 'those reciprocal acts of publike justice and protection, which are the fundamental reason, of all such relative Obligations'.<sup>91</sup> The characteristic conclusion is that although the right of Governments to be obeyed may be based on the ordinance of God, the right of any particular government can still only be constituted and recognized by 'the pure force of Rationality'.<sup>92</sup>

The argument so far, however, clearly relies less on an appeal to history than on an *a priori* conception of the nature of political power. And these writers do in fact use historical evidence less as a form of proof than as a means to endorse what one of them called 'the everlasting rule in politicks'.<sup>93</sup> Historical evidence is useful only (as John Hall remarked—and once more the phrase was to be verbally echoed by Hobbes) to prove 'matters of Fact', and never to demonstrate 'matters of Right'.<sup>94</sup> It was manifestly this familiar acceptance of Conquest arguments which would have panicked the 'whigs'; but it does also mean that in their use of historical evidence these writers were often deceptively perfunctory. Many of their most systematic expositions tended to keep the discussion on the most abstract level: it was crucial to their argument to assert the right of conquest, but it seemed much less crucial to examine any specific case.

Many of these theorists thus stopped short, or even seemed to retreat, at the actual discussion of the Norman Conquest. Prominent 'Engagers' like Ascham and Dury, as well as later writers in much the same mode like Baxter and White,<sup>95</sup> all discussed the rights of conquerors, yet scarcely ever cited the most familiar example from English history. Ascham, for example, evidently felt it enough to nod to history in passing: as he confidently remarked, in a

<sup>89</sup> Dury, *Considerations*, p. 13. Commentary has obscured a crucial discrimination between those who saw all power as merely an exercise of God's will, and those who assumed it was part of this will that men should create their own political arrangements. The first, the substance of W. Jenken, *Certaine conscientious queries* (London, 1651), and of T. Carre, *A treatise of subiection* (London, 1651), did not begin to be a political discussion. The second, however, entailed rational discussion, by implying the question when *not* to submit. Cf. Zagorin, who considers Carre together with all the 'Other Writers' (p. 72).

<sup>90</sup> John Rocket, *The Christian subject* (London, 1651), p. 74.

<sup>91</sup> John Dury, *A disengag'd survey* (London, 1650), p. 19. For ascription see Batten, *op. cit.*

<sup>92</sup> Thomas White, *The Grounds of Obedience and Government* (London, 1655), p. 122. A friend of Hobbes's, dedicated his book to another, Kenelm Digby.

<sup>93</sup> Enoch Grey, *Vox coeli* (London, 1649), p. 40.

<sup>94</sup> John Hall, *The Grounds and Reasons of Monarchy Considered* ('corrected and Reprinted According to the *Edinburgh* copy', 1650), p. 23. Cf. Hobbes, *Behemoth*, above, fn. 69. Kligler thus super-subtle in seeing the remark as a peculiarly Hobbesian denigration of historical in favour of geometrical proof (p. 146).

<sup>95</sup> White: see general remarks in *Grounds of Obedience*. Richard Baxter: see equivocal remarks in *Holy Commonwealth* (London, 1658), esp. pp. 136–7 and 163–4.

rapid mixture of history and prescription, if one party's rights 'be but one as good as another's, then his is the best who hath Possession: which generally is the strongest title that Princes have'.<sup>96</sup> It seems conceivable that some may have felt the need for a certain caution in drawing such heterodox conclusions too readily from English history. Henry Parker, for example, was prepared to offer elaborate historical proof of a conqueror's right, and title to allegiance, but restricted his choice of examples exclusively to Roman history.<sup>97</sup> Samuel Eaton, similarly, began by admitting that 'the Kings Ancestors came by Conquest', but felt that the precedent might scarcely be regarded as acceptable, and eventually decided 'nor dare I grant it'.<sup>98</sup>

There can be no doubt, however, of the recognition by all of these writers of the historical implications of their remarks. Many of them indeed referred to the Conquest quite casually, as a familiar instance of an even more familiar truth. As the author of *England's Apology* pointed out, speaking of the current revolution in government, 'if any be frightened at the change, as that which seems to be dangerous and unlawful, and putting by the heire of the Crowne; I hope they are not ignorant, how many changes have been in England by the tyranny and usurpations of Kings, and of forraigne powers over us'.<sup>99</sup> The first point also which John Rocket had made, in his attempt to prove the 'Lawfulnessse of this present Authoritie', was 'this Observation to any man that is but ordinarily read in our English Chronicles': 'that the former power by which our Kings reigned, and under which our fore-fathers lived, was many times obtained by usurpation... yet to them they yielded subjection, and swore allegiance'.<sup>100</sup> A major assumption, similarly, of Michael Hawke's *Right of Dominion* was that 'The Law of Armes is above all Laws',<sup>101</sup> and that all History verified the point. Dominion was always 'first achieved by valour, and Empire purchased by arms'. In English history this is 'most apparent', for power has followed 'the arms of the Romans, Saxons, Danes, Normans, and other particular forces'.<sup>102</sup>

When it came to the endorsement of this type of principle, moreover, many of these writers did specifically emphasize the importance of 1066 as a leading illustration of their views about political power. They left no doubt

<sup>96</sup> Ascham, *Discourse*, p. 12.

<sup>97</sup> Henry Parker, *Scotland's Holy War* (London, 1651), p. 77. On Parker's political thought see W. K. Jordan, *Men of Substance* (Chicago, 1942), pp. 140–78, where Parker is credited with origination (p. 173) of the 'modern' concept of Sovereignty. His attitude to Conquest theory is not discussed.

