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Political Theology and the Levellers:

**A discussion of the theological sources of the political thought of
the Levellers and of some implications for modern understandings
of political liberalism**

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Thesis submitted for Ph.D. degree

Durham University

Department of Theology and Religion

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Abstract of Thesis

Thesis Title: “Political Theology and the Levellers:

A discussion of the theological sources of the political thought of the Levellers and of some implications for modern understandings of political liberalism”

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The thesis establishes that the political liberty proposed by the Levellers during the English Civil Wars of the 1640s was derived from a theological doctrine of Christian liberty, rooted in Christology and Ecclesiology, and informed by various legal and philosophical traditions. The work is structured around an examination of the sources of Leveller political thought and a discussion of some implications of this for modern understandings of political liberalism.

The thesis argues that a major key to understanding the Levellers is to see the way in which they utilised existing streams of thought, whilst both synthesising and modifying these. These diverse intellectual currents include the English common law, free grace theology, early General Baptist ecclesiology, and natural law and canon law traditions. The Levellers combine these to give rise to the idea that the state should be strictly limited by the individual’s freedom, rights, and contractual consent.

The thesis takes great care with the religious sources, in order to avoid a number of current misreadings, especially with respect to theological ideas, ecclesial groupings, and terminology, particularly in relation to Puritanism. The opposition to fundamental elements of Puritanism will be shown to be a hermeneutic key that unlocks our understanding of the Levellers.

The research calls into question particular socialist readings of the Levellers. It also implicitly shows that the rejection of liberalism by certain modern Christian thinkers is based on an unnuanced view of political liberalism. Equally, the work provides a corrective to some recent secular accounts of political liberalism that see the historical roots of liberalism in a reaction to the church and religion.

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Declaration

I declare that this thesis is my sole work, and that there have been no contributions from other researchers (save for insights from others where these have been recognised in the footnotes).

This thesis represents new material and has not previously been published (save for quotations from the works of other authors); nor has it previously been submitted for a degree at this or any other university.

The copyright of this thesis rests with the author. No quotation from it should be published in any format, including electronic and the Internet, without the author's prior written consent. All information derived from this thesis must be acknowledged appropriately.

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The following have provided particular assistance during the course of this work: Durham University Library, Heythrop College Library, and the British Library, as well as the online services EEBO (Early English Books Online) and JSTOR.

Notes on the Text

In the quotations from the Leveller primary source material, the thesis keeps to the original seventeenth-century language, spelling, grammar, punctuation, capitalisation and italicisation. The only exceptions to this are that the case of the first character of the first word of a quote is sometimes changed where this aids the reader, and the punctuation at the end of a quote is sometimes changed where it seems appropriate.

Quotations from works in foreign languages (for example, from Augustine, the scholastics, Luther, Calvin, and the Anabaptists) are from published translations in the English language.

Abbreviations in the footnotes are as per the definitions in the first page of the Bibliography.

1. INTRODUCTION

1.1 Statement of the overall thesis

The central tenet of the thesis is that the political liberty proposed by the Levellers during the English Civil Wars of the 1640s was derived from a theological doctrine of Christian liberty, informed by common law, natural law, and canon law traditions. The thesis is structured around an examination of the theological sources of the political philosophy of the Levellers on the one hand, and a discussion of some implications of this for modern understandings of political liberalism, on the other. The Levellers are treated as a theological prism which draws together varying strands of prior historical thought, blending as well as changing those strands, and we will look at how these shed light on some present questions of political theology and philosophy.

We will see that the Leveller conception of political liberty is derived from their theological understanding of liberty – that is, from a doctrine of Christian liberty in which we all have liberty because all people are created by God, in the image of God, with God-given natural rights; people are made free in Christ through freely given grace; and belief in God is a voluntary matter, as is membership of a church. In this thesis, it is argued that a major key to understanding the Levellers is to see the way in which they utilised existing streams of thought, whilst both synthesising those streams and modifying important elements of them. These diverse intellectual currents include the English common law tradition of individual liberties, free grace theology, early General Baptist ecclesiology, and an understanding of rights and consent developed within natural law and canon law traditions. The Levellers combine these to give rise to the idea that the state should be strictly limited by the individual's freedom, rights, and explicit ongoing consent.

The search to understand the intellectual sources of their ideas is made that much more difficult by the fact that although the Levellers do sometimes explicitly cite authors and texts in their tracts, it is the case that they also frequently do not. Throughout the thesis I therefore try to be careful to distinguish between links and potential links in ideas; that is, whether there is an evident link, whether it is likely, or

whether it is speculation. Where there are potential links, I try to discern whether these are influences, parallels, or similarities.

At this point it is worth noting, in summary, the main explicit source material that the Levellers refer to positively and use in their tracts. The aim here is to provide a brief list of those authors and works that they use frequently, explicitly, and affirmatively:

- a) Amongst religious writers, the Levellers cite the Bible, Luther and Calvin; and also Hooker's books of *Ecclesiasticall Politie*.
- b) Among the more political authors, they refer to Buchanan; as well as historic political speeches in Parliament from the preceding decades.
- c) In law, they frequently cite Coke's *Institutes*, Coke's *Reports*, Magna Carta, The Petition of Right, and various statutes and court judgements; as well as the legal authors and works, Britton, Fortescue, *Fleta*, and the *Mirror of Justices*. They also cite *The Book of Army Declarations*. Aside from the Bible, it is probably Coke and Magna Carta that are the most quoted in Leveller tracts.¹

Another significant feature of Leveller tracts is that they often cross-refer to other Leveller tracts,² so that, when viewed as a whole, they provide a pattern that suggests a common approach and a core set of political beliefs (despite some differences of emphasis).

In looking at the genealogy and sources of their politics, we will see that the Levellers are often conceptually misunderstood because the sources of their thought, especially the religious sources, tend to be either historically neglected or treated in a somewhat confused manner. The thesis therefore takes great care with these religious sources, in order to avoid a number of misreadings, especially with respect to theological ideas, ecclesial groupings, and terminology, particularly in relation to Puritanism.³ The opposition to fundamental elements of Puritanism will be shown to be key to understanding the Levellers, and this is a hermeneutic key that unlocks our understanding of the various source material and the uses to which the Levellers put it.

¹ For the works quoted in Lilburne's tracts, see D.B. Robertson, *The Religious Foundations of Leveller Democracy* (New York: King's Crown Press, 1951), 125-132.

² Cf. Rachel Foxley, 'John Lilburne and the Citizenship of "Free-born Englishmen"', *The Historical Journal* 47:4 (2004), 863.

³ 'Puritanism' is a difficult term, being subject to varying interpretations. Nevertheless, the term appears extensively throughout the thesis and is discussed in some detail in Chapter Four.

A major corollary that is entailed by the thesis is that some of our modern constitutional liberal notions, such as individual rights and equality under the law, are in fact partly derived from intellectual sources that include specifically *religious* ideas, including some with pre-Reformation roots, rather than from the Enlightenment rejection of religion.⁴ A second, more particular corollary is that several fundamental tenets of constitutional liberalism – the separation of church and state, toleration and religious liberty, limitations on the state’s coercive powers in support of religion, for example – partly derive, via the Levellers, from Anabaptism.

The thesis will thus show that the rejection of liberalism by certain modern Christian thinkers such as Stanley Hauerwas is based on an unnuanced view of political liberalism;⁵ and that there is a Christian narrative, represented by the Levellers, which roots its desire to limit the state in favour of the freedom of the individual, in deeply Christian soil. The thesis will not engage with such thinkers individually or directly, but only implicitly. Equally, the work provides a corrective to those accounts of political liberalism that see the roots of liberalism in a reaction to the church and religion (John Rawls,⁶ Pierre Manent⁷ and A.C. Grayling,⁸ for example); or that adopt a Whig narrative with Locke being in the vanguard of the development of political liberalism (James Tully,⁹ Manent, Grayling). As well as addressing these historical narratives, the thesis discusses the philosophical normative narrative that arises with Rawls, of liberalism removed from any foundational religious claims, partly based on his idea that liberalism is historically rooted in a reaction to religious controversy, and partly based on his Kantian philosophical views. As part of this discussion, it will be shown that the modern ‘Kantian’ form of liberalism exemplified by Rawls,¹⁰ in its attempt to set aside metaphysical questions of truth, risks losing the Leveller insight that

⁴ Cf. William Cavanaugh, who sees liberal ideas of freedoms and rights as originating “in the Enlightenment context of an *explicit rejection* of Christianity and the church” (William Cavanaugh, *Torture and Eucharist* (Oxford: Blackwell, 1998), 191).

⁵ There is some evidence that Hauerwas might be softening in his attitude to liberalism: see Stanley Hauerwas, ‘Where would I be without friends?’, in Mark Thiessen Nation and Samuel Wells (eds), *Faithfulness & Fortitude* (Edinburgh: T&T Clark, 2000), 325.

⁶ John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), xxiv, 303; and John Rawls, *Lectures on the History of Political Philosophy* (Cambridge MA: Belknap Press, 2007), 11. Rawls’s account, though very brief, is rather more nuanced than Manent’s and Grayling’s accounts.

⁷ Pierre Manent, *An Intellectual History of Liberalism* (Princeton: Princeton University Press, 1995).

⁸ A.C. Grayling, *Towards the Light: The Story of the Struggles for Liberty and Rights that Made the Modern West* (London: Bloomsbury, 2007).

⁹ James Tully, ‘Locke’, in J.H. Burns (ed.), *The Cambridge History of Political Thought 1450-1700* (Cambridge: CUP, 1996), 620-622.

¹⁰ Rawls clearly states that his theory of justice “is highly Kantian in nature.” (John Rawls, *A Theory of Justice* (Oxford: OUP, 1999), xviii; cf. *ibid.*, 221, 452.)

political freedom and rights are built on substantive ideas of human equality and justice – that is, notions of liberty are to be rooted not in the autonomous free individual, but in a metaphysical claim about anthropology and liberty, a claim that is based on theology.

1.2 Scholarly context and author's contribution

It is important to be clear that when speaking about 'the Levellers' – a name at first given to them by their opponents¹¹ – we are speaking about the mainstream Leveller party¹² and not about the small group called 'the True Levellers', the Diggers, led by Gerrard Winstanley. Even as eminent a writer as A.J. Ayer has made this confusion,¹³ and thus stated that the Levellers were in favour of an equal distribution of property.¹⁴ This is something that the Levellers consistently and explicitly rejected. Christopher Hill and Brian Manning also seem to confuse the Levellers with the so-called True Levellers on occasions,¹⁵ which neglects the very significant differences between the

¹¹ The term 'Levellers' was first used against the Levellers, it is thought, in 1647 by the King (see H.N. Brailsford, *The Levellers and the English Revolution* (Nottingham: Spokesman, 1976), 309) or by Henry Ireton (see Andrew Sharp (ed.), *The English Levellers* (Cambridge: CUP, 1999), xxi-xxii); ultimately, the Levellers used the term of themselves. See also Blair Worden, 'The Levellers in history and memory, c. 1660-1960', in Michael Mendle (ed.), *The Putney Debates of 1647* (Cambridge: CUP, 2001), 280-282.

¹² The Levellers were arguably the first organised mass membership political party in England – although theirs was not a party bloc or faction, standing in an election; rather they were a petitioner party, with one petition, *The Remonstrance*, attracting nearly 100,000 signatures (see David Wootton, 'Leveller democracy and the Puritan Revolution', in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 424). The Levellers had membership subscriptions, Treasurers, local ward and national organisation, a headquarters (in a tavern), and produced pamphlets, a weekly newspaper, and petitions (see Norah Carlin, 'Leveller Organization in London', *The Historical Journal* 27:4 (1984), 955-960). They were certainly the first grass-roots organised, overtly political, mass movement in England to have a clear and coherent political programme and constitutional manifesto. "Nothing like this had ever existed in England before," notes Morton (A.L. Morton (ed.), *Freedom in Arms* (London: Lawrence & Wishart, 1975), 30). Given their party structure, organisation, and membership subscriptions, Diane Purkiss's claim, that "the Levellers were not a party or a group," and that even the term 'Leveller movement' "is misleading", appears strange and surely mistaken (Diane Purkiss, *The English Civil War: A People's History* (London: Harper Perennial, 2007), 476).

¹³ As, seemingly, does William Lamont in William Lamont, *Godly Rule* (London: Macmillan, 1969), 138, 141.

¹⁴ Alfred J. Ayer, *Thomas Paine* (Chicago: University of Chicago Press, 1990), 25.

¹⁵ See, for example, Christopher Hill, *The World Turned Upside Down* (London: Penguin, 1991), 108-109, 114, 117-118, 120. The True Leveller tract *Light Shining in Buckinghamshire* is a particular source of confusion for both Hill and Manning. This tract is very different in content and style to Leveller tracts: it is far more religious in content, more biblical, and makes extensive use of the Old Testament and of the Book of Revelation (with a marked emphasis upon the Devil); it attacks kings, lords of the manor, and gentlemen, as well as tenancy, corporations, charters, and enclosed land; and it calls for a government by elected judges or elders, and for all things to be in common along the model of the Book of Acts. Indeed, the tract states that "the Israelites Common-wealth, is an excellent pattern" (Anon., *Light Shining in Buckinghamshire*, Thomason E.548(9), 6), a notion that distances this Digger tract from being a Leveller

two groups – with the Diggers being close to what we might now call agrarian communists (earning their name for digging common land), but being an entirely separate movement with only a few ideas in common with the Levellers. Such conflation also neglects the late appearance on the scene of the Diggers, from perhaps December 1648, when the Leveller movement was already well established and indeed about to enter the period of its defeat, as well as neglecting the Diggers’ relatively minor numerical importance.¹⁶

The thesis is primarily a work of political theology rather than history; that is, its primary focus is on Leveller ideas (both political and theological), the sources of those ideas, and the implications of those ideas today for political theology and political philosophy. Although the thesis is not a history of the Levellers, it is a ‘reconstruction’ and interpretation of their thought, working within historical constraints. The thesis investigates the sources of Leveller thinking, particularly within Anabaptism and amongst early English General Baptists, as well as amongst other historical sources. At the same time, the work will engage with a number of historians as appropriate.

The Levellers did not arise within a vacuum – indeed it seems fair to surmise that, had there been no Civil War at this time, there would have been no Leveller movement. Therefore, the thesis is sensitive to the historical context and recognises that the events and ideas of this time of disruption provide a political context to which the Levellers are responding. The 1640s provided an opportunity for a huge amount of pamphleteering by groups and individuals, and it is the tracts written by the Levellers that provide the bulk of the primary material in this thesis. The research in this thesis accordingly focuses closely on the primary Leveller texts and records themselves. At the same time, the thesis engages with other contemporary and earlier primary texts that might be source material for Leveller thought, especially from the natural law and common law traditions, and from Anabaptist and General Baptist sources.

In the course of this thesis I will provide evidence that the Levellers had what amounts to a clear, consistent, articulated political philosophy. That is, it was not just a collection of political positions, nor merely a political manifesto of demands (although they did produce manifestoes). Even though a number of Leveller leaders articulated

tract.

¹⁶ The consensus of modern scholarship seems to be that there were up to ten Digger communities, with perhaps 50 members in Surrey and a handful at each of the other communities. Although small in number, it is of course possible that the Diggers had a wider influence in the local populations.

their political beliefs in a multitude of tracts, the effective unity of core beliefs running through these will become clear. That said, we do need to acknowledge the diversity amongst the Levellers in the movement and recognise that there is not a fixed, single set of beliefs amongst them on every issue; nevertheless, the thesis will draw out the common threads in their political claims.

We have to be careful with several of the secondary sources in this area. When the Levellers were ‘re-discovered’ by American and British historians in the first half of the twentieth century, several adopted the sometimes unhelpful description of ‘left-wing’ to describe where the Levellers stood in relation to other groups on the Parliamentary side in the Civil War. A.S.P. Woodhouse, for example, repeatedly describes the Levellers as being on, and of, “the Left”.¹⁷ This has been taken up by later historians,¹⁸ and some of the major historians who have written on the Levellers – for example, H.N. Brailsford,¹⁹ A.L. Morton,²⁰ Hill,²¹ Manning,²² and G.E. Aylmer²³ – have viewed them from a certain political standpoint (which could variously be described as Marxist or socialist), adopting a particular analysis (a class-based one), and seeing ideas that arguably seem not to be there in the primary material.

The result is that some of the post-War secondary writings on the Levellers by British scholars, typified by Hill and Manning, display what now appear to be somewhat anachronistic and simplistic socialist readings of the Leveller movement.²⁴

¹⁷ A.S.P. Woodhouse (ed.), *Puritanism and Liberty* (London: Dent & Sons, 1965), Introduction.

¹⁸ For example, Howard Shaw, in his book *The Levellers*, frequently describes the Levellers as being on “the left”, without any definition of what ‘the left’ means or why this description of the Levellers should be so (Howard Shaw, *The Levellers* (London: Longmans, 1968), 27, 41, 45, 57, 60, 75, 80).

¹⁹ Brailsford, *The Levellers and the English Revolution*, 10-12, 417-454, 523-540.

²⁰ Morton (ed.), *Freedom in Arms*, Introduction.

²¹ Christopher Hill, *The English Revolution 1640* (London: Lawrence and Wishart, 1955), 5, 22, 48-55; Christopher Hill, ‘From Lollards to Levellers’, in Maurice Cornforth (ed.), *Rebels and Their Causes* (London: Lawrence and Wishart, 1978), 49-67; Christopher Hill, ‘From Marprelate to the Levellers’, in Christopher Hill, *Collected Essays*, Volume 1 (Brighton: Harvester Press, 1985), 75-95; Christopher Hill, ‘Irreligion in the “Puritan” Revolution’, in J.F. McGregor and B. Reay (eds), *Radical Religion in the English Revolution* (Oxford: OUP, 1988), 191-211; Hill, *The World Turned Upside Down*, 63-72, 107-123, 162-183.

²² Brian Manning, *The English People and the English Revolution* (Harmondsworth: Peregrine Books, 1978), 300-340; Manning, ‘The Levellers and Religion’, in McGregor and Reay (eds), *Radical Religion in the English Revolution*, 65-90; Manning, *The Far Left in the English Revolution* (London: Bookmarks, 1999), 1, 31-79.

²³ G.E. Aylmer (ed.), *The Levellers in the English Revolution* (London: Thames and Hudson, 1975), 12-13, 38, 41, 44, 50-54, 82.

²⁴ Manning sees in elements of the Levellers a tendency “characterised by class feeling, dreams of equality ... and hopes for the redistribution of wealth. It foreshadows socialism.” (Manning, *The Far Left in the English Revolution*, 33.) In “the eyes of the Levellers the basic conflict in society was between ‘rich’ and ‘poor’.” (Manning, *The English People and the English Revolution*, 301-302.) The aim of the Levellers was to reduce the political power of the rich (ibid., 330). Thus “the revolution became an open

The thesis aligns itself with current scholarship that has moved on in recent decades from such readings of the Leveller sources,²⁵ and we will avoid revisiting what may be a past argument. The work will demonstrate that the ascription of the term ‘left-wing’ to the Levellers is more likely to mislead than illuminate. We will see that the notion of equality which appears in Leveller tracts is about anthropological and legal equality, and not about economic egalitarianism: we will show during the course of this thesis that the equality to which the Levellers appealed was always theological (an equality in Christ) and political/legal in its ramifications (equality under the law). There was never any attempt on their part at economic levelling, no attempt to level down the rich, and no desire to empower the state to bring about economic equality. This does not mean that they do not have a concern with the poor, but theirs is a concern which is ethical (and not one that can properly be understood in class terms). The thesis does not deny that the Levellers were political radicals, but it does deny that their radicalism is, in any helpful sense, left-wing. The Leveller emphasis on the primacy of individual freedom, including a strong defence of private property, business and free trade, does not sit well with a socialist reading. The thesis will demonstrate that those academics, like C.B. Macpherson and Andrew Sharp, who see the Levellers as part of the family of political liberalism,²⁶ are probably nearer the mark (even allowing for the potential dangers of anachronism). That is, the work will point out the affinities of Leveller political thought with constitutional liberalism.

Although it is often difficult to define liberalism precisely, classical liberalism has a number of common threads. Alan Ryan has characterised these as: a focus on individual freedom, responsibility, and property rights; limited government; the rule of

class conflict, of which the Levellers were the spokesmen” (ibid., 307). In this, the radicalism of the Levellers is on the ‘left’ of the English revolution (Manning, *The Far Left in the English Revolution*, 1).

²⁵ See, for example, Wootton, ‘Leveller democracy and the Puritan Revolution’, 416-417. For comments on Hill’s approach, see J.H. Hexter, ‘The Burden of Proof’, *Times Literary Supplement*, 24 October 1975; W.G. Palmer, ‘The Burden of Proof: J.H. Hexter and Christopher Hill’, *The Journal of British Studies* 19:1 (1979), 122-129; Perez Zagorin, Book Review of *Intellectual Origins of the English Revolution* by Christopher Hill, *The American Historical Review* 71:3 (1996), 951-953; and Kevin Sharpe, Book Review of *Collected Essays, People and Ideas in 17th Century England* by Christopher Hill, *The English Historical Review* 104:411 (1989), 497-498. For comments on Manning’s approach, see Clive Holmes, Book Review of *The English People and the English Revolution, 1640-1649* by Brian Manning, *The American Historical Review* 82:1 (1977), 96-97; Blair Worden, Book Review of *The English People and the English Revolution* by Brian Manning, *The English Historical Review* 92:365 (1977), 902-903; and J. Sears McGee, Book Review of *The English People and the English Revolution, 1640-1649* by Brian Manning, *The Journal of Modern History* 50:1 (1978), 135-138. For comments on the work of both Hill and Manning, see Purkiss, *The English Civil War*, 597-598.

²⁶ C.B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Clarendon Press, 1964), 110, 158; and Sharp (ed.), *The English Levellers*, xiii.

law; the avoidance of arbitrary and discretionary power; religious liberty; and the exercise of caution, scepticism and restraint with respect to power, interference, coercion, ideology, human nature, and the state.²⁷ In the thesis I will treat constitutional liberalism as an expression of classical liberalism and, thus, as part of the broad family of political liberalism; though I will distinguish *Rawlsian* political liberalism from constitutional liberalism. It is not the task of this thesis to defend liberalism as such, or otherwise; rather, I wish to take the above characterisation of classical liberalism as a useful working definition, and to explore further the extent to which the political thought of the Levellers might coincide with it. My thesis is part of the wider scholarship that sees various elements of constitutional liberalism as arising from within a long tradition of political, legal and theological ideas stretching back in part into medieval thought.²⁸ The thesis argues that Leveller political thinking contains strands of what later became known as constitutional liberalism, and thus one can speak of a loose family resemblance between the two.

We should also note here that nearly all the studies of the Levellers have been by historians (although in recent years a small number of libertarian theorists have begun writing about the Levellers),²⁹ and for this reason many secondary sources contain relatively little on the Levellers' political *philosophy* and even less on the *theology* behind this – and what there is (with the notable exception of David Wootton³⁰), can often appear confused. Indeed, the historian Aylmer actually suggests a more secular

²⁷ Alan Ryan, 'Liberalism', in Robert Goodin and Philip Pettit (eds), *A Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 1995), 293-295.

