

The Levellers' Conception of Legitimate Authority¹

A Concepção de Autoridade Legítima dos Levellers

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Abstract

This article examines the Levellers' doctrine of legitimate authority, by showing how it emerged as a critique of theories of absolute sovereignty. For the Levellers, any arbitrary power is tyrannical, insofar as it reduces human beings to an unnatural condition. Legitimate authority is necessarily founded on the people, who creates the constitutional order and remains the locus of political power. The Levellers also contend that parliamentary representation is not the only mechanism by which the people may acquire a political being; rather the people outside Parliament are the collective agent able to transform and control institutions and policies. In this sense, the Levellers hold that a highly participative community should exert sovereignty, and that decentralized government is a means to achieve that goal.

Key-words: Limited Sovereignty, Constitution, People, Law, Rights.

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Resumo

Este artigo analisa como os Levellers desenvolveram uma doutrina da autoridade legítima, com base na crítica à teorias da soberania absoluta. Para os Levellers, qualquer poder arbitrário é tirânico na medida que reduz os seres humanos a uma condição desnaturada. A autoridade legítima se funda necessariamente no povo, que cria a ordem constitucional e permanece como depositário do poder político. Os Levellers também defendem que a representação parlamentar não é o único meio de dotar o povo de atuação política. Antes, o povo fora do Parlamento é o agente coletivo capaz de transformar as instituições e práticas políticas. Nesse sentido, os Levellers sustentam que uma comunidade extremamente participativa deveria exercer a soberania e que o governo descentralizado é o caminho para alcançar essa finalidade.

Palavras-chave: soberania limitada, constituição, povo, lei, direitos.

I

By the mid-1640's, as the first civil war seemed to culminate in a settlement between the Parliament and the Scots, civilians and soldiers from the ranks of the New Model Army began to combine their efforts to fight the probable imposition of a Presbyterian discipline in England. This movement, that from 1645 to 1647 inundated the streets of London with demonstrations, petitions and pamphlets, would later be labelled as "Leveller"³. It was originally a term of abuse. It expressed the fears of social and political subversion, that would, according to a contemporary critic, "equalize, subvert, and confound persons", and give voice to a "giddy people, made up of biased and engaged men, and some strangers, rash youth, silly women and maiden"⁴.

But the Levellers were far from being a unified group, much less a political party organization.⁵ John Lilburne, Richard Overton, William Walwyn, John Wildman and Thomas Prince differed in important issues, as the role of Magna Carta as a source of rights and the extent of franchise. Again, their political thinking was both pragmatic and polemical, so that many of Leveller writings can be seen as casuistic responses to the political crisis that developed in London and its environs between 1646 and 1649. There was also significant ideological diversity with Lilburne grounding his arguments for annual parliaments in English history and fourteenth-century precedent, Overton arguing from natural law, and Wildman making appeals to republican principles. It would be

³ The word "Leveller" was first used after the debates of Putney, either by Cromwell or Charles I. See Vernon & Baker (2010), pp. 39-59. See also Vernon (2012), pp. 198-201.

⁴ Jones (1646).

⁵ Scott (2000), pp. 270-1.

reasonable to infer, therefore, not only that they were rather political activists than political theorists, but also that they did not share a common theoretical ground.⁶

Although I recognize the relevance of seeing the Levellers as a plural and heterogeneous movement, I assume in this paper that it is possible to identify a core of radical political ideas in the Leveller program. As David Como has recently argued, as early as 1645, the future leaders of the Leveller movement had already elaborated a consistent criticism of existing English political system, demanding its complete reform on behalf of the rights and liberties of the English people. Martin Loughlin goes even further, and asserts that Leveller principles can “fit together to form a coherent constitutional philosophy”, while Rachel Foxley has compellingly demonstrated how “the Levellers unified round a distinctive and radical vision of the political future”.⁷ In what follows, I shall endorse that approach, arguing that Levellers’ struggle against absolutism and their efforts to speak for the demands of the people outside the scope of Parliament result in coherent corpus about the foundations of legitimate political authority, which may be described as a doctrine of limited power and authority.

My thesis is that we may find in Levellers’s writings a distinctive doctrine of sovereignty and government, though the Levellers themselves sometimes take government for sovereignty. This puzzlement reflects the complex relations – which the Levellers seem to acknowledge – between popular sovereignty, constitutionalism and the social force of the people. While “constitutionalism” implies the limitation of government by impartial law, theories of sovereignty assert that the source of authority is single and unbounded.⁸ Equally inevitable is the tension between constitutionalism and the conception of people as acting outside the institutions.⁹ Henceforth arises a vicious circle: if the people as sovereign are bounded by their own laws, they have no extra-legal power to change the constitution or the government; inversely, if the sovereign is absolute, she is not subjected to her own laws.

It is beyond the scope of this piece to provide a solution for the dilemma in contemporary terms. My point is to emphasize the Levellers’ extreme reluctance to endorse a highly institutionalized vision of sovereignty, according to which sovereignty is exerted by means of representation and requires the creation of a single abstract political person. For the same reason, the Levellers reject a strongly centralized authority, whose uncontrolled power could threaten individual liberties. In this sense, they argue for contestatory sovereignty,

⁶ Purkiss (2012), p. 476; Braddick (2008), p. 444. Peacey (2012), p. 51.

⁷ David (2006), pp. 353-382; Loughlin (2007), p. 17; Foxley, (2013), p. 7.

⁸ On a characterization of absolutism, see Hoekstra (2013), p. 1080. Lee speaks about “mutual hostility between the competing ideals of unlimited popular self-rule and constitutionalism” (Lee (2016), pp. 1-2).

⁹ See Ochoa Espejo (2012).

according to which the people retain the means to resist and oppose any governmental abuse, having resort to mechanisms of dissent, accountability and constant surveillance of government activity – all of which presuppose a high level of civic participation. But the Levellers also develop a positive view of sovereignty, in which the people are the foundation of constitutional rule and remain the *locus* of political authority. This means that the constituting power of the people takes priority over the constituted powers inasmuch as it generates and organizes it. And, as the Levellers did not have a will-based conception of sovereignty, they understood that the sovereign could not abolish her own laws if she willed. Instead, they conceived of sovereignty as based on natural law or reason,¹⁰ which allowed them to oppose not only the unlimited exercise of power, but also, more remarkably, unlimited power itself.

As I shall also claim, pace Foxley, Leveller doctrine of limited power was not merely a radicalization of, but primarily a departure from parliamentary sovereignty.¹¹ The rupture with parliamentary doctrines was decisive in shaping a peculiar vision of popular government and sovereignty. In order to make my point clear, I will start by examining some features of parliamentary discourse that will be relevant to understand the Levellers' positions.

II

One of the first assertions of parliamentary sovereignty was the Militia Ordinance of 5th of March 1642, by which means the Parliament commissioned, “by the king’s most excellent Majesty and the Lords and Commons in parliament assembled”, the men who should command an army to fight against Charles I. Since the King refused to give his assent to the Ordinance, on 15th March 1642, the Parliament declared, “the People are bound by the Ordinance for the Militia, though it has not received the Royal Assent”. A possible explanation for what might appear to be a sequestration of the king’s majesty or authority by the two Houses of Parliament was soon found in the *Declaration of the Lords and Commons in Parliament concerning His Majesty’s Proclamation* of 6th June 1642. The parliamentarians assumed that, as the king refused to discharge his constitutional duty, they were allowed to exercise the kingly office on behalf of the safety of the subjects.¹² At least formally, the Militia Ordinance rested on the

¹⁰ Sabbadini (2016), pp. 164-186.

¹¹ Wootton (1990), pp. 654-69. Foxley summarizes the Leveller doctrine of political power as an “attempt to meld ... parliamentary sovereignty and the appeal to the people”. She is correct in calling our attention to the importance Levellers attached to appeals to the people as a means to win massive support for their demands, but she understands that “they faced significant difficulties in trying to reconcile the appeal to the people to their conviction that the representative chamber was the only place where institutional supremacy could reside”. See Foxley (2013). p. 52.

¹² Kenyon (1986), pp. 219-226. Besides the documents, Kenyon also provides a fuller background

constitutional doctrine of the King-in-Parliament, or the conjoined authority of king and Parliament, according to which the king had the prerogative to make and change the laws only with the consent of both Commons and Lords during the parliamentary assembly. Since the king could not legislate alone, the King-in-Parliament doctrine offered subjects some legal protection against arbitrary actions of the king.¹³ However, in face of Charles I's recruitment of an army of his own in Oxford in the beginning of 1642, the Houses understood that the king had the intention to rule arbitrarily, that is, without the Parliament.

The Militia Ordinance was readily justified by a number of parliamentarian pamphleteers, among them the influential Henry Parker.¹⁴ In *Observations upon his Majesties late answer* (1642), Parker redeploys one of the central tenets of the radical Protestantism held earlier by Du Plessis Mornay and George Buchanan,¹⁵ arguing that the Parliament fulfilled its constitutional duty when it offered resistance to Charles I's arbitrariness, thereby preventing the people from being reduced to vassals "of the king's mere will" (p. 9). Assuming that the people are "the free and voluntary author of government" (p. 1), Parker suggests that two distinct contracts can be established when the people consent to obey an authority: a contract intended for the people's own good and preservation, or a contract intended for their own ruin (p. 8). Based on English history, Parker supposes that the English people celebrated the first kind of contract, whereby they entrusted the king with their safety, establishing conditions and limits to his power, like the laws and the Parliament. Parker's conclusion is that "the people may use means of defence where princes are more conditioned, and have a sovereignty more limited" (p. 20). When Parliament resisted the king's unlimited prerogative, it was acting on behalf of the people.