<sup>98</sup> Samuel Eaton, *The oath of allegiance and the national covenant proved to be non-obliging* (London, 1650), p. 47.

<sup>99</sup> Anonymous, *England's apology, for its late change* (London, 1651), p. 33.

<sup>100</sup> Rocket, *The Christian subject*, ch. x, pp. 108–10.

<sup>101</sup> Michael Hawke, *The Right of Dominion, and Property of Liberty* (London, 1655), heading to ch. vii.

<sup>102</sup> *Ibid.* pp. 42–3. Hawke has received no attention. Unknown to *D.N.B.*; Zagorin (p. 93) was unable to discover anything about him. Yet he was an able, unusually learned writer, who had read, and cited, de Moulin, Ascham, and Hobbes, as well as the classical writers.

that they regarded 1066 as a real conquest, and that they felt it important to emphasize the point. As Rous remarked (in a lengthy historical disquisition, taking in both Roman and English history), the Normans had had 'no title at all by lineall descent and proximity of blood'. Although the nation 'doth yield subjection to their Lawes to this very day', yet their rule was founded on no better title than 'mere power without title of inheritance', since their first king, 'the Conquer', 'came in by force'.<sup>103</sup> When Peter English came to argue, several years later, the first of his five 'Assertions' in *The Survey of Policy*—'Whether or not, is the power of the King absolute'<sup>104</sup>—he was to emphasize exactly the same point. 'The Conqueror came not to the crown of England, by blood right, but by meer conquest, having the whole Kingdom of England against him.'<sup>105</sup> The most unequivocal formulation, however, was to be given by Nedham, who undertook to show (in the second chapter of *The Case of the common-wealth of England stated*) 'that the Power of the Sword ever hath been the Foundation of all Titles to Government in England, both before, and since the Norman Conquest'.<sup>106</sup> He refused to believe the claims made for William I's right: 'he had none, save a frivolous Testamentary Title'. He concluded instead that William 'established himself a title by Conquest upon the destruction of King Harold, and of the Laws and Liberties of the Nation'.<sup>107</sup>

This view was not used, however (as it was by the Levellers), as an argument against the rights of acquisition.<sup>108</sup> It was used rather to defend the rights of usurped powers against the claims of the legitimists. When Ascham, for example, made his reply to the author of *The grand case of conscience*, he upbraided those who refused to admit that 'the nature of politick justice of society and Religion is such that we may and ought to submit in obedience to those who plenaryly possesse', with the claim that they appeared to have forgotten 'that there was ever such a man in England as William the Conqueror'.<sup>109</sup> The same attitude was later to be confidently embodied in a long pamphlet by Drew. Since the English had freely given 'way or place to the Conquerour in England', it must follow that 'if engaging in our case would be a

<sup>103</sup> Francis Rous, *The lawfulness of obeying the present Government* (London, 1649), pp. 4–6. On Rous, see Zagorin, who mentions discussion of 1066 (pp. 67–8).

<sup>104</sup> Peter English, *The Survey of Policy* (Leith, 1653), in form of five 'Assertions', the first (pp. 2–134) treated as by far the most important.

<sup>105</sup> *Ibid.* p. 78.

<sup>106</sup> Nedham, *op. cit.* p. 13.

<sup>107</sup> *Ibid.* p. 16.

<sup>108</sup> Several of these writers went out of their way to denounce the Levellers, and to explain differences in their own position. Nedham, *The case of the common-wealth*, ch. IV, 'Concerning the Levellers', denounced them as licentious (p. 77), and unreasonable (p. 79). T.B. *The Engagement vindicated* (London, 1650) thought them 'the dregges of the people' (p. 11). Francis Osborne, *A persuasive to a mutuall compliance* (Oxford, 1652), thought them dangerously radical (p. 9).

<sup>109</sup> Anthony Ascham, *The bounds and bonds of publique obedience* (London, 1649), p. 32. Invariably attributed to Rous. But see Wallace, *The Engagement Controversy*, pp. 391–2 for ascription (with cogent reasons) to Ascham.

participation in sinne, by consenting to and establishing the change, theirs could not be without an accessarinesse'.<sup>110</sup> The same principle had in the meantime been more abstractly endorsed by de Moulin's work on *The power of the Christian magistrate*. The 'Letter' in the treatise which examined the rights of usurped powers not only concluded that it was a just action to yield 'Fealty or Homage to him that hath possession *de facto*, though not *de jure*', but also pointed out that the whole of English history endorsed such a view. The recognition of *de facto* rule, he claimed, 'hath been alwayes practised in England under all the Kings since the Conquest'. In spite of the original conquest, in spite of the fact that 'for the greatest part they had no just title to the crown', the validity of their power was never in fact questioned.<sup>111</sup>

The great objection, as has been pointed out, to such fearless discussion and illustration of the rights of conquest, was that it marked the English constitution since 1066 with the 'indelible stain' of absolutism. It has been assumed that this consideration was in fact enough to forestall the use of such argument altogether. But these writers did recognize the constitutional as well as the historical implications of their position, did in fact accept that to trace the powers of the Crown to the right of conquest was to produce an argument for absolutism. The most celebrated formulation of this position was of course eventually to be given by Hobbes, in his *Dialogue* between the philosopher and lawyer. As he bleakly asserted, since the laws of England were originally 'assented to by submission made to the Conqueror', they must therefore take the form of a *fiat* from an absolute power, a power which moreover 'is all descended to our present king'.<sup>112</sup> It has been supposed, again, that this acceptance of the implications of Conquest theory was virtually unique.<sup>113</sup> Hobbes's view had, however, been fully anticipated by many of the other theorists of sovereignty, long before he came to make these somewhat *ad hoc* remarks under the restored Monarchy. Francis Osborne, writing in 1652, had already come to regard it as proved that a conquest could confer complete constitutional powers, and had come to regard the Norman Conquest as 'hitherto the fairest flower in the crowne of our kings', until superseded by the more recent conquests of the army.<sup>114</sup> Like Hobbes, Osborne also believed that a historical study of the recent wars would be useful in teaching the

<sup>110</sup> J. Drew, *The Northern subscribers plea, vindicated* (London, 1651), p. 30.

