

*John Lilburne:  
Revolutionary Constitutional Theorist*

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The 1640s and 50s were tumultuous times in England. While the poet John Milton in quiet and safety wrote defenses of the regicide and Cromwell's revolutionary government, John Lilburne, the more radical Leveller leader, was in and out of both royalist and revolutionary custody. He was tried and sentenced by the Star Chamber under the government of Charles I, captured by the Royalist forces and tried for treason during the Puritan Revolution, and tried for his life twice under Cromwell's Commonwealth government. Who was this audacious popular leader and gadfly of tyrants? The pamphlets he wrote, primarily from various seventeenth-century prisons, reveal much about this early popular leader and democratic thinker. His writings are of particular interest to Americans, for he was one of the first English democratic leaders and a constitutional theorist who anticipated many of the main features of the American judicial system and constitution. In a small, well-worn volume in The University of Iowa Libraries are collected tracts and petitions by Leveller writers, sympathizers, and opponents, including important rare pamphlets by John Lilburne.

He repeatedly landed in jail throughout his adult life because of revolutionary attitudes which were motivated by deep religious convictions. His Calvinistic commitment to the concept of the sovereignty of God caused his opposition to any authority that he thought was inimical to the rule of God. At his 1649 trial for treason, he conducted a wily defense against the capital charge, for under common law procedure at the time, felony defendants were not allowed legal counsel. Near the end of the trial he delivered a ringing appeal to the jury: "I desire you to know your power, and consider your duty, both to God, to Me, to your own Selves, and to your

Country; and the gracious assisting Spirit, and presence of the Lord God omnipotent, the Gouverneur of Heaven and Earth, and all things therein contained, go along with you, give counsell, and direct you to do that which is just and for his glory.”<sup>1</sup> This epitomizes Lilburne’s strengths as a popular leader, a natural eloquence coupled with an ethical and religious appeal well adapted to a seventeenth-century English audience. He was acquitted by the jury, to great popular acclaim. However, the military dictatorship, Cromwell’s government, found it politic to keep him a while longer in jail.

The collection of Leveller tracts in The University of Iowa Libraries is composed of 61 items, ranging from the long account of Lilburne’s 1649 trial (154 pages) to parliamentary petitions and broadsides of a single page. Against all attempts at censorship by the parliamentary government and later the Commonwealth, during the 1640s and 50s an avalanche of tracts and other propaganda materials was printed and circulated avidly. George Thomason, the London bookseller, collected 721 of them in 1641 and 2,134 in 1642 alone.<sup>2</sup> The Iowa collection of Leveller tracts details the major outlines of the movement’s revolutionary program and persuasive appeals. Even a cursory reading demonstrates the movement’s commitment to an equality that was radical even among the revolutionaries of the seventeenth century. Small wonder Cromwell and the other officers believed it necessary to imprison the Leveller leaders, among them John Lilburne. Cromwell and his associates found themselves in the uncomfortable and paradoxical position of persecuting their former allies and comrades in arms. One revolutionary group was pitted against another more revolutionary group. (The French and Russian revolutions later showed the same problem of a successful revolution imperiled by other radical revolutionaries. Witness the fates of Robespierre and Trotsky.)

Not only do the Iowa Leveller tracts show the radical equality of the movement’s thought but also the innovative constitutional theorizing of the leaders, including “honest John Lilburne.” In the 1649 trial, his study in prison of the common law, particularly the works

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<sup>1</sup> *The Triall, of Lieut. Collonell John Lilburne* (London: Theodorus Varax [Clement Walker], 1649), p. 141.

<sup>2</sup> Pauline Gregg, *Free-born John: A Biography of John Lilburne* (London: George G. Harrap, 1961), p. 94. Some 22,000 Thomason tracts now in the British Library are available at Iowa in a microfilm edition published by University Microfilms International (Film 20833). See also the two-volume *Catalogue of the Pamphlets, Books, Newspapers, and Manuscripts relating to the Civil War, the Commonwealth, and Restoration, collected by George Thomason, 1640-1661* (London: British Museum, 1908).

