"No Standing Armies!"

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CHAPTER III

THEORY OF PARLIAMENTARY
COMMAND OF THE MILITIA:
1641–1642

The question of the king's military prerogative was inherent in the criticism of Charles I during the 1630s, but it was not debated seriously until the Militia Bill was introduced in Parliament in December 1641. Several members of the House of Commons—John Pym, Oliver Cromwell, William Strode, and Sir Arthur Haselrig—supported legislation which would have stripped the king of command of the militia. Outside of Parliament, a number of tracts appeared to justify the action. Henry Parker, sometimes described as the most radical political theorist of the early 1640s, William Prynne, the well-known gadfly in the service of the parliamentary opposition, and Stephen Marshall, the famous Puritan divine, were among two score of men who argued for transferring military authority from the king to the Parliament. Some of the principals recognized that the fundamental issue in the controversy over the Militia Bill was a change in England's government, that is, a shift in sovereignty from the king or king-in-Parliament to Parliament alone. The implications of the Militia Bill were unequivocally revolutionary. Its movement through Parliament and passage as an Ordinance\(^1\) in the spring of 1642 had the effects of rupturing the relationship be-

\(^1\)For the text of the Militia Ordinance, see Gardiner, *Constitutional Documents of the Puritan Revolution*, pp. 245–47.
tween Charles I and Parliament, polarizing the politically conscious nation as no other issue of those troubled months had done, and precipitating bloodshed. The proposition that the legislature rather than the executive should have ultimate command over the armed force of the nation was not finally settled in 1642, and it became a central element in the arguments against Oliver Cromwell's New Model Army during the Interregnum and in the protests against the standing armies of Charles II and James II. In 1689, the principle was finally written into the Bill of Rights in Article vi that forbade a professional army in peacetime without the consent of Parliament. The arguments in favor of the Militia Bill/Ordinance are, therefore, of special significance.

Certain aspects of this issue—the political narrative, the content and significance of the messages exchanged between king and Parliament in the spring of 1642, and the political and religious thought of Henry Parker—have been studied and will not be reviewed here. There is a need, however, to look more closely at the many tracts (in addition to Parker's) and sermons that were written to justify Parliament's actions. These little-known pamphlets give a sure reflection of the thinking about military authority in 1642. Contrary to the argument advanced by some scholars, many men besides Henry Parker were writing about parliamentary supremacy, the derivative nature of the royal prerogative, and the limits of precedential law.

The considerations that motivated members of Parliament to bring in a Militia Bill on December 7, 1641, were more complex than has been suggested. The usual explanation is that the army

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2The political narrative, whose general accuracy is acknowledged by scholars, is found in Gardiner, History of England, 1603-1642, vol. 10, passim; the messages between king and Parliament in the spring of 1642 are discussed in J. W. Allen, English Political Thought, 1603-1644 (New York, 1938) pp. 386-412, and B. H. G. Wormald, Clarendon: Politics History and Religion, 1640-1660 (Cambridge, 1951), pp. 47-113; the most important of several studies of Henry Parker's thought are W. K. Jordan, Men of Substance (Chicago, 1942), and Margaret A. Judson, "Henry Parker and the Theory of Parliamentary Supremacy," Essays in History and Political Theory (Cambridge, Mass., 1936), pp. 138-67. They do not deal with the coincidence of Parker's views and those in the pamphlet literature.

3At least twenty-three tracts were written in support of Parliament's actions, at least twenty in support of the king.


5For a more detailed examination, see Lois G. Schwoerer, "The Fittest Subject for a King's Quarrel," J.B.S. 11 (1971): 45-76.
that was raised to fight the Irish Rebellion in October, an army which the critics of the king feared would be turned against Parliament, led directly to the bill. Without doubt, this factor introduced a sense of urgency to the proceedings in the House of Commons, but it was only one of several events and concerns responsible for the Militia Bill. Of near equal importance were the rumors of plots involving the court, the provocative actions of Charles I with respect to a guard for parliament, and parliamentary tactical considerations related to the Impressment Bill. Further, a near-paranoid interest in Parliament’s having its own guard and an ongoing concern (voiced earlier in the debates on the Petition of Right) to restrict the powers of the deputy-lieutenants also played a part. It may be suggested that even if the Irish Rebellion had not occurred, some kind of legislation respecting the militia would have been introduced. In the fall of 1641, the king’s critics were not trying to implement a theory of parliamentary supremacy by wresting from the king the two prerogatives (of military command and appointment of ministers), still left him. Indeed, there was some reluctance to claim command of the armed forces, a power which touched the very essence of royal sovereignty. It was not until January 1642, when the king attempted to arrest members of Parliament, that the opposition claimed command of the armed force. That step was motivated by fear, not political theory. But once the step was taken, it had to be justified.