Alongside the constitutional doctrine of limited monarchy, Parker builds a theory about the nature and extent of popular power. Comparing the body of the people to a voluminous body, Parker explains why the people cannot themselves resist the king's tyranny. When the body of the people was raised, its motions "were so distracted and irregular, that after much spoil and fruition of blood, sometimes onely one tyranny was exchanged for another" (p. 14). The remedy to regulate the movement of the people is found in representation, by which an elected aristocracy¹⁶ is able to simultaneously prevent the turbulent

of English history from 1642 to 1660, which allows locating the personalities and history of the various personages I am considering here. See also Foxley (2013).

¹³ "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 privileges" (*The King's Answer to the Nineteen Propositions*. In: Kenyon (1986), p. 19. See also Pocock (1975), p. 363).

¹⁴ Mendle (1995); Cromartie (2016), pp. 142-163.

¹⁵ Skinner (1978). chap. 9.

¹⁶ "... by virtue of election and representation, a few shall act for many, the wise shall consent for the simple, the virtue of all shall redound to some, and the prudence of some shall redound to all" (Parker (1642), p. 15). The superiority of the representative over the constituents is what Manin calls the "principle of distinction" (Manin (1997), pp. 94-95).

power of the people, and the arbitrary power of king. Representation eventually turns Parliament into the “real body of the [people]” (p. 15). So, when the king betrays the trust that the people have bestowed on him, “the people may assume its own power to do itself right without disturbance to itself, or injury to princes” (p. 15). It is noteworthy that the people that take power in that critical situation is the Parliament, which is the State itself, by virtue of representing all Englishmen (p. 28).¹⁷

As a result of these arguments, Parker makes two bold assertions. First, he states that the people cannot withdraw themselves from their representatives; otherwise anarchy or tyranny shall follow. It is not clear whether Parker’s theory about the extent of popular government condemns individual or collective resistance to Parliament on constitutional grounds. Still, heavy sanctions are expected against those who resist, since they destroy the moral unity, created through representation, between the people outside Parliament and the people inside Parliament. Second, although Parker had been an acrimonious antagonist to the king’s arbitrary rule,¹⁸ he now admits “that there is an arbitrary power in every state... and there is no danger in it”.¹⁹ Contrary to the king’s arbitrary power, parliamentary power is harmless inasmuch as it is founded on the consent of the people. Consent and representation are the sole basis of legitimacy, and, as it turns out, of parliamentarian absolute sovereignty²⁰. It remains to be explained, though, what would hinder the people outside Parliament from recovering their original power when they felt that they were being treated as slaves by the people inside Parliament.

The Presbyterian divine Charles Herle provides an answer to this disturbing question, by means of the idea of “reserved powers”.²¹ Like Parker and other parliamentarian writers, Herle accounts for the Militia Ordinance within the framework of the constitutional doctrine of King-in-Parliament, saying that the Parliament legally reacted against the king’s threats to the preservation of the subjects. As trustees of the people, who are the author of all governments (p. 253), the king and both Houses of Parliament hold political power which is aimed at the people’s fullest good. Herle understands that such an end could not be achieved if the King-in-Parliament were a mere natural body; on the contrary, it is a corporation “which dies not” (p. 240). If the natural body of the king detaches from his political body, Parliament is not dissolved: it continues to hold the political body of the king and of the kingdom.

¹⁷ See also Parker (1644). *Jus Populi*.

¹⁸ See Parker (1641).

¹⁹ Parker (1642), p. 3. See also Parker (1643): “Arbitrary power is only dangerous in one man or in a few men, and cannot be so in Parliaments at any times

²⁰ Doctrines of absolute sovereignty do not conflict, therefore, with constitutional theories of limited government. See Hoekstra (2013), p. 1080. See also Lee (2016), who speaks about “mutual hostility between the competing ideals of unlimited popular self-rule and constitutionalism”, pp. 1-2.

²¹ On the origins of the doctrine of “reserved powers”, see Lee (2016), chap. 1 and 4.

But – as Dr Ferne mischievously suggests – what would happen if the Parliament failed to discharge its duties? Would people reassume their original power? To avoid this unintended consequence, Herle adds that the consent given when the constitution is established becomes incorporated in Parliament.²² So, even if submitted to extreme cruelty, as the primitive Christians were (p. 256), the people would never have cause to resist, for they have “reserved no Power in themselves from themselves in Parliament” (p. 255). Yet Parliament may make use of its own reserved power of resistance in the name of the preservation of the whole kingdom to avoid absolute monarchy. Therefore, the constitutional principles underlying government themselves justify Parliamentary resistance against the king’s arbitrary rule, while preventing the people’s attempts to reassume a power which they no longer possess.²³

The move from the theory of coordinated powers to the theory of sovereignty is not common ground among all parliamentary writers. Philip Hunton, the author of *A Treatise of Monarchy* (1643), and the anonymous author of *Touching the Fundamentall Lawes* (1643), were cautious about taking that further step, endorsing instead the Ancient Constitution as the paramount law of government. For them, the Ancient Constitution assimilates not only English policies and customs beyond memory, but also the Roman *constitutio*.²⁴ Accordingly, the King-in-Parliament government is the supreme power in the commonwealth insofar as it is a mixture of monarchy, aristocracy and democracy.²⁵ This allows Hunton and the author of *Touching the Fundamentall Lawes* to deny that the king has a negative voice. Hunton even denies that any of the three estates can prevail over the others, lest the excess of power of one estate should unbalance the government.

These writers are well aware that a commitment to the theory of coordinated powers poses great difficulties, because the stability of the constitution ultimately rests on the cooperation among the three estates. For the author of *Touching the Fundamentall Lawes*, there is not, nor can there be, any external law binding the King-in-Parliament.²⁶ If the king refuses to assent to the laws created by the people in Parliament, the other estates of the republic²⁷ must act on behalf of the people’s safety, holding him accountable by means of the reserved powers they possess for the preservation of the republic. At this stage,

²² Ferne (1642), p. 204. Herle (1642): “Parliament’s is the people’s owne consent, which once passed they cannot revoke”, p. 255.

²³ Such a power is, according to Herle (1642), “a mere castle in the air” (p. 256).

²⁴ The connection between Ancient Constitution and Commonwealth was suggested, oddly enough, by *The King’s Answer to the XIX Propositions* (1642).

²⁵ [Anon] (1643), p. 267. Hunton’s account of mixed monarchy bears similarity with Polybius’ mixed government. See Hunton (1643), p. 24.

²⁶ “The very Constitution itselfe is the fundamentall law of its owne preservation”([Anon], (1643), p. 267).

²⁷ “if he refuse that honour which the republicke by its fundamentall constitution hath conferred upon him...” ([Anon], (1643), p. 274).

when the anonymous author is about to sanction Parker's and Herle's theory of parliamentary sovereignty, he accepts somewhat ambivalently that violations of the constitution are also rare opportunities for the people to correct their government (p. 278). In a very restricted context, then, the author concedes that no one is superior to the body of the people, not even "their representative actors" (p. 279).

Hunton's endorsement of the Ancient Constitution is even more dramatic. He acknowledges that in all mixed and limited government "there can be no constituted, legal, authoritative judge of the fundamental controversies arising betwixt the three estates" (p. 28). The power that one estate of the commonwealth has against the other abusive estate is of counterpoise and countenance, that is, of resistance. This does not imply, as Parker and Herle assume, that the estates encroached upon can take the place of the encroacher estate, nor that Parliament is the arbiter of the dispute among the estates, for this would make Parliament the supreme authority. Since the Ancient Constitution provides no remedy to prevent internal conflicts, its failure may lead to a condition of disorder that should be avoided, except if the cost to avoid it is "an intolerable servitude".²⁸ In that extreme situation, the appeal to the community outside the frame of government seems to Hunton the only solution to the deadlock; only the individual, after a careful examination of his conscience, can decide whom he shall obey and assist.

Subjects can decide whom they shall support in a civil dissention because they are endowed with reason and judgment, faculties that presuppose patterns of morality and law. In virtue of the fact that their original obligation is first due to the laws and principles of government, and next to those in charge of their preservation, their moral duty is to assist those who endeavour to preserve or restore the constitution. Thus, comparing the actions of the king and Parliament, Hunton concludes that subjects should assist the Parliament, because it resisted the king's arbitrariness. The appeal *ad conscientiam generis humani*, however, does not correspond to a right of resistance. The subjects have a moral, not political power, and they shall be judged and punished in accordance with the laws of the kingdom if they resist a supposedly arbitrary action by Parliament.