of Chief Justice Edward Coke, is apparent. The scarce full-page portrait of his arguing before the court shows him with the *Institutes* of Coke in his hand. Throughout the trial he argued for due process under the common law as a major part of his defense against the treason charge. But the revolutionary nature of his thought becomes apparent in the insistence on counsel for the defense in a felony trial and his insistence on judging whether the commission of oyer and terminer, the court which is trying him, and the indictment are legal. Arguing from the assumption of Protestant individualism, as a lay person Lilburne asks for rights which would extend equality and reduce the expertise and mystique of the legal profession. When he repeatedly mentioned the difficulty of defending himself when much of the law was in Latin and French, he argued for the law to be available and understood by the common person, not to be the province of the learned. The Protestant habit of exercising individual judgment in reading the scriptures in the vernacular is now applied to the law. Such are the far-reaching effects of the Protestant doctrine of the priesthood of all believers. No wonder that William Prynne, an attorney, a more conservative revolutionary, and now an enemy of Lilburne, should have scoffed about the Leveller leader:

I am credibly informed that this upstart monstrous lawyer since he was called to the bar of Newgate [an English prison], where he now practiseth, hath the Book of Statutes there lying open before him, which he reads and interprets to all the poor ignorant people that visit him, telling them that he will in a few days make them understand the laws and statutes of the realm as exactly as any lawyer in England.<sup>3</sup>

The desire for the law to be readily comprehensible in English would indeed lead to a revolutionary equality, just as Prynne feared.

*The Legall Fundamentall Liberties of the People of England* written in June 1649 is one of the tracts which Lilburne stood trial for writing, since it was considered treasonous by the Commonwealth government. The legal theory it propounds is revolutionary and anticipates the American doctrine of judicial review of laws passed by the legislature. This pamphlet is a sustained attack on the legitimacy of the Rump Parliament, which was a remnant of the Long Parliament which waged the successful revolutionary war against Charles I, the Long Parliament having been purged by Colonel Pride on

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<sup>3</sup> William Prynne, *The Lyar Confounded*, p. 22, quoted by M. A. Gibb, *John Lilburne, the Leveller: A Christian Democrat* (London: Lindsey Drummond, 1947), p. 130.

December 6, 1648. The Rump Parliament was kept in power by Cromwell's military power. Lilburne was imprisoned in the Tower of London without bail by the Council of State. Naturally he argued for due process under the common law, since the denial of bail and of habeas corpus and the availability of bail for suspects form important safeguards for the rights of the individual in American law; they are the bulwark against illegal, arbitrary imprisonment and are part of our heritage from the English common law. Totalitarian states and totalitarian revolutionary governments provide no such protections for individuals. Lilburne saw himself as the spokesman and champion of the rights of all English people to these protections afforded by due process under the common law. He insisted on "due Prozesse of Law, before a Justice of Peace, according to the law of the Land."<sup>4</sup>

Of particular interest to Americans is Lilburne's employment of a legal case reported by Chief Justice Edward Coke. This case, *Dr. Bonham's Case*, is the legal precedent upon which judicial review of laws for their constitutionality is ultimately based. This doctrine forms part of the American constitutional system of checks and balances among the three branches of our government. (Judicial review of legislation is no longer part of the English constitution.) Lilburne became acquainted with this case through his association with the Welsh Royalist Judge David Jenkins, who was also imprisoned at the time in the Tower of London. Jenkins was the first to use *Dr. Bonham's Case* in an argument to limit parliamentary powers.<sup>5</sup> Lilburne was the second. He systematically applied Coke's key words in the case to demonstrate that the continued sitting and power of the Rump Parliament was illegal: "That when an Act of Parliament is against Common Right, or Reason, or repugnant, or impossible to be performed or kept, the common law shall controul it, and adjudge this Act to be void: they are the words of the Law."<sup>6</sup> From a revolutionary standpoint, even the Parliament which led the successful revolution against episcopal and royal power must be destroyed if it violates the public good. *Dr. Bonham's Case* provided the authorization not just for limiting legislative power but for a radical change in the legislative body itself and the English constitution.

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<sup>4</sup> *The Legall Fundamentall Liberties of the People of England Revived, Asserted, and Vindicated* (London, 1649), pp. 16-17.

<sup>5</sup> J. W. Gough, *Fundamental Law in English Constitutional History* (Oxford: Clarendon Press, 1955), p. 105.

<sup>6</sup> *The Legall Fundamentall Liberties*, p. 51.

