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A Shared European Heritage

VOLUME II

The Values of Republicanism in Early Modern Europe

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Contents of Volume II

Contents of Volume I

1

Classical Liberty and the Coming of the English Civil War

Quentin Skinner

A good place to begin this chapter – and indeed this entire volume on republican values – is with the rubric *De statu hominis* from the opening of the *Digest* of Roman law, perhaps the most influential of all the classical discussions of the concept of civil liberty. There we read that 'the fundamental division within the law of persons is that all men and women are either free or are slaves'.[1] After this we are offered a formal definition of the concept of slavery. 'Slavery is an institution of the *ius gentium* by which someone is, contrary to nature, subjected to the dominion of someone else.'[2] This in turn is said to yield a definition of individual liberty. If everyone in a civil association is either bond or free, then a *civis* or free subject must be someone who is not under the dominion of anyone else, but is *sui iuris*, capable of acting in their own right.[3] It likewise follows that what it means for someone to lack the status of a free subject must be for that person not to be *sui iuris* but instead to be *sub potestate*, under the power or subject to the will of someone else.

While this summary was exceptionally influential, we already encounter a very similar analysis at a much earlier date among the historians and philosophers of ancient Rome, and especially in the writings of Cicero, Sallust, Livy and Tacitus. Anyone in late-sixteenth- or early-seventeenth-century England who had received a university education would have been required to study

1. Mommsen and Krueger (eds.) 1970, I, v, 3, 35: 'Summa itaque de iure personarum divisio haec est, quod omnes homines aut liberi sunt aut servi.' (Note that, in this and all subsequent quotations from the *Digest*, I have made my own translations.)
2. *Ibid.*, I, v, 4, 35: 'Servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur.'
3. *Ibid.*, I, VI, 1, 36: 'Some persons are in their own power, some are subject to the power of others, such as slaves, who are in the power of their masters' ['quaedam personae sui iuris sunt, quaedam alieno iuri subiectae sunt . . . in potestate sunt servi dominorum . . .'].

these texts in their original Latin (Feingold 1997, esp. pp. 246–56), but it is worth recalling that it was exactly at this period that all these writers also became available in English for the first time. Nicholas Grimalde's translation of Cicero's *De officiis* was issued as early as 1556 (see Cicero 1556), but it only became a best-seller when it appeared in a dual-language version in 1558, after which it went through at least five editions before the end of the century.[4] Meanwhile Henry Savile's translation of Tacitus's *Historiae* and *Agricola* had been published in 1591, with Richard Grenewey's versions of the *Annals* and *Germania* following in 1598.[5] Two years later Philemon Holland issued his enormous folio containing the whole of the extant sections of Livy's *History* (Livy 1600; cf. Peltonen 1995: 135–6), while in 1608 Thomas Heywood published his translations of Sallust's *Bellum Catilinae* and *Bellum Iugurthinum*.[6]

Among these writers, it is Cicero who is most interested in formal definitions of *libertas* and *servitus*, freedom and servitude. The fear of enslavement figures as a running theme of his speeches denouncing Marcus Antonius as a public enemy of Rome's traditional *civitas libera* or free state (Cicero 1926: III, 6, 14, p. 202). These so-called *Philippics* became one of the most popular of Cicero's works in the Renaissance, with a dozen or more editions appearing by the middle of the sixteenth century.[7] Cicero repeatedly exhorts the Roman people to reassert the *libertas* they had lost when they fell under the domination of Julius Caesar, and violently attacks Antonius for aspiring to reduce his fellow citizens to a renewed condition of slavery. Not only does Cicero organise his argument around the contrast between freedom and servitude, but he emphasises in a much-cited passage that liberty is forfeited not merely by actual oppression but also by conditions of domination and dependence:

> Do you call servitude peace? Our ancestors took up arms not only to be free, but also to win power. You think that our arms should now be thrown away in order that we should become slaves. But what cause of waging war can be more just than that of repudiating slavery? For the most miserable feature of this condition is that, even if the master happens not to be oppressive, he can be so should he wish.[8]

4. See Cicero 1558. This dual-language version was reprinted in 1568, 1574, 1583, 1596 and 1600.
5. See Tacitus 1591 and 1598 and cf. Peltonen 1995: 124–35 on these translations and their influence.
6. Sallust 1608. But Sallust's *Jugurtha* had already been translated by Alexander Barclay in 1557.
7. Information from British Library catalogue.
8. Cicero 1926: VIII, 4, 12, p. 374: 'Servitutem pacem vocas? Maiores quidem nostri, non modo ut liberi essent, sed etiam ut imperarent, arma capiebant; tu arma abicienda censes, ut serviamus.

As Cicero's closing remark makes clear, to enjoy *de facto* freedom of action is not necessarily to enjoy liberty. If your freedom is held at the discretion of anyone else, such that you continue to be subject to their will, then you remain a slave. To enjoy liberty, in other words, it is not sufficient to be free from coercion or the threat of it; it is necessary to be free from the *possibility* of being threatened or coerced.[9]

Cicero was at least as much interested in his *Philippics* in the contrasting ideal of the *civitas libera* or free state, but for the best-known statement of his views about the meaning of civil or public liberty we must turn to his *De officiis*. We learn in Book II that, as Grimalde's translation puts it, 'libertie be all to shaken' when 'the lawes bee sounke by some mans might' and citizens are made to depend on the will of a ruler instead of on the rule of law (Cicero 1558, fo. 81[r]). By contrast, as Cicero had already laid down in Book I, free men can be defined as those who are not dependent on anyone else, but are able 'to use their owne libertie: whose propertie is, to lyve as ye list' (*ibid*., fo. 31[r]). Summarising in Book III, Cicero left his early-modern English readers to ponder an almost treasonably anti-monarchical inference: anyone desiring to be a king 'alloweth the overthrow of law, and libertie', so that 'it is not honest to raign as king in that citie, which both hath been & ought to be free' (*ibid*., fo. 149[r]).