III

From 1645 to 1647 John Lilburne was imprisoned in Newgate for writing pamphlets deemed seditious and contrary to the "fundamental laws and government" of the kingdom. His attitude in court also contributed to the conviction. In defiance of the Lords' prerogative and superior rank, Lilburne

²⁸ Hunton (1644), p. 9, 38. Pocock (1975), pp. 368- 370.

refused to take off his hat, to bend before his judges and to answer to the interrogatories, thus showing that they had no jurisdiction over him. Richard Overton, who was likewise incarcerated in 1646 by order of the Lords for printing Lilburne's pamphlets and writing in his defence, also refused to answer the interrogatories from the judges, arguing that nobody is bound to accuse himself. Explaining his reasons for the confrontation, Overton asserted that his case against the Lords is of "the same nature with that of the Parliament against the king".²⁹ At first sight, the phrase may suggest that during those years the campaigns of "defensive resistance"³⁰ against the Lords were grounded on the very same arguments employed by parliamentary writers against the king's arbitrary power. This is only partially correct. We can attain a more complete understanding of the phenomenon of resistance against parliamentary absolutism if we fully accept Overton's contention that his enmity was "onely against tyranny ... whether in Emperor, King, Prince, Parliament, Presbyters, or People".³¹

The Lord's prerogatives were challenged from two connected standpoints. The first was based on the idea that the Lords were not representatives of the people because they were never, Lilburne writes, "instituted and empowered by the Commons of England".³² In the same vein, Overton claims that obedience "in all things just, lawful, honest and reasonable" is due only to those that were chosen by the people, that is, to knights and burgess assembled in Parliament. While the House of Commons was instituted by choice and consent, agrees Walwyn, the Lords are "no natural issues of laws, but the exuberances and mushrooms of prerogatives". These writers are convinced that the prerogative of the House of Lords to exert judicial power in the kingdom must be denounced for being just as arbitrary as the legislative power of the king and the clergymen.³³

Second, the resistance to the judicial power of the Lords drew heavily on the Magna Carta, especially chapter 29, and Edward Coke's gloss of the same chapter. In Lilburne's view, that chapter guarantees that in criminal causes a commoner shall be tried only by his equals and according to common law. Lilburne maintains that neither of these conditions was met during his trial, which he takes to be unquestionable proof that the Lords treated him as already convicted. Overton, for his turn, quotes the Magna Carta and Coke's *Institutes* to remind his judges that no warrant was produced before he and his wife were dragged out of their houses and into the streets, their small children being left

²⁹ Overton (1646a); Lilburne (1646a); Overton (1646b); Overton (1646c)

³⁰ Lilburne (1647).

³¹ Overton (1645).

³² Lilburne (1646a), p. 11.

³³ Overton (1646b). Walwyn (1646).

alone, in an unequivocal violation of their right to their bodies and possessions.³⁴ In face of the unjustified violence his family and he suffered, Overton seeks refuge in the same laws and statutes that were earlier invoked against the king's prerogatives by those who were prosecuted by the Star Chamber and the High Commission in the 1630's. His purpose is to make clear that such prerogative, as well as any discretionary power, is an evil in itself; it is therefore useless to abolish the offices or to eliminate the persons who retain the power without limiting the power itself.

Which principles lay behind the attack on the Lords' prerogatives? In Lilburne's *The Freeman's Freedom Vindicated*, it is the idea that all men and women, as God's creatures, are "by nature all equal and alike in power, dignity, authority, and majesty". Since God does not create ranks or hierarchies, everyone has the same power or dominion over him or herself and over others. As this principle remains valid within political and social life, any increase of power that results in the government of one or more persons over others not only depends on "mutual agreement or consent", but also must aim at the benefit of those who consent. Otherwise, there would be a state of voluntary servitude, which Lilburne characterizes as "unnatural, irrational, sinful, wicked, unjust, devilish, and tyrannical", because it subverts the order designed by God.³⁵ Consequent to the principle of equality and government by consent is Lilburne's controversial contention that "the poorest that lives hath a true right to give a vote, as well as the richest and greatest", which was echoed in 1647 during the debates at Putney by Colonel Rainborough, and endorsed by John Wildman and Edward Sexby. They sum up the demand for universal male suffrage by saying that the only way to avoid a servile condition is to ensure that "every man that is to live under the government" submits, by his own consent, to the government.³⁶

Lilburne's conception of equality derives from the premise that absolute sovereignty belongs exclusively to God: "[God] is circumscribed, governed, and limited by no rules, but doth all things merely and only by His sovereign will and unlimited good pleasure".³⁷ Only God is sovereign; everyone else is subject to His will. Being naturally limited, men's power and will can lawfully command only limited obedience. So *The Freeman's Freedom Vindicated* stages a conflict between antipodes. On one hand, there is the free man, that is, the one who is not subject to anybody's will other than God's,³⁸ and his representative, understood as a deputy or trustee. In opposition to them, there is the person who transgresses the principle of natural equality and as a consequence agrees

³⁴ Lilburne (1646a); Overton (1646b), Overton (1646c).

³⁵ Lilburne (1646a), pp. 11-12.

³⁶ *The Putney Debates*. In: Sharp (1998), p. 131.

³⁷ Lilburne (1646), *The Free-mans Freedom Vindicated*. A Poscript; p. 11.

³⁸ Like Lilburne, who is free, although in the prison of Newgate.

to submit to someone who possesses a God-like absolute power, being able to destroy her at will. The moral of the story is that the representative does not have a *status* above that of the person represented; implicitly, this means that the abuse of authority, or attempt to treat the represented like a slave, justifies taking up arms against whosoever has thus become a tyrant.

As early as 1645, John Wildman had already made the same contention in *England's Miserie and Remedie*, which is a complaint against Lilburne's imprisonment. Wildman understands that only God can exert an arbitrary power, that is, a power based on His will. From this premise, Wildman is able to draw two inferences: that every human authority is circumscribed by law, and that any person who does not recognize limitations to her jurisdiction is in fact a God's imitator, and should be punished as a tyrant, an enemy to humankind. What applies to a prince necessarily applies to a representative body, even more because the latter is but a servant to them that empower it, the people. As the supreme authority, the people never delegated the power to check the abuses and exorbitances of representatives. Invoking his Roman references, Wildman mentions Gaius Flaminius, who used to address to the multitude whenever he wanted to remind the Senators that they were only commissioned to serve the republic. The same occurs in England, says Wildman, where the appeal to the people is a means to teach the members of Parliament about the power that is above them.³⁹

Overton reaches a similar conclusion in *An Arrow against all Tyrants*. For him, tyranny causes such degradation of the human condition that the person who is subject to it ceases to be herself and becomes someone's else, as a beast of burden; the tyrant or usurper, in turn, by appropriating something that does not belong to him, transforms into "thief and robber to his kind" (p. 243). What is at stake in *An Arrow against all Tyrants* is the principle of self-property, which Overton equates to natural liberty: "By natural birth all men are equally and alike born to like propriety, liberty and freedom (...)" (p. 243).⁴⁰

This natural condition of freedom, propriety or birthright is the right to enjoy oneself without being invaded or usurped by others. Overton's assumption is that preservation being the purpose of human life, no one may either abuse us or allow another to do so; if it happens, we are endowed by God and nature with the means, or rights, to avoid the assault that could convert us into slaves, that is, into the property of others. In its negative formulation, the principle of self-property reads that "No man has power over my rights and liberties, and I over

³⁹ Wildman (1645).

⁴⁰ "To every individual in nature is given an individual property by nature not to be invaded or usurped by any. For every one, as he is himself, so he has a self-propriety, else could he not be himself". (Overton (1646c). For Skinner, there is a general theory of liberty underpinning the arguments of Overton, as well as, say, Ireton and Harrington. According to this theory, to be free, one must not be at the mercy of an arbitrary will, and this is only possible for those who have the means to provide for their own survival (Skinner (2006), p.162).

no man's". The reason why nobody may usurp my self-property and I also may not usurp another's self-property is that there is no such thing as an absolute right in nature. Self-property is limited: "For as by nature no man may abuse, beat, torment, or afflict himself, so by nature no man may give that power to another, seeing he may not do it himself" (p. 243). Interestingly, Overton does not deny that one has the capacity to subdue another or to yield to another; he does deny that from the power to act as usurper or beast of burden follows the right to do so. Facts do not create rights or morality. The consequence of transgressing the moral boundaries God has set for his creatures is the loss of the liberty that enables us to be ourselves, that is, humans.⁴¹

The focus on representation stems from the principle of self-property. In order to enter someone's property and share it, one must have "free consent from him whose natural right and freedom it is". Consent is free as long as it is rational, that is, as long it is not obtained by force or fraud. Incidentally, fraud can be a much more effective means of achieving obedience than recourse to violence. In a bitter narrative of England's past, Overton remarks that the "poor deceived people" cannot feel on their necks the Norman Yoke that was put on them by many generations of kings, Lords, and clergymen, "because they are even bestialized in their understandings (...), they are even degenerated from being men, and unman'd (...)"⁴² As the compliance of the people with their tyrants suggests, consent is necessary but not sufficient to establish a just government. Another condition is required: the government must be representative.