In recalling his capture by the Royalists late in 1642 during the war against the king, Lilburne reiterated his belief in the ability of individuals to judge affairs of state in a revolutionary time: "being then as able in my own thoughts, as any private man in England to argue the equity and Justice of the Parliaments Cause, I was then knowingly engaged in."<sup>7</sup> The confident Protestant belief in individualism and individual judgment rings clearly. Recalling his previous service to the parliamentary cause enhances his rhetorical ethos and increases the irony that now he is imprisoned in the Tower of London by the successful revolutionary government he fought to bring to power.

The titles of the Leveller tracts are characteristic of Renaissance controversial prose, being long descriptions of the main lines of argument pursued and intended to persuade. Just a few of the long titles can convey the flavor of the Leveller political position and persuasive appeals:

The Examination, and Correction of a Paper lately Printed Intituled A Relation of the Discourse, between Mr. Hugh Peters and Lieut. Collonel John Lilborn in the Tower of London, May 25 . . . by Robert Massey, Doctor in Physick, who was present thereat, and an Ear Witness thereof. . . . May 5, 1649.

The out-cryes of oppressed Commons. Directed to all the Rationall and understanding men in the Kingdome of England, and Dominion of Wales (that have not resolved with themselves to be Vassells and Slaves, unto the lusts and wills of Tyrants.) . . . 1647

To the supreme Authority, the People assembled in Parliament. The humble Petition of Lieutenant Colonel John Lilburne.

The Juglers Discovered, In two Letters writ by Lievt. Col. John Lilburne, . . . discovering the turn-coat, Machiavelli practises, and under-hand dealings of Lievt. Gen. Cromwell and his soone in law, Commissary Generall Ireton . . .

A Pearle in a Dovnghill. Or Lieu. Col. John Lilburne in New-gate: Committed illegally by the House of Lords . . .

As can be seen from the above titles, seventeenth-century polemic was not notable for niceties of good manners or restrained language. In addition to arguing political and religious issues, the personalities of individuals involved were considered fair game for attack and vilification. A modern audience might well consider this approach unfair employment of the argument *ad hominem*. However,

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<sup>7</sup> *Ibid.*, p. 70.

these democratic agitators thought that arguments involving the ethos of their opponents and themselves were appropriate and persuasive. Even the magisterial John Milton sometimes embarrasses modern readers with the virulence of his attacks on the character and morals of his opponents. Some of these extreme polemical techniques are understandable in light of the study of classical rhetoric and oratory in which ethical arguments were considered legitimate, indeed part of persuasive discourse. One's ethos and that of one's opponents were necessary to persuasion. Furthermore, modern readers should not forget the momentous changes generated from the Renaissance and Reformation in the sixteenth and seventeenth centuries; these were revolutionary times. War and revolution stalked the land. Extreme polemical techniques grow out of the extremity of the times.

Without being detailed or exhaustive, it is appropriate to survey some of the innovative and typical ideas in several of the tracts by Lilburne and other Levellers. In *The Oppressed Mans Oppressions declared* (1646), written while he was imprisoned by the House of Lords, Lilburne relies heavily on Coke's *Institutes* in defending himself. The theological basis of his resistance to authority emerges clearly. He asserts that Parliament has usurped the authority of Christ over "the Consciences of his People." This illegal usurpation of the legitimate sovereignty of God impels him to resist what he considers the tyranny of Parliament. This doctrine of resistance to tyranny did not derive from the first generation of Protestant reformers such as Calvin and Luther, but appears in the works of later Protestant leaders such as John Knox. Lilburne's left-wing or radical religious position appears in the unusual (for this time) championing of liberty of conscience and religious toleration.<sup>8</sup> Neither the Anglicans nor the Presbyterians believed in toleration. Only the radical sectarian religious groups advocated toleration of various unorthodox religious beliefs. Cromwell and most other Independents shared this Leveller belief to some extent. Religious toleration, an American assumption often taken for granted, was still a revolutionary idea during the Interregnum and did not survive when the monarchy was restored in 1660.

Throughout Lilburne's career in jail, he saw himself as the champion of the rights of all Englishmen, as he says in *The Juglers Discovered* (1647). He advocates "the rationall, naturall, nationall, and legal liberties of myself and all the Commons of England."<sup>9</sup> Basically,

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<sup>8</sup> *The Oppressed Mans Oppressions declared* (January 30, 1646), pp. 23-25.

<sup>9</sup> *The Juglers Discovered* (September 1, 1647), p. 5.