²⁸ See, for example, Oakley, Berman, Blythe, Tierney, and Insole. (Francis Oakley, 'On the Road from Constance to 1688: The Political Thought of John Major and George Buchanan', *The Journal of British Studies* 1:2 (1962), 1-31; Francis Oakley, 'From Constance to 1688 Revisited', *Journal of the History of Ideas* 27:3 (1966), 429-432; Francis Oakley, 'Figgis, Constance, and the Divines of Paris', *The American Historical Review* 75:2 (1969), 368-386; Harold Berman, 'Religious Foundations of Law in the West: An Historical Perspective', *Journal of Law and Religion* 1:1 (1983), 5-12, 38, 40-43; James Blythe, 'The Mixed Constitution and the Distinction between Regal and Political Power in the Work of Thomas Aquinas', *Journal of the History of Ideas* 47:4 (1986), 547-565; Brian Tierney, 'Religion and Rights: A Medieval Perspective', *Journal of Law and Religion* 5:1 (1987), 163-175; Brian Tierney, 'Hierarchy, Consent, and the "Western Tradition"', *Political Theory* 15:4 (1987), 646-652; and Christopher Insole, 'Discerning the Theopolitical: A response to Cavanaugh's reimagining of political space', *Political Theology* 7:3 (2006), 323-327.)

²⁹ For example, Carl Watner, Nick Elliott, David Hoile, Roderick Moore, and Peter Kurrild-Klitgaard. (See Carl Watner, "'Come What, Come Will!' Richard Overton, Libertarian Leveller", *The Journal of Libertarian Studies* 4:4 (1980), 405-432; Nick Elliott, 'The Levellers – Britain's First Libertarians?', *Economic Affairs* 9:1 (1988), 33-35; David Hoile, *The Levellers: Libertarian Radicalism and the English Civil War* (London: Libertarian Alliance, 1992); Roderick Moore, *The Levellers: A Chronology and Bibliography* (London: Libertarian Alliance, 1994); and Peter Kurrild-Klitgaard, 'Self-Ownership and Consent: The Contractarian Liberalism of Richard Overton', *Journal of Libertarian Studies* 15:1 (2000), 43-96.)

³⁰ See, in particular, Wootton, 'Leveller democracy and the Puritan Revolution', 412-442.

basis for much of the Levellers' political thought,³¹ as do Don Wolfe³² and Samuel Glover.³³ Even where the scholarly literature looks at Leveller political philosophy and its sources, there can be a tendency to focus on particular influences whilst perhaps ignoring the wider religious sources (Peter Kurrild-Klitgaard's focus on the natural law,³⁴ or Glover's emphasis on republicanism,³⁵ for example). At the same time I will show that the claim that the Levellers wanted to establish a secular republic (Brailsford,³⁶ Carl Watner³⁷) needs to be treated with some caution.

I will demonstrate that the Levellers' political philosophy was derived from their theological understanding; and that this was not some accidental or coincidental occurrence, but the very source of their political theory. That is, the theology is logically and historically prior to the political thought. This is a key proposition of this research. Although the Levellers were a political group, and not a religious group, I will show that there is a clear theological basis to their thought. Their political philosophy was derived from theology, rather than being merely expressed in religious language (as would be expected for the age). As part of this thesis I will seek to show that they had a common core set of beliefs; and that they were not just a collection of individuals with common political beliefs but differing religious beliefs. There were indeed some religious beliefs that they did not hold in common (such as Mortalism) but I regard these as tangential. In the coming chapters, we will see how Christology and ecclesiology in particular led them to a doctrine of Christian liberty that underpinned an anthropology of human equality and freedom, which in turn led to their radical political positions.

This theological understanding is, as we shall discover, markedly different from the Puritan understanding of Christian liberty. I will make the case that a common cause of confusion in the secondary literature is the description, by some historians (notably Wolfe,³⁸ Woodhouse,³⁹ William Haller,⁴⁰ D.B. Robertson,⁴¹ William Lamont,⁴²

³¹ Aylmer (ed.), *The Levellers in the English Revolution*, 49, 68.

³² Don Wolfe (ed.), *Leveller Manifestoes* (New York: Thomas Nelson, 1944), Introduction, 3.

³³ Samuel Dennis Glover, 'The Putney Debates: Popular versus Elitist Republicanism', *Past and Present* No. 164 (1999), 59, 71, 73.

³⁴ Kurrild-Klitgaard, 'Self-Ownership and Consent', 46, 48-50. Kurrild-Klitgaard tries to remove the natural law from its religious roots.

³⁵ Glover, 'The Putney Debates', 47-80.

³⁶ Brailsford, *The Levellers and the English Revolution*, 151, 550.

³⁷ Watner, "'Come What, Come Will!'", 406.

³⁸ Wolfe (ed.), *Leveller Manifestoes*, 2, 10, 107.

³⁹ Woodhouse (ed.), *Puritanism and Liberty*, [13]-[17], [34]-[38], [51]-[59], [68]-[72], [80]-[82], [98].

⁴⁰ William Haller and Godfrey Davies (eds), *The Leveller Tracts* (New York: Columbia University Press,

and John Coffey⁴³), of the Levellers as ‘Puritans’, when, as we shall see, they were in fact opposed to what we might call the Puritan view of the state and to important areas of Puritan theology. Although recognising that there is a question of semantics and terminology here, and that taxonomy may cause us to try to ascribe neat definitions where boundaries are blurred, the thesis will nevertheless address some of this confusion surrounding Levellerism and Puritanism. Indeed, the confusing equation of the Levellers with Puritanism serves to mask the theological differences between the two that give rise to some of the key political differences. Robertson, for example, particularly compounds the potential confusion, by locating the Levellers within “left-wing Puritanism”,⁴⁴ as does Woodhouse.⁴⁵

Further areas of confusion amongst some of the secondary material include: examples of treating 1640s separatists as Puritans (Robertson,⁴⁶ Howard Shaw⁴⁷), confusing the sects with the Independents (Brailsford,⁴⁸ Shaw,⁴⁹ Michael Watts,⁵⁰ Aylmer⁵¹), treating the Levellers as radical Independents (Theodore Calvin Pease,⁵² Michael Braddick⁵³), describing Baptists as Puritans (Wolfe,⁵⁴ Coffey⁵⁵), failing to distinguish between General and Particular Baptists (Robertson,⁵⁶ Wolfe,⁵⁷ Brailsford,⁵⁸ Morton,⁵⁹ Watts,⁶⁰ Barbara Taft⁶¹), confusing free grace theology with belief in

1944), Introduction, 2-3, 37, 40.

⁴¹ Robertson, *The Religious Foundations of Leveller Democracy*, 1-2, 4, 13, 105-106.

⁴² William Lamont, ‘Puritanism, liberty and the Putney debates’, in Mendle (ed.), *The Putney Debates of 1647*, 242-245, 252-255.

⁴³ John Coffey, ‘Puritanism and Liberty Revisited: The Case for Toleration in the English Revolution’, *The Historical Journal* 41:4 (1998), 961-962, 970; and John Coffey, ‘Puritan legacies’, in John Coffey and Paul Lim (eds), *The Cambridge Companion to Puritanism* (Cambridge: CUP, 2008), 331.

⁴⁴ Robertson, *The Religious Foundations of Leveller Democracy*, 13.

⁴⁵ Woodhouse (ed.), *Puritanism and Liberty*, [17], [34], [37]-[38], [51]-[52], [59], [72], [81]-[82].

⁴⁶ Robertson, *The Religious Foundations of Leveller Democracy*, 1-4, 12, 25, 28-29, 60, 105.

⁴⁷ Shaw, *The Levellers*, 5, 7-8.

⁴⁸ Brailsford, *The Levellers and the English Revolution*, 547, 549.

⁴⁹ Shaw, *The Levellers*, 84, 97.

⁵⁰ Michael Watts, *The Dissenters* (Oxford: Clarendon Press, 2002), 121, 123, 126.

⁵¹ Aylmer (ed.), *The Levellers in the English Revolution*, 15, 20.

⁵² Theodore Calvin Pease, *The Leveller Movement* (Gloucester MA: Peter Smith, 1965), 50-51, 120, 125, 156.

⁵³ Michael Braddick, *God’s Fury, England’s Fire: A New History of the English Civil Wars* (London: Penguin, 2009), 372, 486, 507.

⁵⁴ Wolfe (ed.), *Leveller Manifestoes*, 2-3.

⁵⁵ Coffey, ‘Puritanism and Liberty Revisited’, 961-965, 970, 973-974, 979, 984-985.

⁵⁶ Robertson, *The Religious Foundations of Leveller Democracy*, 24-25, 34, 107.

⁵⁷ Wolfe (ed.), *Leveller Manifestoes*, 97.

⁵⁸ Brailsford, *The Levellers and the English Revolution*, 33, 488, 541.

⁵⁹ Morton (ed.), *Freedom in Arms*, 62-63.

⁶⁰ Watts, *The Dissenters*, 126. Generally, though, Watts does distinguish between the two.

⁶¹ Jack McMichael and Barbara Taft (eds), *The Writings of William Walwyn* (Athens GA: University of Georgia Press, 1989), Introduction, 39.

universal salvation (Aylmer⁶²), seemingly not appreciating the difference between universal salvation and general atonement (J.C. Davis⁶³, Manning⁶⁴), mixing free grace belief with opposition to the doctrines of Original Sin and the Fall (Hill⁶⁵), and muddying General Baptists, free grace, the denial of predestination, Arminianism, and unlimited baptism (Sharp⁶⁶). As a result, the secondary source material is treated with significant caution, and during the course of the thesis I will implicitly demonstrate the above inadequacies.

1.3 Detailed map of the chapters

Each chapter operates at two levels: an immediate examination of particular historical sources of Leveller ideas; and an ongoing discussion of the relationship between Leveller thinking and political liberalism today, a discussion which builds up during the course of the work. The thesis is structured thematically, around the sources of Leveller philosophy, with discussions of the following: natural rights as appropriated from scholastic traditions of natural law and canon law; free grace and general redemption (soteriology); the voluntary believers' church and an ethic of engagement rather than withdrawal from the world (ecclesiology); and the liberties of the individual, the rule of law and the English common law tradition.

In Chapter Two we will examine the development of notions of individual rights that go back within natural law and canon law traditions to the twelfth century, and which are taken by the Levellers and modified to include religious freedom. Whilst building on earlier debates on conciliarism, the right of resistance, and natural rights, the Levellers shift political thinking from the scholastic emphasis on community, law, duties and necessity, to a focus on rights that are individual political freedoms (especially religious liberty). This chapter will prove that in contrast to the Puritans, the Levellers believed that church and state should be separate, with genuine freedom of conscience on religious matters, and that the state should have no role whatsoever in a

⁶² Aylmer (ed.), *The Levellers in the English Revolution*, 20.

⁶³ J.C. Davis, 'The Levellers and Christianity', in Brian Manning (ed.), *Politics, Religion and the English Civil War* (London: Edward Arnold, 1973), 231.

⁶⁴ Manning, *The Far Left in the English Revolution*, 83.

⁶⁵ Hill, *The World Turned Upside Down*, 165.

⁶⁶ Sharp (ed.), *The English Levellers*, 18 n. 28.

person's religious affairs. We shall see that the Levellers held that the Gospel superseded and abrogated the Mosaic laws; and this had very significant political implications for the role of the civil magistrate.⁶⁷ On the Puritan belief in the validity of appeals to the Old Law, and Leveller opposition to this, turns much of the political difference between the Levellers and their contemporaries. If the political dispensation of the Old is now abrogated, the magistrate's powers in matters of religion are removed, the state is in some ways secularised, and there is a shift in approach from the duties of the magistrate to the rights of the individual.⁶⁸ I will also discuss whether the Levellers' political theories might have led indirectly into the early charters of some of the North American colonies. This discussion will involve a re-evaluation of Locke's position in the development of thinking on liberty, as we compare Locke's natural law political thinking with that of the Levellers. Unlike Locke, the natural law thinking of the Levellers places less emphasis on teleology and more on Christology.

Chapter Three will examine the soteriological basis of Leveller thought, arguing that free grace theology provided part of the basis for certain key elements of Leveller political philosophy; and the particular character of these influences lends support to the notion that the theological influences ultimately reach back, albeit indirectly, to the Anabaptists. The Leveller position centres on their understanding that *all* people alike (including non-believers) are made free. The Levellers take a Lutheran doctrine of Christian liberty (modified by General Baptist and Anabaptist soteriology, as well as the more antinomian free grace soteriology), and significantly shift it from the positions of Luther and Calvin, to emphasise external political liberty, religious freedom, and liberty for all.

In the fourth chapter we focus on the ecclesiological aspects of the thesis: the chapter shows that an Anabaptist ecclesiology (via the General Baptists) represents a major influence on Leveller thinking, but, at the same time, the Levellers depart significantly from the political tenets of many of the Anabaptists. For the Levellers, the moderate Anabaptist ecclesiology does not lead to a separation of church and state whereby the Christian separates from the world; instead there is a more Augustinian conception of the church in the world. The chapter shows that there are quite different strands within Anabaptist thought, which explains some of the continuities and

⁶⁷ Wootton sees the relationship between the Old and the New Testaments as the central issue at point. (Wootton, 'Leveller democracy and the Puritan Revolution', 438.)

⁶⁸ *Ibid.*, 438-442.

discontinuities in ideas, and which explains the Leveller ethics of engagement with the world and their view that Christians should be very much engaged in forming and changing the state, its constitution and its laws. Despite their emphasis on ecclesial separatism and elements of spiritual antinomianism, they hold that the laws should be influenced by natural law, Christologically understood.

Chapter Five explores the sheer scale and consistency of the messages about the law that appear in Leveller writings – both attacks on the abuses of the law, and prescriptions for how the legal system should be organised. The Levellers are primarily concerned with freedom, the rule of law as a way of protecting that freedom, and the need to reform and limit Parliament in order to protect liberty. The chapter shows how the Levellers developed the common law tradition typified by Coke and yet broke from certain aspects of it. At the same time, the chapter enters a discussion with Rawls on law and the social compact, with a focus on questions of justice, truth, and objectivity. The research shows that the contractarianism of the Levellers is significantly different from that of Rawls: although the Levellers and Rawls both have a social contract at the heart of their political philosophy, the Leveller constitutional Agreement is to codify existing rights, including common law freedoms, and to limit the state.

Here we understand the specific Leveller contribution to ideas of the state. Rawls is employed as representative of a particular strand of modern liberalism, which adopts a broadly Kantian view of human nature. The comparison with Rawls will show that the Levellers tend towards the idea of the minimal state and yet remain committed to the idea that the state's laws should be based on some objective truths about morality, including the natural law. The separation of the church and state envisaged by the Levellers will call into question Rawlsian notions of pluralism and the neutral state – that is, the Leveller discussion will show that it is possible to combine political liberalism with the notion that the state should not be pluralistic or neutral about what constitutes justice. Indeed, a common thread running through the thesis is the importance of truth claims for our understanding of freedom, rights, morality, and law.

The chapters together allow us to understand more fully the Leveller philosophy and its sources, as well as their contribution to the development of constitutional liberalism focussed on a minimal or tightly limited state. At the same time, the work as a whole allows us to see the complexities in the portrayal of political liberalism – whether that portrayal is by defenders or opponents of political liberalism – and to argue for a more nuanced approach. As we will discover, the Leveller writings provide a

prism which highlights a contrast: the particular constitutional liberalism that could be said to characterise the Levellers is ultimately about limiting the political because of metaphysical commitments, whereas the type of modern liberalism represented by Rawls is about limiting metaphysical claims. The important twist, or paradox, is that what might be described heuristically as the liberalism of the Levellers, desires to limit the political for robust theological reasons. The thesis concludes by considering how the Levellers could be used by scholarship that wishes to root the political – especially notions of persons, rights, liberty, and equality – in the metaphysical, indeed in theology.

2. NATURAL LAW AND NATURAL RIGHTS

2.1 Introduction

In this chapter we will focus on the Levellers and their theological and political conception of freedom and rights: on where this understanding might have come from, with a particular look at some of the scholastic traditions that went before; and on whether they later influenced Locke. These traditions come out of the European schools of philosophy, theology and jurisprudence from the late eleventh to the early seventeenth centuries. This chapter will argue that, although Locke can be read as wanting to restrict government, a close reading shows that he wants to restrict certain forms of government; whereas the Levellers, with their view of rights as individual liberties vis-à-vis the state, want to restrict all government.

We will see how the Levellers both utilised existing ideas from within canon law and natural law discussions, especially those of conciliarism; and yet underplayed certain elements found within these theories of rights – rights primarily related to duties, licitness and necessity¹ – and instead emphasised rights more as individual freedoms which exist separately from, and prior to, the community. The chapter argues that this shift in thinking partly owes something to Luther’s idea of individual Christian freedom, though the Levellers move well beyond Luther’s understanding of freedom. Thus, the Levellers could be thought of as developing strands of thought already there in the earlier traditions and, at the same time, introducing both a new conception of what grounds rights, as well as new substantive rights – based on this new conception – especially the right to full religious liberty. (Although I recognise that there is an argument that this ‘new’ right builds on earlier ideas of conscience, found within Aquinas for example.)

The natural law traditions, which continue into Locke, with their focus on teleological ends and the origins in the state of nature, tend to emphasise the authority of the community as a whole, the source of government power in the consent of the people, the common good, and the natural rights of the people as a whole.² The more

¹ Cf. Annabel Brett, *Liberty, Right and Nature* (Cambridge: CUP, 2003), 101.

² Cf. Johann P. Sommerville, *Royalists & Patriots* (New York: Longman, 1999), 100-102.

novel Leveller position meanwhile emphasises restrictions on government, and the legal rights of individuals, thinking derived in part from Christology rather than teleology.

However, the Levellers do not reject natural rights as such; rather, they synthesise them with other understandings of freedom and, in doing so, move away from those elements of natural law thinking that emphasise the priority of necessity, the law, and the legal community. At the same time they shift the emphases within natural law thinking – for example, downplaying the more communitarian aspects of the common good, whilst emphasising individual conscience. It was because of this shift that the Levellers were able to posit the unusual political ideas of genuine liberty of conscience and religious tolerance for all, including heretics and atheists. It was because of the novelty of their ideas that they found themselves opposed, not just to the absolute monarchists, but also to the Puritans – first the Presbyterians and then also the Independents,³ as we shall see when we look at the Whitehall Debates in this chapter.

In some detail we will also compare and contrast the Leveller understanding of rights with that of Locke, in order to illuminate the specific Leveller contribution to the development of ideas about rights. In this discussion of Locke, especially in our examination of the key differences between Locke and Leveller political thought, we will discover how Locke's natural law understanding of rights leads to limitations on his notions of religious liberty and consent, and how the Levellers held quite different understandings of political liberty and of the role of the state. Indeed, we will see that the Leveller theories were in a sense competing with those of Locke; and this discussion will involve a re-evaluation of Locke's position in the development of thinking on liberty. This will enable us to see, in particular, that the Levellers' political theories led

³ The terms 'Presbyterian' and 'Independent' are used in this thesis, reflecting the usage in the primary literature, both of political groupings in the Army and Parliament, and of religious groupings within the Church of England. However, the term 'Independents' in a religious context is the source of some confusion, not least because it is used in a loose way in the primary literature of the period (for background, see Watts, *The Dissenters*, 94-103). The Independents of the late 1640s are those Puritans who reject both the Presbyterian model of church government as normative, on the one hand, and the full separatism of what are called "sectaries", such as the Baptists, who reject the very concept of an established church. To avoid confusion, in the thesis I will restrict the usage of the term 'Independent' to those who want independent locally-run churches (congregations) within the parish structures of the established church, who want a state church and Calvinist orthodoxy, who recognise the parish congregations of the established church as true churches, and are in communion with the Church of England. On the political side, the leading Independents are Cromwell and Ireton. That said, the very idea of an Independent political grouping in Parliament is subject to scholarly debate (see, for a summary of that debate, *ibid.*, 108-109). Nevertheless, in this thesis I shall follow Lilburne's example in talking of an Independent political grouping – a grouping that may not be a strict political party as such (although Lilburne describes them as "the Independent Party"), but which comprises people in Parliament, in the Army, and various clergymen – see John Lilburne, 'The Legall Fundamentall Liberties', in Haller & Davies, 415-421.

indirectly to a form of constitutional liberalism characterised by a marked distrust of central government in general.

As a result of this analysis, we will see that the political liberal tradition of individual rights, limiting the state's powers over individuals, did not start with Locke, as some scholars suggest,⁴ but has much older roots. I will show that the Leveller language of rights and the free individual comes from several sources with solid Christian roots, being derived in part from the scholastic discussions of individual subjective rights, canon law, and conciliarism, and from the Lutheran language of Christian liberty. Yet the Leveller understanding of rights does differ from these earlier natural law traditions: particularly, in the area of religious liberty and in the notion that individual rights are logically prior to the civil constitution – we have liberties as birth-rights conceptually prior to the forming of government.⁵

In asserting that Leveller thought has continuities with natural law thinking, it has to be recognised that there are relatively few explicit quotes in the primary material from earlier natural law proponents, as such. Rather, what becomes clear in reading the primary sources is the voluminous use of natural law language. On the one hand, this makes it relatively simple to see the clear use that the Levellers make of natural law ideas; but, on the other hand, it makes it harder to ascertain the exact sources of their ideas within natural law thinking. As we mentioned in the Introduction, care has to be taken with the status of claims for influences on Leveller ideas where there are no explicit sources quoted. Thus, as we move through the chapter I will indicate the extent to which the influences are clear or are more speculative, and whether we have evidence of possible influences or we have parallels, resonances, and similar patterns of thought.

In the later chapters we will look at the other understandings of freedom that the Levellers synthesised with the natural law; in this chapter we will try to understand the Levellers by appreciating how they both use existing natural law language and yet break from elements of natural law traditions. That said, any such notion of a 'break' should be seen in the context of continuity, development and shift in emphasis, rather than rupture.

⁴ Tully places Locke as the father of modern political individual rights (Tully, 'Locke', 620-622); Manent holds that Hobbes and Locke are the font of liberal individual rights theories (Manent, *An Intellectual History of Liberalism*, Chapters 3-4); and Grayling places Castelleo, Milton and Locke as the source (Grayling, *Towards the Light*, 13, 49-56, 63-79, 119-130).

⁵ This is not a temporal priority but a question of conceptual precedence. I will show later that the Levellers are not interested in some state of nature that might have existed in time prior to the forming of government.