Representation is a particular case of consent, through which someone empowers another person, creating a legal authority for a limited end – the safeguard of self-property and people's safety. While alienation of power entails the loss of self-property, representation is a communication of power, so that the representative does not truly own political power, being instead a deputy, commissioner or delegate.⁴³ The representative is accordingly a creation of those whom he represents; in Overton's metaphor, he is but a shadow, and "that which goes beyond the substance and shadow of a thing cannot possibly be the thing itself either substantially or virtually" (p. 251).⁴⁴ As the power to create and undo the representative belongs to the represented, the former does not exist in separation from, nor act independently from the represented, contrariwise to Parker's contention that, having being incorporated by the Parliament, the people cannot withdraw themselves from their representatives. For Overton,

⁴¹ Foxley points out that Overton's reasoning is greatly indebted to Walwyn's "requirement to preserve oneself from moral self-destruction through sin", which was expressed in *A Help to the Right Understanding*, from February 1645. See Foxley (2013), p. 136.

⁴² Overton (1646b), p. 2.

⁴³ The doctrine of communication was advanced by Althusius. See Salmon (1959).

⁴⁴ The metaphor of the representative as a shadow is a favourite among Levellers. See also Lilburne (1645); Walwyn, William (1646b).

representation must come to an end when the representative goes beyond the represented.⁴⁵

The same rule extends to the House of Commons, which is instituted “by contraction of those [the free people] several individual communications”. Indeed, the principle of limited self-property is the basis of the limitation of any representative government, insofar as it establishes a boundary between what can and what cannot be represented. Religious toleration is the first and main instance of this idea, as we can see in *A Remonstrance of Many Thousand Citizens* (1646): “we have no power from us to doe [compel for the well-being], nor could you have; for wee could not confer a power that was not in ourselves”. This thinking resonates from Walwyn’s principle that Christians can worship God only “according to their understandings and consciences”. As no one has the power to bind oneself in good conscience to an opinion that one does not believe in, there is “no compulsive power in matters of Religion”, every one being “free in the worship and service of God”. Religious opinions are therefore completely out of the scope of representation.⁴⁶

Nevertheless, Overton’s analysis of the *status* of the House of Commons is rather ambiguous, which calls into question who ultimately owns political power, that is, who holds sovereignty. Considering the principles from which Overton derives his views on representation, the most reasonable answer would be that each person individually and the people as a collective are the origin and source of all political power. Yet Overton asserts, “the commons of this nation [...] empowered their body representative [...] with their own absolute sovereignty”. He goes on explaining that the people “conveyed and issued to their proper representers” a “natural sovereignty”. Despite the centrality of the principle of limited self-property, these lines may mislead us to think that the individuals yield their absolute sovereignty to the House of Commons, who thus becomes sovereign.

As may be apparent by now, Overton employs the term “absolute” in different ways. First, “absolute power” is a synonym for tyranny. Repudiating all absolutist theories, from parliamentary to patriarchalist ones, Overton even rejects that parents have, metaphorically or literally, “absolute unlimited power [...] over their children as to do to them as they list”. However, by “absolute sovereign” Overton means also “chief ruler”, “chief magistrate” or supreme executioner of the laws”, epithets that were employed by parliamentary and Independent writers to refer to the position held by the king. Finally, “absolute power” may refer, paradoxically, to the liberty to act in order to preserve freedom. The House of Commons is said to have an absolute power in virtue

⁴⁵ That is an “accountability view” of representation, according to Pitkin’s categories (Pitkin (1972).

⁴⁶ Walwyn (1645a); Walwyn (1646a); Overton (1646d) p. 12.

of its capacity to make or abrogate laws aiming at the people's protection. Thus, the Parliament has absolute legislative power, in contrast to any form of arbitrary power, that is, any power that is neither representative nor authorized by laws. The key word here is "communication", quoted above. Communication supposes a dynamic connection among individuals as well as between each individual and the body representative. Absolute sovereign power may be depicted, therefore, as a constant flow of right from those who own power to their commissioners. Thanks to representation, the sovereignty of the people does not exclude the sovereignty of the House of Commons; on the contrary, one requires the other. In all cases, if representation is the main the criterion for a legitimate exercise of political authority, king and Lords are excluded from government; the House of Commons becomes supreme, concentrating the legislative, judiciary and executive power of the nation.⁴⁷ It would not be unlikely, though, that from the seat of supreme power, the House of Commons could claim to be the seat of absolute sovereignty in the absence of any superior power controlling its actions.

Lilburne responds to such a possibility by invoking the supremacy of the law. As early as 1645, he was promoting the rule of law against the rule of will in an attempt to emphasize that Parliament was bound, like anybody else, by the declared and established law. He argues that Parliament is commissioned to make and abrogate laws as long as these laws were in accordance with Equity or the spirit of Law. And Parliament may be deemed the supreme power as long as it follows Equity; otherwise, no one is obligated to it. To those who might be sceptical about the right meaning of Equity, Lilburne notices that it is expressed in the letter of many laws, like the Magna Carta, for instance, and is always identical with the public good. Without Equity, concludes Lilburne, there would be no *meum et tuum*.⁴⁸

Whereas Lilburne believes that the law of Equity conveyed through the Magna Carta was obligatory and could save the free people from the tyranny of Parliament, Walwyn discredits the entire doctrine of the Magna Carta. For him, not only does the greatest part of the Carta addresses insignificant matters related to hunting, it also deals with rights and liberties that are completely ignored by Parliament. As Walwyn observes, parliamentary writers maintain that Parliament is above the Magna Carta, is unbounded by its own laws, and can dispose of the subjects' lives and properties at its own pleasure, simply because it was chosen by the people and allegedly entrusted with their safety.⁴⁹ Moreover, there are no courts or judges who could enforce the law of Equity against the tyranny of Parliament, because all the legal authorities in England are

⁴⁷ Lilburne (1646); Overton (1646b). See also Lilburne & Overton (1646): "The House of Commons [is] the supreme and legal power and judicature in England".

⁴⁸ Lilburne (1645).

⁴⁹ Walwyn (1645b), pp. 3-6

the offspring of the Norman Conquest. Also making the case for the supremacy of law, Overton argues that justice cannot depend on “the crooked course of favour”. To beg for one’s own right, according to him, “is a disfranchising of myself, and an acknowledgement that the thing is not my own, but at another man’s pleasure”.⁵⁰ Yet, while Overton seems to have no choice but to appeal to the House of Commons for Equity, Walwyn relies on “the honest and plaine men of England” for attaining the “greatest safety” that is “found in open and universal justice”.⁵¹ As I hope to show below, any support for the House of Commons gives way, however hesitatingly, in 1647 to the confidence Walwyn placed on the agency of free people.

It now seems opportune to emphasize some discontinuities between the arguments employed by these three pamphleteers and the parliamentary doctrines. I argued above that both lineages of parliamentary doctrines operate, initially at least, within the frame of the Ancient Constitution. The doctrine of parliamentary absolutism extrapolates from that frame by introducing the idea that the people originally consented to be represented by and in Parliament for the sake of their protection from tyranny. Representation is seen as a mechanism to create a political or institutionalized people in lieu of the unorganized and tumultuous people outside Parliament. This implies: 1) that the representative is essentially superior to and independent of the represented, who is left with no political power after consent; 2) that the people are sovereign only in Parliament, which can therefore exert an arbitrary and legitimate power. By contrast, the Levellers’ arguments do not explore the limits and failures of the Ancient Constitution. Although Lilburne and Overton bring into their defence the Magna Carta, they are more interested in a Cokean kind of juridical reasoning, so to speak, than in the doctrine of the King-in-Parliament, which is considered a heritage of the Norman Conquest. What they really advocate for is the supremacy of law as a limitation on any government whatsoever. And although Walwyn, Lilburne and Overton develop a link between consent and representation, they strongly repudiate the idea that representation entails a complete loss of equality and liberty. In their effort to delegitimize any claim to absolute arbitrary power, they assert that absolute power is necessarily non-representative. They explicitly deny that Parliament is the people – as the shadow cannot be the thing itself; rather, Parliament is subservient to the people’s security and protection from tyranny. Implicitly, they deny that representation is the only mechanism by which the people may acquire a political being. This is why Walwyn appeals to the people not as the

⁵⁰ Overton (1646b), p. 6.

⁵¹ Overton (1646b), p. 5. See also Walwyn (1645b): “The honest and plaine men of England [...] shall be your Judges, and will [...] not suffer a haire of your head to be touched, nor any reproach to be stucke upon your good name, but you shall live and be an honour to your Nation in the hearts of all honest and well affected men”, pp. 7-8.

moral potency behind the constitution, like Hunton, but rather as the political power able to transform and control institutions and policies. The remaining part of this paper turns more directly to the people outside Parliament, who the Levellers conceived as the original, end and bearer of sovereignty.