<sup>111</sup> Lewis de Moulin, *The power of the Christian magistrate in sacred things...with...a digression concerning allegiance* (London, 1650), pp. 27–8. de Moulin (1606–80) was born in France, but a graduate of both Oxford and Cambridge, and (as title-page says) 'History-reader of the University of Oxford'.

<sup>112</sup> Thomas Hobbes, *A Dialogue Between a Philosopher and a Student of the Common Laws*, E.W. VI, 1–160, pp. 21–4.

<sup>113</sup> Pocock, for example, remarks, 'Conquest struck few roots in royalist thought, though from the writings of its opponents one would think it the most dreaded and ever-present of dialectical menaces', and that 'for a systematic exposition of its meaning we must turn to so untypical and unpopular a thinker as Thomas Hobbes' (p. 149). Hill too remarks on Hobbes as 'always *sui generis*', in mentioning his historical views, p. 91.

<sup>114</sup> Francis Osborne, *Persuasive*, p. 4.

lesson that 'a subject becomes obliged to the Conqueror'.<sup>115</sup> The axiom was to be endorsed a year later by Peter English: 'we deny not, but under the reign of the Conquerour himself, Regall Government in England, was of a most absolute and arbitrary power'. He believed indeed—although he was unusually learned also in historical citation—that 'very reason it-self teacheth the point: for he subdued England by strength of hand'.<sup>116</sup> By 1658, Heylyn was able to rest the entire proof of his case that 'the power of making Laws . . . is properly and legally in the king alone' on a consideration of the Norman Conquest. As he continued: 'for the proof thereof, I shall thus proceed. When the Norman Conqueror first came in, as he wonne the Kingdom by the sword, so did he govern it by his power: His sword was then the Sceptre, and his will the Law'.<sup>117</sup> And so this strand of systematic and unashamed absolutist theorizing spanned the Interregnum years, a decade before gaining its final articulation by Hobbes, a generation before gaining its full historical dress from Dr Brady. The views of its exponents cut across all existing party lines.<sup>118</sup> They attained precisely the position which the supposedly missing absolutist ideology based on historical criticism might have been expected to attain.<sup>119</sup> They fulfilled precisely the threat which the 'whigs' always feared from the admission of conquest as a valid basis for rule, the threat of 'the ill use the Champions of Absolutist Monarchy may be inclined to make of such a concession'.<sup>120</sup>

The study of these writers suggests, therefore, two reflexions of some historical importance. It is they, first of all, who present us with a fully articulated and rationalist theory of sovereignty for the first time in the history of English political thought. Their acceptance of the rights of conquest was no mere 'low level' articulation of a prejudice not found in the higher reaches of

<sup>115</sup> Francis Osborne, *Advice to a Son*, ed. E. A. Parry (London, 1896), p. x. According to Zagorin (p. 127) 'the tendencies visible in Nedham's political ideas were carried to a higher pitch in the thought of Francis Osborne'. But it does not seem to me that either believed what Zagorin claims, that political man was (p. 131) 'victim of a destiny beyond human power to foresee or prevent'. On Hobbes's view of the lessons embodied in the History of the civil wars, see *E.W.* III, 703.

<sup>116</sup> English, *Survey of Policy*, p. 77. English is unknown to *D.N.B.*, and has received no attention. But perhaps the most historically learned of all these writers.

<sup>117</sup> Peter Heylyn, *The Stumbling-Block of Disobedience and Rebellion* (London, 1658), p. 267. On Heylyn (1600–62), a notable controversialist, and for ascription here, see *D.N.B.*

<sup>118</sup> This point must be emphasized, since the concept of Sovereignty in these writers has often been treated as a reflexion of the dispute between Royalists and Parliamentarians about the location in practice of supreme political power. See, for example, G. L. Mosse, *The Struggle for Sovereignty in England* (Michigan, 1950), who regards the articulation of these political concepts as one of the 'results' (p. 2) of the conflict between executive and legislature—so that the status of a political theorist is evidently judged as that of a more or less unsuccessful political reformer.

<sup>119</sup> Pocock, while denying that such a theory was ever articulated, recognized that 'the two doctrines' which it would involve would be that the Sovereign 'ruled above the law as a conqueror' or that 'the laws flowed from his will' (p. 54).

<sup>120</sup> Fortescue-Aland, 'Preface' to *Absolute and Limited Monarchy*, cited from Douglas, *English Scholars*, p. 149 n.

literacy.<sup>121</sup> These were sophisticated writers, who all read and cited Machiavelli, Bodin and Grotius.<sup>122</sup> Hobbes can be seen both to have influenced and to have partaken of their views. This point, in the second place, suggests that they may also be regarded as an important means of throwing some further light on the intellectual standing of Hobbes himself. The conventional concentration of attention on Hobbes has caused his contribution to this discussion to have been overestimated. Hobbes was neither the first nor the only writer of the Revolution period to discuss conquest as a mode of acquisition of power, nor was he first or alone in drawing absolutist lessons from the historiography. Such a suggestion could only have been made, indeed, within the confines of a particular methodology in the study of political theory, in which the major figures are abstracted from their intellectual environment and made to appear either as representative or as unique.