Cicero's analysis is heavily indebted to Aristotle's discussion of freedom and tyranny in the *Politics*, and it is a further striking fact that Aristotle's text likewise became available in English for the first time at the end of the sixteenth century. Louis le Roy's French translation was turned into English in 1598, and in this version we are told that kingship degenerates into an enslaving form of tyranny whenever a king 'dooth absolutely commaund and raigne over such as are equall, and all that are better; respecting his owne, and not the subjects profit, and therefore is not voluntarie: for no person that is free dooth willingly endure such a state' (Aristotle 1598, Book IV, ch. 10, p. 208). Later we are given an account of the 'tokens' of political liberty – an account that Cicero follows almost word for word. According to Aristotle, 'obeying and governing by turns, is one token of libertie', so that we may say that 'the end and foundation of the popular state, is Libertie'. To which he adds that 'another token of libertie is, to live as men list', since 'the propertie of bondage is, not to live according to a man's own discretion' (*ibid*., Book VI, ch. 2, pp. 339–40).

Quae causa justior est belli gerendi, quam servitutis depulsio? in qua etiamsi non sit molestus dominus, tamen est miserrimum posse, si velit.'

9. For the idea that liberty should be contrasted not with coercion but with enslavement see Pettit 1997, esp. pp. 17–41, 51–73, an analysis to which I am greatly indebted.

Besides drawing on Aristotle, Cicero refers at several points in *De officiis* to the Law of the Twelve Tables, which he took to be the earliest legal code established in the *civitas libera* after the expulsion of the kings from Rome (Cicero 1913: I, 12, 37, p. 40 and III, 31, 111, p. 390). Cicero alludes to the Twelve Tables again in *De legibus*, in Book III of which he outlines an ideal constitution for a free state and proceeds to enunciate two golden rules. 'When giving laws to free peoples', he reminds us once again, we must first ensure that they are never dominated by the wills of their magistrates.[10] We must ensure that they are entirely ruled by laws, so that 'just as the magistrates govern the people, so the laws govern the magistrates'.[11] The other golden rule is the one explicitly stated in the Twelve Tables, according to which the highest duty of magistrates is encapsulated in the maxim *salus populi suprema lex esto*, 'the safety of the people must be treated as the supreme law' (Cicero 1928: III, 3, 8, p. 466).

The Roman historians were less interested than Cicero in formal definitions of freedom and servitude, but they thought of these concepts in very similar terms. Sallust at the start of his *Bellum Catilinae* describes how the rule of the early kings degenerated into *dominatio* and thereby enslaved the Roman people (Sallust 1931: VI–VII, pp. 10–14). But the people managed – in the words of Heywood's translation – to turn this slavery under 'the Government of one' into a 'forme of limited pollicy', thereby establishing 'this form of Liberty in Government' (Sallust 1608: 17 [*recte* p. 7]). Tacitus in his *Annals* provides a contrasting description of how the Roman people were forced back into slavery under the early principate, and likewise equates their loss of liberty with the re-imposition of arbitrary will as the basis of government. As Grenewey's translation puts it, after the ascendancy of Augustus 'there was no signe of the olde laudable customes to be seene: but contrarie, equalitie taken away, every man endevored to obey the prince', so that 'the Consuls, the Senators, and Gentlemen ranne headlong into servitude' (Tacitus 1598: 2–3). Tacitus admits that some later emperors liked to invoke the traditional *praecepta* of the free state, as when Vitellius adjured Meherdates before the Senate 'that he should not thinke himselfe a Lord and maister to commaund over his subjects as slaves; but a guide, and they citizens' (*ibid*.: 158). But as Tacitus's tone continually makes clear, he regards such rhetorical flights as little better than a mockery of the liberty that the Roman people had lost.

In the opening books of his *History* Livy offers a fuller account of both these processes. Book II begins with a much-cited account of the transition

10. Cicero 1928: III, 2, 4, p. 460: 'nos autem, quoniam leges damus liberis populis . . .'
11. *Ibid*.: III, 1, 2, p. 460: 'ut enim magistratibus leges, ita populo praesunt magistratus'.

from the *dominatio* of the early kings to the liberty enjoyed by the Roman people under their 'free state'. Livy equates this transformation with the establishment of the rule of law and the consequent ending of any dependence on the discretion of the king (Livy 1919: II, I, 218–20 and II, III, 226–8). Having expelled the Tarquins, the Romans established 'a free state now from this time forward'. 'Which freedom of theirs', as Holland's translation goes on, was due to the fact that 'the authoritie and rule of laws' was now 'more powerfull and mightie than that of men' (Livy 1600: 44).

Livy draws on this understanding of freedom and slavery in many later passages, but he illustrates the danger of falling back into servitude most fully in his account of the Decemvirate. The Tribunes initially called for the establishment of these magistrates on the grounds that the rule of the consuls was 'too absolute, and in a free state intolerable', since they were able to 'rule of themselves, and use their owne will and licentious lust in steede of law' (*ibid*.: 87). But within a year of receiving their special authority to reform the laws the Decemvirs seized power for themselves. As a result, the people who in their reforming zeal had been 'gaping greedily after libertie' found themselves 'fallen and plunged into servitude and thraldome' (p. 112). This reversion to slavery, Livy repeats, occurred when they lost the protection of the laws and found themselves subjected once more to arbitrary power. 'The meaner persons went to the wals, and with them they dealt according to their lust and pleasure right cruelly. The person wholy they regarded, and never respected the cause, as with whom favour and friendship prevailed as much as equity and right should have done' (p. 111).

By contrast, Livy always defines the liberty of cities as well as citizens in terms of not living in subjection to the power or discretion of anyone else. When, for example, he describes the surrender of the Collatines to the people of Rome, he stresses that they were able to take this decision because they were 'in their owne power', and hence 'at libertie to doe what they will' (*ibid*.: 28). The same view emerges still more clearly from the much later passage in which he discusses the efforts of the Greek cities to restore their good relations with Rome. To be able to enter into such negotiations, one of their spokesmen is made to say, presupposes the possession of 'true libertie', that condition in which a people 'is able to stand alone and maintain it selfe, and dependeth not upon the will and pleasure of others' (p. 907).