IV

In July 1646, the Presbyterian members of the Parliament drafted the Newcastle Propositions as the basis for the peace treaty with Charles I. The document proposed the restoration of the king to the English throne, the imposition of a Presbyterian state church, and the reversion of the New Model Army to the king's control. For many people, amongst them the authors of *A Remonstrance of Many Thousand Citizens*, the negotiations between the Presbyterian members of the Parliament and the king were a betrayal of the cause of liberty. Identifying themselves as "citizens and other free-borne people of England", the authors of the *Remonstrance* spoke on behalf of the people to remind "their owne House of Commons" (p. 3) of its duty to deliver them "from all kinds of bondage", thus making clear that such peace treaty would never be in the interest of those who fought for liberty of conscience during the civil war. What the *Remonstrance* was keen to emphasize was the nature of the trust bestowed by the people on the body representative for their "peace and happiness".

Although the notion of trust can be found in earlier pamphlets, the recurrent use of the term in the *Remonstrance* suggests that there is something else at play. In the *Remonstrance*, the tensions within the political community are narrated through the process of trust in, and distrust of, the House of Commons. The more objective and instrumental categories of consent and election do not encompass the condition that accounts both for the power that the House of Commons acquired in the beginning of the war, and for its loss of moral authority due to the possibility of a peace settlement with the king. Trust and its antithesis distrust involve an affective and temporal dimension.⁵² In this sense, the *Remonstrance* shows how the trust in the House of Commons was first founded on the opinion that knights and burgess had the same interests as the commons of England, and thence that the arbitrary power personified in the king was a common enemy. The hope to live free "from all kind of exorbitancies" (p. 5) in the nearest future helped to create a bond through mutual obligations. So, in order to fight the oppression, the House of Commons was granted a power that came directly from the willingness of many people to sacrifice their callings, belongings, families, and their lives for the common interest.

⁵² Dunn (1996), p. 95.

But the people did not devote themselves unconditionally to Parliament. Their fidelity and love were based on the expectation of fair dealing and just treatment.⁵³ Fair dealing excludes any attempts to corrupt the people's understanding, as instantiated by the Norman rhetoric of the King-in-Parliament, and even the Magna Carta itself, which in the *Remonstrance* is conceived of as "a beggarly thing" (p. 15). Whereas fair dealing requires the recognition that the people are rational and able to break with the past if necessary, just treatment entails the recognition of civil equality. In order to deserve the trust of the people, the House of Commons was expected to treat everyone as equal, regardless of degrees, wealth or persons. Such expectations, however, were utterly frustrated. From the moment that Parliament employed the servile language of "the king can do no wrong" to excuse the king for the war, invoking the Solemn League and Covenant to protect him, the whole edifice upon which trust was built began to collapse. The breakdown of reciprocity was succeeded by political disenchantment, leading to the point at which the authors of the *Remonstrance* had to warn their representatives that, according to the "established constitution of this commonwealth", their mandates could be "but for one year at the most" (p. 3). If they remained in power longer, it was only because the people still relied on them. Gradually, however, trust is being eroded.

Distrust characterizes many of the feelings towards Parliament from 1646 to 1649.⁵⁴ The rank and file soldiers of the New Model Army were amongst the most aggrieved by the groundless hopes raised by Parliament. In *The Case of the Army truly Stated* (1647), their agents (adjutators or agitators) complain about the direct effects that the peace treaty had on the Army and the people as a whole: The army would be dismissed without payment of their arrears and without any provisions for immunity from prosecutions for acts committed during the war; no indemnity would be provided for wounded soldiers, widows and orphans; an expeditionary force drawn on the New Model's rank would be sent to Ireland. For people who are already burdened with tithes, monopolies, and taxation; subjected to committees and courts composed of Lords; threatened with imprisonment for debts, the treaty means the continuity of a policy of exclusion "from managing state-affairs". But the authors and signatories of *The Case of the Army truly Stated* were not willing to cooperate with those plans, proving thereby that distrust may also prompt one to political action.⁵⁵ At that juncture, the most urgent action was the dissolution of the Parliament assembled since 1640 and the election of a new representative body, a demand that is heavily stressed in the versions of the *Agreement of the People*.⁵⁶

⁵³ "And doe you (because of our readiness to comply with your desires in all things) conceive us so sottish as to be contented with such unworthy returnes or our trust and love?" (Overton (1646d), p. 6).

⁵⁴ Walwyn (1647).

⁵⁵ "There is little probability of any good without some more speedy and vigorous action". *The Case of the Army truly Stated* (1647). See Woolrych (2001).

⁵⁶ I partially endorse Vernon and Baker's contention that the first *Agreement* emerged from the discussions of soldiers and agitators in the Army, led by Wildman (Vernon & Baker (2010)). On the other

The urge for renewal of Parliament was part of a much wider purpose to determine the role and extension of the political power, allowing no room for “the exercise of an unlimited or arbitrary power”.⁵⁷ As specified in the *Agreement of the Free People* (1649), the supreme authority of the country must consist of 400 members elected. As the supreme power of the nation, Parliament is entrusted with the legislative power (to make or repeal laws) and with the executive power (to raise revenues and to make peace or war with foreign countries). Yet its authority is subordinate to the people and to an inalterable law that entrenches a written constitution, the Agreement itself.⁵⁸

The Agreement was a foundational document for the reconstitution of a political society devastated by civil war. Its formal structure resembled that of ancient charters of cities, whose goal, recalls Lilburne in *London's Liberty in Chains Discovered* (1646), was to avoid that the “government should become a tyranny”. Lilburne goes on explaining that these “first Constitutions” provided that “all Officers and Magistrates should be elective By Votes and Approbation of the free people of each City; and no longer to continue then a year”.⁵⁹ As in the past this proviso was meant to protect the free people; in the present it aims at recovering birthrights that were lost in the course of the struggle against the Norman Conquer and his heirs. Nonetheless, we should not overstate the traditionalism of the Agreement and its appeal to customary ways, for this may lead us to neglect the novelty of some of its claims,⁶⁰ a novelty that was clearly perceived by Ireton and Cromwell at Putney on 29th October 1647. From the viewpoint of both army officers, the expansion of the franchise and the distribution of seats in parliament according to population (Article I of *An Agreement of the People*, 1647⁶¹) would result in the ruin of Ancient Constitution, which restrained participation in the legislature to the freeholders. Petty, Sexby, Wildman and Rainborough were ready to accept a new constitution and to break with the past, for they considered the previous acts of consent to not be mandatory in cases in which fundamental rights or liberties are violated. In this sense, the Agreement might be conceptualized as a constitution in modern terms.⁶²

hand, Foxley is correct to insist that the Levellers may have had a hand in the first *Agreement*, since there are many phrasings and patterns of thought similar with earlier pamphleteers who would become the leaders of the Levellers (Foxley (2013), pp. 150-159).

⁵⁷ *An Agreement of the Free People* (1649), p. 2. In this analysis I give priority to this version of the *Agreement*, the most authentically Leveller. See Peacey (2012), p. 58.

⁵⁸ Vernon & Baker (2010), p. 13.

⁵⁹ Lilburne, John (1646b), p. 281. See Orr (2012), p. 77.

⁶⁰ The innovative character of the *Agreements* is controversial. Dzelzainis argues that the Levellers simply defended the restoration of ancient liberties comprised in the Ancient Constitution, “rather than proposing blueprints to a new system” (Dzelzainis (2005), pp. 269-287. See also Orr (2012).

⁶¹ “That the people of England being at this day very unequally distributed by counties, cities and boroughs for the election of their deputies in parliament, ought to be more indifferently proportioned according to the number of the inhabitants...” (*An Agreement of the People*, p. 94.

⁶² That is, “an act whereby a people frees itself (or themselves) from custom and imposes a new form of association on itself by an act of will, reason and agreement” (Tully (1995). *Strange Multiplicity*: p. 60).

This new form of association aimed at ensuring popular sovereignty by means of a complex set of devices that enable and limit the powers available to any representative or institutional body. In effect, the Agreement begins highlighting mechanisms of accountability and responsibility: Annual elections as well as the prohibition of consecutive re-election to prevent factions and to remind office-holders that they are not the real owners of the office.⁶³ It is assumed that frequent elections and the short terms of mandates can bestow legitimacy to an elected government, but also that the government thus elected should be put under the permanent control of the people.⁶⁴ These devices were meant to give trust and distrust an expression in the constitution, being part of an effort to impose control over the political process and a political form of interaction in the public space.⁶⁵ Therefore, popular participation was not limited to the right to vote in regular elections; it was equally required to police the protection to reserved rights.

A second group of devices was intended to safeguard individual and collective powers that are not, nor can be, entrusted to representatives or to anybody else, as matters of conscience; the right to equal submission to law, irrespective of wealth or social position, with the consequent elimination of all political and legal privileges; the power to “constrain any person to serve in way by sea or land — every man’s conscience being to be satisfied in the justness of that cause wherein he hazards his own life, or may destroy another’s” (p. 3).⁶⁶ As already discussed, these reserved powers aimed at the person’s moral integrity, drawing a line between legitimate and illegitimate rule.⁶⁷ Any transgression of this line should be punishable with the death penalty – like “murder or other the like heinous offences destructive to human society”, or attempts “by force to destroy this our Agreement” (p. 4). Unsurprisingly, capital punishment was to be applied in these two cases alone, evidence that the Levellers hesitated about the employment of violence, even when it was supposedly required. Their past and present experiences had taught them that the boundary between coercive power and arbitrary power is often a thin one.