The conventional methodology is in fact historically misleading. The number of writers apart from Hobbes who were similarly concerned in similar ideological discussion strongly implies that Hobbes's axiomatic position of lonely heterodoxy, as 'the *bête noire* of his age',<sup>123</sup> is an assumption which is much in need of re-examination. Hobbes did not even provide the most original or systematic formulation of the views at issue. It is even open to us to suppose that he may to some extent have adopted his views from the earlier discussions we have been examining.<sup>124</sup> For *Leviathan* discussed conquest only in very general terms,<sup>125</sup> *Behemoth*, with its discussion of the origins of Parliament, did not appear until a pirated edition was issued in the year of Hobbes's death;<sup>126</sup> *The Dialogue*, drawing its absolutist implications from the historical evidence, did not appear until 1681.<sup>127</sup> The writers of a generation earlier had already made use of an identical historical vocabulary. They had also shared much more extensively the rationalist assumptions of political thinking conventionally associated exclusively with Hobbes—a theme

<sup>121</sup> This suggestion is Hill's revised position (p. 62 n.).

<sup>122</sup> The writers on *ius gentium* may have provided an important source. They discussed Conquest theory in general terms (as has been noted—see Pocock, *op. cit.* p. 150), and it was Grotius whom Filmer was discussing when he criticized conquest theory. See *Patriarcha*, ed. Laslett, pp. 261–74.

<sup>123</sup> S. I. Mintz, *The Hunting of Leviathan* (Cambridge, 1962), p. vii. Excellent on reactions to Hobbes, though still assumes Hobbes was totally isolated, and his influence totally negative (cf. p. 147).

<sup>124</sup> Hobbes demonstrably endorsed as much as 'influenced' attitudes of the writers on Sovereignty. Nedham, for example, appealed to Hobbes's authority in a special appendix to the 2nd edn. (1650) of *The case of the common-wealth*. Hobbes was also cited and discussed by Hall and by Hawke. Tönnies first spotted Nedham published abstracts from *De Corpore Politico* in *Mercurius Politicus*, the journal he edited, in 1651. See F. Tönnies (ed.), *The Elements of Law* (London, 1889), Introduction, p. xi. On Nedham as editor, see J. Frank, *The Beginnings of the English Newspaper 1620–1660* (Cambridge, Mass., 1961), esp. chs. XI–XII.

<sup>125</sup> See 'Leviathan' in *E.W.* III, esp. pp. 703–7.

<sup>126</sup> See introduction to *Behemoth*, ed. F. Tönnies (London, 1889), pp. viii–ix.

<sup>127</sup> Printing history in H. Macdonald and M. Hargreaves, *Thomas Hobbes: a Bibliography* (London, 1952).



too large to follow out here, but one that will repay the closest consideration. It may be claimed that this suggestion for bringing Hobbes further into a more meaningful relation with the spectrum of political debate in his age not only adds to our information about the structure of seventeenth-century ideas; it may also suggest some further reconsideration of both the content and the significance of Hobbes's own political thought.<sup>128</sup>

The rationalist, absolutist usage of Conquest theory was to be re-stated very occasionally in the second half of the century, perhaps only by followers of Hobbes. The most intelligent and effusive statements were to come (though never in print) from Sir William Petty.<sup>129</sup> It remains true, however, that the ideology had little future under the Restoration and none at all after 1688. Despite its bogus history, the 'whig' ideology was to triumph at the very time when the materials to refute its historical groundwork had become fully available. Despite his impeccable learning, Brady was to become the historian merely of the non-jurors.<sup>130</sup> Although the attitude became outlawed, however, it did not in fact lapse. By an extraordinary irony the absolutist argument was to be covertly revived by the 'whigs' themselves, to take its place under heavy camouflage within the eighteenth-century Pantheon of Lockean liberalism.<sup>131</sup>

This intellectual sleight of hand seems to have passed off unnoticed by historians.<sup>132</sup> The exposure of the trick can, however, be traced back to 1709,<sup>133</sup>

<sup>128</sup> I have attempted to sketch what seems to me the relevant methodology here in 'Hobbes's *Leviathan*', *The Historical Journal*, vii (1964), 321–33. I hope shortly to try to justify further my interpretation of these writers and of Hobbes by attempting a complete study of their politics in its relation to Hobbes's intellectual milieu.

<sup>129</sup> In a forthcoming study of Petty I hope to show the extent to which his own 'Political Arithmetic' was built out of studying Hobbes. Petty was a great admirer of Hobbes, and transcribed many of his own political remarks from *Leviathan*. He also wrote extensive notes about the Conquest, one of which has been printed in The Marquis of Lansdowne (ed.), *The Petty Papers* (2 vols., London, 1926), i, 16–21. (Other information from The Bowood MSS. (Petty Papers), by kind permission of the Most Hon. the Marquis of Lansdowne.)

<sup>130</sup> The 'whig' author of *The British Liberty Asserted* (London, 1714), for example, denounced the non-juror George Harbin for his reliance on Brady, a historian 'refuted by Tyrrell and others in every thing material' (p. 61).