2.2 The Levellers and the scholastic traditions

“*Laws* are made to justify *Freedom*; and the force of a *Nation* should be to maintain the just *Laws* and *Liberties* of the people; the contrary is *Cruelty* and *Murther*.”⁶ There are common, undeniable and binding principles of nature, law and reason, states the Leveller William Bray; and to act contrary to the rights of the people is to commit injustice “contrary to the plain inbred Light of Nature.”⁷ For the Levellers, the starting-point of political discussion is law based on (prior) liberty: the need for just laws, the rule of law and equality before the law; and the individual free people and the requirement that they consent before giving up some of their liberties. Importantly, individual rights are natural rights that are prior to the civil constitution; we have liberties as birth-rights conceptually prior to the forming of government and which stand over the claims of government. This distinguishes the Leveller understanding of rights from, say, Hobbes.⁸

In some areas of political thought the Levellers seem broadly to take on earlier scholastic political ideas – on resistance to tyranny, for example – whilst at another level they take and develop earlier ideas such that there are novel departures in thought. Thus, the Levellers appear to build on earlier scholastic notions of rights, consent, the importance of conscience,⁹ and the separate spheres of the religious and the secular (thus limiting the state);¹⁰ yet they move beyond prior scholastic thought to advocate individual rights as liberties ‘separate from’ the community, ongoing consent that can be withdrawn, full freedom of conscience even for heresy, and a strictly non-coercive role for the state with respect to religious matters.

With the Levellers, we see the political expression of a concept that certain individual rights limit the power of the state; that these are God-given individual freedoms, that exist prior to the state; and which are inalienable and which inhere in each of us. We see here both the usage and development of natural law thinking and yet

⁶ William Bray, *Innocency and the blood of the slain Souldiers*, Thomason E.568(12), 8.

⁷ *Ibid.*

⁸ See, for example, Thomas Hobbes, *Leviathan*, ed. Michael Oakeshott (New York: Touchstone, 1997), Part Two, Chapters 18, 20-21.

⁹ Cf. Aquinas, ST, I-II, q. 19, aa. 5-6. See Norman Kretzmann and Eleonore Stump (eds), *The Cambridge Companion to Aquinas* (Cambridge: CUP, 1993), 221.

¹⁰ See, for example, John Neville Figgis, *Political Thought from Gerson to Grotius, 1414-1625* (New York: Harper Torchbook, 1960); and James Blythe, *Ideal Government and the Mixed Constitution* (Princeton: Princeton University Press, 1992); discussed in Insole, ‘Discerning the Theopolitical: A response to Cavanaugh’s reimagining of political space’, 326-327.

a shift from it. For example, the Levellers argue that statute laws that are contrary to natural law are simply void – a law that is against reason and the law of nature is unjust and is “voyd” and “no Law”;¹¹ this is a restatement of a natural law line that stretches back to Gratian’s *Decretum* of circa 1140.¹² Yet, the Levellers also articulate a clear right to religious liberty as a fundamental political freedom, which represents a break with the thought of the medieval canon lawyers and natural law scholars. Thus Leveller talk of natural law and natural rights has to be understood in terms of both continuities and discontinuities with natural law traditions.

2.2.1 Continuities

That seeing all men are by nature the Sons of *Adam*, and from him have legitimatly derived a naturall propriety, right, and freedom, Therefore *England* and all other Nations, and all particular persons in every Nation, notwithstanding the difference of Lawes and Governments, rancks, and degrees, ought to be alike free and estated in their naturall Liberties, and to enjoy the just Rights and Prerogative of mankind, whereunto they are Heirs apparent.¹³

Thus the great Presbyterian polemicist, Thomas Edwards, quotes words from Richard Overton as an example of what he calls the errors, heresies, and strange opinions of the ‘sectaries’. The Levellers and their allies are accused of using natural rights and natural freedoms to assert that all persons should be equally free – an absurd idea for Edwards, a man who does not reject the natural law but who does reject the way in which the Levellers utilise it. It is thus germane to explore what use the Levellers make of these concepts that come from within natural law thinking.

First of all, we will look at the broad lines of thinking from various natural law traditions that the Levellers seem to utilise. From earlier scholastic philosophers, theologians, and canonists, the Levellers appear to derive notions of individual (subjective) rights, self-proprietty and inalienability, as well as political consent, popular sovereignty and resistance; and these thus seem to represent continuities in lines of thought. The Levellers use ‘rights’, ‘liberties’ and ‘freedoms’ interchangeably in their tracts, and this in itself is revealing. These rights always pertain to people and they are described as the people’s birthright. The Levellers themselves use natural law

¹¹ Bray, *Innocency and the blood of the slain Souldiers*, 9.

¹² Gratian, *Concordia*, Dist. 8, post c. 1. (Gratian, *The Treatise on Laws (Decretum DD. 1-20) with the Ordinary Gloss*, ed. Augustine Thompson (Washington DC: CUA Press, 1993), 25.) See Brian Tierney, *The Idea of Natural Rights* (Grand Rapids MI: Eerdmans Publishing, 1997), 60.

¹³ Thomas Edwards, *The third part of Gangraena*, Thomason E.368(5), 17.

terminology – talking of natural rights, right reason, and rationality. Indeed, Edwards accuses the ‘sectaries’ (he includes the Leveller leaders and various religious separatists in this) of using the natural law and natural rights to undermine the laws of the country:

Instead of Legall Rights and the Lawes and Customes of this Nation, the Sectaries talk of, and plead for naturall Rights and Liberties, such as men have from *Adam* by birth, and in many of their Pamphlets they still speak of being governed by Right reason, so that look now as they do in matters of Religion and Conscience they fly from the Scriptures and from supernaturall truths revealed there, that a man may not be questioned for going against them, but only for Errors against the light of nature and right reason; So they do also in Civill Government and things of this life, they go from the Lawes and Constitutions of Kingdoms, and will be governed by rules according to nature and right reason; and though the Lawes and Customes of a Kingdom be never so plain and cleer against their wayes, yet they will not submit, but cry out for naturall Rights derived from *Adam* and right reason.¹⁴

There is a kernel of truth in Edwards’s polemic: for, a Leveller like Wildman argues that the custom whereby the House of Lords (which appears stacked in the Presbyterian interest) has jurisdiction over Commoners is invalid because it is “unreasonable”; the law of nature abhors such a claim; and it is thus “irrational” and “repugnant to the law of nature.”¹⁵ Furthermore, some Levellers were prepared to talk of a return to a state of nature – a potentially revolutionary concept: “Wherefore, though an inavoydable necessity, no other means left under heaven, we are inforced to betake our selves to the Law of Nature, to defend and preserve our selves and native Rights.”¹⁶ If the natural law and natural rights can be put to such political purposes, we are entitled to ask if there is any continuity from such thinking to earlier understandings of natural rights.

The discussion in this section will explore the apparent continuities, through the themes of natural rights, self-propriety, and resistance theories. In order to comprehend the idea of rights that existed prior to the Levellers – in order to grasp how they utilised prior notions – we will first have a brief look at scholastic natural law thinking on rights. The Latin terms ‘ius’, ‘dominium’, and ‘potestas’ are the key terms in scholastic thought on rights, but, as Annabel Brett importantly shows in her book *Liberty, Right and Nature*, there were different schools that interpreted these in different ways. *Ius* can mean right in the sense of a person’s right, the right thing, and law. This equivalence is itself very telling, as we shall see. *Potestas* is understood in the sense of power as a

¹⁴ Ibid., no page (image 28).

¹⁵ John Wildman, *The lawes subversion*, Thomason E.431(2), 28-30.

¹⁶ William Thompson, *Englands Standard Advanced*, Thomason E.553(2), 1.

faculty; and *dominium* in the sense of power as a relation over something. In the early scholastic discussions on private property, the right of self-preservation, the right to self-defence, the rights of infidels, permissive natural law, rights in marriage, and ecclesiastical rights under canon law, there arose what appears to be a language of personal subjective rights. However, scholarly debate has tended to be divided over exactly how and when the move from purely objective rights (the right thing, what is just, in accord with the objective natural law) to subjective rights (rights of an individual human person) occurred.¹⁷ Although the details of that debate do not concern us – for, in a sense, the Levellers cut across this debate – what is important for this thesis are the various ideas that are thrown up in the discussion of rights, and the limitations on the understanding of rights with respect to the individual and to freedom.

During the Franciscan poverty dispute of the early fourteenth century, the Franciscan, William of Ockham, advanced the idea of *ius* as a *potestas* of the subject. Even though we lose *dominium* with the Fall, we still have a licit *potestas* to subdue the world. Although Ockham is thought by some¹⁸ to be the father of the subjective school of rights, Brian Tierney has shown that the concept of individual subjective rights came from the early medieval period, from the twelfth-century canon law jurists – that is, before Ockham, before the fourteenth-century Nominalist philosophy, and before the Franciscan debates.¹⁹ We will come back to Ockham below. We thus have the language of objective natural rights and of subjective natural rights circulating at the same time, even from an early period. Indeed, Tierney finds evidence of a theologian, Godfrey of Fontaines, writing in the 1280s, moving from talk of the “objective natural law to subjective natural right in the course of a single sentence.”²⁰

Amongst the later scholastics we find rights language that seems to include individual freedom. With Las Casas we find talk of individual rights (rights of single individuals) and of a natural right to liberty; Tierney argues that Las Casas is blending juridical concepts of natural rights from within canon law with the Thomist notion of the natural law.²¹ For Vitoria, rights derive from man being made in the image of God;

¹⁷ For an overview of this debate see Tierney, *The Idea of Natural Rights*, 8, 13-42.

¹⁸ E.g. Michel Villey. See, for example, Michel Villey, ‘La genèse du droit subjectif chez Guillaume d’Occam’, *Archives de philosophie du droit* 9 (1964), 97-127.

¹⁹ Brian Tierney, ‘Villey, Ockham and the Origin of Individual Rights’, in John Witte and Frank Alexander (eds), *The Weightier Matters of the Law* (Atlanta: Scholars Press, 1988), 1-31.

²⁰ *Ibid.*, 27-28.

²¹ Tierney, *The Idea of Natural Rights*, 276-285.

thus all humans, including children, slaves, infidels, and sinners, have rights.²² His significant contribution (developing some of Gerson's thinking) is the notion that rights inhere in human nature rather than the nature of the external world and that, thus, no non-human creature or thing could have rights. For Mair, the right to hold and dispose of property is treated as the paradigm case of a right,²³ and this possibly comes close to sounding like a modern conception of right, as a liberty of the individual in this instance.

When we look at the Levellers, we can see examples of the language of the liberty of the individual, as they emphasise "native rights", which are sometimes spoken of as ancient (making English people "free-born") and as inalienable.²⁴ In *An Arrow Against all Tyrants* Overton sets this out:

To every Individuall in nature, is given an individuall property by nature, not to be invaded or usurped by any: for every one as he is himselfe, so he hath a selfe propriety For by naturall birth, all men are equally and alike borne to like propriety, liberty and freedome, and as we are delivered of God by the hand of nature into this world, every one with a naturall innate freedome and propriety ... even so we are to live, every one equally and alike to enjoy his Birth-right and privileged; even all whereof God by nature hath made him free.²⁵

These rights, however, never give one person the right over another. Again Overton is clear: "No man hath power over my rights and liberties, and I over no mans."²⁶ Overton's idea of rights grounded by nature in 'selfe propriety' reflects an earlier scholastic notion that can be seen, for example, in Henry of Ghent who in the late thirteenth century talked, in his discussion of the rights of a condemned criminal, of the criminal, and no-one else, having a property ('proprietas') in the substance of his body.²⁷

One of the major contributions of Leveller thinking is this focus on the concept of individual 'self-propriety' which means that we have freedoms as individuals that cannot be given up, what we today would call 'inalienable' rights. Inalienability precisely is based on this self-propriety, self-ownership. This notion may ultimately derive from the ideas of Richard of St Victor in the twelfth century, where the concepts

²² Ibid., 271.

²³ Quentin Skinner, *The Foundations of Modern Political Thought*, Volume 2 (Cambridge: CUP, 2004), 121.

²⁴ Although they do not use this exact term.

²⁵ Richard Overton, *An Arrow Against all Tyrants*, Thomason E.356(14), 3.

²⁶ Ibid.

²⁷ See Tierney, *The Idea of Natural Rights*, 86.

of person, property, and incommunicability are interlinked.²⁸ For the Levellers, I cannot give my freedom to believe to someone else, and they cannot legitimately take it from me. Thus I cannot give this power to the state and nor can the state legitimately take it from me or compel me. The importance of this concept to political theory is the idea of individual inalienable rights not drawn from membership of a group or society. In *An Appeale* Overton states: “By naturall birth, all men are equall and alike borne to like propriety and freedome.”²⁹ Every man has a self propriety; every individual is given this by nature, and it is not to be usurped or invaded in any way; and no man may give that power to another. Overton is able to appeal to these natural rights, these properties of himself, to assert his freedom and to condemn attacks upon that freedom:

That whereas your prisoner under pretence of a Criminall fact being in a warlike manner brought before the House of Lords to be tried, and by them put to Answer to Interogatories concerning himselfe, both which your Petitioner humbly conceiving to bee illegall, and contrary to the naturall rights, freedomes, and properties of the free Commoners of *England*; confirmed to them by *Magna Charta*, the Petition of Right, and the Act for the abolishment of the Star-chamber: hee therefore was imboldened to refuse subjection to the said House, both in the one and the other, expressing his resolution before them, that he would not infringe the private rights and properties of himselfe, or of any one Commoner in particular, or the common rights and properties of this Nation in generall.³⁰

The Levellers also talk of common rights and liberties – we all have these liberties and each of us has them equally. “All and every particular and individuall man and woman,” states Lilburne, are “by nature all equall and alike in power, dignity, authority, and majesty, none of them having (by nature) any authority dominion or majesteriall power, one over or above another.”³¹ The Leveller notion of human equality stands within the natural law traditions, and, indeed, similar notions can be found in late sixteenth and early seventeenth-century writings (Knox for example).³²

These ideas of self-propriety and inalienability lead us to the notion of consent. For the Paris theologian Almain, political authority inheres in the people before they form a political society and the people only delegate their powers to the ruler; the

²⁸ See Richard of St Victor, *De Trinitate*, Book 4, c. 6: a person is defined as a “*proprietas individualis, singularis, incommunicabilis*.” (Richard de Saint-Victor, *De Trinitate*, ed. Jean Ribailier (Paris: Vrin, 1958), 169.) I am grateful to an unpublished work of Peter Bristow for these ideas of Richard of St Victor.

²⁹ Richard Overton, ‘An Appeale’, in Wolfe, 162.

³⁰ Richard Overton, *To the high and mighty States*, Thomason 669.f.10(91), 1.

³¹ John Lilburne, *The Free-mans Freedome Vindicated*, Thomason E.341(12), 11.

³² John Knox, ‘The Letter to the Commanly’, in Roger A. Mason (ed.), *John Knox On Rebellion* (Cambridge: CUP, 2004), 118-119.

highest political power remaining with the people at all times. This is based on Mair's view that the political power that the ruler has is delegated to the ruler by the people to be used on their behalf – the people do not alienate but merely delegate their sovereignty. The conciliarists, Mair and Almain, thus allow the people the right to remove a ruler who does not govern properly in their interests.³³ This right of self-preservation, however, belongs to the people as a body rather than the individual person in this theory,³⁴ nevertheless, Almain's emphasis on the right and duty of self-preservation provides a key for later thought, especially for resistance theories. We will return to Mair and Almain as we discuss the Leveller understanding of the right of resistance below. Even so, the important notion, that the power of the people is only delegated to its ruler and not given up, can be seen in the Levellers and stretching back from Almain to Durandus of Saint Pourçain and to the twelfth-century Decretists.³⁵

In Almain we can see the interlinked notions of consent, self-preservation, the right to revoke delegated power, and the right to depose.³⁶ In a sense this builds on Gratian's *Decretum* where he states that those subject to the law confirm laws by approving them through customary use, and conversely abrogate some laws through contrary custom.³⁷ Such ideas allowed later constitutionalists like Bartolus to develop the theory that the government cannot make any statutes contrary to those agreed by the whole people. Legislation needs the authority of the people, and such authority is only delegated by the sovereign body of the people – this is, in embryo, the concept of popular sovereignty. Suarez and Bellarmine, though, repudiate any idea that the power of a community derives from people as individuals: they only allow consent in moving to the establishment of a society. Vitoria, Soto, Molina, and Suarez accept the necessity of consent before a ruler can first be instituted to form a civil society; but once that

³³ See, for example, Francis Oakley, 'Almain and Major: Conciliar Theory on the Eve of the Reformation', *The American Historical Review* 70:3 (1965), 676.

³⁴ Almain's emphasis (not surprisingly as a conciliarist) is on the right of the body, the community, with regard to the head, rather than the right of an individual within the body with respect to the body. Cf. J.H. Burns, 'Scholasticism: survival and revival', in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 150; and J.H. Burns, 'Jus Gladii and Jurisdictio: Jacques Almain and John Locke', *The Historical Journal* 26:2 (1983), 372-374.

³⁵ Tierney, *The Idea of Natural Rights*, 237-238; and Tierney, 'Hierarchy, Consent, and the "Western Tradition"', 648-650.

³⁶ See Almain's *Question at Vespers* (in Jill Kraye (ed.), *Cambridge Translations of Renaissance Philosophical Texts*, Volume 2 (Cambridge: CUP, 1997), 13-35). Cf. Burns, 'Scholasticism: survival and revival', in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 148-150; and Skinner, *The Foundations of Modern Political Thought*, Volume 2, 119-120.

³⁷ Gratian, *Concordia*, Dist. 4, c. 3. See Tierney, 'Hierarchy, Consent, and the "Western Tradition"', 648, 651 n. 7.

power is justly bestowed, ongoing consent need not be sought by the ruler – except in certain cases such as taxation (Molina and Suarez). Likewise, for Las Casas, liberty requires that we consent to government and taxation; but, importantly, consent is required of all, i.e. of each individual. There is a move away from Vitoria’s views here, as Las Casas insists that the consent of a majority should not prejudice the rights of a single person withholding consent. We will see in the Putney Debates later in this chapter that consent plays a key role in the political thought of the Levellers. For it is with the Leveller Agreement,³⁸ discussed at Putney, that we can see the Leveller emphasis upon explicit consent and the limited delegation of powers, to be expressed in a formal social contract.

As we have already begun to see, the concepts of rights, inalienable self-proprietty, and consent, serve as precursors to the emergence of resistance theories amongst some of the natural law traditions. The subject of resistance will come up several times throughout this chapter: here in our discussion of scholastic continuities of thought; under Luther; and then under Locke. The argument of the chapter is that the Levellers pick up and intensify the traditional notions of resistance that are already there within scholasticism, even if they do so indirectly.

We earlier touched on Ockham, and his important contribution for our discussion is his emphasis on natural rights as setting limits on a ruler’s powers, including discussions of limitations on a pope’s powers with respect to the rights of the rest of the church.³⁹ This was to be taken up by the early conciliarists, of whom Gerson is perhaps the most significant for our study of potential sources of Leveller thinking on rights. Tierney argues that Gerson’s theory of rights can only be understood within the context of medieval conciliarism – the discussions surrounding secular government and church, and church and pope, and in particular the role of a general council of the church. Conciliarism’s core concern was to justify limiting or deposing the head for the sake of the body (of the church). Gerson developed the idea of a natural right to self-defence inhering in all individual persons,⁴⁰ which will be important in our later discussion of Locke. From a Thomist conception of the lawfulness of killing in self-defence,⁴¹ he moves to an individual subjective right to self-defence. Gerson’s conciliarism was to be

³⁸ The Leveller ‘Agreement’ is a proposed politico-legal constitution for the state, in the form of a written document, which is to be agreed to by the people. This will be discussed in detail throughout the thesis.

³⁹ Tierney, *The Idea of Natural Rights*, 193.

⁴⁰ *Ibid.*, 233.

⁴¹ See Aquinas, ST, II-II, q. 64, a. 7.

built upon by Mair and Almain, and we shall see in this chapter that some of the ideas of these later conciliarists are one of the likely (though indirect) sources of Leveller political thought (via Buchanan, for example).

In their language of the right of resistance, the Levellers appeal to what are, in effect, conciliarist ideas. The “Body ... may cure the Head if it be out of tune,” states the Leveller newspaper, *The Moderate*; and so the Commonwealth may “cure or purge their Heads, if they infect the rest.” A body would cut off a “sickly head” if it could and take another; and indeed a civil body “is not bound ever to one” head.⁴² These are political ideas that ultimately appear to echo conciliarist ecclesiology, particularly that of Mair and Almain, although we cannot be certain (for the editor of *The Moderate* goes on to illustrate his arguments with instances from the Bible and from secular history).

At the same time, Leveller tracts seem to echo Jesuit political thought, especially in the matter of the right of resistance. For Jesuit thinkers like Suarez and Molina, what counts is whether the ruler’s commands are in accord with the law of nature; and, if they are not, then Suarez and Molina allow the right to resist,⁴³ even to kill the prince after legal deposition (in the case of Suarez, this is particularly aimed at James I of England). For Suarez, this right rests on natural justice and on the prior social ‘contract’.⁴⁴ Molina, whilst holding that the law of the ruler is to be obeyed, develops the right of resistance to include the right of an individual to overthrow a usurping tyrant⁴⁵ – this is an idea that can be found in the early Aquinas too.⁴⁶ In itself, this is a development from earlier ‘resistance theories’: for example, John of Salisbury, in the twelfth century, talks of the right to slay a tyrant.⁴⁷ These ideas of resistance will indirectly be taken up by the Levellers, at least implicitly. As we move through the chapter we can see the various resistance concepts which seem to feed into Leveller ideas: conciliarist, Jesuit,

⁴² *The Moderate*, Number 21, 28 November – 5 December 1648, Thomason E.475(8), 177.

⁴³ Cf. Bernice Hamilton, *Political Thought in Sixteenth-Century Spain* (Oxford: OUP, 1963), 59, 61-62, 63-64.

⁴⁴ J.H.M. Salmon, ‘Catholic Resistance Theory’, in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 239.

⁴⁵ Cf. Frank Costello, *The Political Philosophy of Luis de Molina, S.J. (1535-1600)* (Rome: Institutum Historicum, 1974), 66-67.

⁴⁶ Aquinas, *Scriptum super Sententiis*, Book II, Dist. 44, q. 2, a.2. See Kretzmann and Stump (eds), *The Cambridge Companion to Aquinas*, 220; and Oliver O’Donovan and Joan Lockwood O’Donovan (eds), *From Irenaeus to Grotius* (Cambridge: Eerdmans Publishing, 1999), 328-330.

⁴⁷ John of Salisbury, *Policraticus*, Book 3:15, Book 8:20. See O’Donovan and Lockwood O’Donovan (eds), *From Irenaeus to Grotius*, 281, 295-296. (Cf. Blythe, ‘The Mixed Constitution and the Distinction between Regal and Political Power in the Work of Thomas Aquinas’, 555.)

and Calvinist. Although these represent many layers of texture in Leveller thinking, we cannot always say exactly how each layer fed in.