Several clauses of the *Agreement of the Free People* were also dedicated to issues of criminal justice, reflecting the Levellers’ preoccupations with the need to separate the formulation and the application of criminal laws, as well as with procedures for judicial independence.⁶⁸ The legislative was not to have any power to make laws concerning the death penalty - except in the cases of murder or high treason mentioned above -; nor might it have the right to

⁶³ Harrington makes a similar claim. Harrington, James (1996), p. 33.

⁶⁴ Tuck, Richard (1993), pp. 242-243; Scott. (2000), p. 283.

⁶⁵ I draw here on Rosanvallon (2008).

⁶⁶ Foxley (2013), p. 136.

⁶⁷ As Skinner eloquently summarizes the reasoning, “any social arrangements under which our birthright is forfeited must for that reason be illegitimate”(Skinner (2006), p. 163).

⁶⁸ Loughlin (2007), p. 20

take away “men’s lives, limbs, liberties and estates ... upon trivial or slight occasions”; likewise, in criminal laws, punishments should be proportionate to the offences. Further measures were prescribed to prevent personal administration of justice that amounts to arbitrariness: That nobody be sent to prison before conviction and condemnation; that the Lords have the same power to commit the commoners to prison as the commoners have to commit them⁶⁹; that the jury in criminal cases should be composed of twelve persons “of the neighbourhood to be chosen in some free way by the people”; and that nobody be deprived of defence witnesses.⁷⁰

Finally, the *Agreements* emerged from practices of popular participation and were intended to reinvigorate popular sovereignty thanks to election in different levels of government. *The Agreement of Free People*, in particular, expressed the Levellers’ commitments to a decentralized political society. Local governments remained out of the reach of the central power, orienting their interests rather autonomously.⁷¹ Accordingly, the Levellers propose the abolition of central courts and the transfer of criminal and civil jurisdiction to local hundreds courts. Despite being supreme, the Parliament’s authority is also blocked from intervening in local religious and political activities, like the direct choice of ministers in the parishes, and the election of “any public officer upon any counties, hundreds, cities, towns or boroughs”. The state envisaged by the Levellers was dispersed in self-determined communities.

It might be tempting to associate the urge for the decentralization of power and political participation to the Levellers’ attachment to the theory of mixed constitution or divided powers. The truth is quite the opposite: The Levellers’ call for unicameralism was rooted in the assumption of equality among voters. They thus conceived the legislature as necessarily composed by one sole element, not of two or three - a model of government that would be later criticized by Harrington for being simple and more susceptible to corruption. The Levellers, in contrast, repudiated mixed government thoroughly, associating it more with the Norman Yoke than with republican Rome. In *The Bloody Project*, Walwyn scornfully suggests that mixed government is at best impractical and at worse a play among factions. If Parliament was composed by the Lords Spiritual, Lords Temporal and Commons, as it was firstly held, then the exclusion of the bishops

⁶⁹ *Instructions agreed upon as the sence of the Petitioners of Buckinghamshire and Hartford Shire*, 1646.

⁷⁰ See also *Certain articles for the good of the commonwealth* (1647). An insightful study on the arguments employed by the Levellers advocating the importance of juries rights can be found in Greene (1985). According to Greene, “The “jury right” was more than just another Leveller reform item: the supposed right lay at the very heart of Leveller political and social theory, and at least in its theoretical implications the right involved the gravest threat that the Levellers posed to the governments of the Interregnum (p. 154)

⁷¹ Davis (2007). Baker argues that Levellers’ “decentralist agenda was influenced by civic practice” (Baker (2012), p. 106.

serves as proof that the three elements were not equal; whereas if it is assumed that Parliament is composed by king, Lords and Commons, the war against the king cannot be taken as the assent of the king to the war. If two states agree, they can exclude the third; if they do not agree, then “nothing can be done, which in government is ridiculous to imagine” (p. 9). Lilburne, in turn, gives rather ironic support to the King-in-Parliament policy *vis-à-vis* the government of the *Rump*, saying that it was the Levellers' interest “to keep up one tyrant to balance another, till we certainly knew what that tyrant that pretended fairest would give us as our freedom”.⁷² This assertion sounds like a hopeless bet that the monarchy could destroy the violent oligarchy of the Army. It is also an expression of disillusionment with the promises of a free England.

Now, while the *Agreements* conveyed the idea of an unalterable law that enables and simultaneously constrains the legislative, judicial and executive powers, they also shed light on the community that is supposed to make those engagements. In effect, who are the “we, the free people of England” that agree on the terms of the paramount law, accepting thereby to establish constraints on themselves?⁷³

In a broader sense, the free people of England who are “capable of subjection as well as rule” refer initially to all men “born in the realm”, as mentioned in chapter 29 of the Magna Carta so often quoted by Lilburne.⁷⁴ This seems to be the sense employed in *The Agreement of the People* (1647), which calls for the support of all “countrymen”. Who should be counted as citizens, though, was a highly disputed issue during the debates at Putney. Colonel Thomas Rainborough, John Wildman and Edward Sexby contended that all Englishmen, by the mere fact that they were born in the country, “ought to have a voice in elections”. In turn, Maximilliam Petty, Thomas Reade, and Nathaniel Rich argued that the citizens were “all inhabitants that have not lost their birthright”, excluding thereby servants and beggars because they would not be able to express their vote independently. This is the opinion that prevails in the *Foundations of Freedom* and *An Agreement of the Free People*, where the citizens are all men over 21 years old, with the exception of those “servants or receiving alms or having served the late king in arms or voluntary contributions”.⁷⁵ Although more exclusive than the first version, it is nonetheless

⁷² “That there should be either three or two distinct states equally supreme is an absurd nullity in government” Walwyn (1648), pp. 8-9; Lilburne (1649).

⁷³ “...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” (*An Agreement of the Free People*, 1649).

⁷⁴ Thomas (1974), p. 75. There are indications that in some cases women would also be considered the people. See *The Large Petition of the Levellers* (1647) and *Petition of Women, Affecters and Approvers of the Petition of Sept. 11, 1648*. See also Foxley (2004).

⁷⁵ *The Putney Debates*. (1647), pp. 102-130.

far more inclusive than the proposal offered by Ireton and Cromwell at Putney, where they were keen to maintain the privilege of being a representative for those with a “permanent fixed interest in this kingdom”. According to them, permanent interest is granted by birthright, freehold or ownership, since only the freeholders actually agree to defend their country under any circumstances and to strive for its prosperity. The Army agents and Levellers, however, could not accept that they had risked their lives and families for the country only to remain subjects. The mere fact of having fought for the country was sufficient to demonstrate that soldiers and other political activists were the people, and have accordingly the necessary attributes for political participation: An interest in the country’s freedom against arbitrary power. The extensive practices of petitioning and pamphleteering would thus serve as proof that the multitude could enter into political arena as citizens.

If we analyse this last point in more detail, we see that the “we the people” or “all sort of people” are, first, the inhabitants of cities, counties and the nation. But the people are also a multitude in a Hobbesian sense: A multiplicity of persons “with a diversity of opinions and interests” (XVI, p. 115).⁷⁶ Instead of “the rabble”, “the brutish multitude” that instilled fears of social dissolution, the Levellers assumed that the each individual of the multitude or people was rational for being able “to save, defend, and deliver himself from all oppression, violence and cruelty whatsoever”.⁷⁷ As they are born into a complex society, they develop different opinions, doctrines, sentiments; they have different interests. They are evidently liable to errors and may therefore hold erroneous opinions concerning religion, liberty and knowledge. From thence they are prone to violence; otherwise they are capable of correcting their errors by means of persuasion. Consequently they are also capable of debate, deliberation on public issues and devotion to the welfare of the country. The people are a society of persons composed by distinct social and political groups that may or may not agree depending on contingencies.

Although they conceived of the people as the single source of political authority, they did not attribute to the people a single will. The multiplicity of opinions and ways of life rendered the people a heterogeneous body, allowing one social or political group to check the power of another. The political arena was therefore considered as a domain of contingency and conflict. This may seem paradoxical, however. Is it reasonable to identify in the people the *locus* of sovereignty and deny that the people act as result of a single unity?⁷⁸ The solution to the puzzle lies in the Levellers’ refusal to conceive of the people as a philosophical abstraction - perhaps, we may conjecture, because they

⁷⁶ Hobbes (1997).

⁷⁷ Overton (1647), p. 325.

⁷⁸ See Rosanvallon (2008), p. 292.

understand the idea of a single will as a principle springing up from absolutist fountains, or perhaps because they see as absurd the idea of an abstract people. This is not to say, however, that the people cannot act as a collective agent. As Lilburne explains, “the Agreement of the People, begun and ended amongst the people, can never come justly within the Parliament’s cognizance to destroy”.⁷⁹ The Agreement constitutes the people that shall occupy the space of sovereignty.⁸⁰ This is not a God-like sovereign; nor sovereignty is expressed as a transcendent right, since the constitution encompasses each individual’s substantive moral constraint to resist arbitrary power wherever it is.⁸¹ Either way, absolute or arbitrary right is an oxymoron. A people or a majority that acts outside the laws would have power to undo the constitution, but still their actions would be completely devoid of authority or legitimacy.