By the time Charles I confronted his Parliament in 1640, after a gap of eleven years, these observations by the Roman historians about 'free states' and the attendant dangers of enslavement had all been turned into works of English political thought. Carrying with them the unparalleled prestige accorded to the wisdom of antiquity, these works provided at the same time

an explicitly anti-monarchical perspective from which the English could begin to reflect anew on their political experiences, and in particular on the relations between the liberty of subjects and the prerogatives of the crown. As Thomas Hobbes was subsequently to observe in *Leviathan*, such reflections were bound in the end to have a destabilising effect on the Stuart monarchy (Hobbes 1996, ch. 21, pp. 149–50). Those who felt threatened by the crown's understanding of its prerogatives now had available to them a way of thinking about their grievances in the light of which the crown's attitudes and policies could easily be represented as nothing less than an aspiration to reduce a free people to servitude.

This aspect of the ideological origins of the English revolution has arguably received too little attention from historians,[12] who have placed an overwhelming emphasis on English common law as the main instrument for challenging the extra-Parliamentary powers of the crown.[13] They have often implied that the constitutional debates of the early Stuart period were largely immune from broader legal influences,[14] and insofar as they have discussed the role of Roman law in these debates they have tended to associate its principles with the defence of absolutism.[15] As we shall see, however, one of the most potent sources of radical thinking about the English polity in the years immediately preceding the outbreak of civil war in 1642 was provided by classical and especially Roman ideas about freedom and servitude. Far more than has generally been recognised, the outbreak of the English revolution was legitimised in neo-Roman terms.

We need to focus on two particular groups who made prominent use of classical arguments in the climacteric period between the convening of the Short Parliament in April 1640 and the outbreak of civil war in the summer of 1642. First of all we need to take note of the common lawyers in Parliament, several of whom exhibit a surprising willingness to draw on Roman sources in defending the liberties of subjects. But we mainly need to focus

12. The most important exception to this rule is the account in Peltonen 1995. For valuable surveys of Roman liberty and its revival in early-modern English political theory see also Sellers 1994, esp. pp. 69–98 and Sellers 1998, esp. pp. 7–11, 17–22.
13. The classic work is Pocock 1987c, but for important revisions see Burgess 1992 and Sommerville 1999: 81–104. These assumptions about common law are particularly prominent in Burgess 1992, Burgess 1996 and Cromartie 1999.
14. A point excellently made against G. R. Elton, Conrad Russell and their admirers in Sommerville 1996.
15. It used to be generally agreed that civil law mainly served as a prop to absolutism. See for example Mosse 1950 and Simon 1968. More recently, thanks largely to Levack 1973, it has been recognised that the situation was more complicated. See, for example, Burgess 1992: 121–30 and 1996: 63–90. But even Levack 1973, esp. p. 88 and Burgess 1996, esp. pp. 75, 78 still appear to assume a basic consonance between civil law and royalism.

on the group of malcontents later stigmatised by Hobbes in his *Behemoth* as the 'Democratical Gentlemen' (Hobbes 1969: 26). Hobbes's characterisation is in one way misleading, for it gives the impression that the gentlemen in question were self-conscious exponents of a radical ideology designed to limit the powers of the crown. To read their speeches and pamphlets, however, is to be struck not by their radicalism but by their defensive and even reactionary outlook, by their bewilderment as well as outrage as they confronted what they took to be the crown's assault on their standing in the community, and above all by their determination to exploit any arguments tending to uphold their traditional privileges. Hobbes was undoubtedly right, however, to see that their reliance on classical arguments about freedom and servitude eventually pushed them into adopting a standpoint so radical as to be virtually republican in its constitutional allegiances. Hobbes bitterly summarises the position into which they stumbled as a result of seeking to defend their interests by recklessly drawing on 'the books written by famous men of the ancient Grecian and Roman commonwealths' (*ibid.*: 3). They found themselves committed to arguing that the crown's prerogatives were straightforwardly incompatible with the liberty of subjects, and thus that 'all that lived under Monarchy were slaves' (Hobbes 1996: 150).

We need to distinguish two separate phases of the attack mounted by these democratical gentlemen and their allies. They began by concentrating on what they took to be the crown's continuing disregard for the personal and property rights of individual subjects. How far the holding of lands and goods may be subject to the will of the king became a leading topic of debate from the moment when Parliament first re-assembled in the spring of 1640. The anxiety of the democratical gentlemen stemmed from the fact that, in the course of the 1630s, the crown had extended its policy of raising non-Parliamentary revenues, in particular by turning the Ship Money levy into a general tax. When George Peard, a common lawyer, rose in the Short Parliament to speak against this judgment, he declared that the imposing of non-Parliamentary taxes takes away 'not onely our goods but persons likewise', so reducing us from free subjects to slaves (Cope with Coates (eds.) 1977: 172). But the most powerful denunciation of the policy from a neo-classical standpoint appeared in *The Case of Shipmony Briefly Discoursed*, a pamphlet anonymously issued by Henry Parker to coincide with the opening of the Long Parliament in November 1640.[16] Parker begins by invoking the

16. On the precise political context in which Parker's tract appeared see Mendle 1995: 32–50.

Roman law view of what it means to live in servitude. 'Where the meere will of the Prince is law' we can expect 'no mediocrity or justice', and 'wee all see that the thraldome of such is most grievous, which have no bounds set to their Lord's discretion' ([Parker] 1999: 98). Parker is clear that the mere existence of such discretionary powers, not their actual exercise, has the effect of reducing us to slavery. 'It is enough that we all, and all that we have, are at his discretion', for where all law is 'subjecte to the King's meer discretion', there 'all liberty is overthrowne' (pp. 110, 112). With these general considerations in mind, Parker turns to the Ship Money tax. If we accept that the king has a right to impose this charge, so that 'to his sole indisputable judgement it is left to lay charges as often and as great as he pleases', this will 'leave us the most despicable slaves in the whole world' (p. 108). The reason is that this will leave us in a condition of total dependence on the king's goodwill. But as Parker rhetorically asks, if we have no alternative but to 'presume well of our Princes', then 'wherein doe we differ in condition from the most abject of all bondslaves?' (p. 109).