The Militia Ordinance, while it was, of course, related to the earlier bill, was a direct response then, to an act of intended violence by the king. Charles’s attempt to arrest the five members threatened the careers, fortunes, and lives of the parliamentary leadership and, by implication, of the entire opposition. This step hardened the determination of extremists and moderates and removed many doubts. Whatever the theoretical and constitutional implications, the armed force of the nation could not be left in the king’s hands if his critics were to survive.

The idea that an ordinance issued by Parliament without the king’s consent could transfer ultimate command of the militia

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7A parliamentary ordinance was a declaration passed by both Houses and issued without the assent of the king. Such a device had been used since August 20, 1641, by the Long Parliament. Sir Simonds D’Ewes had looked into the precedents and had quite erroneously assured the House of an ordinance’s great and ancient authority.
from the crown to Parliament was logically inconsistent with traditional constitutional principles. The idea that Parliament alone should command the armed force of the nation was also illegal and unconstitutional. Although both Houses were dominated by radical parliamentarians in the spring of 1642, men were uncomfortable with what they were doing. An observer commented upon how busy the members were in their effort to bring the militia “within the jurisdiction of the houses of Parliament, and yet they pretend no lessening or dishonour to the King.” In the debate of February 8, 1642, for example, only Henry Marten, the first and most forthright of a tiny group of republicans in the Long Parliament, was confident that the king had no power to veto bills passed by both Houses. He maintained that “the King’s consent should be included in the votes of the Lords” and that the assent of both houses was sufficient to make a law. Most members were unsure. As the issue moved to a conclusion, Sir Simonds D’Ewes noticed a sense of “sadness and guilt” in the debate of March 2. Although the members were not moved sufficiently by Bulstrode Whitelocke’s impassioned speech against the ordinance on March 5 to reject the ordinance, unease about its legality continued. In April, the predominant sentiment was to abandon the ordinance altogether and accept instead an amended version of the Militia Bill which Charles presented on April 11. It was argued that such a course would satisfy the whole kingdom and compose all differences. So enthusiastic was D’Ewes that he declared in the debate on April 20 that the king’s bill was

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There is no evidence that a parliamentary ordinance was ever issued during the Middle Ages without royal authority. See Gardiner, History of England 1603-1642 10: 4, and British Museum (hereafter cited as B.M.), D’Ewes Journal, Harleian Manuscripts, 163, f. 475. The folio numbers to the Harleian Manuscripts follow those used in the index to that manuscript.

10B. M., D’Ewes Journal, Harleian Manuscripts, 163, f. 409 verso.
12Gardiner, History of England 1603-1642 10: 186, notes that the bill has not been preserved and that it is necessary to deduce its contents from the debate. Wormald, Clarendon, pp. 103-7, discusses Edward Hyde’s reaction to Charles’s move and the underlying intentions of the king.
the most necessary legislation “that had ever come into the House.” In a rhetorical flight, he compared it to the “Paladium [sic] in Troy in which the very safety of the city consisted” and was moved to hope that all men would see the wisdom of it, “even Turks, Jews and infidels.” Only Henry Marten again adamantly opposed it, and his motion to reject it failed for lack of a second. Instead, the House proceeded to amend the king’s Militia Bill which Charles himself rejected on April 28.

The sense of ambivalence about the Militia Ordinance was also reflected in the leadership’s eagerness to explain itself. Messages, resolutions, and responses to the king, many of which were contradictory, confused, and incoherent were regularly issued. They were widely circulated and, as the crisis deepened, released to the public before being sent to Charles. On March 14, 1642, the House of Commons appointed a committee of its most distinguished members (thirty-one in number) to prepare a declaration “to satisfy the kingdom” of the legality and necessity of its actions. On March 16, a committee of the Long Robe was asked to set forth why the king was obliged by law to pass the ordinances that the two houses presented to him. Although the legality of ordinances was asserted, only a man identified as “Honest Hall” denied unequivocally that the king’s assent was necessary to a true law. The “most powerful and active members” sought to allay fears by protesting that the Militia Ordinance was defensive and that they had no intention of attacking the king. Pym, John Hampden, Denzil Holles, and Sir Philip Stapleton were joined by lawyers such as St. John in encouraging wavering members to support the Ordinance. The concurrence in the House of Lords of the lord keeper (Edward lord Littleton), and his confident assertion that the Ordinance was legal also carried a good