V

From 1647 on, the Levellers were largely attacked on defamatory and polemical grounds. Their most active adversary was Marchmont Nedham, the editor of the royalist newsbook *Mercurius Pragmaticus*.⁸² Even after changing allegiances to become the editor of the republican *Mercurius Politicus*, Nedham continued to insist that the Levellers’ “wild project” of “popular or democratic government” was the “greatest enemy to liberty”. Whenever the inconstant, ignorant, irrational, licentious, and voluble multitude got power in their hands, says Nedham, they behaved as the most violent and unpredictable tyrant.⁸³

Nedham was not alone in his distrust of popular government for the supposedly irrationality, volubility and lack of judgment of the multitude, which would render them completely unable to exercise political power⁸⁴. Political theorists as distinct as Thomas Hobbes and James Harrington equally shared an unfavourable assessment of the common people’s political abilities. For Hobbes, a common power is created when the multitude “is made *One Person*” (XVI, 114), that is, when each individual consents and “acknowledge[s] himself

⁷⁹ Lilburne (1648), p. 351.

⁸⁰ See Loughlin (2014), p. 228; Loughlin (2007), p. 21. I disagree with Loughlin, though, in that “the political power is generated only when “the people” is differentiated from the existential reality of a mass of particular people (the multitude)”.

⁸¹ “For were not tyranny in itself resistible, then a man might lawfully murder himself or give power to another to be his butcher” (Overton (1647), p. 330).

⁸² Worden (2001), p. 281.

⁸³ Nedham (1650), chap. IV. N 377 1153 13. See also Nedham (1647). It would be a mistake, however, that Nedham opposed the Levellers thoroughly, as he is the probable author of *Vox plebis, or the peoples out-cry against oppression, injustice and tyranny* (1646).

⁸⁴ This is not to say that Harrington is a Hobbesian wolf under republican sheepskin, as Scott (1993) implies. For an assessment of Harrington’s critique of Hobbes’ absolute sovereignty, see Fukuda (1997), pp. 123-26.

to be the author of whatever he that beareth their Person shall act” (XVII, p. 120). If not represented by one person, the multitude is always incapable of action. Therefore, though consent is at the foundation of the artificial person, surely it is not enough to preserve it.

Despite being on the other side of the political spectrum, the republican Harrington reaches the same conclusions as Hobbes with respect to the conditional exercise of power. In *The Art of Lawgiving* (1659),⁸⁵ Harrington focuses on *The Agreement of the Free People*, to offer evidence that the Levellers proposals would inevitably lead to anarchy or at best to oligarchy. To that extent, the election of biennial parliaments consisting of 400 hundred representatives of the nation, and guarantees against the undue prolongation of mandates, were founded on two erroneous presuppositions. First, that 400 hundred persons could represent five hundred thousand people; secondly, that there must exist constitutional reservations or a right of resistance against the supreme power. Harrington notes that if this assembly of 400 hundred persons is supreme, it is the sovereign *de facto*, not the people of England. To avoid that inconvenience, the *Agreement* states that the assembly must be dissolved after eight months, but this provision seems equally obnoxious, since it creates a vacuum of power. Once the assembly is dissolved, who would govern the nation? And if Parliament did not dissolve itself voluntarily, who would compel it to do it? In the end, government would be *de facto* exercised by an oligarchy ended with power to control the Parliament (p. 404).

Hobbes and Harrington seem to coincide in condemning the Levellers’ proposals for being at once dangerous and fragile. This coincidence should not come as a surprise. As Harrington himself acknowledges in *The Art of Lawgiving*, “Where the sovereign power is not as entire and absolute as in monarchy itself, there can be no government at all” (p. 404). For both authors, a representative institution (whether the State, or two houses) occupies the space of sovereignty, and any form of political activity outside the institutions produces conflicts. In other words, every commonwealth must have a recognizable centre of decision, regulation and control to prevent civil war; to this purpose, this central power cannot be resisted.

However persuasive Hobbes’ and Harrington’s arguments could sound to their audience, it should be kept in mind that the Levellers rejected the premise that the existence of order – of the State and of the government – requires political institutions to embody and represent the people. While Hobbes and Harrington (and Rousseau later on) maintained that the “incorporated or constituted people displaces the several, constituting people”,⁸⁶ the Levellers assumed instead that political power should not be circumscribed to institutionalized forms of action.

⁸⁵ Harrington (1711), p. 403.

⁸⁶ Pettit (2012), p. 289.

They contended that it would be a mark of tyranny if the representative replaced the dispersed people (taken as an absent sovereign), or that, allegedly because of the size and complexities of the modern world, free men were restrained from participating in power. For them, the “people” may be both a multitude of individuals and a contingent collectivity.⁸⁷ Considering the Levellers’ practices, representation was not treated as a filter that reduces the sphere of political activity to a level where it can be viable. The Levellers are the pioneers in adopting participative techniques by means of petitions, pamphlets, popular organizations and public demonstrations.⁸⁸ These are extra-parliamentary practices of sovereignty that manifest active voices and deliver judgments on unfair laws.⁸⁹ The Levellers envisaged the streets, the army, churches, taverns and even prisons as spaces of political action. No wonder that in December 1647 the royalist newspaper *Mercurius rusticus* resented that England had converted “into another Athens”.

⁸⁷ Loughlin (2007); Loughlin (2014).

⁸⁸ Thomas (1974).

⁸⁹ Urbinati, Nadia (2006). p. 25.

References:

Primary Sources:

- [Anon] *Touching the Fundamentall Lawes* [1643]. In: Malcolm, Joyce Lee, *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts*, 2 vols. (Indianapolis: Liberty Fund). Vol. 1, 1999.
- Ferne, Henry. *The Resolving of Conscience* [1642]. In: Malcolm, Joyce Lee, *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts*. Indianapolis: Liberty Fund, 1999.
- Harrington, James. *The Oceana and Other Works of James Harrington, with an Account of His Life by John Toland*. London: Becket and Cadell, 1711.
- Harrington, James. *Oceana and Other Writings*. Ed. Pocock, J. G. A.; Cambridge: Cambridge University Press, 1996.
- Herle, Charles. *An answer to a Treatise* [1642]. In: Malcolm, Joyce Lee. *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts*. Indianapolis: Liberty Fund. Vol. I, 1999.
- Hobbes, Thomas. *Leviathan*. Ed. Tuck, Richard. Cambridge: Cambridge University Press, 1997.
- Hunton, Philip. *A Treatise of Monarchy*. E. 103. (15). 1643.
- Hunton, Philip. *A Vindication of the Treatise of Monarchy*. E. 39. (12.), 1644.
- Jones, Captain. *Plain English or the sectaries anatomized*. E. 350. (11.), 1646.
- Kenyon, J. P. *The Stuart Constitution, Documents and Documentary*. Cambridge University Press, 1986.
- Lilburne, John. *In the 150 page of the Book.*; q.v. 669f-10-33, 1645.
- Lilburne, John. *The Free-mans Freedom Vindicated*, E. 341. (12.) 1646.
- Lilburne, John. *London's Liberty in Chains Discovered*". In: Hart, David & Kenyon, Ross (eds). *Tracts on Liberty by the Levellers and their Critics (1638-1660)*. Indianapolis: Liberty Fund. Vol. 3 (1646b), 2014.
- Lilburne, John. *An Appeal from the Commons to the Free People*. E.398. (28.), 1647.
- Lilburne, John & Overton, Richard. *The Out-cryes of Opressed Commons*. In: Hart, David & Kenyon, Ross (ed). *Tracts on Liberty by the Levellers and their Critics (1638-1660)*. Indianapolis: Liberty Fund. Vol. 3. (1646), 2014.
- Lilburne, John. *Foundations of Freedom*. In: Woodhouse, A. P. S (ed). *Puritanism and Liberty* London: J.M. Dent and Sons Lt. (1648), 1938.
- Lilburne, John. *Legal Fundamental Liberties*. In: Woodhouse, A.S.P. (ed). *Puritanism and Liberty*. London: J.M. Dent and Sons Lt. (1649), 1938.
- Nedham, Marchamont. *The Levellers levell'd, Or; The Independents conspiracie to root out monarchie*. An interlude. Wing (2nd ed.) / N394, 1647.