As the constitutional crisis deepened, the two Houses eventually produced a general statement to the effect that we forfeit our freedom whenever our properties are made dependent on the will of the king. The occasion for this resolution was the dispute that arose in the opening months of 1642 over the decision by Parliament to take into its own hands the royal arsenal at Hull. When the governor, Sir John Hotham, closed the gates of the city against the king, Charles I reacted by accusing him of treason, arguing that as sovereign he possessed 'the same title to His Town of *Hull*, which any of His Subjects have to their Houses or Lands' (Husbands *et al.* (eds.) 1642: 266). The response of the two Houses – in their Remonstrance of 26 May 1642 – was to proclaim this view of the prerogative blankly inconsistent with the liberty of subjects. Arguing that any threat to the property of freemen is at the same time a threat to their living and substance, Parliament went on to speak – in the litany later made famous by John Locke – of an inherent conflict between such prerogatives and our 'lives, Liberties and Estates' (p. 264). Kings are prone to believe 'that their Kingdoms are their own, and that they may do with them what they will' (p. 266). But this principle 'is the Root of all the Subjects misery, and of the invading of their just Rights and Liberties'. It undermines 'the very Foundation of the liberty, property and interest of every Subject in particular, and of all the Subjects in generall'. To say that a king can dispose of these rights at will is to say that they are held by mere grace, which in turn is to say that we are not free subjects at all (*ibid.*).

The need to secure life, liberty and estates against such encroachments continued to be asserted throughout the period up to the start of the fighting in the autumn of 1642. During the opening months of that year, however, the democratical gentlemen and their allies suddenly shifted the focus of their attack, turning to challenge in the name of popular liberty a power of the crown hitherto regarded as sacrosanct by all parties. The prerogative they now began to question was that of the 'Negative Voice', the right of the king to give or withhold his assent to any proposed acts of legislation put to him by the two Houses of Parliament.

The issue over which the democratical gentlemen plunged into this further phase of their campaign was the question of who should control the militia. After the outbreak of the Irish rebellion in October 1641, and after the king's abortive but violent attempt to arrest five members of Parliament in January 1642, the two Houses claimed to be anxious about their own security. Following their decision in January to take over the arsenal at Hull, they proceeded at the beginning of February to draw up a Militia Ordinance which they sent to the king for his assent. Protesting about 'the bloody counsels of Papists and other ill-affected persons', they proposed that 'for the safety therefore of His Majesty's person, the Parliament and kingdom at this time of imminent danger', the control of the militia should be vested exclusively in persons approved by the two Houses of Parliament. They went on to list their local nominees, granting them extensive powers to muster, train and arm the people 'for the suppression of all rebellions, insurrections and invasions that may happen'.[17]

As every good royalist knew, the control of the militia was one of the indisputable 'marks' of sovereignty listed by Bodin in his *Six livres de la république*. Although Charles had hitherto accepted a number of bills limiting his prerogative, this further demand at first elicited from him and his advisers a stunned silence.[18] While the king temporised, however, Parliament made an astonishing move that wholly changed the terms of the debate. Voting the king's delay a direct denial, the two Houses passed the Militia Ordinance on their own authority on 5 March 1642 (Gardiner (ed.) 1958: 245–7), and ten days later pronounced it legally binding on the people notwithstanding its failure to secure the royal assent (Husbands *et al.* (eds.) 1642: 112).

17. Gardiner (ed.) 1958: 245–6 prints the Ordinance of 5 March, but notes that the same provisions already appear in the version sent for the royal assent by both Houses on 16 February. Husbands *et al.* (eds.) 1642: 73–5 print the list (dated 12 February) of those whom Parliament proposed to entrust with the organisation of the militia.

18. See Charles I's temporising response in Husbands *et al.* (eds.) 1642: 80.

'I am so much amazed', exclaimed the king (an unfortunate echo of Shakespeare's *Richard II*) 'that I know not what to Answer' (*ibid.*: 94). As recently as December 1641 John Pym – unofficial leader of the opposition in the House of Commons – had explicitly conceded that the prerogative of the Negative Voice was a pillar of the constitution and beyond dispute. Less than three months later, however, the two Houses had in effect voted to set this prerogative aside. The outcome was an instant and acute crisis of legitimacy. How could Parliament possibly defend its decision to trample on such a fundamental and hitherto unquestioned flower of the crown?

The answer is that the principles in the light of which the two Houses justified their action were entirely drawn from the legal and moral philosophy of ancient Rome. The resulting campaign mounted by the democratical gentlemen and their allies may in turn be said to have progressed in two distinct steps. They began by taking their stand squarely on the fundamental maxim that Cicero had cited from the Law of the Twelve Tables: that, in legislating for a free state, s*alus populi suprema lex esto*, the safety of the people must be treated as the supreme law. The vote calling for the Militia Ordinance to be obeyed as a law speaks of 'the safeguard both of his Majestie, and his People' as paramount (Husbands *et al.* (eds.) 1642: 112), while the petition of a week later repeats that none of their plans can 'bee perfected before the Kingdome be put into safetie, by setling the *Militia*' (p. 123). Summarising their grievances in their declaration of 19 May 1642, they repeat once more that the fundamental purpose of government is 'the safeguard both of his Majesty, and his people', the maintenance of 'the good and safetie of the whole' (p. 207).