Overton clearly takes the right of resistance from within traditional natural law thinking – for him, illegal censures and warrants, even by the king or by lords, means that

the persons invaded and assaulted by such open force of Armes may lawfully arme themselves, fortifie their Houses (which are their Castles in the judgement of the Law) against them; yea, disarme, beat, wound, repress and kill them in their just necessary defence of their own persons, houses, goods, wives and families, and not be guilty of the least offence.⁴⁸

Although this natural law right of self-defence is already recognised in the law of England, the Levellers take it a step further, for they appeal to natural rights against Parliament – naming Parliament as tyrannous – which distances the Levellers from their political contemporaries who themselves accepted the notion of the natural law. After all, the Presbyterians and the Independents used natural law arguments; what is distinctive with the Levellers is that they utilise natural rights demands against Parliament: by using the natural law to judge Parliament as a tyranny, claiming that certain laws of Parliament are null and void, maintaining natural rights prior to and independent of the state, affirming an equality of political rights, and asserting fundamental rights that the Puritans simply do not recognise. The Levellers part ways with the Independents in the Leveller claim that Parliament tyrannises ten times more than the King and so it is “lawfull for us to take up Armes against them.”⁴⁹

Moreover, when a Leveller tract calls Parliament “*Tyrants and Usurpers*”,⁵⁰ the readers of this tract – including Cromwell and the Independents – would have known exactly what the authors were asserting by this particular language: a right of resistance. Indeed, Lilburne is explicit: “*That tyranny be resistable.*”⁵¹ This is a right not recognised by Luther but most certainly recognised by Jesuits like Suarez, Molina and Mariana. This may also explain why the Levellers were labelled ‘Jesuits’ by their opponents⁵² – a term of abuse which on the surface might appear ludicrous (given that it is manifestly not true) until one sees the political beliefs implied by the term. Indeed,

⁴⁸ Overton, *An Arrow Against all Tyrants*, 9.

⁴⁹ John Lilburne, *Jonahs cry out of the whales belly*, Thomason E.400(5), 4.

⁵⁰ See Lilburne’s tract, published under the signature of a group of young men, *An outcry of the youngmen and apprentices of London*, Thomason E.572(13), 11.

⁵¹ Lilburne, *Jonahs cry out of the whales belly*, 4.

⁵² See, for example, John Lilburne, *The second part of Englands new-chaines discovered*, Wing 2534:04, 2.

the Leveller weekly, *The Moderate*, states that the Commonwealth gave authority to princes and so can take this away again and punish the princes, since their power is not absolute

but *Potestas vicaria*, or *Deligara*, a power deligate, or by commission from the Common wealth, which is given with such restrictions, cautions, and conditions, yea, with such plain exceptions, promises, and oaths of both parties, as if the same be not kept between the King and People, but wilfully broken on either part, then is the other not bound to observe his promise, or oath, though never so solemnly made or sworn: For if two travellers should swear the one to assist the other upon the way, from all theeves, and other danger whatsoever, and it fall out, that the one joynes with a friend, and sets upon the other, to rob and slay him; clear it is, that the other is not bound to keep his oath towards that party that hath so wickedly broken it unto him, but rather ought to kill ... for breach thereof.⁵³

The wording of the first part of this quotation is very close to that of the English Jesuit, Persons/Parsons, who likewise asserts that “the power and authority which the Prince hath from the commonwealth is in very truth, not absolute, but *potestas vicaria* or *deligata*.”⁵⁴ Again, this may well explain why the Levellers were attacked for being ‘Jesuits’. It seems to provide some evidence for the influence of Jesuit resistance theories upon Leveller thought (whether from English Jesuits like Persons, or perhaps from Spanish Jesuits like Molina), and shows how the Levellers were willing to make use of earlier political thinking, particularly in the area of the contractual nature of political society. If the people’s elected representatives break the trust that they have been given, then, asserts the editor of *The Moderate*, “the people are bound by the law of God, man, and nature, to disobey them,” and it becomes “lawfull for the people after such breach of trusts, to use all Coercive power for bringing to condigne punishment such trustees, and to fight with, kill, and slay all such as shall oppose them therein.”⁵⁵

What we can see now is the broad continuity between Leveller thought and scholastic thought, especially that of the conciliarists and then the Jesuits; and, yet, a move by the Levellers to emphasise the individual and the need for a formal social contract to express consent and to protect the liberty of the individual. It is probably in

⁵³ *The Moderate*, Number 23, 12 December – 18 December 1648, Thomason E.477(4), 202.

⁵⁴ From Robert Persons, *A Conference about the Next Succession to the Crowne of England*, quoted in Sophie Nicholls, Book Review of *Jesuit Political Thought: The Society of Jesus and the State, c. 1540-1630* by Harro Höpfl, *H-Ideas, H-Net Reviews* (January 2008), at <http://www.h-net.org/reviews/showrev.php?id=13995> (accessed 27 June 2009). Cf. Salmon, ‘Catholic Resistance Theory’, in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 243.

⁵⁵ *The Moderate*, Number 16, 24 October – 31 October 1648, Thomason E.469(16), 130.

these areas that we begin to notice the apparent discontinuities between scholastic thought and Leveller thinking.

2.2.2 Discontinuities

The question then is whether, for the Levellers, ‘natural’ rights are rights purely as understood within the existing natural law traditions, that is, whether our fundamental freedom is a natural law freedom belonging to human nature *qua* created nature; or whether they are natural in that they inhere in us at birth prior to civil society, giving political rights that are logically prior to society, since a God-given freedom has been given to individuals through the redeeming act of Christ (understood as over or even against our nature). For the Leveller, William Bray, the laws of nature, reason and scripture guarantee people’s rights, freedom and justice, as they involve capital obligations of man to God but also “Obligations of God to man.”⁵⁶ Reason, law, justice, and right are continually linked by Bray, expressing a natural law approach to rights. Yet, the natural law is ratified in Christ’s death, such that to act against someone’s natural rights is to justify the “Crucifying” of Christ.⁵⁷

In scholastic natural law traditions, rights seem to be primarily related to duties, what is licit, and the law; to what is rational and morally right. That is, rights are powers in accord with the natural law, to do that which is licit or an obligation; and rights apply to us as human beings and are due to our nature, or applied to us juridically as we occupy certain roles. As Brian Tierney has shown us, the twelfth-century canon law jurists recognised individual subjective rights. Nevertheless, these natural rights were powers or faculties that should be thought of as licit claims – in areas like the laws of torts, contracts, or marriage – by individuals in so far as they were members of taxonomic classes (husbands, bishops, and so on); or as active powers to do that which is licit and approved (or permitted by not being otherwise commanded or prohibited); or were necessary rights based on duties, such as the obligation of everyone to self-preservation.⁵⁸ There appears to be less conception of individual rights as inherent or pre-legal individual *freedoms* that could be upheld as liberties from the reach of the

⁵⁶ Bray, *Innocency and the blood of the slain Souldiers*, 8.

⁵⁷ William Bray, *Heaven and Earth, Spirit and Blood, demanding reall Commonwealth-Justice*, Thomason E.562(9), 2.

⁵⁸ Tierney, *The Idea of Natural Rights*, 35, 54-57, 70-74.

law,⁵⁹ rights that could be upheld against the civil community, rights such as religious freedom. The fundamental natural right of anyone to nourish, protect, and preserve his own body (cf. Suarez),⁶⁰ is a duty or obligation, rather than a freedom as such. The duty makes certain actions morally licit or even obligatory. As Annabel Brett puts it, the language of rights was “bound in with necessity rather than liberty.”⁶¹

Tierney observes that even “a thinker like Gerson, who wrote eloquently on ‘evangelical liberty’, could not conceive of anything like a modern right to religious freedom.”⁶² Rights within early conciliar thought have to be understood within notions of hierarchy and the good of the body;⁶³ within this theory, rights belong to groups but not all rights belong to every individual in society, and the common benefit comes above the good of the individual. For Suarez too, (though not a conciliarist), the common good is to be preferred to private good, and so the common good can override the natural rights of the individual.⁶⁴ Likewise, Mair, in defending rights in his conciliar theory, would not envisage a right to religious liberty, for example. In the end, although we have suggested that liberty of conscience might be a development of earlier ideas of conscience going back to Aquinas, we should clearly notice the Leveller idea of full liberty of conscience for all, even to the point of heresy – and Walwyn’s notion of “liberty of conscience” being the “principall branch” of freedom⁶⁵ – as also being a break with the rights envisaged within earlier natural law thinking.

Furthermore, in the natural law traditions, natural rights tend to be thought of more as powers, duties, and obligations rather than individual political freedoms. Indeed, natural rights for the likes of Vitoria belong to people as a whole rather than to individuals. So even such subjective natural rights have less of a notion of individuality than the English common law conception of rights; and the freedom entailed is more like a positive liberty to do something licit, rather than a negative liberty (freedom from something) as we find in the common law. We can now see that rights within natural law traditions tend towards the right to do what is right (both in the moral and the legal sense); so you only have rights to do that which is morally right; and a person cannot have rights to do that which is against the civil law when that human positive law

⁵⁹ See Brett, *Liberty, Right and Nature*, 87.

⁶⁰ See Suarez, quoted in Tierney, *The Idea of Natural Rights*, 308.

⁶¹ Brett, *Liberty, Right and Nature*, 101.

⁶² Tierney, *The Idea of Natural Rights*, 214.

⁶³ Cf. C. Colt Anderson, *The Great Catholic Reformers* (Mahwah NJ: Paulist, 2007), 127.

⁶⁴ Cf. Hamilton, *Political Thought in Sixteenth-Century Spain*, 57.

⁶⁵ William Walwyn, *Tolleration Justified*, Thomason E.319(15), 15.

accords with natural law. Whereas, the Levellers posit rights as freedoms that precede, supersede, and trump positive law. This trumping effect is not the occasional licitness or duty to break the law in an emergency (being free to steal some food when starving to death, for example); it is an initial veto over the rightness of whole swathes of laws in certain areas.

This means that we have to be careful when interpreting what might appear to be language tending towards the modern idea of individual freedoms (as in this example from the scholastic philosopher Buridan):

They are free and equal in this sense, that it is licit for each equally to acquire for himself as much as he can, and to possess the things he has acquired, and to use them as it pleases him – on the condition that he does so without harming the community or his fellow citizens.⁶⁶

In this instance, Buridan is describing a licit power or ability, rather than a personal right as a political freedom. We thus need to be cautious with the understanding of ‘freedom’ or ‘liberty’ within natural rights traditions: for you are not free to do that which is unnatural, sinful, illegal, or irrational. Not only do you have no freedom or right to do that which is a sin, but if you do sin, you can lose your rights/freedoms, as Brett describes the views of Soto:

When man sins he betrays his own rationality and loses his freedom and thereby his proper right; the commonwealth may therefore kill him for the sake of its own purposes without injury to him.

The loss of right in himself is the crucial factor in justifying the action of the commonwealth in killing a malefactor.⁶⁷

Soto’s position here is based on the model of the commonwealth as a body: just as with a body, a limb may be cut off “lest it infect the whole”,⁶⁸ so has the commonwealth the right to conserve itself. Furthermore, for those scholastic thinkers like Soto, infractions of biblical injunctions, including those of the Old Testament, are sinful and come under the remit of the secular ruler for punishment, as Skinner notes:

Since the law of nature is also the will of God, the commands and prohibitions of the divine positive laws in the Bible cannot differ from the law of nature. ... even under this new dispensation the injunctions of the Old Testament still retain their characters as laws. Since the Mosaic code is known to represent the will of God, it cannot differ from ... the dictates of the law of nature.⁶⁹

⁶⁶ Jean Buridan, *Quaestiones super decem libros Ethicorum Aristotelis ad Nicomachum*, Book 5, q. 18, quoted in Brett, *Liberty, Right and Nature*, 102.

⁶⁷ Brett, *Liberty, Right and Nature*, 160.

⁶⁸ Domingo de Soto, *De iustitia et iure libri decem*, Book 5, q. 1, a. 2, quoted in *ibid.*

⁶⁹ Skinner, *The Foundations of Modern Political Thought*, Volume 2, 150.

This idea, that the Mosaic code still stands and is part of the civil law of the secular ruler, including with respect to religious observance, is of immense importance for our later discussion in this chapter of Puritanism and Leveller opposition, especially during the Whitehall Debates.

One of the innovations of the Levellers is that common rights and freedoms should be recognised in a written constitution, a real contractual agreement, that not only clearly sets out these rights but which limits the powers of the state with respect to these rights. This seems to build on some of the ideas of the conciliarists, and of the later Jesuits like Molina, as well as the more explicit emergence in later scholasticism of the notion of a ‘social contract’: Fernando Vazquez, for example, uses the language of Roman law to construct a theory of absolute natural liberty from which people form a city by a contract of good faith to secure the end that each might lead the better life in safety, the law having the same nature as a contract, so that natural liberty is artificially limited by a compact that makes political society.⁷⁰ Nevertheless, the Agreement of the Levellers is not about any original state of nature and subsequent social contract, as in Vazquez’s abstract original universal natural liberty, limited by an artificial and contingent compact made in the distant past;⁷¹ it is about a new constitutional arrangement to be made now or in the near future in England and Wales.⁷²

The Leveller desire for a formal compact is threefold: a) to provide a clear statement of the fundamental law which would be superior to Parliament; b) to limit the powers of the state in favour of individual rights; and c) to express formally people’s consent. So although the Leveller Agreement can be considered as building on earlier scholastic notions of ‘constitutionalism’ and of consent (Lilburne talks of the “maxim in nature, no man can binde me but by my own consent”),⁷³ it can also be thought of as going beyond these in terms of setting out a current written constitution and the notion of formal ongoing consent. It is at the Putney Debates that the issue of consent is most forcefully debated, as we shall observe below. The reason that consent figures so highly is that we have to give up some of our individual political liberty, so it is critical in Leveller thought to be clear about the limits of this and indeed how I can give up the liberty that I own.

⁷⁰ See Brett, *Liberty, Right and Nature*, 181, 184, 202-204.

⁷¹ Cf. *ibid.*, 198, 204.

⁷² Cf. Rachel Foxley, ‘Problems of Sovereignty in Leveller Writings’, *History of Political Thought* 28:4 (2007), 648, 651, 655.

⁷³ John Lilburne, *London’s liberty in chains discovered*, Thomason E.359(17), 53.

Macpherson perceives that the term ‘propriety’ is key: it is a property which we each have in ourselves as individuals; I have an inalienable property in myself; this is, in Macpherson’s terms, the notion of ‘self-possessiveness’.⁷⁴ He sees the Levellers deriving civil and political rights from natural rights; and natural right is derived from natural property in one’s own person. They conceive of property as a natural right – every one has property in their own person – and derive civil and religious liberties from this.⁷⁵ This propriety is prior to government; civil and religious liberties must be for all;⁷⁶ and these natural rights owe nothing to society. Setting aside the question of whether Macpherson over-emphasises property (especially property in one’s labour)⁷⁷ at the expense of the theological basis for ‘selfe propriety’, we can see how the Levellers have taken the concept of self-property (*proprietas*) beyond Richard of St Victor and Henry of Ghent. There has been a shift from the abstraction of personhood and property rights to a theological focus on the primacy of innate individual freedom given by God, such freedom being prior to community and distinct from juridical rights to self-preservation based on licitness, duty and teleology. The Levellers, then, locate power and dominion in particular individual persons, in each and every person, and posit explicit political equality based on this natural equality of freedom. Furthermore, the Leveller tracts talk of civil rights and fundamental natural rights – the latter being prior to the former. So, the Leveller conception of rights is this: there are civil rights that we have as members of society; there are fundamental absolute rights, called natural rights, that we have separately from and prior to civil rights; and civil rights derive from the fundamental rights. To put this another way, our freedom precedes our legal rights, logically, politically, morally, and metaphysically.

This has important implications for limiting the state. Whereas there had long been debates within scholasticism about limiting the temporal power of the state over the church, the formation and constitution of the state, and the powers of rulers,⁷⁸ it is perhaps fair to suggest that the Levellers – with their focus on the fundamental right to individual religious freedom, which makes a statement about the superior claim of the

⁷⁴ Macpherson, *The Political Theory of Possessive Individualism*, 137-142, 153.

⁷⁵ *Ibid.*, 139.

⁷⁶ *Ibid.*, 139, 143.

⁷⁷ *Ibid.*, 144-153.

⁷⁸ See, for example, Blythe, ‘The Mixed Constitution and the Distinction between Regal and Political Power in the Work of Thomas Aquinas’, 547-565; and Tierney, ‘Religion and Rights: A Medieval Perspective’, 167, 169. For the application of this to contemporary political theology, see Insole, ‘Discerning the Theopolitical’, 327.

individual's religious rights over the temporal authority of the state – move the debate on to the level of the individual and the state. That is, the earlier debates about the respective powers and duties of the ruler and the body of the people, or of the church and the magistrate, are superseded by a debate about the individual and the state. This is not to deny the importance of the scholastic debates on ecclesiology and constitutionalism, and indeed the wider role of ecclesiology in Leveller thinking (see Chapter Four). Nonetheless, for the Levellers, the right of the individual becomes something to be asserted against the state.

As we recall from above, there is an ongoing scholarly debate about objective versus subjective rights, and when the latter notion arose. It seems then that this debate may be an intellectual cul-de-sac which fails to do justice to the Leveller understanding of individual rights, as we have seen that their understanding is situated within natural law thinking and traditions going back beyond conciliarism to Aquinas and to earlier canon law jurists. The Leveller notion of individual subjective natural rights does not stand in opposition to earlier notions of objective natural rights; rather there are broad continuities in many important aspects. Nevertheless, there are some differences and discontinuities between a Leveller conception of rights and a scholastic conception of rights, and so it is perhaps better to comprehend these as differences of emphasis. It is probably more useful to see the scholastic understanding of natural rights as emphasising our nature, community and necessity; whereas the Leveller understanding of rights places a greater emphasis on the liberty of the individual located in Christ, conceptually prior to the community. It is this latter point which enables the Levellers to posit individual freedoms that move beyond the freedom of inner conscience to be genuine external political liberties – such that one could have a 'right' to be a heretic.

The pressing question now is: what explains the Leveller shift in natural rights to emphasise such individual freedom? One can find in their texts the different languages of natural law, the English common law, and the more Lutheran language of freedom in Christ. It is probably their blending of natural law language and ideas with this common law tradition (which we will explore in Chapter Five) and insights from Luther (that we shall explore in this chapter) that allows the Levellers to focus on the liberties of the individual, which are a) more than powers; b) more than the positive liberty to do what is licit; c) not derived from being attached to office or role; and d) which do not arise from membership of a group or the body politic, or by grant of the state. As Lilburne says, our liberties “were not of Grace and donation, but of Right and

inheritance.”⁷⁹ This allows the Levellers to use negative liberties (freedom from) against the claims of the state.

At the Reformation, the scholastic understanding of freedom, of the relationship between the individual and the corporate, and of the Christian and the law, encountered an upheaval provoked by Luther’s concept of Christian liberty. With Luther we have a clear statement of Christian freedom from the law and a marked emphasis upon the individual (although, for Luther, the individual is a receptacle for *divine* action, as we shall discover); the argument of this chapter is that the Leveller combination of natural rights with a Lutheran understanding of individual liberty allowed the Levellers to move the understanding of individual liberty beyond both scholasticism and Luther.

2.3 Luther

Just as the Levellers utilise Luther’s ideas to introduce shifts in the scholastic understanding of rights, so the Levellers, whilst utilising elements of Luther’s ideas, nevertheless discard certain important elements.

We know, because he tells us,⁸⁰ that the young Lilburne read some of Luther’s works,⁸¹ alongside the Bible, Foxe’s *Book of Martyrs*, and works from Calvin, Beza, Thomas Cartwright, William Perkins, Luis de Molina or Pierre du Moulin,⁸² Henry Burton, and John or Richard Rogers,⁸³ as well as Sir Edward Coke. Within this rich mix we have Lutheranism, Calvinism, perhaps late scholasticism, and the common law. If Lilburne had indeed read the Jesuit Molina, an exponent of freedom and of the state of nature and what we would call the social contract, and an opponent of Lutheranism, that would be revealing. As we shall see in this chapter and the next, the Levellers both

⁷⁹ John Lilburne, *Liberty Vindicated against Slavery*, Thomason E.351(2), 2. Cf. Foxley, ‘John Lilburne and the Citizenship of “Free-born Englishmen”’, 858.

⁸⁰ Lilburne, ‘Legal Fundamentall Liberties’, in Haller & Davies, *The Leveller Tracts*, 404.

⁸¹ Lilburne does not tell us which works of Luther he has read; nor are we able to tell in which language. We do know that a number of Luther’s works were available in English at this time: for example, the *Commentary on Galatians* had been translated into English and published in London in 1575, 1577, 1580, 1588, 1602, 1616, and 1635. *A Treatise touching the libertie of a Christian* had been translated into English and published in London in 1579 (two editions), and 1636. What is noticeable is the relatively large number of editions over the years of the *Commentary on Galatians*, which suggests that this work was popular.

⁸² Lilburne writes “Molins” (the possessive of ‘Molin’), and Luis de Molina (Luis de Molin / Molineus) is perhaps the author being referred to here. However, there remains the possibility that Molins refers to the Huguenot Petrus Molinaeus (Pierre du Moulin).

⁸³ It is not possible to tell from the text to which ‘Rogers’ Lilburne is referring.

make use of certain Lutheran ideas and, at the same time, depart significantly from others.

In his treatise *On Christian Liberty (the Freedom of a Christian)* – a book owned by Walwyn⁸⁴ – Martin Luther contrasts the Old Testament with the New Testament: the promise of the New is freedom from the Law. Faith makes us free: “A Christian has all that he needs in faith and needs no works to justify him; and if he has no need of works, he has no need of the law; and if he has no need of the law, surely he is free from the law.”⁸⁵ As a result, “a Christian is free from all things and over all things,”⁸⁶ and “we Christians are all kings and priests and therefore lords of all.”⁸⁷

For Luther all human works are worthless; individual faith is what counts: “A Christian has no need of any work or law in order to be saved since through faith he is free from every law and does everything out of pure liberty and freely.”⁸⁸ Freedom is given to the believer, and this is an individual freedom. Although Luther limits this freedom to a spiritual inner freedom,⁸⁹ nevertheless it is a freedom given to the individual and this is the key insight. Here we begin to see the move from freedom as a necessity related to human nature to an individual freedom in Christ.

Even though this treatise is homiletic in style, rather than theological, and not as systematic as his later *Commentary on Galatians* (see Chapter Three), it has a significant historic position. What Luther does is to break with the natural law traditions of scholasticism: freedom is now based on faith in Christ (and not on anything to do with our nature – indeed our nature is fundamentally sinful), and is located in the individual believer who is freed by the redemptive act of Christ. As Quentin Skinner puts it, Luther’s principles “involved no appeal to the scholastic concept of a universe ruled by law, and scarcely any appeal even to the concept of an intuited law of nature: Luther’s final word is always based on the Word of God.”⁹⁰ However, we must be careful to avoid assuming that Luther thereby rejects the natural law itself; for he remains committed to the notion of a natural moral law, as can be seen in his writings, where he explicitly upholds the natural law, reason, and the Golden Rule.⁹¹

⁸⁴ William Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 368.

⁸⁵ Martin Luther, *On Christian Liberty*, trans. W.A. Lambert (Minneapolis: Fortress Press, 2003), 15.

⁸⁶ *Ibid.*, 28.

⁸⁷ *Ibid.*, 31.

⁸⁸ *Ibid.*, 41.

⁸⁹ See his talk of the ‘inner’ and the ‘outer’ man, for example in *ibid.*, 9.