Lilburne has no fully developed theory of natural law, but occasionally, as in the foregoing statement, he blends the more typical consciousness of common law rights with natural law rights. His perception of what is just and unjust is also heavily nationalistic; Englishmen per se have certain rights because of the English common law. Thus he argues repeatedly for the right of habeas corpus and protests vociferously what he considers the inquisitorial legal process of the House of Lords.<sup>10</sup> (The English common law and American law are accusatorial, not inquisitorial.) The full title of *The Resolved mans Resolution* (1647) reveals a keen sense of a heritage of accepted legal rights, Lilburne's determination "to maintaine with the last drop of his heart blood, his civill Liberties and freedoms, granted unto him by the good, just and honest declared lawes of England."<sup>11</sup>

In this same pamphlet appears the important but radical idea of freedom of speech, a right not recognized by English law at that time.<sup>12</sup> The rest of the pamphlet details the Leveller leader's insistence on other now commonly accepted rights which protect the individual person from the unrestrained power of the state. While the Levellers and Lilburne are notable for their secular approach to political issues during the English Revolution, occasionally Lilburne buttresses secular arguments with religious authority, as in the discussion of the right not to incriminate himself; English law and the "law of God" prohibit self-incrimination.<sup>13</sup> This essential safeguard against judicial torture and coercion appears in the fifth amendment to the U.S. Constitution. Many American legal and constitutional principles could better be termed Anglo-American.

In contrast to many of the tracts, the simple title of *An Agreement of the Free People of England* (1649) initially conceals the most important achievement in constitutional theory that the Levellers produced. This is a breathtaking proposal for a new type of government based on a written constitution. Very rarely in sixteenth- and seventeenth-century thought does one encounter such a new idea which will in later years so profoundly change government theory and actual practices. Though less well known, *An Agreement* (and its later versions) ranks with the French Revolution's Declaration of the Rights of Man or the American Declaration of Independence. The *Agreement* was written by Lilburne,

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<sup>10</sup> Ibid., pp. 1, 7.

<sup>11</sup> *The Resolved mans Resolution* . . . (April 30, 1647), p. 1.

<sup>12</sup> Ibid., pp. 4, 7.

<sup>13</sup> Ibid., p. 36.

AN  
AGREEMENT  
OF THE  
Free People of England.

Tendered as a *Peace-Offring* to  
this distressed *Nation*.

BY

Lieutenar Colonel *John Lilburne*, Master *William Walwyn*, Master *Thomas Prince*, and Master *Richard Overton*, Prisoners in the Tower of *London*, *May* the 1. 1649.

*Matth. 5. verse 9. Blessed are the Peace-makers for they shall be called the children of God.*



A Preparative to all sorts of people.

**I**F afflictions make men wise, and wisdom direct to happiness, then certainly this Nation is not far from such a degree thereof, as may compare if not far exceed, any part of the world: having for some yeares by-past, drunk deep of the Cup of misery and sorrow. We blesse God our consciences are cleer from adding affliction to affliction, having ever laboured from the beginning, of our publick distractions, to compose and reconcile them: & should esteem it the Crown of all our temporal felicity that yet we might be instrumentall in procuring the peace and prosperity of this Common-wealth the land of our Nativity.

And therefore according to our promise in our late *Manifestation* of the 14 of *April* 1649. (being perswaded of the necessitie and justnesse thereof) as a *Peace-Offring* to the Free people of this Nation, we tender this ensuing Agreement, not knowing any more effectuall means to put a finall period to all our feares and troubles.

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Opening page of a pamphlet by John Lilburne and others, published in 1649 (Wing item L2079). From a collection of 61 rare Lilburne tracts and broadsides in The University of Iowa Libraries.

William Walwyn, Thomas Prince, and Richard Overton, all Leveller leaders imprisoned in the Tower of London by the Commonwealth government.<sup>14</sup> A grimly comic example of the stupidity of government censors is the imprimatur of Gilbert Mabbot, approving the publication of the *Agreement* by the Commonwealth government, at the end of the copy in The University of Iowa Libraries. However, his masters recognized the importance of the innocent-sounding small tract and promptly dismissed the unwary Mabbot. Copies which lack the imprimatur were apparently altered to disguise the whole embarrassing incident.<sup>15</sup> There is a lesson here for all would-be dictators in attempting to censor the free flow of ideas.