The upholding of *salus populi*, they concede, normally requires that the two Houses of Parliament should act in concert with the king. We still find this understanding of the mixed constitution unhesitatingly put forward even in the markedly hostile declaration of 19 May 1642:

> The Kingdome must not be without a meanes to preserve it selfe, which that it may be done without confusion, this Nation hath intrusted certaine hands with a Power to provide in an orderly and regular way, for the good and safetie of the whole, which power, by the Constitution of this Kingdome, is in his Majestie and in his Parliament together. (*ibid.*)

The two Houses accept, in other words, that England is a mixed monarchy, and that in normal circumstances the highest legislative authority can be

exercised only when king and Parliament act together as the three Estates of the realm and hence as the joint bearers of sovereignty.[19]

The two Houses next insist, however, that the crisis in which the nation currently finds itself is such that this fundamental principle of the mixed constitution cannot be upheld. Although the nation is facing a dire emergency, the king is incapable of recognising the gravity of the situation, so completely has he been hoodwinked by a 'Malignant Party' of evil counsellors.[20] Given this predicament, with one of the three Estates effectively disabled from pursuing the public good, it becomes the positive duty of the other two Estates to act together in the name of *salus populi*, even if this involves defying the sadly misguided king.

With this contention, the two Houses arrive at their revolutionary conclusion that, at least in conditions of emergency, the highest legislative authority lies not with the king-in-Parliament but with Parliament alone.[21] We find this claim to Parliamentary sovereignty unambiguously put forward in the declaration of 19 May 1642. 'The Prince being but one person, is more subject to accidents of nature and chance, whereby the Common-Wealth may be deprived of the fruit of that trust which was in part reposed in him' (Husbands *et al.* (eds.) 1642: 207–8). When 'cases of such necessity' arise, 'the Wisdome of this State hath intrusted the Houses of Parliament with a power to supply what shall bee wanting on the part of the Prince' (p. 208). The need for this power is obvious in the case of natural disability, but 'the like reason doth and must hold for the exercise of the same power in such cases, where the Royall trust cannot be, or is not discharged, and that the Kingdome runs an evident and imminent danger therby' (*ibid.*). But this is to speak of the very predicament in which, as a result of the machinations of the Malignant Party, the nation now finds itself. It follows that in this emergency the two Houses can and must act according to their own judgment, and 'there needs not the authority of any person or Court to affirme; nor is it in the power of any person or Court to revoke, that judgement' (*ibid.*).

By the end of May 1642, the democratical gentlemen and their allies had fully articulated this new vision of the mixed constitution. Even the core prerogative of the Negative Voice, they now argue, can be set aside by

19. For other statements of the theory at this juncture see Mendle 1985: 177.

20. This claim is first strongly stated in the petition about the militia presented to the king on 1 March 1642. See Husbands *et al.* (eds.) 1642: 92–4.

21. On this dramatic revision of the theory of the mixed constitution see Mendle 1985, esp. pp. 176–83. As Mendle 1993 rightly adds, this move in the spring of 1642 undoubtedly involved the two Houses in claiming that sovereignty lay with them alone.

Parliament if the safety of the people might otherwise be jeopardised. We next need to note that, in the course of the months that followed, the two Houses proceeded to open up a different and yet more radical line of attack on the government. Moving beyond their simple invocations of *salus populi*, they began to delve more deeply into their classical heritage, and in particular to appeal yet again to Roman ideas about freedom and servitude.

This further development was prompted by the fact that the government had in the meantime succeeded in mounting a damaging counterattack on their initial line of argument. As Charles I and his advisers soon perceived, the control of the militia was constitutionally a side issue. The key constitutional question was raised by Parliament's underlying rejection of the prerogative of the Negative Voice. Responding to this revolutionary move, the king's advisers went vigorously on the offensive. No one, they responded, can be under any obligation to obey a mere Bill or Ordinance, even if it has been passed by both Houses, if it fails to secure the royal assent. This is because, according to the fundamental laws and customs of the realm, the power to make laws is vested at all times jointly in king-in-Parliament. This reading of the constitution is implicit in several of Charles's Declarations of May 1642,[22] but the clearest exposition can be found in the *Answer to the XIX Propositions* composed for the king by Viscount Falkland and Sir John Culpeper and issued on 18 June 1642 (Mendle 1985: 6). The *Answer* unequivocally asserts that 'in this kingdom the Laws are jointly made by a King, by a House of Peers, and by a House of Commons chosen by the People, all having free Votes and particular Priviledges' (Charles I 1999: 168). Furthermore, the essence of the king's standing as one of the three Estates is said to derive from the fact that he possesses a Negative Voice.[23] Speaking in his own person, Charles maintains that any attempt to bypass or even question this prerogative would be to 'deny the freedom of Our Answer, when We have as much right to reject what We think unreasonable, as you have to propose what you think convenient or necessary'. By the terms of the mixed constitution 'the Manage of Our Vote is trusted by the Law, to our Own Judgement and Conscience', and 'most unreasonable it were that two Estates, proposing something to

22. See Charles's Answer to Parliament's Declaration of 4 May about Hull (Husbands *et al.* (eds.) 1642: 163–4). See also the King's Answer to Parliament's Declaration of 5 May about the militia (ibid.: 175–6). For the adoption of the same vocabulary by royalist pamphleteers after April 1642 see Mendle 1985: 180–2.

23. Charles I 1999: 155. Fukuda 1997: 24–5 sees in this passage the earliest 'Polybian' definition of the English constitution. But the language of the *Answer* closely echoes the Parliamentary Declarations to which it was a response.

the Third' should be able to bind the third to act according to their will (Charles I 1999: 164).

Charles I's *Answer* has sometimes been seen as a concessive and conciliatory document (Weston 1965: 5, 26, 29). But as soon as we place it in the context of the Parliamentary attack on the royal veto, we can see that it constituted an aggressive and powerful counterblast to the democratical gentlemen and their allies. With its unimpeachable account of how the normal processes of legislation actually operate, and with its consequent reaffirmation of the Negative Voice as an indispensable element in the mixed constitution, the *Answer* furnished the crown and its protagonists with an almost unanswerable legal case. As the democratical gentlemen quickly perceived, if they were to sustain the momentum of their campaign, they needed as a matter of urgency to develop some new and different lines of attack.