14Ibid., f. 475, f. 475 verso.
15Parliament’s declarations are described as “ambiguous, obscure, and at times a little stupid” by Jack Hexter, The Reign of King Pym (Cambridge, Mass., 1961), p. 175.
18Reports of the Historical Manuscripts Commission (hereafter cited as H.M.C.), MSS of Duke of Buccleuch and Queensberry 1: 292.
20Whitelocke, Memorials 1: 172.
21Ibid., p. 165.
deal of weight with men who were uncertain how to vote.\textsuperscript{22} For these reason, not because of carefully expounded arguments about a constitutional theory, the Militia Ordinance was passed and implemented

Charles I unequivocally rejected the Militia Ordinance. When asked on March 9 if he would not allow Parliament to command the militia for a time, his response was vehement: "By God, not for an hour." "You have asked that of me in this, was never asked of any King and with which I will not trust my wife and children."\textsuperscript{23} All during the troubled spring of 1642, Charles I countered the efforts of Parliament with his own barrage of declarations and responses. Written mostly by Edward Hyde, they were aimed primarily at men outside of Parliament and had the effect of winning adherents to the king's side.\textsuperscript{24} Charles's policy was to argue that an ordinance issued by Parliament was illegal and to maintain that he was willing to settle the militia by the legal procedure of a parliamentary bill. But the suggestion that he would agree to some kind of restriction of his command of the militia was disingenuous. Charles understood better than most of his contemporaries that inherent in the struggle for command of the militia was a fundamental constitutional change which would have stripped the monarchy of real power. Later, he described the controversy as the "Fittest Subject for a King's Quarrel" and explained that "Kingly Power is but a shadow" without command of the militia.\textsuperscript{25} He never had any intention of giving up his authority over the armed force of the nation. In support of his position, he declared that, if the Militia Ordinance passed, he would have no credit abroad, and argued that the nation's security depended on his reputation with foreign princes. He reminded his critics that they were bound to him by the oaths of supremacy and allegiance and that, therefore, they should be "tender" of his royal rights. His right to command the militia was a "point of the greatest importance, in which God and the Law hath trusted us solely." Charles scored a telling point when he confessed that he had justified his own arbitrary government of the recent past on the grounds of necessity

\textsuperscript{22}Ibid., pp. 165, 171, 175-76. Littleton was known as a "profound lawyer," "well-versed in the records." He told Hyde he voted for the Militia Ordinance to disarm the Commons. Littleton joined the king in May.
\textsuperscript{23}Rushworth, \textit{Historical Collections} 4: 533.
\textsuperscript{24}Wormald, \textit{Clarendon}, pp. 65, 83-84, 100, 105, 160.
\textsuperscript{25}The King's Cabinet Opened included later in Harleian Miscellany 7: 525.
and imminent danger and warned members of Parliament that they should take care not to "fall . . . into the same error upon the same suggestions." As for himself, he promised hereafter to abide by the law.²⁶ In view of the strength and appeal of the king's position, Parliament's supporters needed to enlarge upon what they had said to offer still more persuasive arguments. This was done by men outside Parliament—by a number of radical pamphleteers and preachers.

A real battle of pamphlets (not unlike that of 1697-1699 over King William III's army) took place in 1642. On both sides were men of talent and reputation. The most important of Parliament's proponents was the eminent political theorist of the early 1640s, Henry Parker. His *Observations upon Some of His Majestie's Late Answers and Expresses* attracted more attention than any other tract in the controversy and alone prompted a whole sequence of animadversions, answers, and rejoinders.²⁷ The most distinguished preachers of the decade were also involved. Famous among those for Parliament were Stephen Marshall, known as "that Geneva bull," and regarded at the time of the controversy as an "Augustine, the truly polemical Divine of our times,"²⁸ and John Goodwin, who was noted for his "perspicuity and acuteness." Both were Fast-Day preachers. For the king were Henry Ferne, Charles's chaplain extraordinary, whose first published work²⁹ was also the first book openly on the king's side, and Henry Hammond, the archdeacon of Chichester. The well-known controversialist, William Prynne, took the part on behalf of Parliament. Men personally

²⁶This summary of the king's policy with respect to the militia is based on Rushworth, *Historical Collections* 4: 533-34, 540, 545-46, 548-50.