<sup>131</sup> In its final form this section has greatly benefited from the criticisms of Mr John Dunn, of King's College, Cambridge. But he does not endorse all that is said, and further elucidation must await his forthcoming work on the influence of Locke's political ideas. It must be emphasized too that in what follows I am far from wishing to adopt the suggestions of Leo Strauss, *Natural Right and History* (Chicago, 1953), or R. H. Cox, *Locke on War and Peace* (Oxford, 1960), that Locke's political theory somehow covertly re-stated Hobbes's positions. My whole contention is that to insist on Hobbes as the inevitable point of departure is an unhistorical view.

<sup>132</sup> There is however a note of some of the writers involved in the debate in Douglas, op. cit. pp. 165–7. See also G. M. Straka, 'The Final Phase of Divine Right Theory in England', *English Historical Review*, cccv (1962), 638–58. Shows Conquest theory eventually became part of Church and 'de facto Tory' Royalism after 1688. But stops short of seeing 'whigs' covert adoption of same vocabulary, and does not see the parallels with 1650's.

<sup>133</sup> Possibly even to 1689, when Ascham's *Confusions* was anonymously re-issued under the very significant title, *A Seasonable Discourse*.

the date when the latter-day Patriarchalist Charles Leslie began his attacks on the 'whig' writers Higden and Hoadly.<sup>134</sup> William Higden had published in 1709 a *View of the English Constitution* in which the theme had been an attempt to prove that 'the King, for the time being, hath, both by the Statute and Common Law, the Legislative Power of the Kingdom'.<sup>135</sup> He had attempted to verify this claim by a long disquisition on the succession of English kings, in which he had further claimed that 'the people of England always submitted and took Oaths of Fidelity to the Thirteen Kings, who from the Conquest to Henry the VII came to the Throne without Hereditary Titles, as well as to the Six Hereditary Kings who Reigned in that Period'.<sup>136</sup> It was a view that fitted popularly into the ideological framework associated with the Glorious Revolution. Higden's book was to go through four editions within six years, and its theory was to be expounded and elaborated by many other prominent 'whigs'—including Willes, the chief justice, and Hoadly, the leader of the low-Church Divines.

The opponents of the 'whigs', however, did not fail to point out the monstrous irony involved in this defence of the rights of the citizen—by the supposed liberals of the day—in terms of the rights of the possessor. Leslie<sup>137</sup> saw in Higden's account a covert elevation of the rights of Conquest—a solvent of all natural allegiance, since it would regard Rebellion as 'an Injury only when it is little, and robs the King of a share. But if it takes all, it is no injury at all!'<sup>138</sup> Leslie later extended this attack, to include Hoadly as well as Higden, in what he called his *Finishing Stroke*: He employed in this case the device of a Dialogue. A 'Hottentot' (an earlier incarnation of the Noble Savage) was innocently made to draw an unfavourable comparison for both Hoadly and Higden between their schemes of government, and no government at all. He was made to conclude that their view of the rights of Conquest would in fact imply a system no different from anarchy. The crucial point was put in a rhetorical question to Hoadly: 'does not your Law turn with every Blast of Wind? Here are Two fighting for the Crown, the Law Stands by, and Waites the Success; and will Hang those that are Beaten, and recognise the Conquerour: And if the other Conquer him again, then the Law turns to his Side again'.<sup>139</sup>

<sup>134</sup> On Hoadly, see C. Robbins, *The Eighteenth Century Commonwealthman* (Cambridge, Mass., 1959), chs. III and IV. Robbins does not, however, mention Higden.

<sup>135</sup> William Higden, *A View of the English Constitution* (London, 1709), p. 60. Hearne, *Collections*, noted publication (II, 284) and author's *Defence* (III, 93). Hearne was unsympathetic to Higden, because (as he said) he 'resolves all into possession' (II, 297).

<sup>136</sup> Higden, *View*, p. 1.

<sup>137</sup> Leslie replied anonymously to Hoadly in *The Best Answer* (London, 1709) and *Best of All* (London, 1709), to Higden in *The Constitution, Laws and Government of England Vindicated* (London, 1709), and to both in *The Finishing Stroke* (London, 1711). Authorship immediately guessed. See Hearne, II, 297.

<sup>138</sup> Leslie, *The Constitution*, p. 30.

<sup>139</sup> Leslie, *The Finishing Stroke*, p. 132.

Their opponents, moreover, recognized in the 'whigs' position an irony even sharper than this anarchic tendency of their political stance. They not only suggested that the theory controverted all their supposedly liberal 'whig' principles; they also pointed out that the identical theory could actually be traced to the writings of the theorist most vilified and rejected by all good 'whigs'—Thomas Hobbes. This was indeed the first point made by George Harbin, in his folio of 1713 on *The Hereditary Right of the Crown of England*, the most influential attack on the 'whigs' to emerge from the controversy. Harbin claimed to show, by an elucidation of successions even more elaborate than Higden's, that the English monarchy had invariably rested on an indefeasible hereditary right. This view had never in fact been challenged at all, he claimed, until the subversive works of the Interregnum period by 'Thomas White, a papist, Dr Goodman, Baxter, Eaton, Ascham, Hobbes'. 'The first Time that the Duty of Paying Allegiance to Powers in Possession began to be taught Publickly in this Kingdom' was in the works of these 'Papists, Fanaticks and Deists' whose heresies he claimed the 'whigs' were now trying to revive.<sup>140</sup> Harbin had already intimated, moreover, that it was with Hobbes that he chiefly associated these views. On the title-page of his earlier attack on the 'whigs'—*The English Constitution Fully Stated*<sup>141</sup>—he had reproduced the entire passage from Thomas Tenison's *The Creed of Mr Hobbes Examined*<sup>142</sup> in which Hobbes had been denounced for (amongst other things) allowing the rights of conquest. To Hobbes specifically Harbin traced the source of this doctrine, 'pernicious in its Consequence to all Nations',<sup>143</sup> the doctrine which he believed the 'whigs' had covertly revived. The same genealogy was traced, moreover, by Leslie, who pointed out that the original 'Assertors of the Pernicious Position' that 'Possession and Strength gives a title to Govern' were acknowledged to have been 'Hobbs, Owen, Baxter, Jenkins, etc.'<sup>144</sup> And in his attack on Hoadly for failing to see 'the Difference betwixt a Physical Power and a Legal Authority', Leslie had simply exclaimed 'this is Hobbs his State of Nature'.<sup>145</sup> But perhaps the most pointed denunciation of the 'whigs' alleged reliance on Hobbes for their principles of obligation was to be provoked by the publication of John Broughton's *Great Apostacy from Christianity* in 1718.<sup>146</sup> In discussing the 'evil influence' of refusing to pay