It was at this moment that the democratical gentlemen sought to regain the ideological initiative by delving yet more deeply into their classical heritage, and in particular by extending their earlier discussions of freedom and servitude. The main credit for engineering this crucial move appears to be due to Henry Parker, whose *Observations upon some of his Majesties late Answers and Expresses* first appeared anonymously on 2 July 1642.[24] The *Observations* is Parker's most important tract, and as we shall see its neoclassical analysis of freedom and free commonwealths exercised an immediate and pervasive influence on other writers in favour of the parliamentary cause.

Parker's is an unusually complex text, however, and it would be misleading to imply that his account of freedom and slavery carries the main burden of his case. Rather he seems to have taken his principal task to be that of lending full support to the radical interpretation of the mixed constitution already put forward by the two Houses of Parliament. He accordingly begins by reaffirming that *salus populi* is 'the Paramount Law that shall give Law to all humane Lawes', enunciating the principle in exactly the terms that Cicero had employed in his *De legibus* (Parker 1933: 169; cf. Cicero 1928: III, 1, 1–3, pp. 458–60). He next concedes that in normal circumstances 'the legislative power of this Kingdome is partly in the King, and partly in the Kingdome' (Parker 1933: 182). But he then insists that 'where this ordinary course cannot be taken for the preventing of publike mischiefes, any extraordinary course that is for that purpose the most effectual, may justly be taken and

24. For an account of the context in which Parker's text appeared see Mendle 1995: 70–89.

executed' in accordance with the paramount duty to ensure that *salus populi* is preserved.[25]

For the purposes of the present argument, however, what matters most about Parker's *Observations* is that, in addition to restating this earlier line of thought, he developed a further and explicitly neo-classical attack on the prerogative of the Negative Voice. If this prerogative, he declares, is indeed pivotal to the operation of the mixed constitution, then we cannot speak of the English as a free nation at all. The effect of the Negative Voice is to take away the liberty not merely of individual subjects but of the people as a whole. It converts the English from a free people into a nation of slaves.

This further argument runs as a groundswell throughout Parker's text, but it may be helpful to distinguish two elements in it. One hinges on the nature of the relationship between the king and Parliament presupposed by the claim that the crown possesses a Negative Voice. With this prerogative, Parker objects, the king 'assumes to himselfe a share in the legislative power' so great as to open up 'a gap to as vast and arbitrary a prerogative as the Grand Seignior has' in Constantinople (Parker 1933: 182–3). For he assumes a power to 'take away the being of Parliament meerely by dissent', thereby making it 'more servile then other inferior Courts' (p. 187). To allow the Negative Voice, in short, is to render Parliament dependent on the king and thereby reduce it to servitude.

The other element in Parker's argument flows from his assumption that 'the Lords and Commons represent the whole Kingdome' and 'are to be accounted by the vertue of representation as the whole body of the State' (*ibid*.: 175, 211). If we allow that the king has a Negative Voice, then 'without the Kings concurrence and consent', the two Houses are reduced to 'livelesse conventions without all vertue and power'. But this is to take away the political virtue and power of the people as a whole. Tracing the implications of this disenfranchisement, Parker closely follows two different formulae used by his classical authorities to describe the onset of national servitude. As we have seen, Livy had equated this condition with the substitution by our rulers of 'their owne will and licentious lust in steede of law' (Livy 1600: 87). Parker repeats that the Negative Voice subjects the entire nation 'to as unbounded a regiment of the Kings meere will, as any Nation under Heaven ever suffered under'. For 'what remains, but that all our lawes, rights, & liberties, be either no where at all determinable, or else onely in the Kings breast?' (Parker 1933: 175–6). The other formula to which Parker refers is Aristotle's claim that

25. Parker 1933: 182. As Mendle 1995: 48 puts it, the argument amounts to a defence of 'full-blown bicameral parliamentary absolutism'.

(as the English translation of the *Politics* had put it) we fall into a condition of slavery whenever we become subject to the discretion of others, since 'the propertie of bondage is, not to live according to a man's own discretion' (Aristotle 1598, Book VI, ch. 2, pp. 339–40). Parker agrees that, if we permit the king 'to be the sole, supream competent Judge in this case, we resigne all into his hands, we give lifes, liberties, Laws, Parliaments, all to be held at meer discretion' and thereby leave ourselves in bondage (Parker 1933: 209–10).

Charles I had complained in his *Answer to the XIX Propositions* that without the Negative Voice he would be reduced from the status of 'a King of *England*' to a mere 'Duke of *Venice*' (Charles I 1999: 167). Parker daringly picks up the objection as a means of clinching his argument about national servitude. 'Let us look upon the Venetians, and other such free Nations', he responds, and ask ourselves why it is that they are 'so extreamly jealous over their Princes'. It is because they fear 'the sting of Monarchy', which stems (as Livy had said) from the power of monarchs to 'dote upon their owne wills, and despise publike Councels and Laws' (Parker 1933: 192). The jealousy of the Venetians arises, in other words, from their recognition that under a genuine monarchy they would be reduced to slavery. It is 'meerely for fear of this bondage' that they prefer their elected Dukes to the rule of hereditary kings (*ibid.*).

Perhaps foreseeing the conflict to come, Parker adds in minatory tones that no self-respecting people can be expected to endure such servitude. He reiterates that, if a nation is made 'to resigne its owne interest to the will of one Lord, as that that Lord may destroy it without injury', this is to say that the nation in question has been made 'to inslave it selfe' (*ibid.*: 174). Once more we hear strong echoes of the English translation of Aristotle's *Politics*, which had warned that 'no person that is free dooth willingly endure such a state' (Aristotle 1598, Book IV, ch. 10, p. 208). Parker similarly warns that 'few Nations will indure that thraldome which uses to accompany unbounded & unconditionate royalty' (Parker 1933: 180). The reason, he adds, is that it is 'contrarie to the supreme of all Lawes' for 'any Nation to give away its owne proprietie in it selfe absolutely' and thereby 'subject it selfe to a condition of servilitie below men' (p. 186). If kings impose this servitude, Parker implies, they must not be surprised if their subjects throw off this unnatural yoke.