- Nedham, Marchamont. (1650). *The Case of the Commonwealth clearly Stated*. N 377 1153_13 (1650).
- Overton, Richard. *Divine Observations upon the London Ministers*. E. 315. (15.), 1645.
- Overton, Richard. *An Alarum to the House of Lords*. E. 346. (8.), 1646a.
- Overton, Richard. *A Defiance against all Arbitrary Usurpations and Encroachments*. E. 353. (17.), 1646b.
- Overton, Richard. *An Arrow against all Tyrants and Tyranny*. E. 356. (14.), 1646c.
- Overton, Richard. *A Remonstrance of many thousands citizens, and other freeborn people of England, to their own House of Commons*. E. 343. (11.), 1646d.
- Overton, Richard. *An Appeal from the Commons to the Free People*. In: Woodhouse, A.S.P. *Puritanism and Liberty, being the Army Debates*. University of Chicago Press (1647), 1951
- Parker, Henry. *The case of shipmoney*. In: Malcolm, Joyce Lee (ed). *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts*, 2 vols, ed. Indianapolis: Liberty Fund. Vol. 1, (1641).1999.
- Parker, Henry. *Observations upon some of his Majesties late Answers and Expresses*, 1642.
- Parker, Henry. *Accommodation cordially desired*. E. 101. (23.), 1643.
- Parker, Henry. *Jus Populi*. E. 12. (25.), 1644.
- Walwyn, William. *A Helpe to the right understanding of a Discourse concerning Independency*. In: Hart, David & Ross, Kenyon (ed). *Tracts on Liberty by the Levellers and their Critics* (1638-1660), 7 vols.. Indianapolis: Liberty Fund, Vol. 2 (1645a), 2014.
- Walwyn, William. *England's Lamentable Miseries*. E. 304. (19.), 1645b.
- Walwyn, William. *The Just Man in Bonds*, A-71202, 1646a.
- Walwyn, William . *A Pearle in a doughhill*. In: Hart, David & Ross, Kenyon (ed). *Tracts on Liberty by the Levellers and their Critics* (1638-1660), 7 vols. Indianapolis: Liberty Fund. Vol. 3 (1646b), 2014.
- Walwyn. *Tolleration Justified, and Persecution Condemn'd*; In: Hart, David & Kenyon, Ross (ed.), *Tracts on Liberty by the Levellers and their Critics* (1638-1660), 7 vols. Indianapolis: Liberty Fund, Vol. 3 (1646c), 2014.
- Walwyn, William. *Gold Tried in the Fire*. E. 392. (19.), 1647.
- Walwyn, William. *The Bloody Projetc*, E. 460. (4.), 1648.
- Wildman, John. *England's Miserie and Remedie*. E. 302. (5.), 1645.
- An Agreement of the People* (1647). In: Sharp, Andrew (ed). *The English Levellers*. Cambridge: Cambridge University Press, 1998.
- An Agreement of the Free People*. E. 552. (23.), 1649.

- Certain articles for the good of the commonwealth* (1647). In: Woodhouse, A.S.P., *Puritanism and Liberty, being the Army Debates* (1647); University of Chicago Press, 1951
- Instructions agreed upon as the sence of the Petitioners of Buckinghamshire and Hartford Shir.* In: Hart, David & Ross, Kenyon (eds). *Tracts on Liberty by the Levellers and their Critics* (1638-1660), 7 vols. Indianapolis: Liberty Fund. Vol. 3 (1646), 2014.
- The Case of the Army truly Stated.* E. 411. (9.), 1647.
- The Putney Debates* (1647). In: Sharp, Andrew (ed). *The English Levellers.* Cambridge: Cambridge University Press, 1998.

Secondary sources:

- Baker, Philip. “The Levellers, Decentralisation and the Agreements of the People”. In: Vernon, Elliot & Baker, Philip. *The Agreements of the People, the Levellers, and the Constitutional Crisis of the English Revolution.* Hampshire: Palgrave-MacMilliam, 2012
- Braddick, Michael. *God’s Fury, England’s Fire: A New History of the English Civil Wars.* Penguin. United Kingdom, 2008.
- Como, Davi. “An Unattributed Pamphlet by William Walwyn: New Light on the Prehistory of the Leveller Movement”. *Huntington Library Quarterly*, Vol. 69, No. 3 (September), 2006.
- Cromartie, Alan. “Parliamentary Sovereignty, Popular sovereignty, and Henry Parker’s adjudicative standpoint”. In: Bourke, Richard & Skinner, Quentin. *Popular Sovereignty in Historical Perspective.* Cambridge: University Press, 2016; pp. 142-163.
- Dunn, John. *The History of Political Theory and other essays.* Cambridge: Cambridge University Press, 1996.
- Davis, J. C. *English Radicalism, 1550-1850:* Cambridge University Press, 2007.
- Dzelzainis, Martin. “History and Ideology: Milton, the Levellers, and the Council of State in 1649”. In: *The Huntington Library Quarterly*, Vol. 68, No. 1/2, pp. 269-287, 2005.
- Foxley, Rachel. John Lilburne and the citizenship of ‘Free-born Englishmen’. *The Historical Journal*, 47, 4 (2004), pp. 849-874.
- Foxley, Rachel. *The Levellers – Radical political thought in the English Revolution.* Manchester University Press, 2013.
- Fukuda, Arihiro. *Sovereignty and the Sword,* Oxford: Oxford University Press, 1997).

- Greene, Thomas A. *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury*. Chicago, 1985.
- Hoekstra, Kinch. "Early Modern Absolutism and Constitutionalism". In: *Cardozo Law Review*, 34, 2013.
- Lee, Daniel. *Popular Sovereignty in Early Modern Constitutional Thought*. Oxford: Oxford University Press, 2016.
- Loughlin, Martin. "The constitutional thought of the Levellers". In: *Current Legal Problems*, 60, 2007. p. 7.
- Loughlin, Martin. "The concept of constituent power", *European Journal of Political Theory*. Vol 13, Issue 2, 2014.
- Manin, Bernard. *The Principles of Representative Government*. Cambridge: Cambridge University Press, 1997.
- Mendle, Michael. *Henry Parker and the English Civil War*. Cambridge: Cambridge University Press, 1995.
- Ochoa Espejo, Paulina. *The Time of Popular Sovereignty*. Penn State, 2012.
- Orr, D. Alan. "Constitutionalism: Ancient, Modern and Early Modern in the *Agreements of the People*". In: Elliot Vernon & Philip Baker (eds). *The Agreements of the People, the Levellers, and the Constitutional Crisis of the English Revolution*. Hampshire: Palgrave-MacMilliam 2012.
- Peacey, Jason. "The people of the Agreements". In: Elliot Vernon & Philip Baker (eds). *The Agreements of the People, the Levellers, and the Constitutional Crisis of the English Revolution*. Hampshire: Palgrave-MacMilliam 2012.
- Pettit, Philip. *On the People's Terms – A Republican Theory and Model of Democracy*. Cambridge University Press: Cambridge, 2012.
- Pitkin, Hanna. *The Concept of Representation*. University of California Press: Berkeley, 1972.
- Pocock, J. G. A. *The Machiavellian Moment*. New Jersey: Princeton University Press, 1975.
- Purkiss, Diane. *The English Civil War: A People's History*. Harper Collins. United Kingdom, 2012.
- Rosanvallon, Pierre. *Counter-Democracy: Politics in an Age of Distrust*. Cambridge: Cambridge University Press, 2008.
- Sabbadini, Lorenzo. "Popular sovereignty and representation in the English Civil War". In: Bourke, Richard & Skinner, Quentin (eds). *Popular Sovereignty in Historical Perspective*. Cambridge: University Press, 2016.
- Salmon, J.H. M. *The French Religious Wars in English Political Thought*. Clarendon Press, 1959.
- Scott, Jonathan. "The rapture of motion: James's Harrington republicanism". In: Philipson, Nicholas & Skinner, Quentin (eds). *Political Discourses in Early Modern England*. Cambridge: Cambridge University Press, 1993.

-
- Scott, Jonathan. *England's Troubles: Seventeenth-Century English Political Instability in European Context*. Cambridge University Press, 2000.
- Skinner, Quentin. *The Foundations of Modern Political Thought*. Cambridge: Cambridge University Press, vol. II, 1978.
- Skinner, Quentin. "Rethinking Political Liberty". *History Workshop Journal*, 6; pp. 156-170. 2006.
- Thomas, Keith. "The Levellers and the Franchise". In: Ayler, G. (ed.). *The Interregnum*. London, 1974.
- Tuck, Richard. *Philosophy and Government*. Cambridge: Cambridge University Press, 1993.
- Tully, James. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press, 1995.
- Urbinati, Nadia. *Representative Democracy*. Chicago and London: University of Chicago Press, 2006.
- Vernon, Elliot. "A Firme and Present Peace; Upon Grounds of Common Right and Freedom': The Debate on the Agreements of the People and the Crisis of the Constitution, 1647-59". In: Vernon, Elliot & Baker, Philip Baker. *The Agreements of the People, the Levellers, and the Constitutional Crisis of the English Revolution*. Hampshire: Palgrave-MacMilliam, 2012.
- Vernon, Elliot & Baker, Philip. "What was the first Agreement of the People?", *Historical Journal* 53, 2010.
- Vernon, Elliot & Baker, Philip. *The Agreements of the People, the Levellers, and the Constitutional Crisis of the English Revolution*. Hampshire: Palgrave-MacMilliam, 2012.
- Worden, Blair. "The Levellers in history and memory, c. 1660-1960". In: Mendle, Michael (ed.). *The Putney Debates*. Cambridge: Cambridge University Press, 2001.
- Woolrych, Austin. "The debates from the perspective of the Army". In: Mendle, Michael (ed.). *The Putney Debates of 1647*. Cambridge: Cambridge University Press, 2001.
- Wootton, David. "From Rebellion to Revolution: the crisis of the winter of 1642/3 and the origins of civil war radicalism". *English Historical Review*, 105, 1990.