²⁷Henry Parker, *Observations upon Some of His Majesties Late Answers and Expresses* (London, 1642), which followed an earlier version with slightly different title dated May 21, 1642, was printed on July 2, 1642. There was a second edition in 1642. For titles of Parker's tracts and the chronological sequence of replies and rejoinders, see William Haller, ed., *Tracts on Liberty in the Puritan Revolution, 1638-1647* (New York, 1934), 1: 24, 26, 27 and notes 14, 16; Jordan, *Men of Substance*, pp. 142-43, n. 4.


²⁹Henry Ferne, *The Resolving of Conscience, upon this Question. Whether . . . Subjects May Take Arms and Resist?* (Cambridge, 1642). The tract was reprinted at London in 1642, with a second edition printed at Oxford in 1643. The article in the *Dictionary of National Biography* (hereafter cited as *D.N.B.*) asserts that this tract was the first openly on the king's side.
close to Charles came to the king's defense. John Spelman, a man respected for his learning and love of history, whose premature death cut short his intended appointment as one of Charles's secretaries of state, wrote a highly effective response to Parker.  

The young courtier, Sir Dudley Digges, the man probably most beloved by the king, who had moved from opposition in 1628 to support of Charles, also defended the crown in print. Curiously enough, there is no evidence that Edward Hyde contributed to the exchange of pamphlets. Nor did John Milton write a response to Dudley Digges, as he is sometimes said to have done. Less famous men were also engaged in the literary battle. Of these, John March was the most impressive. Notwithstanding that he was a lawyer, trained at Grey's Inn, he wrote a careful defense of Parliament's actions, in which he said that an "overstrict observance of the Law may sometimes be unlawful," and that an unreasonable law "doth not oblige men to obedience." Peter Bland, about whom nothing but his name is known, brought enthusiasm, confusion, and contradiction to the exchange of tracts. And finally, there were powerfully written tracts whose authors must remain completely anonymous but whose titles alone show the radicalism of their authors.

The interest was widespread and persistent. As late as October 15, 1642, the militia issue was described as the "main thing now looked upon and pried into by all eyes." Time and money were freely ex-

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34 Peter Bland, *A Royall Position . . . or an Addition to a Book Intituled Resolved upon the Question* (London, 1642), pp. 9, 11.
35 Two examples of anonymous tracts are: *Touching the Fundamentall Lawes . . . to Which Is Annexed, the Privilege and Power of the Parliament Touching the Militia* (London, February 24, 1643), and *The Privileges of the House of Commons in Parliament Assembled, wherein 'tis Proved their Power Is Equal with That of the House of Lords, If not Greater, Though the King Joyn with the Lords. However, It Appears that Both Houses Have a Power above the King* (London, 1642).
performed in the effort. Peter Bland was willing to finance the reprinting of a tract to supply corrections and a missing page. He took the advice of his printer about using a new title page to assure good sales. Peter Bland was willing to finance the reprinting of a tract to supply corrections and a missing page. He took the advice of his printer about using a new title page to assure good sales. The well-connected John Spelman had his problems with printers. He explained the delay in getting his pamphlet to the public: he had to await the “conveniency of a Presse.” Charles I complained regularly that the “Presses Swarm” with pamphlets and printed papers and his supporters echoed him, adding that “fractious Preachers” deliver sermons dealing with “matters of the times” instead of salvation. A check of the McAlpin and Thomason Catalogues for 1642 and early 1643 confirms the contemporary view that more pamphlets were written about the militia issue than any other.

The lines of the argument that most unequivocally supported the Militia Ordinance and Parliament’s assumption of the command of the militia were set out by Henry Parker in Observations. The basic points that he made were reiterated and elaborated in many other tracts and sermons, and a few innovative ideas and fresh illustrations were added. The tracts written by lesser men were, perhaps, less elegant and coherent than Parker’s, but the issues they explored—parliamentary supremacy, the derivative nature of the royal prerogative, the limits of precedential law and the connection between power and sovereignty—were the same. All of them, Parker included, if his own words are to be credited, were monarchists, but the monarchy which was implicit in their thought was a very different institution from that known to England prior to the controversy. One has only to recall the arguments about other kinds of military questions in 1628 to appreciate how radical the thinking of many men had become in 1642.