While Parker's intervention was of crucial importance, his neo-classical line of argument was not without precedent. The Parliamentary Remonstrance of 26 May 1642 had already contained a warning that, so long as Parliament is dependent on the will of the king and his evil counsellors, the English will be no better than a nation of slaves:

> We shall likewise addresse our Answer to the Kingdom, not by way of appeal (as we are charged) but to prevent them from being their own executioners; and from being perswaded, under false colours of defending the law, and their own Liberties to destroy both with their own hands, by taking their lives, Liberties, and Estates out of their hands, whom they have chosen and entrusted therewith; and resigning them up unto some evill Counsellors about his Majesty, who can lay no other foundation of their own greatnesse, but upon the ruine of this, and, in it, of all Parliaments, and in them of the true Religion, and the freedome of this Nation.
>
> (Husbands *et al.* (eds.) 1642: 263–4)

The Remonstrance ends by calling on the people to reflect on the treasonous designs of the Malignant Party and ask themselves 'whether if they could master this Parliament by force, they would not hold up the same power to deprive Us of all Parliaments; which are the ground and Pillar of the Subjects Liberty, and that which onely maketh *England* a free Monarchy' (*ibid.*: 279).

After the publication of Parker's *Observations*, these neo-classical hints about public freedom and its forfeiture were far more confidently taken up. The Declaration issued by the two Houses on 14 July[26] maintains that the stark choice now facing 'the free-born English Nation' is either to adhere to the cause of Parliament or else 'to the King seduced by Jesuiticall Counsell and Cavaliers, who have designed all to slavery and confusion' (Husbands *et al.* (eds.) 1642: 464). The Declaration of 2 August presents the dilemma in still more lurid terms.[27] We are being invited to 'yield our selves to the cruel mercy of those who have possessed the King against us' (Husbands *et al.* (eds.) 1642: 492), although it is obvious that their aspiration is 'to cut up the freedom of Parliament by the root, and either take all Parliaments away, or which is worse, make them the instruments of slavery' (p. 494). The final Declaration issued by Parliament before the king raised his standard of war on 22 August recurs to the same theme. The leaders of the Malignant Party 'have now advised and prevailed with his Majesty by this Proclamation, to invite his Subjects to destroy his Parliament and good people by a Civill War; and, by that meanes to bring ruine, confusion, and perpetuall slavery upon the surviving part of a then wretched Kingdome' (p. 509).

It would be an overstatement, however, to suggest that these references to slavery and national servitude necessarily reflect any direct acquaintance

26. For the date see Rushworth 1692: 756. 27. For the date see Rushworth 1692: 761.

with classical theories of liberty. These Declarations perhaps imply, but they certainly do not state, the distinctive Roman law assumption that the mere fact of living in dependence on the goodwill of others is sufficient to undermine our liberty and reduce us to servitude. We find a very different picture, however, if we turn to the numerous pamphlets and treatises published in defence of Parliament in the weeks immediately following the appearance of Parker's *Observations* at the start of July. A considerable number of these writers reveal a clear understanding of the classical theory of freedom and slavery, and in several instances they put forward this theory as the essence of their anti-royalist stance.

One of the most forthright statements of the neo-classical case can be found in the anonymous tract of 1 August 1642 entitled *Reasons why this Kingdome ought to Adhere to the Parliament.*[28] We are assured that, despite the calumnies put about by the Malignant Party, the two Houses remain the people's 'onely Sanctuary of their Religion, Lawes, Liberties, and properties' (p. 6). Referring directly to Parker's 'most excellent' *Observations* (p. 2), the author goes on to assail the prerogative of the Negative Voice as uniquely destructive of the nation's liberties. If any decision made by Parliament can be frustrated by the exercise of the royal veto, this gives the king 'an unlimited declarative power of Law above all Courts, in his own breast'. But this means that 'the last Appeale must be to his discretion and understanding, and consequently, the Legislative power [is] His alone' (p. 11). If we now comply with this view of the constitution, the effect will not only be to 'forsake this Parliament, and leave it to the mercy of the Malignants'; it will also be to leave our 'Religion, Lawes, Liberties, and properties open to the spoyle and oppression of an Arbitrary Government' (p. 12). It is just this openness to being spoiled and oppressed, however, which serves in itself to take away our liberty. If Parliament allows the king a Negative Voice, 'this whole Kingdome shall consist only of a King, a Parliament, and Slaves' (p. 14).

Less than two weeks later, the two Houses ordered the printing of a similar argument put forward in *A Remonstrance in Defence of the Lords and Commons in Parliament.*[29] The anonymous author calls on the whole nation to adhere to the two Houses, 'who are the eyes, eares and understanding of the Common wealth' (pp. 5–6). If instead we allow the Malignants to obtain the power they seek, this will bring 'the ruine of the Parliament, the destruction of the Kingdome, and the Lawes and liberties of the Subject' (p. 3).

28. The London book-seller George Thomason (whose comprehensive collection of civil war tracts is now in the British Library) notes the date of publication on the title-page of his copy.
29. Thomason notes on the title-page of his copy that this tract appeared on 11 August 1642.

By defending the Negative Voice, the Malignants hope to 'change the forme of Government of this Kingdome, and make it subject to the Arbitrary power of the king'. But to make a kingdom subject to arbitrary power is to reduce it to servitude. The Malignants are in effect planning to 'become masters of our Religion and liberties to make us slaves' (p. 5).