⁹⁰ Skinner, *The Foundations of Modern Political Thought*, Volume 2, 19.

⁹¹ See, for example, Martin Luther, ‘Secular Authority: to what extent it should be obeyed’, in John

Luther makes freedom Christocentric and thus cuts across scholastic concerns about original liberty and the state of nature. With Luther all people are in a sense unfree, being in sin, but the Christian is made free in Christ by faith. The scholastic discussion of the rights of people *qua* their humanity is made void, for it is the individual believer that is free. The author of the radical 1646 tract, *Vox Plebis, or, The Peoples Out-cry*, writes: “For as God created every man free in *Adam*: so by nature are all alike freemen born; and are since made free in grace by Christ.”⁹² Here we have a linking of the natural law understanding of man created free by God with a Lutheran notion of freedom in Christ.

Luther’s main contribution to the Leveller story is that he provides later thinkers with a toolset that enables them to talk about the freedom of the individual; the theological basis of freedom in Christ (and Christ’s redemptive act); and the setting aside of the Old Testament Law. These three points seem to explain how the Levellers are able, as we shall shortly see, to develop the natural rights language to include a focus on individual rights, rights as individual liberties, and freedom centred in the doctrine of Christian liberty. The Levellers somehow take Luther’s Christocentric and individual language and link it to notions of individual liberty. Christ was “Crucified, butchered and massacred in his Liberties, Freedoms and Rights of his humanity,” writes the Leveller, William Bray, and as a result Christ, for the liberties of his people, “perfectly declared the Laws of nature and justice.”⁹³ Bray locates our freedom in Christ yet also sees the natural law perfected and ratified in Christ. He is insistent that there are “Common principles of nature” which apply to all and provide our “rights of nature”.⁹⁴ Like Luther, the Levellers uphold the idea of the natural law whilst emphasising the work of Christ.

In the Petition of Women of May 1649 the Leveller writers state: “We are assured of our Creation in the image of God, and of an interest in Christ, equal unto men, as also of a proportionate share in the Freedoms of this Commonwealth.”⁹⁵ This is a linking of several key themes in just a few words: the classic ‘image of God’ language, equality in Christ, and political freedom. This single sentence seems to encompass both the natural

Dillenberger (ed.), *Martin Luther: Selections from His Writings* (New York: Anchor Books, 1962), 400-401.

⁹² Henry Marten, *Vox Plebis, or, The Peoples Out-cry*, Thomason E.362(20), 4. The authorship of the 1646 *Vox Plebis* is disputed: the author may be Overton.

⁹³ Bray, *Heaven and Earth, Spirit and Blood, demanding reall Commonwealth-Justice*, 2.

⁹⁴ *Ibid.*, 3.

⁹⁵ (Petition of Women) *To the Supreme Authority of England*, Thomason 669.f.14(27), 1.

law language (the image of God) and the more Lutheran language of freedom in Christ. What it does show also, is a clear line of thought: God, Christ, equality, political freedom. That is, the equality and political freedom derive from God through Christ. In *A postscript* John Lilburne moves from Christ's works to a notion of rights:

And when the fulnesse of time was come, that Christ the Restorer and Repairer of mans losse and fall, should come and preach Righteousnesse & justice to the world ... knowledge of Christ, doth not destroy morality, civility, justice, and right reason; but rather restores it to its first perfection... the greatest good that I know of ... is, rationally to discover the privilege, that is, the Right, Due, and Propriety of all the sons of Adam, as men: that so they may not live in beastlinesse, by devouring one another: and not only so, but also to stand for, and maintain those Rights and Priviledges in any Kingdome.⁹⁶

The natural law then is not destroyed but perfected in Christ. Yet, these natural rights are the property of all – that rights and liberties belong not to believers alone but to all, is an important shift from a Lutheran understanding of Christian freedom. Moreover, these liberties are never purely internal or spiritual but are fundamental liberties that are asserted against the “Arbitrary power of [the] State” and against tyranny.⁹⁷ Here we see the appeal to rights against the state, which moves beyond Luther.

Indeed, it has to be noted that the Levellers did not follow Luther's ideas uncritically. The editor of the Leveller newspaper, *The Moderate*, attacks the idea that all powers were ordained by God and are thus to be obeyed without resistance:

God hath ordained all things in heaven and earth for the good and wel-being of man; and what power soever is contrary to, or acting against the same, is no power of god, but against his expresse will and pleasure, and in opposition to himself, and his eternall decree for that purpose, and therefore most lawful to be disobeyed.⁹⁸

Most importantly, in contrast to the Levellers, Luther upheld the idea that the state should enforce true religion – that it is not only the role and duty of the state to uphold true religion but that this should include the compulsive use of the civil law (what we today would call the criminal law). Whereas, as we will shortly see in our discussion of the Whitehall Debates, the Levellers will use the Lutheran contrast between the old Law and the new Gospel in ways that Luther would not envisage.

Furthermore, again in contrast to the Levellers, Luther arguably helped boost the role of the state: in so far as he downplayed the powers of the church; extended the

⁹⁶ John Lilburne, 'A Postscript' (to *London's Liberty*), in Aylmer, 72-73.

⁹⁷ Bray, *Innocency and the blood of the slain Souldiers*, 5.

⁹⁸ *The Moderate*, Number 16, 24 October – 31 October 1648, Thomason E.469(16), 130.

powers of the secular ruler, including over the national church in their territory; and focused on the Pauline teaching that the secular powers are ordained by God and to be obeyed passively, with no appeal to a law of nature that could be used to question the ruler. Although later Lutherans did develop limited resistance theories,⁹⁹ for Luther the duty is to obey and there can be no real right to resist the government. So it would probably be correct to see the Levellers as utilising elements of Luther's ideas, whilst discarding others. This is something that we will explore in more detail when we return to Luther in the next chapter as we examine the doctrine of free grace.

Although the Levellers use the important Lutheran insight of our freedom in Christ, this is shifted from Luther's own views to become a genuine political external liberty. This individual liberty in Christ becomes the primary source of political norms, rather than the source being in community, nature and law. The resulting differing emphases, and the individualistic and antinomian elements inherent in this, lead to a political rupture between the Levellers and their Puritan contemporaries on the subject of rights.

2.4 Putney Debates

The Levellers' proposed constitutional Agreement to protect people's rights was debated at Putney and it is in the record of the Putney Debates that we can read the great discussions on the issues of rights, liberties, and property, with the Levellers lined up against Cromwell and Ireton.

The clash between conceptions of rights, around the civil liberties of the individual, is clear at these debates, which began in late October 1647 and which were recorded in the Clarke Papers. The Putney Debates highlight the fundamental differences between the political Independents and the Levellers: these two groups cannot agree a political programme (around the wording and adoption of a

⁹⁹ Also, although later radical Calvinists (especially the Huguenots in France) developed resistance theories, these theories tend to operate at the level of church and king, king and people, superior and inferior magistrate, the right to resist being held by the people; with resistance being seen more as a religious duty than a political right. The right is not typically of an individual (although Ponet in England and Knox and Buchanan in Scotland do come closest to this), and not really of each and every individual: it is a restrictive right (allowed only to certain groups who uphold the 'true' faith) and so would not be a right that Catholics or Anabaptists had, for example. We will come back to Ponet, Knox, and Buchanan later.

constitutional document) because there is such a large philosophical gap in the conception of rights and society. The Levellers have an understanding of the basis of society being individuals with natural rights, who must all come together and agree and consent to be governed for the common good, encapsulated in a formal compact. The Leveller understanding of rights and liberties is, as we shall see, markedly different from their former allies, the Independents.

The Debates get stuck on Article I of the Levellers' (first) *Agreement of the People*, pertaining to a more equal representation of the people in electing MPs according to the number of inhabitants. Cromwell's son-in-law Ireton leads for the Independent side and he sees this Article as implying that every inhabitant is to be equally represented – a notion that he rejects. Ireton wants a free Parliament governed by those who represent people with a permanent interest in society (in the sense of owning property); and he cannot accept the Leveller position which starts from a free people governed by their consent. For Ireton, people have to obey the laws even if they have no say or consent in those laws. Who consents and who should be represented are two sides of the same coin for Ireton and in both cases he has a very limited franchise in mind.

Ireton holds that the only people with a right to determine the laws of those who live here are those with a permanent fixed interest in land here; otherwise foreigners could come here, settle, and pass laws to deprive us of our freedoms. Ireton recognises a birthright: non-landowning people born in England have a right to live here and not be thrown out; but that is it. They have a right to live here but not to share in power, otherwise they could pass laws to take land from those with land; whereas, the only people who can pass such laws are those with land. If you have an equal right in choosing your representatives then you have an equal right in land and property – and this would give one person the freedom to take another's property, which would be anarchy. For that reason, the fundamental constitution of the country is about property:

If you will resort only to the Law of Nature, by the Law of Nature you have no more right to this land, or anything else, than I have. I have as much right to take hold of anything that is for my sustenance, [to] take hold of anything that I have a desire to for my satisfaction, as you. But here comes the foundation of all right that I understand to be betwixt men, as to the enjoying of one thing or not enjoying of it: we are under a contract, we are under an agreement, and that agreement is what a man has for matter of land that he hath received by a tradition from his ancestors, which according to the law does fall upon him to be his right. ... This is the foundation of all right any man has to anything but to

his own person. This is the general thing: that we must keep covenant one with another when we have contracted one with another.¹⁰⁰

In contrast, for the Leveller side,¹⁰¹ (Colonel) Rainsborough states that “every man that is to live under a government ought first by his own consent to put himself under that government.”¹⁰² He continues that the foundation of all law lies in the people, and “every man born in England cannot, ought not, neither by the Law of God nor the Law of Nature, to be exempted from the choice of those who are to make laws for him to live under, and for him, for aught I know, to lose his life under.”¹⁰³ So no person should be exempted from the choice about those who make laws for that person to live under. For Rainsborough, no person can be bound to obey the commandments of those whom they have not had a voice in choosing. Wildman adds

that all government is in the free consent of the people ... there is no person that is under a just government, or hath justly his own, unless he by his own free consent be put under that government. This he cannot be unless he is consenting to it.¹⁰⁴

For Wildman it is a fundamental issue of consent: you can only be bound by laws to which you have given your consent; and government is thus in the free consent of the people. Indeed the liberty of the Kingdom consists in the fact “that there should not be anything done, or laws made, without the consent of the people.”¹⁰⁵ He asks if “any person can justly be bound by law, who doth not give his consent that such person shall make laws for him?”¹⁰⁶ Ireton’s trump answer is that foreigners, whilst here, are bound by our laws although they have not consented to them.

There is thus an irreconcilable discussion of rights at Putney. Ireton simply rejects any notion of the natural God-given rights of all – he states that this undermines property and tends to anarchy. For him, rights are but civil rights and are limited; that

¹⁰⁰ Woodhouse (ed.), *Puritanism and Liberty*, 26-27.

¹⁰¹ It is not clear that there is unanimity amongst all the Levellers on what the Leveller attitude to the franchise is – i.e. how wide the franchise should be, exactly who should give consent. See the debate in Roger Howell and David Brewster, ‘Reconsidering the Levellers: the Evidence of the Moderate’, *Past and Present* No. 46 (1970), 68-86. Howell and Brewster posit the idea that there were differences between, for example, Rainsborough and Petty, and that there were differences between the Leveller leadership and the Leveller paper *The Moderate*. See also Michael Mendle, ‘Introduction’, in Mendle (ed.), *The Putney Debates of 1647*, 12; and John Morrill and Philip Baker, ‘The case of the armie truly restated’, in *ibid.*, 115-119. Pocock even raises the question as to whether Rainsborough can be considered a Leveller – see J.G.A. Pocock, ‘The true Leveller’s standard revisited: an afterword’, in *ibid.*, 285-286.

¹⁰² Woodhouse (ed.), *Puritanism and Liberty*, 53.

¹⁰³ *Ibid.*, 56.

¹⁰⁴ *Ibid.*, 66.

¹⁰⁵ *Ibid.*, 112.

¹⁰⁶ *Ibid.*, 66.

is, rights are given by civil qualification. “Give me leave to tell you,” he argues, “that if you make this the rule [the right to elect based on number of inhabitants in the constituency] I think you must fly for refuge to an absolute natural right and you must deny all civil right.”¹⁰⁷ For Ireton, the state and the protection of property-holder’s property come first. There are no rights prior to the civil constitution; it is the civil constitution that gives rights; liberty is provided for by the civil constitution. There is an implicit social contract, based on property, which confirms and gives rights: land and property law are the basis of society, indeed the basis of peace. Land, property, law, and mutual covenant thus give us our freedoms – they are the very foundations of rights. For the Levellers, on the other hand, the starting-point is the individual free people and the requirement that they consent before giving up some of their liberties. That is, individual rights are prior to the civil constitution: we have liberties as birth-rights conceptually prior¹⁰⁸ to the forming of government. We then need an explicit social contract to protect our pre-existing rights and to confirm our consent.

Scholarly articles on the Putney Debates in recent decades have often tended to focus on the issue of how wide the franchise would be as intended by the Levellers.¹⁰⁹ The danger with this approach, is of not seeing the wood for the trees. Apart from anything, the discussions about the franchise only occupy part of one day at Putney. It is the Agreement itself that is, from the Leveller side, fundamental to the debate and it is startling in what it represents: a new constitution for England,¹¹⁰ a written constitutional document, to be agreed by each individual free person, that recognises pre-existing rights, that reserves rights – including the codification of the right of religious liberty – by constraining Parliament and setting a paramount law above Parliament.¹¹¹ Wildman insists that the role of the Agreement is to set out the agreement with the people, and to limit the powers of Parliament by setting out what its powers are and what powers it does not have – importantly, strictly circumscribing Parliament: “There must be a

¹⁰⁷ Ibid., 53.

¹⁰⁸ This is not a temporal priority but a question of conceptual precedence. We have already noted that the Levellers are not interested in some state of nature that might have existed in time prior to the forming of government.

¹⁰⁹ See the summary of the scholarly positions in Wootton, ‘Leveller democracy and the Puritan Revolution’, 431-432. See also Macpherson, *The Political Theory of Possessive Individualism*, 107-153; J.C. Davis, ‘The Levellers and Democracy’, *Past and Present* No. 40 (1968), 174-180; and Ian Gentles, ‘The Agreements of the People and their political contexts, 1647-1649’, in Mendle (ed.), *The Putney Debates of 1647*, 156.

¹¹⁰ The second Agreement makes clear that the Levellers understand ‘England’ to include Wales.

¹¹¹ Cf. Mendle, ‘Introduction’, in Mendle (ed.), *The Putney Debates of 1647*, 12.

necessity of a rule between the Parliament and the people, so that the Parliament should know what they were entrusted with, and what they were not.”¹¹² For the Levellers, the need for an agreement is twofold: to express consent and to guarantee liberty. As Wildman states, the foundation of all justice is the election of the people, so giving this power back to the people is giving them what is their due right. The Levellers have discovered that limiting powers is the key to protecting liberties, and it is this restriction on the power of the state that is to be further debated at the Whitehall Debates (see below).

As Wootton remarks, it is popular sovereignty, consent, and the protection of rights that are more important than the franchise and detailed constitutional questions.¹¹³ That is, more important than the exact detail of who should get the vote, is the idea of setting up a new constitution that is to be legitimated by people’s explicit consent, rather than the constitution being legitimated by the implicit consent and mutual promise of property owners (Ireton’s covenant and contract) or by historic precedent and the existing law.¹¹⁴ Indeed, as Morrill and Woolrych note, there is no mention of the franchise in the first Agreement.¹¹⁵ This Agreement simply does not address the matter of who should have the vote; it rather asks for a redrawing of boundaries according to population.

We can now see that there are (at least) two quite different conceptions of liberty at work during the Putney Debates: the view of Ireton and Cromwell that liberty arises within the participation of property holders in the implicit constitution (Ireton: “Constitution founds property”),¹¹⁶ and the Leveller view that liberty is prior to the state, in many areas is outside the state’s remit, and must be protected from the state by a written constitution. Ireton holds that it is the current constitution which is his birthright, because that gives him his property rights; the Levellers want a new constitution that recognises pre-existing birthrights, as the current constitution does not protect liberties. Woodhouse’s ascription of the Debates as being about Puritanism and liberty masks several important features: the very different views of liberty, the limited notion of liberty held by Ireton, and the main proponents of liberty being the Levellers,

¹¹² Woodhouse (ed.), *Puritanism and Liberty*, 91.

¹¹³ Wootton, ‘Leveller democracy and the Puritan Revolution’, 433.

¹¹⁴ Austin Woolrych, ‘The debates from the perspective of the army’, in Mendle (ed.), *The Putney Debates of 1647*, 68.

¹¹⁵ *Ibid.*, 72.

¹¹⁶ Woodhouse (ed.), *Puritanism and Liberty*, 69.

who were not Puritans. In an otherwise confusing account of the Debates (in that he treats Levellers as Puritans), William Lamont puts his finger on an important point – that political liberty in many ways was an alien concept to most Puritans.¹¹⁷

The Puritan view of the world is tellingly revealed in several speeches by Cromwell on 1 November at the Debates in which he both defends the right of Parliament to decide the constitutional settlement of the kingdom and suggests that any reform to the shape of the state might be revealed by God to “those that have the Spirit of God within them”,¹¹⁸ i.e. the elect. Cromwell invites those assembled to speak about their experiences of what God has given them in answer to their prayers. He is astute enough to accept that knowing the mind of God is complicated where there is lack of clarity and lack of agreement; hence he urges caution – waiting for God to act so that “God will lead us to what shall be his way.”¹¹⁹ In contrast, Wildman asserts that there is nothing in the word of God that reveals what should be the civil structures; rather what is of God is to be like God, to be just and merciful. What is just and good is of God, and this is demonstrable by reason; thus, going against the safety of the people cannot be the mind of God. Wildman cannot accept that anyone who claims to speak from God in civil affairs is doing so; instead we have to start with what is just and what is good. So he uses the natural law to turn the tables on the Puritans, asserting the natural law and reason against any direct revelation of God of what is to be done in civil matters.

If we look at the Debates as a whole, what becomes apparent is that there are two clear groups: Ireton and Cromwell on one side, and Wildman and Rainsborough on the other.¹²⁰ The former pair consistently defend the current constitution; the latter defend individuals’ consent and rights and argue for a new constitutional settlement. Both groups are consistent throughout the Putney Debates. The franchise debate amongst scholars has muddied the waters with discussions about whether the Levellers were consistent amongst themselves, both at Putney itself and over time. That debate detracts from the consistency of what the Agreement does represent with regard to rights and liberty, and the role of the state. The Agreement represents a quite different

¹¹⁷ Lamont, ‘Puritanism, liberty and the Putney debates’, in Mendle (ed.), *The Putney Debates of 1647*, 241-255. See also J.C. Davis, ‘Religion and the Struggle for Freedom in the English Revolution’, *The Historical Journal* 35:3 (1992), 510-511, 513-514, 518, 521, 525, 530.

¹¹⁸ Woodhouse (ed.), *Puritanism and Liberty*, 105.

¹¹⁹ *Ibid.*, 107.

¹²⁰ Davis, likewise, notes that it is Wildman and Rainsborough who act as spokesmen for the Levellers (rather than some of the other more minor figures who make occasional interventions). Davis, ‘The Levellers and Democracy’, 176.

understanding of individual rights from that of Ireton and Cromwell. The various versions of the Agreement propose a consistent view of the state that stands in opposition to the view of the state of the Puritan Independents.

It is one thing to argue that the Levellers changed their stance on certain issues,¹²¹ but it is quite another to claim that the movement lacked ideological coherence, with different types of Levellers standing for different things.¹²² Whilst it is natural to assume that, amongst those who paid their subscription dues to the Leveller party, there might well be differences of opinion, as in any political party, it is also reasonable to let the evidence of the petitions, Agreements, and tracts speak. It is in these works that we can find a clear and coherent political philosophy that is best understood when compared with their contemporaries. The Putney Debates, for example, allow us to see the differences between the Leveller demands and the thinking of the Puritans, and this will be even clearer when we look at the Whitehall Debates. The Leveller understanding of rights and liberties is, as we have seen, markedly different from their former allies, the Independents. The idea of starting a new constitution, based on written consent, reserved rights, and full religious liberty, is alien to the Independents.

If we dig deeper, we can see that in the foreground of Putney two very different works were circulating: the Army Council's *Heads of Proposals* and the Levellers' (first) *Agreement of the People*. This Agreement was tabled and read at Putney on 29 October. Although the records of Putney do not show a discussion of the topic of religious toleration or liberty, the differences between the two texts in this matter is especially revealing. The Leveller Agreement simply states that matters of religion and the ways of God's worship are not entrusted to any human power. In contrast, the *Heads of Proposals*, written or partly-authored by Ireton,¹²³ takes away power from bishops, makes the use of the Book of Common Prayer and church attendance non-compulsory, and calls for the non-enforcement of the (Presbyterian) covenant. That is the limit of the liberty proposed by the Independents, and indeed the document calls for the continuation of action against Catholics. It is at Whitehall, over a year later, that the formal recorded debate on religious liberty will appear.

¹²¹ Cf. Tim Harris, 'The Leveller legacy: from the Restoration to the Exclusion Crisis', in Mendle (ed.), *The Putney Debates of 1647*, 222.

¹²² Cf. *ibid.*, 231.

¹²³ Woolrych, 'The debates from the perspective of the army', in Mendle (ed.), *The Putney Debates of 1647*, 61.

2.5 Whitehall Debates

The clash between conceptions of rights based on the role of the Old Testament Law is particularly clear at the Whitehall Debates between the Army leaders and the Levellers, which began in the last few weeks of 1648 and which were also recorded in the Clarke Papers.

The debates focus on the question of whether the civil magistrate has any power in matters of religion, and the Leveller demand in *An Agreement of the People* that religious matters be exempted from civil control. The Levellers clearly follow a line of separation of religious and civil powers and of freedom of religion. Ireton rejects this line, basing much of his argument on an explicit appeal to the Old Testament and the duty of the civil magistrate to suppress idolatry, atheism, and immorality.

The Whitehall Debates reveal a fundamentally irreconcilable view of liberty and the role of the state. The gap centres precisely on whether the Old Testament equating of civil and religious is still to hold, or whether it ended under the Gospel. The political and religious Independents led by Ireton and Nye effectively align themselves with the Presbyterian view that was expressed in the Westminster Confession of Faith of 1646/47, which, in Chapters 20 and 23, states that the civil magistrate is to suppress heresy, blasphemy, the publication of anti-Christian opinions, and such practices. Ireton states:

That 'tis the injunction [of the Old Testament], and likewise it hath been the practice of magistrates in all the time of the Old Testament till the coming of Christ in the flesh, to restrain such things. ... This is clear through the current of the Old Testament.

... what was a rule or duty to them ... [should] be a rule and duty of magistrates now.

... for those things themselves for which they had a perpetual ground in relation of the duty to God, a perpetual rule by the law written in men's hearts, and a [perpetual] testimony left in man by nature, and so consequently for those things whereof the ground of duty towards God is not changed – for those things I account that what was sin before is sin still, what was sin to practise [before] remains sin still, what was the duty of a magistrate to restrain before remains his duty to restrain still.¹²⁴

¹²⁴ Woodhouse (ed.), *Puritanism and Liberty*, 155-156.