*An Agreement of the Free People of England* opens with a simple, eloquent statement of the postwar condition of England as a nation "having for some yeares by-past, drunk deep of the Cup of misery and sorrow." After the prefatory statement by the four Leveller leaders, the agreement itself follows in the same dignified style:

We the free People of *England*, to whom God hath given hearts, means and opportunity to effect the same, do with submission to his wisdom, in his name, and desiring the equity thereof may be to his praise and glory; Agree to ascertain our Government, to abolish all arbitrary Power, and to set bounds and limits both to our Supreme, and all Subordinate Authority, and remove all known Grievances.

*And accordingly do declare and publish to all the world, that we are agreed as followeth.*"<sup>16</sup>

Thirty clear, direct articles follow, outlining the democratic, republican government advocated by Lilburne, Walwyn, Prince, and Overton. The Levellers propose a new parliament to be elected by almost universal manhood suffrage. In article after article, a revolutionary and prophetic constitution unfolds. Various economic reforms are proposed. Imprisonment for debt is abolished. (One might recall the pathetic portrayal of debtors' prison in nineteenth-century England in Dickens's novel *Little Dorrit*.) The American revolutionaries made sure they did not import this feature of English common law into the American legal system. Only conviction for treason is to result in the confiscation of a felon's estate. At that

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<sup>14</sup> The modern editors of some of the Leveller tracts note other copies in the possession of Godfrey Davies, at the Huntington Library, in the Thomason Collection at the British Library, and at the Union Theological Seminary. See William Haller and Godfrey Davies, eds., *The Leveller Tracts, 1647-1653* (Gloucester, Mass.: Peter Smith, 1964), p. 318.

<sup>15</sup> *Ibid.*

<sup>16</sup> *An Agreement of the Free People of England* (May 1, 1649), p. 3.

time all convictions for a felony deprived the heirs of a felon from inheriting property under the common law. The Parliamentary Petition of Right (1628) is to be the basis of the legal system and of the new parliament. The Petition of Rights emphasizes due process and limitation of government power. Article X is particularly important: Parliament is to have no powers in religious matters; there will be religious toleration. There is to be freedom of conscience without interference by the state, for government intrusion in religious matters has caused "distractions, and heart burnings in all ages" and resulted in "persecution and molestation."<sup>17</sup> This is a remarkably restrained statement considering the history of England and the imprisonment of the authors at the time. No forced military service is to be allowed; citizens will have freedom of conscience to evaluate whether a particular war is just.<sup>18</sup> This provision is still revolutionary and would be considered visionary in the twentieth century. Modern nation states would have difficulty waging war if they were denied the power of conscription. The egalitarian, radical democratic character of the Levellers is perhaps most clearly revealed in this article.

The power of the state and the established church would be severely restricted, as announced in the opening of the *Agreement*. The precursor of the American Constitution's Fifth Amendment is present in article XVI; there will be no self-incrimination in judicial proceedings. Defendants will enjoy further protection because all law proceedings will be in English.<sup>19</sup> Compulsory church tithes will be abolished. Such tithes obviously strengthened the state church as opposed to other Protestant groups. Among the lower-class people such tithes were resented and were quite a financial burden. Apparently not many persons paid them cheerfully like Chaucer's saintly Plowman. Another anti-authoritarian provision was that individual congregations would freely choose their own ministers.<sup>20</sup> This provision would also favor the more radical Protestant groups such as the Baptists and Quakers. Trial by twelve-man juries from the neighborhood, chosen by the people and not by any government authority, is guaranteed. A person of any religious persuasion can hold office in the state except "such as maintain the Popes (or other foreign) Supremacy."<sup>21</sup> Roman Catholicism was still feared in the sev-

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<sup>17</sup> Ibid., pp. 3-6.

<sup>18</sup> Ibid., p. 5.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid., p. 6.

<sup>21</sup> Ibid., pp. 6-7.

enteenth century by almost all political groups as a subversive threat to England. Even Cromwell, whose tolerationist views were far in advance of most people, did not provide for toleration of Catholics in England. Memories of the Gunpowder Plot and other alleged Catholic plots against the Protestant monarchy remained fresh.