A further plea to recognise that the very existence of the Negative Voice enslaves the nation can be found in the tract published on 17 August 1642 under the title *Considerations for the Commons in This Age of Distractions*.[30] The Negative Voice gives rise to a consequence that 'must needs sound harsh in the eares of a free people'. This harsh consequence is that 'the King withdrawne by evill Councell may at pleasure take away the very essence of Parliaments meerely by his owne dissent, thereby stripping them of all power in matters of judicature that they may not determine any thing for the good and safety of the Kingdome'. If this prerogative is allowed, 'it must needs follow, that its both vaine and needlesse to trouble the whole Kingdome to make choice of its representative body', for whatever decisions it may reach can always be set aside by the mere dissenting will of the king. The reason why this cannot fail to sound harsh in the ears of a free people is that any king who may 'at pleasure' set aside the laws in this fashion is a king of slaves.[31]

Of all these neo-classical defences of Parliament, however, by far the fullest and most sophisticated was the anonymous treatise published on 15 October 1642 under the title *The Vindication of the Parliament And their Proceedings*.[32] The two enemies now confronting each other are said to be the Malignant Party and the two Houses of Parliament. Quoting the Declaration of 2 August, the author first explains that the goal of the Malignant Party is 'to cut up the freedome of *Parliament* by the root, and either to take all *Parliaments* away, or (which is worse) make them the instruments of slavery'.[33] An easy means of attaining this goal lies ready to hand in the alleged prerogative of the Negative Voice. With this prerogative 'the sole power of managing the affaires of the *Kingdome*' belongs 'onely unto the *King*; and nothing at all to *either*, or *both Houses*' (*The Vindication* 1642, sig. C, fo. 2^{v}). But to grant the king this 'arbitrary power, to rule us, according to the dictates of his own conscience' is to run the risk of turning ourselves into 'most miserable and wretched slaves' (*ibid.*, sig. D, fo. 3^{r}).

30. Thomason notes the date of publication on the title-page of his copy.
31. All quotations from *Considerations* 1642, sig. A, fo. 3^{v}.
32. Thomason notes the date of publication on the title-page of his copy. Note that, because of the muddled pagination of *The Vindication*, I have given references by signature mark rather than by page.
33. See *The Vindication*, sig. B, fo. 4^{r} and cf. Husbands *et al.* (eds.) 1642: 494.

As the author is at pains to underline, the mere fact that the king possesses a Negative Voice is sufficient in itself to reduce us to slavery. Speaking in Aesopian vein, he reminds us that, as we can readily learn from the birds and their predators, it is all too easy to live in servitude without suffering actual oppression or constraint:

> For as the Crane had better to keepe his head out of the Wolves mouth, then to put it into his mouth, and then stand at his mercy, whither he will bite off his neck or not, so it is better for every wise man, rather to keepe and preserve those immunities, freedomes, prerogatives, and priviledges, which God, and nature hath given unto him, for the preservation, prosperity and peace of his posterity, person and estate, then to disenfranchize himselfe and relinquish and resigne all in to the hands of another, and to give him power either to impoverish or enrich, either to kill him or keepe him alive.
>
> (*ibid.*, sig. D, fo. 3^{v})

An absolute ruler may choose to enrich instead of kill you, but you are none the less a slave for that. What takes away your liberty is the mere fact of living at the mercy of someone else.

Although the author of the *Vindication* assures us that he is writing in the hope of averting 'these *Civill Wars* threatning' (*ibid.*, sig. A, fo. 2^{v}), he concludes that this prospect of enslavement is enough in itself to justify a resort to armed force. The king has surrounded himself with papists and evil counsellors who 'perswade him that it is lawfull for him to doe what he list'. As a result, the choice now facing the people of England is between '*Popery, or Protestantisme*' and between '*slavery or liberty*' (*ibid.*, sig. D, fo. 4^{v}). But it would be 'unnaturall, that any Nation should be bound to contribute its own inherent puissance meerely to abet tyranny, and support slavery'.[34] From which it follows that a defensive war must now be justified. We must stand ready to take up arms, and not to lay them down until 'we are assured of a firme peace, and to be ruled as becommeth a free people, who are not borne slaves' (*The Vindication* 1642, sig. E, fo. 1^{r}).

By the time these revolutionary sentiments had reached print, the two Houses of Parliament had already taken a resolution to raise an army and resist the king. The plots of the Malignant Party and other evil counsellors had left them with no alternative, they now proclaimed, but to 'Declare and Ordaine, that it is, and shall be lawfull for all His Majesties loving Subjects, by force

34. *Ibid.*, sig. E, fo. 1^{r}. Here the author quotes Parker's *Observations*, although without acknowledgment. See Parker 1933: 169–70.

of Armes to resist the said severall parties, and their Accomplices'.[35] Those engaging in such acts of resistance will not only be defending 'the Religion of Almighty God' against the aspiration of the Malignant Party to replace it with popery; they will also be foiling their evil designs by defending 'the Liberties and Peace of the Kingdom' against the imposition of arbitrary government (Husbands *et al.* (eds.) 1642: 499).

Historians have claimed that the arguments used to justify this final decision to resist were essentially contractual in character (see for example Salmon 1959: 80–8; Sanderson 1989, esp. pp. 18–21). The king had broken the terms of his covenant with his people, who had never given up their natural right to set down whatever form of government they had originally consented to set up. Such arguments were certainly brought forward at this juncture, and Henry Parker in his *Observations* makes emphatic use of them (Parker 1933, esp. pp. 167–71). But it is striking that Parliament itself and many of its supporters preferred to justify their decision to go to war in neo-classical rather than in contractarian terms. The final Declarations issued by Parliament in August 1642 make no mention of the natural rights of the sovereign people. They speak instead of the need to liberate the people from being mastered and enslaved by the 'Malignant Party of Papists, those who call themselves Cavaliers, and other ill-affected persons' who have deliberately driven the country into civil war:

> The intention being still the same, not to rest satisfied with having *Hull*, or taking away the ordinance of the *Militia*; But to destroy the Parliament, and be masters of our religion and liberties, to make us slaves, and alter the Government of this Kingdom, and reduce it to the condition of some other countries, which are not governed by Parliaments, and so by Laws, but by the will of the Prince, or rather of those who are about him. (Husbands *et al.* (eds.) 1642: 497)

It is in the name of staving off such arbitrary government and perpetual slavery, they declare, that they have now decided to raise an army under the earl of Essex, 'with whom, in this Quarrell we will live and dye' (p. 498). From the Parliamentary perspective, the civil war began as a war of national liberation from servitude. If there was any one slogan under which the two Houses finally took up arms, it was that the people of England never, never, never shall be slaves.

35. See Husbands *et al.* (eds.) 1642: 499, who date the declaration to 8 August 1642.