<sup>140</sup> George Harbin, *The Hereditary Right of the Crown of England Asserted* (London, 1713), opening paragraph. For ascription see Douglas, op. cit. p. 166. Harbin's anonymity was to be the cause of a tragic muddle, see *ibid.* p. 167.

<sup>141</sup> George Harbin, *The English Constitution Fully Stated* (London, 1710), printed extract from Tenison on its title-page.

<sup>142</sup> Thomas Tenison, *The Creed of Mr Hobbes Examined* (London, 1670). See Mintz, op. cit. pp. 72–9. The passage quoted was from *Epistle Dedicatory*.

<sup>143</sup> Harbin, quoting Tenison, title-page.

<sup>144</sup> Leslie, *The Constitution*, p. 103.

<sup>145</sup> Leslie, *The Best Answer*, p. 22.

<sup>146</sup> John Broughton, *The Great Apostacy from Christianity, with its Evil Influence on the Civil State* (London, 1718).

allegiance when due, Broughton had cited with approval 'the late Dr Higden' in claiming that a subject's proper course is always to maintain 'a strict Adherence to a Constitution, as it stands in Fact'.<sup>147</sup> This brought immediate denunciation from the anonymous author of *A Vindication of Lawful Authority*, for having 'thought fit to revive this Monster' of 'Hobbism' in political thought.<sup>148</sup> The express aim, in fact, of the reply was to provide (in the words of its own subtitle) 'A Confutation of Hobbism in Politicks, as it is reviv'd by some Modern Doctors'.

The proponents of hereditary right were undoubtedly correct, moreover, to see in the arguments used by Higden and his fellow 'whigs' a covert but strong element of specifically Hobbesian theory. It would of course never have occurred to any of these modish 'whigs' actually to cite a writer with a reputation as old-fashioned and as sinister as that of Hobbes. There is indeed nothing in what they say that would have necessitated a reading of Hobbes's own works. Under the guise of their constitutionalism, however, the parallels with the absolutist use of Conquest theory are inescapable.

The disguise adopted by the 'whigs' in this compromising situation was the typical argument by consent. The claim that the government needed to be based on the consent of the people had by then become axiomatic: it was 'so plain a Truth', according to one writer, 'that it is not worth proving'.<sup>149</sup> When proof was offered, however, it was invariably historical. It had been 'a Fundamental of the Constitution under the Saxon Monarchy' that no monarch could rule without 'the Consent and Assent of the Lords Spiritual and Temporal, and the People of the Land'.<sup>150</sup> William I had thus come to the throne not by right of Conquest, but 'by virtue of his prior Parliamentary Title',<sup>151</sup> and had 'founded his Right upon the Election of the People'.<sup>152</sup>

It was recognized, however, that this concept of consent still needed to be more explicit to have any purchase. If hereditary right was not to be accepted as an appropriate test for consent, it became essential to formulate other tests of the adequacy of governments, to which consent could then be given. And here it had in fact become accepted dogma (especially after James II's flight) that the bounds of consent were to be set by the capacity of the Government as protector. 'The care of the Nation being the true primary End, and first Design of Government itself; whenever a King does of himself relinquish the Care of the Nation, he does by a necessary Consequence relinquish the

<sup>147</sup> John Broughton (fn. 146), pp. 142–3.

<sup>148</sup> George Smith, *A Vindication of Lawful Authority* (London, 1718), p. 4. For Smith (1693–1756), a non-juring bishop, and for ascription, see *D.N.B.*

<sup>149</sup> Richard Venn, *King George's Title Asserted* (London, 2nd edn., 'corrected', 1715), p. 18.

<sup>150</sup> Anonymous, *The British Liberty Asserted* (London, 1714), p. 5.

<sup>151</sup> Anonymous, *Parliamentary Right Maintain'd* (n.p., 1714), p. 98. William III's title of course seen as of same kind—the immediate and essential parallel drawn. See also Venn, *op. cit.* p. 48.

<sup>152</sup> Anonymous, *Treason Unmask'd* (London, 1713), p. 236.