The first tract to appear on the issue, A Declaration of the Great Affaires, came out around April 22, 1642, several weeks before Parker’s Observations. In quaint terms, it posed the basic problem confronting everyone. “The Devil hath cast a Bone,” wrote the unknown author, “and rais’d a contestation betweene the King and Parliament touching the Militia: His Majesty claimes the disposing of it to be in Him by right of Law; The Parliament saith rebus sic

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37 Bland, A Royall Position, p. 15
38 Spelman, A View of a Printed Book, preface.
39 Rushworth, Historical Collections 4: 547; Digges, An Answer to a Printed Book, p. 25; William Hall, A Sermon Preached at St. Bartholomews the Lesse in London on the XXVIII Day of March 1642 (London, 1642), preface.
40 Parker, Observations, p. 41-42.
The implication was plain: The heart of the issue could not be just command of the militia, but sovereignty in the state. Parker plainly saw that, in the "intricacy" of England's mixed government, one element had to be supreme and that supremacy mattered most in the area of military power and especially in a time of crisis. For Parker and others, that supreme element in the practical affairs of government was the Parliament, not the king. Their difficulty was to demonstrate this. They could not easily appeal to precedent, law, or past custom. Instead, they based their arguments on necessity, natural law, the law of reason and the "fundamental laws of the nation." They argued analogously to show the reasonableness of their position. Parker and some others predicated their position on a belief in a contract form of government and on a notion that ultimate sovereignty resides in the people and is exercised by Parliament. Many of them embellished their arguments with legalisms and legal references.

One approach to the problem was to explore the nature of royal prerogative, a subject which, one writer admitted, was "much talked of, . . . but little knowne." Henry Parker denied categorically that kings receive their power from God. On the contrary, the original of royal power was "inherent in the people"; they were the "fountains and efficient cause," he wrote. At the foundings of government, the people handed over certain authority to the king, but limited him at the same time, so that from the beginning, the power of the king was "conditionate and fiduciary." Thus, the king's prerogative power was, in general, derivative and restricted. Parker had argued in an earlier tract that royal prerogative was bound by law. Then he had written that royal prerogative "ought to be declared out of the written and knowne Lawes of the Kingdome . . . wee ought not to presume a Prerogative, and thence conclude it to be a Law, but we ought to cite the Law and thence prove it to be Prerogative." The same point was reiterated by a lesser pamphleteer in 1642. The king's "prerogative is

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41This anonymous tract appeared also under the title *A Question Answered, How Laws Are To Be Understood and Obedience Yielded? Necessary to the Present State of Things Touching the Militia* (London, 1642). It angered the king, who demanded that the House of Lords find out who wrote it and punish him and the publisher: C.S.P.D., 1641-43, p. 308; Whitlocke, *Memorials* I: 167.

42Parker, *Observations*, p. 44.

43*A Discourse upon the Questions in Debate between the King and Parliament* (London, September 1642), p. 5.


but what power the Law [as framed in Parliament] gives him,” declared one writer.\(^47\)

As to the specific prerogative over the militia, Parker did not deny that it rested with the king, but he said, for reasons to be discussed, that Charles should have consented to the Ordinance and should not have used his “fiduciary power.”\(^48\) Other writers approached that question differently. For example, one writer defined royal prerogative as the power to “rule Arbitrarily”\(^49\) in cases which had not been covered by law and granted that the king did possess prerogative power over the militia. But when the people do not trust the king, they have a right to demand that the royal prerogative be “exemplified into a law,” which would define its limits. The military prerogative of the crown had not been defined by statute. The Militia Ordinance did that and should be regarded as an example of this basic right of the people. It simply extended the law into an area which formerly was not adequately covered by law. The author contended that the laws established when governments are first organized or at some later time cannot possibly provide for every eventuality. Parliament has the right, as in the Militia Ordinance, to meet the needs of changing circumstances and to frame laws that invade the area of prerogative and, by defining that prerogative, increasingly restrict it.

John March conceded that “by Law” and custom ultimate authority over the militia traditionally rested with the king. But he asserted that if Parliament felt threatened (and when else did it really matter?), then the two houses had the power to sever the prerogative over the militia from the king. Although the King alone could not give away his military authority, Parliament could.\(^50\) Still another spoke of Parliament’s “reassuming”\(^51\) the power of the militia which it had given to the king. A very few, sometimes inconsistently, simply denied that the king ever possessed the prerogative over the militia.\(^52\) In all these tracts, then, royal prerogative was construed as derivative from and dependent upon Parliament. By arguing in this fashion, the

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\(^{47}\)Peter Bland, *Resolved upon the Question... wherein Is Likewise Proved, that... the Setting of the Militia As 'tis Done by the Parliament... Is According to... Law* (London, 1642), p. 12.