The Levellers launched a frontal assault on Cromwell's Commonwealth government in article XXVII when they specified that civil authority would be supreme over the military.<sup>22</sup> Cromwell's power and the continued sessions of the Rump Parliament were based on the revolutionaries' successful control of the military. England was a military dictatorship, albeit a remarkably benign and civilized one. One might recall that in the U.S. Constitution the military is firmly under civilian control and command. The overwhelming impression derived from a reading of *An Agreement of the Free People of England* is a hearty distrust of government authority of any political persuasion; this is particularly apparent in the words and tone of articles XXIX to XXX. The last paragraph of *An Agreement* sets the revolutionary written constitution in a religious perspective, understandable and congenial to the seventeenth-century reading audience:

Thus, as becometh a free People, thankfull unto God for this blessed opportunity, and desirous to make use thereof to his glory, in taking off every yoak, removing every burthen, in delivering the captive, and setting the oppressed free; we have in all the particular Heads forementioned, done as we would be done unto, and as we trust in God will abolish all occasion of offence and discord, and produce the lasting Peace and Prosperity of this Common wealth.<sup>23</sup>

Considering the radical proposals of the short tract, this is a mild and decorous conclusion which, however well intended, did nothing to allay the well-founded fear of the government that the Levellers represented a force for revolution that England, at least her propertied classes, was unready for.

Following *An Agreement* are various tracts both supporting and denouncing Lilburne and the Leveller political program. Many of the items came from the year 1649. Cromwell and his military allies are attacked and defended vigorously and polemically. The subject of law reform is a recurring concern of the propagandists as well as toleration and limiting the powers of Parliament. One of the most interesting and well-written of the tracts is Richard Overton's *An*

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<sup>22</sup> *Ibid.*, p. 7.

<sup>23</sup> *Ibid.*, p. 8.

*Appeale from the degenerate Representative Body the Commons of England* (1647). He discusses the relation of right reason, a concept from the earlier Renaissance, equity and the law. He believes in the contract theory of government.<sup>24</sup> He narrates his story, how he was arrested without a warrant by authority of the House of Lords. Not only is he imprisoned in Newgate, but his brother is imprisoned at Maiden Lane and his wife is publicly abused and imprisoned in Bridewell. He denounces particular members of the Commons as traitors who have violated the "Fundamentall Lawes, Rights and Liberties of the Commons of England."<sup>25</sup> He claims that the rights to free speech and writing have been infringed. Overton calls for armed resistance to Parliament because it is tyrannical.<sup>26</sup> This tract alone clearly shows why he is in jail as, in the modern sense, a political prisoner.

*The Second Part of Englands New-Chaines discovered* (1649) was one of the tracts for whose authorship Lilburne was charged with treason by the Commonwealth government. As one might expect, the tract attacks Cromwell and the other officers supporting him and favors the even more radical elements in the revolutionary army. Iowa's collection of Leveller materials includes a copy of the Commons *Declaration* (1649) declaring the pamphlet "A Scandalous Book." The tract is "seditious" and the authors are guilty of "High Treason." One of the ironies of the Puritan Revolution is that the army was the most radical element and exerted a constant pressure on Cromwell to move farther and farther to the left politically, while the Rump of the Long Parliament was relatively more conservative. A partial explanation is that the soldiers had only to debate and fight, while Cromwell and the Parliament had to govern the country and prevent it from falling into civil war or anarchy. And the royalists were waiting to take advantage of disunity in the ranks of the revolutionaries.

The title of the last tract in the Iowa collection shows the support of Lilburne by the more radical elements in the army: *A Conference with the Souldiers, or, A Parley with the Party of Horse, which, with drawn Swords entered the Sessions at Mr. John Lilburn's Tryall* (1652). The influence of Lilburne's thought appears in a tract by Captain William Brady in support of the Leveller leader (1649).

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<sup>24</sup> *An Appeale from the degenerate Representative Body the Commons of England* (London, 1647), pp. 2-7.

<sup>25</sup> *An Appeale* is misnumbered at this point in the tract, pp. 7-11. This may be an indication of the surreptitious and probably hasty printing of the tract.

<sup>26</sup> *An Appeale*, pp. 9, sigC<sup>r</sup>-C2<sup>r</sup>.

Bray, himself, was imprisoned at Windsor. As authorities, he cites the English common law and Lilburne. The Bible and English law favor the value of human life and liberty; following his mentor, Bray cites from Chief Justice Coke's *Institutes*.<sup>27</sup> Like Lilburne, Captain Bray criticized the increasing power of Cromwell as a de facto dictator. He viewed the common law as a bulwark protecting the individual against all unjust assumptions of power, either King Charles's or Cromwell's.