Government also, and so make void his own Right and Title.<sup>153</sup> It had become axiomatic too that to suggest any doctrine opposed to the view that 'Allegiance is only due for the sake of Protection' would be 'Inconsistent with the happiness of Mankind'.<sup>154</sup>

It can now be seen, however, that this test for the bounds of allegiance entailed a readily suppressed but extremely significant corollary. For if the test of allegiance is a capacity to protect, the subject would also be bound to transfer his allegiance to any ruler who could prove himself better equipped than the existing legitimate power as a protector. But this was simply to concede that subjects are bound to recognize the rights of conquest, for 'since the Conqueror has Power to hinder them' from taking orders from anyone else, 'they for the sake of their own Preservation must be glad' to receive their protection from him.<sup>155</sup> Several of Harbin's critics were to pause anxiously on the brink of this purely Hobbesian claim. 'Persons of great Reputation for their Learning and Integrity', as one writer guardedly put it, have assured us that we ought not to inquire 'by what Right or Title a King ascends the Throne'. 'Tis sufficient to constitute him the Object of their Obedience, that he has Possession.' But all he would add was that he found 'considerable Probabilities' in the view.<sup>156</sup> Other critics, however, took the Hobbesian argument at a confident plunge. A startlingly clear summary of the conclusion to which this committed them was to be given by Locke's friend John Shute, in *The Revolution and Anti-Revolution Principles Stated and Compared*. It was impossible, he decided, to separate the right to govern from the power, for 'if a Conqueror has never so just a cause of War, all Men think it their Duty to adhere to the Person who has given this same just cause as long as he retains the Power of Protecting them, and after that, they think it their Duty to transfer their Allegiance to the Conqueror, tho' he had no just cause for making War'.<sup>157</sup>

The Norman Conquest was thus to be invoked once again as the earliest and best instance of a political truth which the whole of English history was claimed to endorse. Kings were owed allegiance not because of any right, but in terms of their capacity to protect. Protection being 'the Cause of our Allegiance', it must always be due 'to him that protects us; and not to him who is not able'.<sup>158</sup> It had thus been entirely just, 'after his Government was

<sup>153</sup> Venn, *op. cit.* p. 33.

<sup>154</sup> John Shute, *The Revolution and Anti-Revolution Principles Stated and Compared* (n.p., 2nd edn., 1714), p. 16. For Shute (1678–1734), see Robbins, *op. cit.* pp. 234–6. Shute's authorship established by acknowledgement in the work as being 'By the Author of the Two dissuasives against Jacobitism'. For Shute's authorship of these, see *D.N.B.*, *sub* Barrington.

<sup>155</sup> *Ibid.* pp. 11–12.

<sup>156</sup> Venn., *op. cit.* p. 49 and p. 53.

<sup>157</sup> Shute, *op. cit.* p. 21.

<sup>158</sup> Sir John Willes, *The Present Constitution, and the Protestant Succession Vindicated* (London, 1714), p. 45. For Willes (1685–1761), see *D.N.B.* For ascription, see S. Pargellis and D. J. Medley, *Bibliography of British History, the Eighteenth Century* (Oxford, 1951), p. 76.

settled', that 'Oaths of fidelity were universally taken' to William the Conqueror.<sup>159</sup> William had clearly created his own right to the succession. It was equally clear, however, that he could have claimed no other sort of right at all. Any attempt, as all these writers agreed, to trace a hereditary claim 'must be absolutely void in its own Nature'.<sup>160</sup> There was 'clear and unquestionable Evidence of Duke William's having no Right to the Crown, but by the Sword'.<sup>161</sup> He was 'a stranger in blood' to the English Crown; 'Invasion by the Normans' had indeed broken up the accepted succession in the House of Egbert.<sup>162</sup> William had in short been 'justly from his Victory and ensuing Fortunes stiled the Conqueror'.<sup>163</sup>

The irony was complete. Parliamentary right was sustained by an argument which, a generation earlier, might have been used to confute it. The Parliamentarians who had stood for the rights of representative assemblies against absolute power managed to assimilate to themselves the most characteristic argument of the contrary ideology. The Revolutionaries who had denied that the Norman Conquest could ever have interrupted the immemorial rights of Parliament ended up by including a covert attack on the basis of their own claims. The unfortunate Harbin was thus to be denounced for treason by the liberal 'whigs'<sup>164</sup> in effect for attempting to confute an argument used most characteristically by the liberals' leading opponent, 'the infamous author of *Leviathan*', Thomas Hobbes.

This study has attempted to present one case-history in the variety of uses of historical information. The uses have appeared more complex and devious even than their protagonists themselves might readily have admitted. The eventual acceptance of 'whig' ideology is seen to have been based on covert adaptations as well as on suppressions of the earlier and more complex structure of historical ideas. The triumph of the 'whig' version suppressed further discussion about early English history of either the absolutist or Leveller kind. Yet the implications of these attitudes were to some extent to be covertly adopted by the 'whigs' themselves. The resulting amalgam was to be extremely influential: but it can now be seen that the process was also not without its casualties.

The most obvious casualty was to be the accurate investigation of early English history. It happened that the most ideologically acceptable use of the historical information was also the least historically accurate. The 'whig'

<sup>159</sup> Higden, *View*, p. 2.

<sup>160</sup> Willes, *op. cit.* p. 20.

<sup>161</sup> *British Liberty Asserted*, p. 14. Similar denial made by Shute, *op. cit.* p. 59.

<sup>162</sup> J. Asgill, *The Protestant Succession Vindicated* (London, 1714), pp. 62-4. Asgill (1659-1738) wrote several such pieces, none of much value.

<sup>163</sup> *Treason Unmask'd*, p. 235. These remarks were in fact lifted without any acknowledgement from the *New History of the Succession* (1690), p. 32. Cf. above, fn. 51.