\(^{49}\)*A Discourse upon the Questions*, pp. 5, 6, 9.

\(^{50}\)*March, An Argument or Debate in Law*, pp. 1, 5.

\(^{51}\)*Touching the Fundamental Lawes*, p. 10 (2nd p. 10).

\(^{52}\)*Bland, A Royall Position*, p. 7; *Militia Old and New, One Thousand Six Hundred and Forty Two. Read All or None: and Then Censure* (London, August 18, 1642); *The Case of the Commission of Array Stated* (n.p., October 20, 1642), p. 5.
pamphleteers could logically draw the conclusion that Parliament's assumption of the command of the militia in a time of crisis was justifiable.

On another level, it was argued that the dangers confronting the nation justified the steps Parliament had taken. Parker argued that the safety of the people (the *salus populi*) took precedence over all other considerations. "The Law of Prerogative it selfe, it is subservient to this Law," he wrote.\(^53\) Other pamphleteers were equally unequivocal.\(^54\) Now there is nothing intellectually sophisticated about an appeal to "danger" and "necessity." That argument was used by royalists in the 1620s and 1630s; it is a time-worn excuse for circumventing law. But in the hands of the pamphleteers, the idea served as a starting point for arguments of complexity and force. Appeal was made to the law of nature, which Parker described as the most "transcendent and overruling of all humane Lawes." It allows people without disloyalty to save themselves. Parker asked his readers to suppose a situation in which a general of an army turns his cannons on his own soldiers. In such a situation, the soldiers were, of course, released from their obligation to obey the general. The same was true of a king who attacks his people; they are free to resist.\(^55\)

Lesser writers echoed the point about the law of nature.\(^56\) John March stressed that in time of danger the law of reason legalized actions that otherwise would be illegal. For example, a prison break was regarded as a felony in law under normal circumstances, but not as a felony according to the law of reason if the prison is on fire. Similarly, Parliament had no legal right to command the militia, but in time of danger the law of reason made it legal for Parliament to assume control of the militia.\(^57\) The notion that there was a law of reason that was higher than man's law was not new; it was part of the medieval tradition. But another closely related point was novel. This argument held that a distinction should be made between reason or the public good (which were equated) and the letter of the law. If the implementation of a law violated reason or the common good, then that law was void and might be resisted. An equitable interpretation

\(^{53}\)Parker, *Observations*, pp. 3, 8.

\(^{54}\) *The Vindication of the Parliament and their Proceedings*, in *Harleian Miscellany* 8: 63.

\(^{55}\) Parker, *Observations*, pp. 4, 16; cf. p. 35.

\(^{56}\) *Touching the Fundamental Laiwes*, pp. 10, 11; *A Discourse upon the Questions*, p. 15; *The Vindication of the Parliament and their Proceedings*, in *Harleian Miscellany* 8: 63.

\(^{57}\)March, *An Argument or Debate in Law*, pp. 7, 43.
of the law gave the king the right to use military power against foreign invaders or domestic rebels but not the right to use it against Parliament or "Commonwealth." If the monarch violated the equity of the law (which need not be spelled out, no more than a general need be told not to turn his guns against his own soldiers), military authority might be taken from him.\textsuperscript{58}

The limitations of law and precedents were underscored by Parliament's protagonists in still other ways. Admit, argued one writer, that there was no law or precedent to make the Militia Ordinance legal. It did not matter. The good of the nation could not depend upon the judgments of the past. How could any new precedents or laws be framed if Parliament always needed precedents "to steere by."\textsuperscript{59} The consent of the members of Parliament to the ordinance was sufficient. Goodwin was bold enough to argue that while the goodness of an individual was not enough to make an act lawful it did lend a "strong presumption" of legality to the act.\textsuperscript{60} It was commonly affirmed that Parliament could do no wrong. Thus, by the terms of this argument, Parliament's moral excellence rendered its actions legal.

The argument that necessity justified Parliament's actions was predicated on the assumption that Parliament was the proper judge of whether danger and necessity existed. For Parker, there was doubt that Parliament was the "supreme judicature, as well in matters of State as matters of Law"; it was the "great Councell of the Kingdome, as well as of the King."\textsuperscript{61} Parliamentary resolutions had asserted that very point. Preachers and other pamphleteers reiterated it. In the judgment of the great preacher, Stephen Marshall, every state had to have within it a body to preserve it in time of danger, and for him, that body was Parliament.\textsuperscript{62} Arguing the same point, another writer asked who other than Parliament could possibly judge whether the nation was in danger? The king was misled by evil counselors and

\textsuperscript{58}For example, \textit{A Declaration of the Great Affaires} (London, 1642), pp. 5, 6; \textit{The Vindication of the Parliament and their Proceedings}, in \textit{Harleian Miscellany} 8: 48: "The Equity of the Law, and not the Leuer of the Law, is the true Law."