Ireton repeats this same argument again and again: what was evil before is evil now, “that which was sin then is sin now”;¹²⁵ the powers and duty of the magistrate under Moses to punish, are the same today. “There are some things of perpetual right in the Old Testament, that the magistrate had a power in before the coming of Jesus Christ in the flesh,” states Ireton, and “you must give us leave to think that the magistrate ought according to the old institution to follow that right.”¹²⁶ Moreover, if idolatry is exempt from punishment by the civil magistrate now then so might punishment for murder be exempt. The appeal to liberty under the Gospel would mean mercy for all and no punishment for murder and theft.

Ireton recognises the idea of civil rights which we have in common and which are equal. However he does not allow that conscience can have a prior claim over the civil powers – otherwise people could be free to practise idolatry or atheism, something that the civil magistrate cannot allow. John Goodwin,¹²⁷ a radical Independent minister here half-siding with the Levellers,¹²⁸ distinguishes between conscience and civil rights – the latter being under the civil power of the magistrate. For the Levellers, the New Testament does not give the civil magistrate powers over religious matters – there is a separation of rights and powers. Goodwin’s view is quite simple: “God hath not invested any power in a civil magistrate in matters of religion.”¹²⁹

Goodwin then makes the key claim that the magistracy under the Gospel is different to that under the Law: “The magistracy under the Gospel is chosen [by men], and they are vested with that power which they have from men. ... Magistrates, [I say], have so much power as the people are willing to give them.”¹³⁰ Wildman’s view is that “it is not lawful to entrust the magistrate with such a power. ... matters of religion or the worship of God are not a thing trustable, so that either a restrictive or a compulsive power should make a man to sin.”¹³¹ What was given to Jewish magistrates was not given to all magistrates for all time.

For the Levellers this discussion of religious freedom went to the heart of the matter – the power and limitations of the civil authority. Indeed, near the beginning of

¹²⁵ Ibid., 168.

¹²⁶ Ibid., 146.

¹²⁷ More on Goodwin will be found further below in the main text.

¹²⁸ Goodwin sides with the Levellers on the principle of magistrates not having coercive religious powers, but disagrees with them over the need to insert this in the constitutional Agreement. See also Davis, ‘Religion and the Struggle for Freedom in the English Revolution’, 515.

¹²⁹ Woodhouse (ed.), *Puritanism and Liberty*, 126.

¹³⁰ Ibid., 157-159.

¹³¹ Ibid., 160-161.

the debate Lilburne actually states this – he tells them that the substance of the question about the power of the magistrate in matters of religion is actually about the trust that is reposed in the magistrate and whether that is to be expressed in the Agreement. The Levellers do not accept that the civil authority has any such power and nor can it be given to them, even by the people themselves. In that sense, people have certain inalienable rights; and these rights set limits on civil authorities. So religious freedom represents something fundamental in their understanding of political freedom and how civil society should be organised. Religious freedom was not just another plank in their platform; nor was it something that they merely felt passionately about for themselves or others.

There are two important areas of Leveller focus here: the defence of individual conscience; and the consequent limiting of the power of the state to such an extent that certain areas are simply described as outside the state's remit. Certain powers are not and cannot be given by the people to the magistrate. At Whitehall we see the political expression of the concept that certain individual rights limit the power of the state; that these are God-given individual freedoms, that exist prior to the state; and these are inalienable and inhere in each of us. Although the defence of individual conscience might be building on earlier ideas from Aquinas (as we have noted), the Leveller argument goes much further than Aquinas in that it entails toleration for heresy, for example, in a way that Aquinas would not accept.¹³² Moreover, the limitation of the temporal order is not a defence of the church *per se*, but a defence of the individual (including of individuals whose beliefs would put them outside any church).

A further key theme of the Leveller arguments at Whitehall is an implicit denial of one important aspect of Puritan thinking: the idea that the Old Testament Law demands still stood, because they were originally in accord with the natural law then and thus must still be so now. As we have seen, Ireton clearly and repeatedly puts forward this view at Whitehall. The Leveller position, in contrast, is that the New Testament Gospel sets aside the Old Testament obligations. The Baptist minister, Thomas Collier, supporting the Levellers, sets this out clearly:

The law of the Jews is not binding to us under the Gospel; ...

The Judicial Law to the Jews is abrogated to us in the Gospel; ... there are some things mentioned with which magistrates in the New Testament have nothing to do, [and] yet [it] was given as command to magistrates in the Judicial

¹³² See Aquinas, ST, II-II, q. 11, aa. 3-4.

Law to punish [them]; ... The first is that [sin] of idolatry, which was punished with death in the Old Testament: idolaters are to be put to death. Yet under the Gospel, the Gospel is so far from denying [even to] that [a] liberty or toleration (much less [giving] power unto a magistrate to punish an idolater with death), that if a man or woman had a wife or husband that was an idolater, they were to live with them and not to punish them according to the law of the Jews.¹³³

This is a dramatic shift, developing a thought of Luther, from Puritan thinking. The Levellers have taken the natural law language tradition and built in a new understanding of rights, utilising a Lutheran insight, but in such a way that would have been rejected by Luther. For the Levellers have developed, from the opposition between the old Law and the new Gospel, a right to religious freedom and a denial of any power to the magistrate in matters of religion. Whitehall reveals the clear division between the Levellers and the Puritans, a divide over religious liberty and a conflict over the role of the state.

Whilst we should be careful in our taxonomy of the groups in this period, being wary of the dangers of being over-precise, too clear-cut, and thus failing to recognise the fluidity of boundaries between groups, there is an opposite danger – of being imprecise and confusing. To describe the Levellers as ‘radical puritans’, as Coffey does (based on an overly wide understanding of ‘Puritanism’),¹³⁴ serves to hinder rather than help our understanding of both the ideas and the historical context. Without anticipating too much at this stage (see the chapter on ecclesiology), we can at least note here that Lilburne, for example, did not wish to purify the Church of England; he did not even recognise it as a church, but saw it as anti-Christian. Only if we understand that the Levellers were *not* Puritans will we understand the Whitehall Debates and the wider historical context in which these debates took place. If there had been no Civil War and Puritan rise to power, there would probably have been no Leveller movement, it seems fair to say. The Puritan context is precisely part of the historical context that allows us to understand the Levellers, and understanding the Levellers is aided by understanding their differences with the Puritans.

Whilst aware of the danger of tying terms down too tightly or narrowly, the thesis takes as a working assumption the notion that Puritans in the 1640s were those who wanted to purify the Church of England, the state church.¹³⁵ They were the inheritors of

¹³³ Woodhouse (ed.), *Puritanism and Liberty*, 165.

¹³⁴ See, for example, Coffey, ‘Puritanism and Liberty Revisited’, 962, 964, 969-970.

¹³⁵ For the thinking on this matter, I am indebted to Meic Pearse. For the sake of clarity, this thesis follows the definition of ‘Puritanism’ enunciated by Pearse: “The term ‘Puritan’ refers to people *within*

the Calvinism of those who had been Marian exiles, had opposed aspects of the Elizabethan established church and more latterly the Laudian Church of England in its episcopalian and Prayer Book form. However, they were not separatists: they wanted to purify the state church of what they saw as its Popish elements, and to have a non-episcopal, comprehensive, established church. Importantly, they wanted to maintain a national *state church*; we can see them as working *within* the state church for further purification of that church.¹³⁶

The inaccurate description of the Levellers as Puritans – ‘inaccurate’ if the above working assumption is accepted – by certain historians like Woodhouse and Shaw, obscures the huge rift between the groups. Shaw says that “there can be no doubt that Puritanism was the main source of their [Leveller] energy and ideas.”¹³⁷ If anything, it could be argued that Leveller *opposition to Puritanism* is one of the sources of Leveller political thought, particularly during the Whitehall Debates. Similarly, Woodhouse’s description of the Levellers as ‘Puritans of the Left’ causes confusion and is unhelpful, especially when he talks of such Puritan concern for complete religious liberty and the absolute separation of church and state,¹³⁸ matters to which the Puritans were opposed, as we have just seen.

The two main groups of Puritans at this period were the Presbyterians and the Independents. Presbyterians were Calvinists who wanted the Church of England to look like the Scottish Presbyterian church – a purified church governed without bishops but with synods of presbyters.¹³⁹ The Presbyterians desired a Presbyterian national church with strict conformity by the populace to this.¹⁴⁰ Independents were Calvinists who similarly wanted a purified church without bishops, but who held to the notion of individual parishes choosing their own ministers (i.e. having a greater degree of autonomy);¹⁴¹ nevertheless they wanted to remain within the parish structures of an

the Church of England and is inappropriate ... to describe those outside that institution. Puritanism wished, quite literally, to ‘purify’ the Church of England from those residues of popery which its exponents discerned there.” Meic Pearse, *The Great Restoration* (Carlisle: Paternoster Press, 1998), 163.

¹³⁶ See Margo Todd, ‘The problem of Scotland’s Puritans’, in Coffey and Lim (eds), *The Cambridge Companion to Puritanism*, 174. See also Patrick Collinson, ‘Antipuritanism’, in *ibid.*, 22.

¹³⁷ Shaw, *The Levellers*, 3.

¹³⁸ Woodhouse (ed.), *Puritanism and Liberty*, 59.

¹³⁹ See John Morrill, ‘The Puritan Revolution’, in Coffey and Lim (eds), *The Cambridge Companion to Puritanism*, 72-73.

¹⁴⁰ We should not confuse the Presbyterians at this stage in history with the later separate Presbyterian denomination that developed from the Restoration onwards.

¹⁴¹ See Morrill, ‘The Puritan Revolution’, in Coffey and Lim (eds), *The Cambridge Companion to Puritanism*, 72.

established church.¹⁴² The Independents supported a greater degree of toleration, but it was still a highly limited ‘toleration’. Both groups wanted the state to uphold Calvinism by coercion (with the Independents allowing slightly more latitude).

A reasonable question at this point is whether the existence of Independent ministers like John Goodwin blurs the boundary between the Levellers and the Independents (i.e. undermining the simple portrayal of the Levellers as favouring religious liberty with the Independents opposing this). Goodwin seems to belong to a semi-separatist type of Independency – a gathered church but within the overall philosophy of Independency (i.e. separatist by force of circumstance rather than by deep theological conviction).¹⁴³ Although Goodwin’s congregation had in the past sometimes supported Leveller petitions, their relationship with the Levellers was ambivalent,¹⁴⁴ and in the end Goodwin and his associates fell out with the Levellers and are explicitly attacked by Walwyn.¹⁴⁵ That said, the apparent ambiguity of Goodwin is almost the exception that proves the rule:¹⁴⁶ other Independent ministers are clearly in favour of the coercive role of the Christian magistrate.¹⁴⁷

In his tract *The Vanitie of the present Churches*, Walwyn attacks the Independents directly for being like the Presbyterians – asking for liberty of conscience whilst they were being oppressed and then dropping this call in favour of persecution when they are in power.¹⁴⁸ Walwyn’s writings point up the need to be careful when talking of Independents favouring what might appear similar to liberty of conscience.¹⁴⁹ Independent appeals to conscience have to be seen in context: a) as demands, with the Presbyterians, for freedom from episcopacy and the Book of Common Prayer; b) as appeals for their type of church governance to be permitted by the Presbyterians, to co-

¹⁴² The Independents, though sometimes thought of as Congregationalists, were within the comprehensive established church and not a separate denomination. To confuse matters, some of the primary literature of the period refers to Independent churches as “Congregationall”, but we should be careful about reading later denominational understanding of Congregationalism back into Independency of the late 1640s. To add further confusion, some of the primary literature describes Particular Baptist churches, for example, as ‘Independent’ churches.

¹⁴³ See, for more background, Watts, *The Dissenters*, 120.

¹⁴⁴ See Lilburne’s letter to Goodwin in Lilburne, *Jonahs cry out of the whales belly*, 5-6.

¹⁴⁵ Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 352-355, 376-378, 392.

¹⁴⁶ On Goodwin as a lone maverick amongst Independent ministers, see Watts, *The Dissenters*, 164-165.

¹⁴⁷ See Avihu Zakai, ‘Religious Toleration and Its Enemies: The Independent Divines and the Issue of Toleration during the English Civil War’, *Albion: A Quarterly Journal Concerned with British Studies* 21:1 (1989), 1-33.

¹⁴⁸ William Walwyn, ‘The Vanitie of the Present Churches’, in Haller & Davies, 253-255, 257-258.

¹⁴⁹ Purkiss, for example, states that “Independents wanted freedom of conscience” (Purkiss, *The English Civil War*, 433). This is somewhat too sweeping, or is open to misinterpretation, and appears to be based on a confusion of the Independents with the ‘sects’ (ibid.).

exist alongside the Presbyterian model of church governance; c) as a call for freedom for the ‘saints’;¹⁵⁰ and d) as something quite different from a general liberty for the expressing of opinions deemed atheistic, blasphemous, heretical, idolatrous, or Papist. The Independent idea of toleration is a limited toleration, with far more power thereby given to the state. It is independency with respect to ecclesiastical offices (local church-government), but *not* independency from a national established church and the godly magistrate who is the civil supreme governor of the church.¹⁵¹

Two contrasting documents emerged subsequent to the Whitehall Debates: published just one day after the above debate on the role of magistrates with respect to religion, came the Levellers’ second Agreement. This developed the statement of the first Agreement into a much stronger and more detailed assertion that the Parliamentary Representatives have no power to make any laws that compel or constrain in the exercise of religion, profession of faith, or worship (with the rider that any public national worship should not be compulsory or express Popery). The Officers’ Agreement (published a month later), in contrast, not only bans Catholicism and episcopalianism from being the public religion of the nation, but also limits individual religious toleration to Trinitarian believers – although pulling short of extending this liberty to Catholics and episcopalians. What we see emerging here – and this will be important for our later discussion of Locke – is the difference between religious freedom and religious toleration. For the Independents, there should be some toleration, in a limited fashion, granted by the state. For the Levellers, there should be religious liberty for all individuals because the state has no legitimate power whatsoever over individuals in these matters.

2.6 The Levellers and religious freedom

Aylmer’s contention, that “if the Levellers had not been side-tracked into excessive concentration on the issues of the parliamentary suffrage, and then of church-state relations, they might have enjoyed wider support”¹⁵² is somewhat perplexing, as church-state relations are not some side issue for the Levellers but lie at the heart of their

¹⁵⁰ See Zakai, ‘Religious Toleration and Its Enemies’, 3, 27.

¹⁵¹ See *ibid.*, 15-16.

¹⁵² Aylmer (ed.), *The Levellers in the English Revolution*, 82.

thought. Unless one understands the centrality of religious liberty in Leveller political thought, in stark opposition to the Puritans, one cannot really appreciate Leveller thought; for, as Walwyn says, “the ground of Freedome consists” in the practice and exercise of Religion.¹⁵³ Furthermore, Walwyn holds that Parliament is “chosen by the People to provide for their safety and Freedome, whereof Liberty of conscience is the principall branch,”¹⁵⁴ and of all liberty, “liberty of Conscience is the greatest.”¹⁵⁵ Indeed, one Leveller correspondent in the Leveller newspaper, *The Moderate*, writes that the public cause of the whole nation was understood to be “for *Liberty of Conscience*.”¹⁵⁶ Those historians, such as Aylmer, who mistakenly suppose that Leveller thought is secular, have not given full weight to the breadth and depth of Leveller thought.

This use of conscience carries strong resonances with Thomistic natural law thinking, even if it is a radicalisation of Thomistic themes. There is no determinant path from a Thomistic conception of conscience to the Leveller conception of conscience, but it is implicit in Thomism and so cannot be ruled out. What is clear, is that within Leveller thinking conscience is key, and liberty of conscience, even for those who err, is fundamental. Indeed, the author(s) of the tract *Vox Plebis, or, The Peoples Out-cry*, which is either a Leveller tract or a sympathising tract, state(s) that the liberty of the people of the Commonwealth consists in three things: “liberty of Conscience in matters of Faith, and Divine worship; Liberty of the Person, and liberty of Estate.”¹⁵⁷ Liberty of conscience is due by divine right since

the conscience is a Divine impression, or illumination, in the soule of man, ... the ingraven Character of the mind & wil of God in the soul of man; ... therefore it is not to bee constrained, or inforced to submit to any other rule, then what the Creator, by his revealed will, according to the Scriptures, hath imprinted in it: And for that cause is onely to bee accountable to him, whose image it is; as being the onely competent Judge of his owne will.¹⁵⁸

Walwyn in *Tolleration Justified* gives an early indication of the thinking that was later to be used at Whitehall:

¹⁵³ Walwyn, *Tolleration Justified*, 7.

¹⁵⁴ *Ibid.*, 15.

¹⁵⁵ William Walwyn, ‘A Word More to Mr Thomas Edwards Concerning the Nationall Covenant’, in McMichael, 192.

¹⁵⁶ *The Moderate*, Number 62, 11 September – 18 September 1649, Thomason E.574(4), 722. Cf. Howell and Brewster, ‘Reconsidering the Levellers: the Evidence of the Moderate’, 84.

¹⁵⁷ Marten (or Overton), *Vox Plebis, or, The Peoples Out-cry*, 3-4.

¹⁵⁸ *Ibid.*, 4.

Now all sectaries ... have a like title and right to Freedome, or a Toleration; the title thereof being not any particular of the Opinion, but the Equity of every man's being Free in the state he lives in, and is obedient to, matters of opinion being not properly to be taken into cognisance any farther then they break out into some disturbance or disquiet to the State. But you will say that by such a toleration, blasphemy will be broached, and such strange and horrid opinions as would make the eares of every godly and christian man to tingle; what, must this also be tolerated? I answer, it cannot be just to set bounds or limitations to toleration, any further then the safety of the people requires.¹⁵⁹

For all their political differences, the main political groupings, of the Presbyterians and the Independents on the Parliamentary side, and the Royalists on the other, in fact held similar views about the role of the state, the need for the state to protect and promote religious ‘orthodoxy’, and the lack of any notion of individual rights in the face of this. They held that the state should suppress idolatry, blasphemy, and atheism, for example. As early as 1644, Roger Williams had seen that the Presbyterians and the Independents were united in persecuting for cause of conscience,¹⁶⁰ and that prelacy, Presbyterianism, and Independency were alike in this – with the Independents, like the Presbyterians, casting “down the crown of our Lord Jesus at the feet of the civil magistrate.”¹⁶¹ In contrast, the Levellers were the sole mainstream political group to differ: to stand for freedom of religion and separation of church and state, for full and equal toleration, based on individual rights. Royalists, Presbyterians and Independents alike appeal to the eternal law, as divinely revealed by the word of God in Scripture, to support the idea of the state’s duty to uphold religion.

As we have observed, the Leveller notion of religious liberty was opposed by both main groups of Puritans, Presbyterians and Independents. The earlier Presbyterian-dominated Parliament had passed the Blasphemy Ordinance in May 1648;¹⁶² the later Independent-controlled Rump Parliament passed the 1650 Blasphemy Act prescribing capital punishment for those publishing atheistic and blasphemous opinions,¹⁶³ and in

¹⁵⁹ Walwyn, *Tolleration Justified*, 8.

¹⁶⁰ Roger Williams, *The Bloudy Tenent of Persecution for Cause of Conscience* (Macon GA: Mercer University Press, 2001), 263.

¹⁶¹ *Ibid.*, 217.

¹⁶² “Ordinance for punishing the Publishing, and preventing the Growth of blasphemous and heretical Opinions” (House of Commons Journal, Volume 5, 1 May 1648, at <http://www.british-history.ac.uk/source.aspx?pubid=110> (accessed 27 June 2009)). “An Ordinance for Punishment of Blasphemy and Heresy” (House of Lords Journal, Volume 10, 2 May 1648, at <http://www.british-history.ac.uk/source.aspx?pubid=181> (accessed 27 June 2009)).

¹⁶³ The Act (“An Act against several atheistical, blasphemous, and execrable Opinions”) was aimed at the Ranters – see House of Commons Journal, Volume 6, 9 August 1650, at <http://www.british-history.ac.uk/source.aspx?pubid=111> (accessed 27 June 2009). However, we should note that this Parliament also passed the Toleration Act in 1650, which ended the penalties for non-attendance at the

1653 the Instrument of Government expressly excluded a number of religious groups from toleration.¹⁶⁴ We should thus distinguish the Leveller idea of genuine religious liberty for all by right, from the Cromwellian religious toleration in which the state grants limited toleration and only to certain religious groups and beliefs.¹⁶⁵ Cromwell follows the same path that we saw with Ireton at Whitehall: liberty of conscience does not extend to profaners or blasphemers, who should be punished by the civil magistrate, or to the holders of any religion that he considers seditious or factious.¹⁶⁶ Therefore, the suggestion that it is Puritanism which is the historical seedbed of liberty, as propounded from Carlyle to Woodhouse and Haller, needs to be heavily nuanced by the extent to which Puritanism directly opposed the Leveller call for full religious liberty as an individual right.

One of the most distinctive contributions of Leveller thinking is their focus on the liberty of conscience as an inalienable right. Walwyn puts it in this way: “No man can refer matters of Religion to any others regulations. And what cannot be given cannot be received.”¹⁶⁷ This makes use of the idea of individual *inalienable* liberties – a theory that builds on Godfrey of Fontaines’ inalienable (“not licitly possible to renounce”)¹⁶⁸ natural rights.¹⁶⁹ It also has continuities with Mair and Almain who further developed the early concept of inalienability into the political arena,¹⁷⁰ yet these later thinkers were talking primarily about the inalienability of rights (understood as powers) of the community, i.e. of the people together as one body. Like Godfrey, they developed this idea of inalienability from the inalienability of the power of the individual to preserve his or her life. The Levellers thus significantly develop the theory of inalienability from these earlier theories in that liberties are now not derived from membership of a group

local parish church, by explicitly repealing a number of clauses in the Elizabethan religious laws – see Morrill, ‘The Puritan Revolution’, in Coffey and Lim (eds), *The Cambridge Companion to Puritanism*, 80.

¹⁶⁴ Cf. Barry Coward, *The Stuart Age* (London: Longman, 1994), 256. Section XV of the Instrument excludes Catholics “for ever” from being elected or voting in Parliamentary elections. Section XXXVII grants freedom to Trinitarian believers – except for Catholics, Episcopalians, and Christians who “practise licentiousness” (The Instrument of Government, at <http://www.constitution.org/eng/conpur097.htm> (accessed 4 July 2009)).

¹⁶⁵ See for example Ivan Roots (ed.), *Speeches of Oliver Cromwell* (London: Everyman, 1989), 230.

¹⁶⁶ Cf. *ibid.*, 67, 95, 228.

¹⁶⁷ William Walwyn, *A Helpe to the Right Understanding of a Discourse concerning Independency*, Thomason E.259(2), 4.

¹⁶⁸ Godfrey: you cannot renounce rights in those common goods of the world which are needed to sustain life, because you are bound by the law of nature to sustain your life. This applies to each one of us.

¹⁶⁹ Tierney, ‘Villey, Ockham and the Origin of Individual Rights’, 27.