<sup>164</sup> The charge of treason was put by Asgill, by Shute, by the author of *Treason Unmask'd*, and in the preface to *British Liberty Asserted*.



interest in early English history had been born of frankly propagandist needs. But the 'whig' influence was to become so pervasive that their partisan dismissal of the Norman Conquest was to become enshrined as the accepted scholarly tradition. The error was manifest, yet it has only been eradicated by the most polemical revisions of modern scholarship. The popular histories in the meantime had all come to repeat with implicit faith the 'whig' myth of an Ancient Constitution. The great exception, Hume's *History*, was to be vilified at its first appearance, and was later to be denounced by Macaulay himself.<sup>165</sup> Macaulay, conversely, regarded Hallam with considerable esteem,<sup>166</sup> and Hallam's *View of the State of Europe* embodied the 'whig' mythology in its most patriotic form. The continuity of English progress was regarded as making the constitutional history of England an 'object of superior interest' over other European nations. Although this continuity might seem to have been interrupted at 1066, English liberties had in fact always survived, and though 'long in abeyance' they 'became a tangible possession' once more with the grant of the Great Charter. The shocking view that the Charters had in fact merely 'sprung from the private ambition of a few selfish barons' could thus be dismissed with complete confidence.<sup>167</sup> The same mythology, moreover, was to receive the most formidable scholarly backing when Freeman published his five vast volumes on the Norman Conquest some sixty years later. His immense learning was used in effect to endorse the same historically threadbare 'whig' propaganda. The intention of his entire account, the fullest ever conceived, was almost paradoxically to demonstrate that the Conquest itself had not after all been a very significant event. 'I cannot too often repeat,' as he began, 'for the saying is the very summing up of the whole history, that the Norman Conquest was not the wiping out of the Constitution, the laws, the language, the national life, of Englishmen.'<sup>168</sup> And at the end of the final volume, in the chapter on the *Political Results of the Conquest*, we are still being assured that 'the final effect' of the Conquest 'was to enable us to preserve more of the spirit and institutions of earlier times, to keep up a more unbroken continuity' with the Ancient Constitution.<sup>169</sup>

The other casualty of the 'whig' hegemony proved to be nothing less than the submerging of any predominant rationalism in the English political tradition. This process itself, as can be seen, embodied a notable irony, for while Coke's conception of the continuity of right, his reversion to allegedly immemorial ways, was originally the backing for a revolutionary programme, its

<sup>165</sup> For its initial reception, see Hume, *Autobiography*. For Macaulay on Hume see Lady Trevelyan (ed.), *The Works of Lord Macaulay* (8 vols., London, 1866), v, 152.

<sup>166</sup> For Macaulay on Hallam, see *ibid.* v, esp. 162-6.

<sup>167</sup> Henry Hallam, *A View of the State of Europe during the Middle Ages* (3 vols., London, 1818), II, 375, 421 and 447-51.

<sup>168</sup> Edward A. Freeman, *The History of the Norman Conquest of England* (5 vols., Oxford, 1867-76), I, 72.

<sup>169</sup> *Ibid.* v, 334.

legacy was to be a sceptical conservatism, a use of history not so much for political debate as to deny that any such debate could be valid. History itself became seen as the embodiment of what was constitutionally proper—not to be quarrelled with or altered, except at grave peril. The attitude has become one of the most characteristic and influential voices in English political thought.<sup>170</sup> It was not to be Hobbes's attitude to history—as evidence to verify more abstract conclusions—but rather Hale's reply to Hobbes—the reply that we must hold fast to history itself—which was to go into the mainstream of the tradition. This has of course come to be regarded as pre-eminently the tradition of Burke. But Burke himself looked to Hale, and Hale looked to Coke, and so the tradition falls into place as one of the most potent legacies of the 'whig' ideology.<sup>171</sup>

If we were to try, however, to trace the roots of English liberalism, we would scarcely look for them in this 'whig' attitude to political life. The insistence rather of Hobbes on the equality of men as the necessary point of departure, the insistence of the Levellers on the rights of men as the necessary political conclusion, the insistence of all the writers on sovereignty we have examined on some principle of utility as the proper measure of a government's value—these, the more systematically rationalist attitudes, are also clearly the more recognizably liberal.<sup>172</sup> They are attitudes which were characteristically sustained by an appeal (as with the 'whigs') to history: but it was an appeal to start, not to stop, discussion.

The 'whig' ideology indeed obviously amounted neither to genuine history nor to systematic political theory. It was more like political propaganda in historical dress. Yet it was to be their mode of thought which left the strongest mark not only on the conduct of political affairs, but also upon the study of history itself, and even upon political theory. The 'whigs' managed either to suppress or to adapt both the historical and the theoretical views by which their own ideology could have been most severely damaged. This attempt to study the process may thus be said to endorse a familiar truism: the most accepted ideology is by no means always the one based on the most acceptable evidence.

<sup>170</sup> It has gained a most eloquent modern embodiment, as systematically as the doctrine itself will allow, in the works of Professor Oakeshott. See esp. 'Political Education', in *Rationalism in Politics* (London, 1962).

<sup>171</sup> For Hale's reply to Hobbes, 'Sir Matthew Hale's Criticisms on Hobbes's Dialogue of the Common Laws', see Sir William Holdsworth, *A History of English Law* (London, 14 vols., 1903–52), v, Appendix III, pp. 499–513. On Burke's affinities to Hale, see J. G. A. Pocock, 'Burke and the Ancient Constitution—A Problem in the History of Ideas', *The Historical Journal*, III (1960), 125–43.

<sup>172</sup> This claim is indeed the theme of Macpherson, *Possessive Individualism*, see esp. ch. vi.