Though the Commonwealth government could not execute Lilburne without a massive outcry from his supporters, it exiled him and fined him the heavy amount of £7,000, which he could not hope to pay. This, however, did not silence the indefatigable pamphleteer. From exile in Holland he wrote in May 1652 yet another blast against the revolutionary government: *As You Were or The Lord General Cromwell and the Grand Officers of the Armie their Remembrancer. Wherein, as in a glass they may see the faces of their Soules spotted with Apostacy, Ambitious breach of promise, and hocus-pocus-juggling with the honest Soldiers, and the rest of the Free-people of England* (May 1652). The title aptly summarizes the arguments of the tract and gives the flavor of the style, a mixture of legal terms and concepts with a racy colloquial diction.

The heritage of the Renaissance appears in the metaphor of a mirror for rulers in which is revealed their shortcomings. One of the best-known works of the sixteenth century was *The Mirror for Magistrates*, which had the avowed didactic purpose of revealing the follies and vices of princes. As expected, Lilburne protests his banishment and enormous fine. He charges that Cromwell "walks by the Principles of Atheisme and Machiavellsme."<sup>28</sup> The charge of atheism is a catch-all term of denunciation, during the sixteenth and seventeenth centuries, generally meaning unorthodox in thought. The most devout believers could be called atheists by those who were their enemies. The charge of Machiavellism was also widely used as a term of abuse; it meant politically expedient and cunning. A stock character on the Renaissance stage was the Machiavel who plotted and deceived to gain power. An example of Lilburne's colloquial style is his use of the phrase "honesty is the best policy."<sup>29</sup> This may have been proverbial even in his time. In this tract Lilburne speaks

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<sup>27</sup> William Bray, *True Excellency of God and his Testimonies, and our Nationall Lawes, against Titular Excellency* (1649), pp. [2, 4].

<sup>28</sup> John Lilburne, *As You Were or the Lord General Cromwell and the Grand Officers of the Armie their Remembrancer* (May, 1652), pp. 1, 4.

<sup>29</sup> *Ibid.*, p. 12.

admiringly of Milton's defense of the regicide, the *Defensio Prima*, his answer to the continental scholar Salmasius.<sup>30</sup>

Unwisely, Lilburne returned from exile and was shortly back in prison, this time in Newgate. The Iowa collection of Leveller tracts includes several documents from this later period (1653), some by Lilburne, including the almost inevitable petition to Parliament, and other petitions by his supporters. Some of these documents are very rare, including three which are not recorded in Wing's *Short Title Catalog*. Reading the titles gives one a sense of déjà vu; Lilburne always seems to be in prison and manages somehow to get his grievances printed. Lilburne's biographer really has no firm explanation of how Lilburne managed his polemic career from prisons so successfully; the various governments he offended had no luck silencing him in jail. In July 1653 Lilburne was tried the last time for returning illegally from banishment. A letter in the Commonwealth state papers notes his able self-defense "with his old buckler, Magna Charta."<sup>31</sup> In this last period of imprisonment, his religious faith continued to motivate his opposition to the government and to give him personal comfort. In *The Just Defence of John Lilburne, Against Such as charge him with Turbulency of Spirit* (1653), he compares himself with other persecuted Protestants: "the most faithful servants of Christ in every country where they lived, being ever the greatest enemies to tyranny and oppression."<sup>32</sup> In an anonymous tract, one of the last in the Iowa collection, Lilburne's legacy of relying on law and democratic processes sounds down the years: *The Fundamental Lawes and Liberties of England Claimed, asserted, and agreed unto, by severall Peaceable Persons of the City of London, Westminster, Southwark, Hamblets, and Places adjacent* (July 9, 1653). With Cromwell's benevolent military dictatorship firmly in power, the writers assert boldly that the people of England are the source of authority.<sup>33</sup> Though this vision was lost with the Restoration and did not reappear until the eighteenth century in the French and American revolutions, Lilburne remains an eloquent witness to the rule of law through due process, to restraint of the state's power, to democratic rule, and to civil rights for the individual.

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<sup>30</sup> *Ibid.*, sig.C2v.

<sup>31</sup> "The Trial of Mr. John Lilburne." *State Trials*, ed. T. B. Howell (London: T. C. Hansard, 1816), V, n. p. 408.

<sup>32</sup> *The Just Defence of John Lilburne, Against Such as charge him with Turbulency of Spirit* (n.d.), p. 2. This is dated by Gregg as printed August 25, 1653, *Free-born John*, p. 403.

<sup>33</sup> *The Fundamental Lawes and Liberties of England Claimed* (n.d.), pp. 1-2.