¹⁷⁰ Skinner, *The Foundations of Modern Political Thought*, Volume 2, 120-121.

(being human) as such or from society, but are asserted as political liberties precisely at the individual level against the state's regulation.

With the Levellers, because of this inalienable self-propriety, when the social compact is made, the individual still does not give up their ownership in themselves – they retain self-sovereignty. The Levellers thus put forward one of the earliest systematic political discussions of political rights based on the conceptual starting point of individuals: inalienable individual rights, primarily religious liberty; the need to limit the powers of the state vis-à-vis individuals' fundamental rights (which are prior to legal rights); ongoing individual consent that can be withdrawn; and the role in this of an agreed written constitution.

We have already noted how the Levellers make liberty of conscience a key to their political thinking – as almost *the* fundamental right – and how conscience was already considered within the Thomistic tradition. Yet, if we consider the Levellers as perhaps standing within the development of that tradition, we have to recognise also the extent to which conscience is taken beyond that tradition with the new emphasis on freedom of conscience as an external political liberty for all, to include even the right to express views regarded as heretical.

2.7 Locke

As we saw earlier, the Levellers built on various natural law traditions, and yet broke away from certain key elements of them – particularly the natural law emphasis on the priority of community, necessity, and the law – even if only by emphasising and radicalising other elements of natural law thinking, such as the theme of conscience. In this section, a key area of discussion will be whether Locke's understanding of rights is similar to that of the Levellers, or whether Locke is still within a natural law tradition that has a more 'communitarian' emphasis. In the discussion of Locke that follows, I shall examine the similarities between Locke and Leveller political thought, and most importantly the key differences. These differences will again highlight how the Levellers themselves took various natural law elements, yet significantly built on them, as they synthesised them with other traditions or highlighted particular elements more than others. I will thus show that the Levellers developed natural law ideas in new and far-reaching ways, that both predate Locke's views and are distinct from them.

This will enable us to see that, contrary to a Whig view of history that views Locke as one of the founding fathers of English ‘Liberalism’ (see Tully and Grayling, for example),¹⁷¹ the English political liberal tradition started earlier than Locke, with the Levellers, and with roots in earlier philosophical, legal, and religious traditions – and it is these that we will discuss both here and in the following chapters. As Macpherson says, the Levellers were radical liberals because they put freedom first. More strongly than that, their freedom is rooted in the individual; yet it is the individual understood within a Christian framework.

In the following sections I will demonstrate that Locke’s natural law theology results in a political philosophy that ultimately is bound by its teleology into asserting the priority of the common good and the central state in achieving this good; with the result that there appears a collectivism which can, for all the constraints on it, override individual freedom. The contrast with the Levellers will show that there are a number of profound doubts about the role of Locke in the development of liberalism, and that Locke’s political philosophy is not primarily about limiting the state with respect to individual rights. In order to show this, I have grouped the differences between Locke and the Levellers into several categories: firstly, evidence for Locke’s collectivism, and then the understanding of consent, resistance, property, and toleration.

2.7.1 Locke’s Collectivism

I intend to show that Locke’s view of the role of the state tends to what might be described as a form of collectivism, with such an emphasis on the common good that individual rights are, to a significant extent, downplayed.

In his *First Tract on Government*, Locke asks if the civil magistrate may lawfully impose the use of indifferent things in religious worship. His answer is that the magistrate “must necessarily have an absolute and arbitrary power over all the indifferent actions of his people.”¹⁷² The natural liberty that God has given to us over our exterior indifferent actions is freely handed over to the magistrate. The key term is ‘indifferent’ (*adiaphora*): these are things indifferent to the true worship of God, in that they are not prescribed by God. The opposite, in this concept, is those things which we believe are necessary to save our own souls.

¹⁷¹ See Tully, ‘Locke’, 622; and Grayling, *Towards the Light*, 2-4, 13, 73, 115-116, 127-129.

¹⁷² John Locke, *Political Essays*, ed. Mark Goldie (Cambridge: CUP, 1997), 9.

In this tract Locke repeatedly attacks antinomianism (but not by name); we are to obey the commands of the magistrate in all things that God has left us free: “The light of reason and nature of government itself making evident that in all societies it is unavoidably necessary that the supreme power ... must still be supreme, i.e. have full and unlimited power over all indifferent things and actions within the bounds of that society.”¹⁷³ This early tract (1660 – 1661) could be regarded as fairly ‘illiberal’; the unlimited power given to the magistrate seems almost Hobbesian. However, we should perhaps consider the context: Locke sees religious appeals to liberty and conscience as the cause of strife and war. He is not here concerned about the source of the magistrate’s power, but simply defends obedience to the magistrate. This is because the alternative is war – the wars that are happening on the Continent or the civil wars recently seen in England. It seems to be this horror of civil war that drives Locke’s thinking in this tract.

In his *Second Tract on Government*, (1662), Locke again links those who attack magistrates’ powers with the strife of the civil war. The ‘magistrate’ can be a monarch or an assembly, but it has absolute power: this is the power of making and imposing laws, and includes the right to govern the ‘National Church’. “The magistrate can determine indifferent things in the worship of God and impose them on his subjects,” states Locke; “Indifferent things, even those regarding divine worship, must be subjected to governmental power.”¹⁷⁴ In this tract, our life and liberty are deemed to be at the discretion of the magistrate, who “is the sole ruler of the land and its inhabitants without contract or condition” and “to whose discretion are delivered the liberty, fortunes and the life itself of every subject.”¹⁷⁵

Locke states that we must obey the magistrate – even to obeying an unjust law. It is not our right to resist; we are passively and actively to obey; and obedience is demanded by God: “The subject is bound to a passive obedience under any decree of the magistrate whatever.”¹⁷⁶ Locke explicitly invokes the famous Pauline injunction to be subject to the higher powers¹⁷⁷ (although in his later work he will allow a right of resistance, as we shall see). The commands of conscience cannot overrule the commands (laws) of the magistrate, otherwise we have anarchy, the collapse of law and

¹⁷³ Ibid., 51.

¹⁷⁴ Ibid., 57, 69.

¹⁷⁵ Ibid., 70.

¹⁷⁶ Ibid., 62.

¹⁷⁷ Romans 13:1-7.

government. Again Locke bases his arguments not on the source (explaining the source legitimacy) of civil power and authority, but rather on the fear of the anarchy that would result without it. That is, we have a sort of reverse-teleological argument.

To the extent that there is a real argument, the teleology gives us a clue. Far from being in any way politically radical, Locke is in fact continuing natural law thinking. If the magistrate's power is from anywhere it is from God; and the cause of civil society is the end-cause – for the avoidance of anarchy and war. That is why we find in these tracts no real concept of individual rights and liberties, no civil contract, no real separation of church and state, as can be found in the Levellers' writing fifteen years earlier. This should immediately make us cautious of claims that the Levellers "paved the way" for Locke and the Whig tradition.¹⁷⁸

Macpherson notes that there is an argument that "Locke was not an individualist at all, but a 'collectivist' in that he subordinated the purposes of the individual to the purposes of society."¹⁷⁹ Of course, it is possible that the collective and the individual are not ultimate political categories for Locke, as the source of norms; rather he is concerned with the natural law. Nevertheless, Macpherson points out that against the sovereignty of Locke's majority the individual has no rights. This argument does seem to have some weight: Locke's language of the state as a body which can cut bits off for the common health of the rest is symptomatic of this. Locke's use of the phrase 'the public good' should alert us. As Christopher Insole has stated, an emphasis on the common good often slides into an endorsement of the authority of the community over individuals: "Any notion of the common good is bound to be one person's or one group's conception which, if it is to be socially effective, must in some way impose upon individuals who are marginal or opposed to the great project."¹⁸⁰ Similarly, David Fergusson observes that "any attempt to override the individual preferences of citizens by legislating in favour of the common good will result in illiberal measures and particularly in the tendency of majorities within a given society to oppress minority groupings."¹⁸¹

Although Macpherson's Marxist-type analysis and his emphasis on the supremacy of estate-property seem to impose a prism onto Locke's texts with which to read them,

¹⁷⁸ Macpherson, *The Political Theory of Possessive Individualism*, 158.

¹⁷⁹ *Ibid.*, 195-196.

¹⁸⁰ Christopher Insole, *The Politics of Human Frailty* (London: SCM, 2004), 168.

¹⁸¹ David Fergusson, *Church, State and Civil Society* (Cambridge: CUP, 2004), 134.

some of his conclusions about the individual in Locke's society do hold a certain weight. Locke does not found the role of the individual vis-à-vis the state on the inalienable rights of the individual, but on the proper (teleological) end of government being to protect 'property' in the broadest sense (people's lives and estates). So the state's powers are not limited for Locke by my individual rights but by this end. The end is to protect property and prevent war – i.e. to keep the internal and external peace.

In a way, this should not surprise us, for it is a corollary of his natural law thinking. The natural law is at the very heart of Locke's thinking about law, rights and society. In the *Essays on the Law of Nature*, he states that without the natural law human society is impossible; for the natural law is the basis of both the constitution of the state (the body politic) and the pact amongst people. Without the natural law there is no community.¹⁸² The state and the common good are thus viewed as part of divine providence, coming in a positive sense from the top down. The laws of the civil magistrate derive their binding force from the constraining power of natural law; and it is the natural law that decrees that the civil lawmaker should be obeyed. Our obligation to obey the law thus derives from this law of nature.¹⁸³ Our liberty and rights (for example to property) also derive from this natural law.¹⁸⁴ In this theory the state is viewed essentially positively, both as part of God's designs and as something that protects us; and our rights are seen as bound up with law, obligation, and the common good.

We saw earlier, in the sections on the Putney Debates and the Whitehall Debates, that the Levellers had shifted the understanding of rights to focus them on individual freedoms, and most importantly, freedoms that were to be upheld against the state. In contrast, Locke's view of the state, the law, and rights, are still firmly within a scholastic natural law tradition. "Locke's polity, both at parish and national level, was a much governed one," writes Mark Goldie: "He was a patron of minimal government only in certain, if crucial, ways."¹⁸⁵ There is here an important difference between Locke and the Levellers in how the state is viewed. In Locke's theory the state is in a sense fundamentally good, ensuring peace; and problems arise when there is an absolutist monarch or the likelihood of one, and he needs deposing or excluding.

¹⁸² Essay 1 (in Locke, *Political Essays*, ed. Goldie, 87-88).

¹⁸³ Essay 6 (ibid., 120).

¹⁸⁴ Essay 8 (ibid., 131-132).

¹⁸⁵ Ibid., xxvii. In fact, if we look at Locke's notes headed 'Atlantis', of 1676-1679, we can see that in his utopia the state is very intrusive (ibid., 252-259).

Whereas, in Leveller thinking, the state is that which should protect our freedoms but instead often encroaches upon them; and therefore the powers of the state itself need fundamentally limiting. That is, in Leveller thinking, the state is seen in a less positive light, as something to be curtailed.

2.7.2 Consent

I will now demonstrate that Locke's account of political consent is so narrow that large categories of people are excluded from consenting to the government and laws under which they are obliged to live, and are left with reduced political rights. This certainly seems undermining of a case that Locke holds to a doctrine of fundamental political equality, a case advanced by Waldron.¹⁸⁶

In the *First Treatise*, Locke writes a sustained attack on Filmer's *Patriarcha* and accuses Filmer of holding that men are not naturally free and that princes have their power by absolute divine right (and thus have unlimited sovereignty): "His System ... 'tis no more but this, *That all Government is absolute Monarchy*. And the Ground he builds on, is this, *That no Man is Born free*."¹⁸⁷ For patriarchalism, all people are born under government; they are not free; just as all are born under a father, so we are born as subjects of a king. Locke thus wants to show that, against Filmer, people are naturally free; and for this he uses natural law arguments.

The whole of the *First Treatise* is an attack on Filmer and thereby an attack on monarchical absolutism. However, Locke is not defending individual liberty – Locke defends natural freedom ("Man has a *Natural Freedom*") but not individual freedom.¹⁸⁸ He is attacking the basis of the theory of the divine right of kings in order to support the 'Exclusion' – the attempt to exclude James, Duke of York from succeeding to the throne upon the future death of his brother, King Charles II.

In the *Second Treatise* Locke repeats that in the natural state we are all born free and equal. "The *State of Nature* has a Law of Nature to govern it, which obliges every one," writes Locke, and "Reason, which is that Law, teaches all Mankind." Every person "is bound to preserve himself," and so "ought he, as much as he can, to preserve the rest of Mankind."¹⁸⁹ In the state of nature, every one has the right to punish the

¹⁸⁶ Jeremy Waldron, *God, Locke, and Equality* (Cambridge: CUP, 2002), 110, 114-136, 151.

¹⁸⁷ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: CUP, 2004), 142.

¹⁸⁸ *Ibid.*, 190.

¹⁸⁹ *Ibid.*, 271.

transgressor of the law of nature, not just the person who is the victim of the transgressor; for “the Offender declares himself to live by another Rule ... and so he becomes dangerous to Mankind ... being a trespass against the whole Species, and the Peace and Safety of it.”¹⁹⁰ A transgressor offends against the law of nature and thus against mankind. A person who wishes to take my life or freedom puts himself into a state of war with me and I have, through the right of self-preservation, a right to kill him. Anyone who tries to exercise absolute power over me, attempts to put me into slavery, and so I can kill this aggressor. We shall see later that these basic premises are key to Locke’s theory of the right of resistance to the monarch.

To avoid this state of war is, for Locke, “one great *reason of Mens putting themselves into Society*, and quitting the State of Nature.”¹⁹¹ People form society to avoid the state of war; that is, we come together and form society in order to preserve freedom, freedom based on nature and reason. Natural law requires that this placing of our liberty under another power be by consent. The consent to being under the laws of a government is now tacit for most of us who were not part of the original compact: we tacitly consent to the government by staying and ‘enjoying’ part of the land (whether through ownership, permission, lodging, or merely travelling freely on the highway).¹⁹² Yet, foreigners who stay here are not considered by Locke to be members of our society, though subject to our laws; positive express consent is required for full membership of society. Tacit consent is consent to follow the laws, whereas express consent is required for membership of the Commonwealth. Even an English person who stays in England and enjoys the land, if that person has not made an express consent, then they are not a member of the Commonwealth and are free to go and live in another country. There is thus a two-tier consent here and two quite different types of political status for persons (II, Sections 119-122). We shall explore this further below.

In forming a society, by consent, we give our natural private rights and powers to punish to the civil magistrate, in trust and for purposes in accord with the natural law, and so the Commonwealth has power to punish. In society a magistrate now has a right to punish one who transgresses against the law of nature because we all had that right originally, a natural freedom that we have consented to hand over. However, the reason that Locke emphasises government by free consent is not because he is concerned with

¹⁹⁰ Ibid., 272.

¹⁹¹ Ibid., 282.

¹⁹² This argument was attacked by both David Hume and Adam Smith.

actual individual freedom, rights, or individual consent; but because he needs to attack any idea that government began by paternal right. This is because his real aim is to attack the basis for absolute monarchy.

It is noteworthy that Locke thinks that a Catholic king of England would be a tyrant, but does not consider that legal legitimised slavery is tyrannical, and this point is germane to understanding who is a member of Locke's 'People' – for neither Catholics nor slaves are members of those whom he considers to be 'the People', and neither group is involved in consenting to society and its laws. In the *Second Treatise* Locke advances the idea that those who oppose a conqueror who is fighting a just war against them forfeit their lives and deserve death; and the conqueror thus has an absolute despotic power over their lives. Locke fully accepts this notion of slavery: the slave's owner may "make use of him to his own Service, and he does him no injury by it."¹⁹³ Locke's account has no concept that a slave has rights that are not being recognised by society, for the slave simply has no rights – although the conqueror has no rights to the property, wife, and children of the enslaved person. You can legitimately kill the slave, if it pleases you, but not take his property (possessions).¹⁹⁴ This is not as absurd as it first sounds: for Locke, the conqueror can only legitimately take that which is forfeit (the property that is the slave's life), and must recognise that others (the slave's family) have rights in the property that represents the possessions of the slave.

Similarly, there are some blunt sections towards the end of the document *The Fundamental Constitutions of Carolina* (1669): "Every freeman of Carolina shall have absolute power and authority over his Negro slaves, of what opinion or religion soever." A slave can be a member of whatever church they choose, but no slave shall "be exempted from that civil dominion his master has over him."¹⁹⁵ What is important in these examples of slavery from different works, is Locke's acceptance of a class of people who do not have the right to life and who are not part of the society: "These men ... being in the *State of Slavery*, not capable of any Property, cannot in that state be considered as any part of *Civil Society*; the chief end whereof is the preservation of Property."¹⁹⁶

¹⁹³ Locke, *Two Treatises of Government*, ed. Laslett, 284.

¹⁹⁴ *Ibid.*, 390.

¹⁹⁵ Locke, *Political Essays*, ed. Goldie, 180.

¹⁹⁶ Locke, *Two Treatises of Government*, ed. Laslett, 323.

At the heart of Locke's social contract is a major ambiguity: who are the members of society who make the contract? People of estate or all people? For Locke it is not the latter. Locke seems to line himself up with Ireton – for example, foreigners are not members of society; in Macpherson's reading of Locke, only those natives with estate can be 'full' members of society. The literal reading of Locke is that only those who explicitly make a positive and irrevocable consent to be a member, can be full members (II, Section 122), and a member will have property (II, Section 138). Indeed, a person can own estate and still not be a member. As we will now see, who is to be considered as a member for Locke will need to be narrowed further.

If Catholics, atheists, slaves and others with undesirable opinions are excluded from the vote or from standing as elected representatives, because they are not to be tolerated, then they are specifically excluded from formal consent to any current, and any new, laws and taxes under which they must live. This places them in a separate category from foreigners who tacitly consent to the laws by living here, even though they do not have a right to vote. Yet Locke says that no-one can be subjected to the political power of another without giving consent. This raises more than doubts about Locke's understanding of 'equality', it raises doubts about whether those excluded are actually members of 'the People'. This relates to the earlier point about Locke's two tiers of political status for people in society. Perhaps there are even three tiers. Catholics, atheists, slaves, and others who purvey certain undesirable opinions will not be regarded as formal consenters, those who make express positive commitment to the Commonwealth, and so will not be members of society. The various levels of rights in Locke's hierarchy have very little to do with property *per se*; although property is necessary, but not sufficient, for membership of the top tier of Locke's society. At the top are full members of society who have political rights including the right to vote and the right of resistance. Below them come those who implicitly consent to the laws, but who do not have the right to vote and perhaps do not have the right to resist. At the bottom come the excluded groups of people who have limited political rights. Although the full members of society will be property owners, property might well be owned at the other levels too; although it is not clear what the property rights would be of those groups who are not to be tolerated by the magistrate.

For Locke, the original consensual contract is essential as an answer to Filmer; yet it leads him to later problems in explaining how we today, who were not part of the original contract, give consent; and exactly *who* is to give consent. This is a problem

for Locke that Rawls has identified: he recalls Hume's view that nothing is gained by Locke in basing today's political obligation on some original contract.¹⁹⁷ Put simply, why should I be held obliged by a contract that I did not make? This is a complex question which the Levellers, to an extent, bypass by basing their contractarian view of consent in a formal agreement that is to be made in contemporary times, with regular elections for representatives in Parliament once the Agreement is enacted. The novelty of their position is that it sidesteps Locke, Hobbes, Buchanan, Suarez, Bellarmine, and Vazquez, and the long tradition of an original consent, to assert that the contract is to be an actual written agreement to be made today, with contractarian consent to be ongoing in regular (perhaps annual) Parliamentary elections. The Levellers are not interested in an original consent of a theoretical or aboriginal social contract; they are interested in constitutional consent now and ongoing political consent into the future.

The Putney Debates probably revealed some of the clearest statements of the Leveller understanding of consent: whoever has to live under the laws of a government should have a say in choosing that government. This inevitably required widening the franchise, reforming representation, holding regular Parliamentary elections, and removing the religious restrictions that excluded whole groups of people. Lockean political equality and consent seem markedly different from – more restricted and limited than – Leveller notions.

2.7.3 Resistance

In this sub-section I argue that Locke's theory of resistance is less radical than often thought, rather confused or ambiguous, and somewhat restricted when compared with the Levellers.

Locke sets out his doctrine of resistance in the Two Treatises, most explicitly in the *Second Treatise*. There has been scholarly dispute about when these were written, and whether they were written as one document (in two parts) or as two separate documents some years apart. It seems likely that they were written sometime in the period 1679 – 1682, and as one book in two parts.¹⁹⁸

¹⁹⁷ Rawls, *A Theory of Justice*, 29.

¹⁹⁸ See, for example, Locke, *Two Treatises of Government*, ed. Laslett, Introduction. See also David Wootton (ed.), *John Locke: Political Writings* (London: Penguin, 1993), Introduction; and Richard Ashcraft, 'Revolutionary Politics and Locke's *Two Treatises of Government*: Radicalism and Lockean Political Theory', *Political Theory* 8:4 (1980), 429-486. This would place the treatises as part of the Exclusion Crisis and its immediate aftermath rather than, as the Preface states (which must have been

In Chapter 13 of the *Second Treatise* Locke sets out his major conclusion – that the people have a power to remove the legislative power, if it acts contrary to their trust: “There remains still *in the People a Supream Power* to remove or *alter the Legislative* ... they will always have a right ... to rid themselves of those who invade this Fundamental, Sacred, and unalterable Law of *Self-Preservation*.”¹⁹⁹ Furthermore, if the executive power violates the law, the people have no duty of obedience or allegiance to that ruler, for he is acting according to his own will and, in acting so, the ruler reverts to being “a single private Person without Power.”²⁰⁰ If the executive power uses force against the legislature, the people have a right to remove the executive by force. The use of force without authority puts the executive into “a state of War with the People,”²⁰¹ and the use of force without proper authority makes that person the real aggressor (rendering him liable to be treated accordingly). The people’s right of self-preservation is supreme: here Locke sets out a very strong right of resistance, based on natural law. Not only do the people have the right to get out of being under tyranny, they also have the right to *prevent* it (II, Section 220). He thus gives philosophical support to the post-1680 Whig theorising on resistance and early plotting against James, Duke of York.²⁰²

“The crucial question” in the seventeenth century, writes Wootton, “was not whether power originated with the people, but whether and under what circumstances they or their representatives could reclaim it. It is the question, not of democracy, but of popular sovereignty.”²⁰³ So Locke is proposing that people have the right to remove their consent from being governed by this particular ruler and to resist the ruler, where

added later), as part of the post-1688 making good the title of King William. Through his patron, Shaftesbury, Locke was a member of an aristocrat-led group, to be known as Whigs (the term is used in this way from about 1681), that tried to prevent James, Duke of York from having the right of succession to the throne upon the future death of his brother Charles II. The Whigs wished to exclude James because, to put it simplistically, he was a Catholic and they feared a Catholic absolutist monarch. James acceded to the throne in 1685. In order not to be too harsh on Locke, we should perhaps put aside his anti-Catholic motives and let his texts speak for themselves. Nevertheless, the historical context helps explain part of his thinking, although it should be noted that Waldron is fairly critical of some of the historical contextual approaches to understanding Lockean texts – see in particular Waldron, *God, Locke, and Equality*, 11, 115. The Preface mentions a second reason for writing the treatises: to refute the views of Sir Robert Filmer. This is clearly the dominant theme from reading the subsequent text. Filmer, an exponent of Patriarchalism, was seen as one of the leaders of the Stuart conception of absolute monarchy; hence the need to tackle him in the battle to exclude the future James II.