\textsuperscript{59}Bland, \textit{Resolved upon the Question}, p. 15; cf. p. 14 and To the Reader.

\textsuperscript{60}John Goodwin, \textit{Anti-Cavalierisme, or, Truth Pleading As Well the Necessity, As the Lawfulness of this Present War} (London, 1642), p. 13.

\textsuperscript{61}Parker, \textit{Observations}, p. 28. The point was emphatically repeated in Henry Parker, \textit{A Political Catechism, or Certain Questions Concerning the Government of this Land} (London, 1643), p. 11.

counselors themselves were beneath Parliament. It was said that the two houses were the "epitome" of the nation, the "representative body." As a corollary, it was also said that the nation was bound to accept Parliament's judgment, whatever the judgment was. The idea reflected what Parker had written, namely, that "there can be nothing said against the Arbitrary supremacy of Parliaments."

None of the tracts seriously considered that the House of Commons was patently not representative. Only one insignificant tract admitted the fact. Parker and others simply asserted the contrary. No pamphleteer recommended a new election to assure a representative character. Further, the idea that Parliament might declare that danger existed for its own selfish purposes was dismissed. Proponents simply denied, in the face of overwhelming evidence to the contrary, that Parliament would ever act in an arbitrary fashion. They used the argument that D'Ewes had made in December 1641—that there was a difference between submitting to vast military authority which was answerable to Parliament and submitting to the king under compulsion.

Another argument justifying Parliament's action was, in effect, a rebuttal to Charles's contention that members were bound by the oaths of supremacy and allegiance to support him. On the contrary, it was said, members were bound by their oaths of allegiance and supremacy to take over command of the militia. On March 15, the House of Commons voted that the Militia Ordinance was not in "any way against the oath of allegiance."

Prynne argued that the oaths members took were dependent upon the king's coronation oath, and since the king had violated his oath, members were released from theirs. March developed a more complicated argument, insisting that

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63 *A Discourse upon the Questions*, pp. 9, 15.
66 *Parker, Observations*, p. 36.
69 For example, *March, An Argument or Debate in Law*, p. 15; William Prynne, *Vox Populi* (London, 1642), p. 3. The *Journals* for both Houses show that Parliament swiftly and ruthlessly repressed opposition to the Militia Ordinance. For example, *L.J.* 4: 652, 653; 5: 6, 7; *C.J.* 2: 471, 472, 473, 492, 503, 507, 510, 513. The most important episode occurred at Maidstone in Kent.
oaths obliged members to protect and defend the king, and if Parliament had not taken command of the militia, the king and nation would have been destroyed. Thus, the oaths bound them to do as they had done “under sinne of perjurie.”

Besides, March went on, the oath of supremacy did not mean that the privileges of the king should be preferred to those of the common weal, which in fact, come first. The argument was a curious and indefensible interpretation of the meaning of the oaths; and it was blasted by the king’s friends. That it was made must indicate that contemporaries were concerned about the conflict between the oaths they had taken and their actions.

Another line of argument used was that if one agrees that the militia is absolutely the king’s, then there is no point in having laws or striving for liberty, for the king had the power to destroy everything. This argument reflected the realization that a military force would be more powerful than law and that the control of the militia meant sovereignty in the state. One pamphleteer put the proposition this way: If the militia belonged to the king alone, then Englishmen might as well “burn the Statutes” which had been made and “save a labour of making more.” Laws could make no difference in a contest with muskets. The king’s command of the militia meant that he possessed the “power to mow the fertill meadowes of Britain as often in a Summer as he pleaseth.” Such a power, proponents of Parliament argued, had to be severed from the King and given to Parliament who would act in the interests of the common good.

Although in the debate in the House of Commons few argued directly that Parliament alone possessed legislative powers, many pamphleteers advanced this idea. Some tracts categorically stated that the king’s confirmation of legislation was accidental rather than essential. It was simply asserted that the vote of the king was included in the vote of the Lords. March stressed that Parliament was one body composed of the King, Lords, and Commons. Although absent in person, the king was not absent in law: the king was head of the body, and to admit his presence in law was equivalent to acknowledging the

72March, An Argument or Debate in Law, p. 27. 73Ibid., p. 28.
74For example, Certain Materiall Considerations (London, 1642), p. 11.
76Touching the Fundamentall Lawes, p. 12.
77A Discourse upon the Questions, p. 4.
78March, An Argument or Debate in Law, pp. 29, 41, 43.
79For example, The Instructions of God’s Word (London, 1642); and William Prynne, The Aphorismes of the Kingdom (London, 1642).
death of Parliament, which was patently untrue. Moreover, if the absence of the king were acknowledged, that absence was illegal and, therefore, could not invalidate a law passed by the House of Commons. Another pamphleteer argued that since Parliament may legislate without dispute in unimportant matters, such as the paving of roads, it may with much better justification legislate in a question of such supreme importance as the militia. Others argued, in language as opaque as that used in the declarations of Parliament, that “fundamentall law...coucht” in Nature and written in “her Magna Charta” required obedience to a parliamentary Ordinance, even though the king had not assented to it. Further, the ancient institutional character of Parliament as the highest court of law in the land was offered, as it had been in Parliament’s statements, to justify the idea that Parliament may declare what the law of the land is and may not be overruled by the king. The argument was that the power of lower courts was conferred by the king’s patents, and their decisions could not be overruled by the crown. Accordingly, the actions of the Parliament, the highest court of all, could not be countermanded by the king.

Implied in all that was written by pamphleteers and preachers was the notion that men have the right to resist the king. Prynne stressed that the Biblical injunction, “Touch not mine annointed,” referred to the people, not to kings and that it was lawful for subjects to take up arms against a monarch who invades their rights. Marshall also asserted the right of subjects to disobey their monarch. Much of what was said was consistent with the general medieval assumption that a tyrant may be resisted. But the matter was cast in quite specific terms by an anonymous pamphleteer who declared that if the king’s commands were against the order of both houses of Parliament, then those commands should be disobeyed. He went on to describe Parliament as the “soul” of the king and to conclude from this, in a tortured argument, that obeying Parliament was equivalent to obeying the king, even if thereby an order of the king were disobeyed.

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80March, An Argument or Debate in Law, p. 15. The same point was made by William Prynne, The Opening of the Great Seal of England (London, 1643), p. 32.
81March, An Argument or Debate in Law, p. 17.
82A Discourse upon the Questions, p. 15.
83The Observator Defended in a Modest Reply (London, 1642), p. 3.
84William Prynne, A Vindication of Psalm 105.15 ... Proving ... that It Is More Unlawfull for Kings To Plunder and Make War upon their Subjects ... Then for Subjects To Take up Armes against Kings (London, 1642).
In justifying Parliament's command of the militia, these pamphlet-eers were advocating a radical change in England's government, just as the king's friends charged. None of them in 1642 explicitly advocated republicanism. Many, including Parker, protested their devotion to the monarchy. The credibility of this position was helped by their insistence upon separating the person of the king and the institution of monarchy. Thus, they could attack the king's ministers and his policies without destroying the kingship itself. When the militia issue was first brought before the Parliament, the aim was for a change of policy, not a change of constitution. But the effect of what was said and done in Parliament and in the press was to strip the crown of its most important prerogative, to elevate Parliament above the king, and to lodge sovereignty in it. The monarchy that was left possessed only the shadow of authority. It was the king and his friends who refurbished the argument of mixed and balanced government that had been commonly used in the past. By contrast, such an idea was seldom mentioned by Parliament's friends. Nor did they deal with the need to restrain the power of Parliament if liberty and property were to be preserved. They did not even seem aware of it. The militia issue, more than any other, propelled men along a path of radicalism.

Once the question of military power was opened in Parliament it proved impossible to resolve it without war. On neither side was there anyone with enough wisdom and courage and intellectual strength to heal the breach. No compromise was logically possible when the question of sovereignty and military power was at issue. To have two supremacies, insisted an eloquent if little-known contestant, is ridiculous. Charles I knew this, and that is why he found the militia controversy such a fit subject for a king's quarrel. Henry Parker understood the implications too, as did a larger number of pamphlet-eers and preachers in 1642 than has been recognized. Englishmen's
thinking about whether the king or Parliament should command military power could never again be the same. The idea that the legislature rather than the executive should have ultimate control over the armed force of the nation became a central element in all future arguments.