¹⁹⁹ Locke, *Two Treatises of Government*, ed. Laslett, 367.

²⁰⁰ *Ibid.*, 368.

²⁰¹ *Ibid.*, 370.

²⁰² Ashcraft even suggests that Locke is supporting resistance to Charles II (Ashcraft, ‘Revolutionary Politics and Locke’s *Two Treatises of Government*’, 449, 452).

²⁰³ David Wootton (ed.), *Divine Right and Democracy* (London: Penguin, 1986), 41.

resistance includes the pre-emptive right to defend themselves using deadly force. The right to use power to punish an aggressor reverts to the people. Even though the tyrant may be oppressing you rather than me, the tyrant offends against mankind and so we all have the right to resist.

Locke's right of resistance is, however, not clear (see, in particular, Chapters 13 and 18-19 of the *Second Treatise*): it is not apparent exactly who has the right to use force to resist; he just says that 'the People' can rightly resist. When the circumstances are such that it is right to resist, the power reverts to the individuals – but in the community. So power and the judging of the right to resist are in the body of the people. It is unclear if individuals can use force to resist,²⁰⁴ and what happens when the community is split in its views. It appears that power that is forfeited by a ruler reverts to the society, the community, but power can never revert to the individual as long as the society lasts.²⁰⁵ This would imply that the individual person cannot exercise the right of resistance, and that it must be exercised by the community – unless, of course, Locke holds that the breach in the laws of nature by the tyrant causes society to cease to exist and causes the people to revert to being individuals in the state of nature. However, it is not clear that Locke does say this.

Nevertheless, Locke does state that “every one has a *Right* to defend himself, and *to resist the Aggressor*.”²⁰⁶ The implication here is that if a single person is subject to force without right (i.e. illegal force) by the king, that person can resist. Yet Locke holds that it is “impossible for one or a few oppressed Men to *disturb the Government*, where the Body of the People do not think themselves concerned in it.”²⁰⁷ In the following section, Locke suggests that the illegal acts must extend to the “Majority of the People” or “seem to threaten all” before we can resist. In a later section we read that the mischief of the government must be general or sensible to the greater part of the People (the people ‘universally’ have to have a persuasion),²⁰⁸ the oppression of one

²⁰⁴ Tully clearly thinks that each individual does have the right to resist, in Locke's *Two Treatises*. However, the sections that Tully references to support his claim (from II, Chapter 19) are far from clear: only one section, 232, states that “every one has a *Right* to defend himself, and *to resist the Aggressor*.” While the other sections are more ambiguous or refer explicitly to ‘the People’. See Tully, ‘Locke’, 637 n. 14. Against Tully, it would seem unlikely for Locke to hold that every single person has the right to resist, otherwise he would have to grant this right to Catholics, atheists, and promoters of contrary opinions, in England, and to slaves in English colonies – unless we accept a more limited conception of who ‘the People’ are understood to be.

²⁰⁵ *Second Treatise*, Section 243

²⁰⁶ *Ibid.*, Section 232.

²⁰⁷ *Ibid.*, Section 208.

²⁰⁸ *Ibid.*, Section 230.

person does not move the People. Indeed, in Section 205, we find the statement: “It being safer for the Body, that some few private Men should be sometimes in danger to suffer, than that the head of the Republick should be easily, and upon slight occasions exposed.”²⁰⁹ This seems to suggest that sometimes it is better for a few innocent people to suffer than to overthrow the head of government. It also undermines the case that there is an unambiguous individual right of resistance in Locke. Furthermore, it leaves hanging the obvious questions of who decides what is merely ‘slight’, what only affects a few, and what is safe for the Body.

Locke’s right of political resistance is not really for individuals as such, but for ‘the People’ (and a restricted group of people at that). Tully seemingly neglects too much contrary evidence when he claims that Locke repudiates 500 years of ‘political holism’ in positing political individualism or radical popular sovereignty, and reconceptualises “rebellion as a political activity of the people”; and that no-one, until Locke, “was willing to grant that the people either individually or collectively had the capacity to exercise political power themselves.”²¹⁰

Firstly, Locke’s doctrine of rebellion in fact relies on notions of self-preservation and the natural right to resist an aggressor, and thus stands in the natural law traditions and owes a debt to scholasticism (Almain for example).²¹¹ It is possible that Locke was influenced as well by Calvinist writers like Ponet,²¹² Knox,²¹³ Goodman,²¹⁴ Beza,

²⁰⁹ Ibid., Section 205.

²¹⁰ Tully, ‘Locke’, 622.

²¹¹ See for example Brett, *Liberty, Right and Nature*, 118; Burns, ‘Scholasticism: survival and revival’, in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 150; Skinner, *The Foundations of Modern Political Thought*, Volume 2, 119-120; and Tierney, *The Idea of Natural Rights*, 237-238. However, see also Burns, ‘Jus Gladii and Jurisdictio: Jacques Almain and John Locke’, 369-374, in which Burns argues for the difference between the individualism of Locke’s theory of the right to punish any aggressor and the corporatism of Almain’s theory of the power of resisting. Burns’s focus on Almain’s communitarianism may neglect the doubts of others about the supposed individualism in Locke’s theory: the right to punish one who is an aggressor of others derives from the natural law right of self-preservation that we all have as humans; but there is a difference between natural rights and political rights for Locke, and to exercise the right of resistance in political society requires a decision of the people; not all individual persons who live within the society can exercise the decision and the political right to resist – for there are groups that Locke excludes.

²¹² Ponet sees it as a law of nature to depose and punish civil governors; and he also appeals to medieval canonists and conciliarists in his arguments. He concludes that any private individual person may have a command of God to kill the tyrant. (John Ponet, *A Short Treatise of Politique Power*, Thomason E.154(36), 47-52.)

²¹³ In ‘The Letter to the Commanlty’, Knox gives the people a right to punish, which seems to be based on two things: a fundamental equality of all before God, and the duty to suppress idolatry. Nevertheless this right of ‘resistance’ (if that is what it is) seems aimed at the clergy rather than the ruler. (Mason (ed.), *John Knox On Rebellion*, 118-121, 123-126.) In the accompanying ‘Appellation’, Knox argues that there is a religious duty to punish to death those that draw the people to idolatry, and that no person is exempt from punishment. The duty to punish belongs to the whole people, and indeed “to every member

Mornay, and Buchanan, whose resistance theories were likewise influenced by the conciliarism of Mair and Almain (indeed Mair was a teacher of George Buchanan).²¹⁵ Furthermore, in 1599, the Jesuit Mariana had taken and developed the thinking of Mair and Almain and stated that individual people had the right to resist (in *De Rege et Regis institutione*).²¹⁶ Moreover, Molina, though not as sweeping in his right of resistance as his fellow Jesuit, allows individuals the right of resistance in certain circumstances.²¹⁷

The second argument against Tully's claim is that the Levellers had already, conceptually, given political power to the people, as individuals, to withdraw consent from their government. It is the notion of power reverting back to the people which is seen as one of the key elements of popular sovereignty. Wootton pinpoints the first modern political appearance of this notion to the 1645 tract *England's Miserie and Remedie*, written by one of the early Levellers as a defence of John Lilburne.²¹⁸ This tract talks of supreme power being in the people and of the people *lending* their sovereign power to Parliament; the government makes use of the people's delegated power, by consent and trust, but if the authorities abuse it they "degenerate into tyrants, and become *hostes humani generis*, enemies of mankind."²¹⁹ Furthermore, the injury to one member of the public body (Lilburne) is a wound to the 'public liberty'. In such cases, "it is not credible that either people or person, in any outward condition under which they mourn, sigh, or groan, will continue any longer therein." So, "it must necessarily follow that the multitude ... will be easily persuaded to shake off all bonds of obedience,"²²⁰ for only a madman would obey those who disregard that person's

of the same" (ibid., 99, 102). It is in the debate at the General Assembly in June 1564 that, based on his positing the difference between the person of the office-holder and the office itself which is to be obeyed (a theme he develops in his letter to the nobility of Scotland of 22 May 1559, see ibid., 154), he clearly states that "the prince may be resisted and yet the ordinance of God not violated" (ibid., 192).

²¹⁴ Though Skinner points out that such early Calvinist writers held to a religious duty, rather than a political right, to resist. (Skinner, *The Foundations of Modern Political Thought*, Volume 2, 240.)

²¹⁵ See ibid., 224, 235, 320-321, 343-344; and Oakley, 'Almain and Major: Conciliar Theory on the Eve of the Reformation', 681, 685.

²¹⁶ See Skinner, *The Foundations of Modern Political Thought*, Volume 2, 346-347.

²¹⁷ See Costello, *The Political Philosophy of Luis de Molina*, 66-68.

²¹⁸ This tract is thought to be by Wildman, Overton, or Sexby – the attribution is still subject to debate (Wootton (ed.), *Divine Right and Democracy*, 273). Written in September 1645, it is arguably written prior to the formation of the Leveller movement as such, although it is rather difficult to define when exactly the movement did begin. It is probably helpful to see the Levellers as emerging and coalescing from late 1645, through 1646. Wolfe, for example, dates the first published appearance of embryonic Leveller ideas to October 1645, with the full integration of their ideas in July 1646 (Wolfe (ed.), *Leveller Manifestoes*, 5-15).

²¹⁹ Anon., 'England's Miserie and Remedie', in Wootton (ed.), *Divine Right and Democracy*, 277.

²²⁰ Ibid., 280.

liberties and safety.²²¹ The tract explicitly talks of the multitude ‘regaining’ their lost freedoms by some sudden attempt.

The tract *England’s Miserie and Remedie* is also significant for its explicit reliance upon the thought of Buchanan,²²² who allows that individual people have the right to resist. The tract quotes from Buchanan’s work of 1579, *De jure regni apud Scotos*, a dialogue in which Buchanan develops a natural law notion of a mutual pact between the king and his subjects, a pact that is made void if it is broken by one party. In this case, the tie between the two is broken, and if it is the king who does this then he is a tyrant; he forfeits his rights and is an enemy of the people; and a war against such a tyrant is just. The “right” to “kill the enemy”, the tyrant, belongs not just to the people as a whole but to “any individual”.²²³ In *An Appeale* of 1647 Overton takes this thinking to its logical conclusion for his time: every rational Commonwealth man is bound from just principles of divinity, humanity and reason to try to remove the tyrant; defensive resistance is lawful for every man for the recovery of natural human rights.²²⁴ We can see then that the Levellers make use of a tradition of a concept of resistance that goes from Buchanan back to the silver age of conciliarism and beyond²²⁵ – thus, *pace* Tully, there is, as we have seen, a long tradition of resistance that represents a continuity of several centuries and which undermines Tully’s claim for the novelty of Locke’s doctrine of popular sovereignty.

To continue this second point, that the Levellers had already conceptualised political popular sovereignty, we can turn to the late tract of 1657, by the Leveller Edward Sexby, *Killing Noe Murder*, which again well predates Locke’s *Second Treatise*. In this tract Sexby asserts that a tyrant reduces us to the condition of a slave and that over a tyrant “every man is naturally a judge and an executioner,”²²⁶ and the tyrant can be destroyed by the natural law of God. Tyranny is against the law of nature,

²²¹ Likewise, Lilburne states in a 1645/1646 tract that an absolute tyrant is “not by any to be obeyed” (John Lilburne, *Innocency and Truth justified*, Thomason E.314(21), 11).

²²² Glover, ‘The Putney Debates’, 64.

²²³ George Buchanan, *A Dialogue on the Law of Kingship among the Scots*, eds and trans. R.A. Mason and M.S. Smith (Edinburgh: Saltire Society, 2006), 141.

²²⁴ In a tract of 1647, Lilburne states that “tyrannie, is tyrannie, exercised by whom soever,” and “tyrannie is resistable” (John Lilburne, *The Oppressed mans Oppressions Declared*, Thomason E.373(1), 34). See also David Wootton, ‘From Rebellion to Revolution: The Crisis of the Winter of 1642/3 and the Origins of Civil War Radicalism’, *The English Historical Review* 105:416 (1990), 666.

²²⁵ Cf. Oakley, ‘Almain and Major: Conciliar Theory on the Eve of the Reformation’, 684–685. Indeed, Buchanan explicitly links his own thought back to early conciliarism: Buchanan, *A Dialogue on the Law of Kingship among the Scots*, 134.

²²⁶ Edward Sexby, ‘Killing Noe Murder’, in Wootton (ed.), *Divine Right and Democracy*, 364.

and the tyrant is “no magistrate, no citizen or member of any society.” A ruler who arrogates power not from the people’s consent “is not a ruler but an invader.” In a tyrant’s case “every man has that vengeance given him which in other cases is reserved to God and the magistrate.” The tyrant is an enemy to all human society and has no protection from the law: “He that goes armed against every man arms every man against himself. ... When no justice can be had, every man must be his own magistrate, and do justice for himself.”²²⁷ Sexby quotes Augustine’s saying that societies without law are great confederacies of thieves and robbers. A tyrant is a common robber of mankind, and just as we are permitted by the natural law of God to kill a thief who breaks into our house at night, so we can use force to repel the tyrant. Furthermore, every man has a right to kill an enemy: “against common enemies and those that are traitors to the commonwealth, every man is a soldier.” Sexby also uses Plutarch’s tenet that it was lawful “to kill him that but aspired to tyranny.”²²⁸

Thirdly, as noted, Locke does not seem to give the political power of rebellion to any individual person, or at least not clearly or unambiguously so, (some individuals being excluded automatically), but primarily considers resistance from the point of view of the community (the members of the community as a whole, or perhaps as some sort of majority acting together). My interpretation of the text is that Locke gives the political power of resistance to the people (or more restrictively to those who have ‘membership’ of the people), rather than to individuals, but the people use the natural rights that they had and have as individuals to self-preservation. Certainly, the complex question of who judges when the oppression is sufficient to warrant armed resistance to the king, or when there should be pre-emptive resistance against a tyranny that is yet future, seems to rest with something beyond the individual: the community, or God. In disputes between people, then “*every Man is Judge* for himself,”²²⁹ but this is immediately qualified by the statement that, in a dispute between a prince and people, then the Body of the People is the judge. If that fails, then people can appeal directly to heaven.

The *Two Treatises* should be understood as advocating the people’s right of resistance to the monarch, i.e. the right to change the ruler or to prevent a proposed ruler ascending the throne, rather than being about limiting the state with respect to

²²⁷ Ibid., 366-373.

²²⁸ Ibid., 375.

²²⁹ *Second Treatise*, Sections 240-242.

individual rights. For that reason, Locke's right of resistance is rather different from the Levellers' notion of resistance – appearing less radical than the Levellers – and, as a result, carries different implications for the view of the state and the individual.

2.7.4 Property

Locke's theory of the right to private property, I will show, is overridden by the common good, leading us to conclude that individual rights for him are subordinate to the community.

In Chapter 5 of the *Second Treatise*, Locke sets out his theory of the origin of property – how people could appropriate that which was in common, without consent – as an answer to Filmer's criticisms of notions of natural freedom and consent.²³⁰ Locke's theory is based on his idea that every person has a property in their own person (and thus mixing labour makes property). The formation of society is for the preservation of property – understood as life, liberty, and estate. The preservation of lives, liberties, and property, is the 'end' of society, in the teleological concept. This requires law, judge, and punitive power. These three powers – legislative, judicial, and executive (punitive) – are to be directed to peace, safety, and the public good.

For Locke, the supreme power in society is the legislative power (which can be held by a body or a person), but this cannot be an absolute arbitrary power. Firstly, laws passed by the legislature must conform to the law of nature, in which freedom from arbitrary power is closely linked to the duty of self-preservation. Secondly, nobody can transfer more power than they have themselves; nobody has absolute arbitrary power over themselves or others; therefore no such power is there to be transferred (no-one can enslave himself by his own consent, for slavery would be the continuation of the state of war). Thirdly, government cannot take a person's property without their consent,²³¹ for that would be against the 'end' of government.²³²

Arbitrary government, which he equates with absolute monarchy, is inconsistent with the end purpose of government. Thus "*Absolute Monarchy ... is indeed inconsistent with Civil Society, and so can be no Form of Civil Government at all.*"²³³ It reduces us effectively to the state of nature – we are all in the state of nature, including

²³⁰ Tully, 'Locke', 628.

²³¹ 'Consent' means consent of the majority (II, Section 140; see also Sections 95-99).

²³² For Locke, taxation without consent subverts the end of government (II, Sections 140, 142).

²³³ Locke, *Two Treatises of Government*, ed. Laslett, 326.

the absolute ruler. This is the first great conclusion that Locke has been leading up to.²³⁴

In his book, *The Political Theory of Possessive Individualism*, Macpherson launches a significant attack on Locke. He accuses Locke of transforming equal natural rights into differential natural rights in his theory of property: the mass of equal individuals is transformed into two groups with very different rights – those with property and those without. Civil society is established to protect property, so it is established to protect unequal rights. Rawls too follows a line of criticism similar to, but subtly different from, Macpherson's: Locke "assumes that not all members of society following the social compact have equal political rights ... the propertyless have no vote and no right to exercise political authority."²³⁵ Although we might not agree with Macpherson's quasi-Marxist reading of Locke, based on the former's analysis of seventeenth-century society and the role of property, Macpherson nevertheless has a point here when he highlights the differential rights in Locke's theory. However, he has mistaken the crux of the point: as we have already seen, there is indeed an inequality in Locke's understanding of people's rights, but it is not about property as Macpherson holds. Part of the problem is Locke's use of the word 'property' which sometimes means property as conventionally understood (e.g. II, Section 120) and sometimes means life, liberty and estate (e.g. II, Section 123).

Macpherson describes Locke's theory as a defence of the rights of expanding property rather than of the rights of the individual against the state: "Locke did not think it desirable ... to reserve some rights to the individual as against any parliament or government. No individual rights are directly protected in Locke's state."²³⁶ Locke's theory is, for Macpherson, a defence of the supremacy of property and ultimately involved the subordination of the individual to the civil society. Macpherson may be correct in his second claim (the subordination of the individual), but he is not correct in his first claim about the supremacy of property – precisely because within the subordination of the individual lies also the subordination of property.

²³⁴ *Second Treatise*, Chapter 7, Section 90.

²³⁵ Rawls, *Political Liberalism*, 287. The subtle difference is that, for Rawls, the inequality is post-compact. See also Rawls, *Lectures on the History of Political Philosophy*, 104-105, 155.

²³⁶ Macpherson, *The Political Theory of Possessive Individualism*, 257.

For example, it is not clear what the property rights would be of those groups who are not tolerated by the government,²³⁷ in Locke's theory. Do their natural property rights supersede their lack of political rights? This may well be the case, for, within the natural law, there was a tradition going back to Innocent IV who had stated in the mid-thirteenth century that every rational creature, including infidels, could licitly own property – that is, the right to property and jurisdiction over it, applies to all persons under the natural law, irrespective of religion.²³⁸ We will only understand Locke fully if we understand the central role for him of the public good within a natural law tradition – indeed he allows the common good to override individual property rights: where it is in the interests of the Commonwealth that the slaughtering of cattle should be stopped for a while, in order to increase the stock, the magistrate can forbid his subjects from killing any calves (i.e. from exercising their property rights).²³⁹ What is significant about this, is that those, like Macpherson,²⁴⁰ who have emphasised the primacy of property rights in Locke's thinking, have perhaps failed to notice that the section on property occupies a relatively small space in his work (and is actually just answering Filmer), and that this quote shows that, in Locke's political philosophy, it is in fact the common good of the community that has primacy.²⁴¹

Furthermore, we can see that Locke understands natural rights from within the view of the teleological end of the community. For Locke, we have rights but sometimes the state can override them if it is in the public good so to do. "Given that the Lockean conception of government makes the maintenance of order and security a primary duty for the magistrate," notes Lorenzo, "there are a considerable number of reasons linked with that duty that the magistrate can advance to justify removing a right."²⁴² In contrast, for the Levellers, I have certain individual rights which cannot be alienated by me, and therefore the state cannot legitimately override them. Again, this

²³⁷ See the next sub-section for more details of groups that are to be excluded.

²³⁸ See Tierney, *The Idea of Natural Rights*, 143-144.

²³⁹ John Locke, *A Letter concerning Toleration*, ed. James Tully (Indianapolis: Hackett, 1983), 42.

²⁴⁰ At opposite ends of the political spectrum, both Macpherson and Nozick seem to over-emphasise property and the theory of acquisition in Locke's *Two Treatises*. See Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), 174-182.

²⁴¹ Nozick notes that, under a Lockean scheme, property rights can be overridden – see Nozick, *Anarchy, State, and Utopia*, 180. Nozick uses this fact to show the need for a stronger defence of appropriation and transfer rights, so as to defend property rights.

²⁴² David J. Lorenzo, 'Tradition and Prudence in Locke's Exceptions to Toleration', *American Journal of Political Science* 47:2 (2003), 249. Lockean rights, argues Lorenzo, are circumscribed by the government's duty to preserve mankind (ibid., 254).

calls into question Macpherson's claim that the Leveller understanding of property and self-proprietty paved the way for Locke and his doctrine of rights.²⁴³

2.7.5 Toleration

Locke's view of religious toleration is not only less radical than sometimes supposed, in that it excludes certain groups from toleration, it also reveals the priority of the state over the individual in his thinking.

In his *An Essay on Toleration* of 1667, Locke repeats the teleological argument: the end purpose of government is the measure of it. Locke denies that the magistrate's power is derived from the grant and consent of the people. The only matters to demand universal toleration are the place, time, and technical manner in which one worships God; and speculative opinions in so far as they do not disturb the state. So, for example, worshipping God in a papist manner is to be tolerated, but Catholics "ought not to be tolerated in the exercise of their religion" because "they mix with their religious worship and speculative opinions other doctrines absolutely destructive to the society wherein they live."²⁴⁴ The views of Catholics are destructive of governments and so the magistrates should suppress their publication: "Papists are not to enjoy the benefit of toleration."²⁴⁵ Anything that seems to threaten the peace of the state is to be suppressed by the magistrate, particularly if the dissenting faction becomes a large number: "And perhaps the Quakers, were they numerous to become dangerous to the state, would deserve the magistrate's care and watchfulness to suppress them."²⁴⁶

Goldie's claim, that this essay marks a decisive turning-point in Locke's thinking, seems unsupported by the evidence of the text. While the essay is a step forward from Locke's previous works, in that it allows religious toleration, it is still a limited toleration; and toleration is a duty of the magistrate but not a right of the individual. "Freedom of worship," notes Wootton on this essay, "is not to be extended into a wider liberty of conscience."²⁴⁷ The limit of toleration, for Locke, is when it conflicts with the civil. Here again the focus is on the end purpose of government: anything that might conflict with this end is to be suppressed. The notion that power is from God, and the

²⁴³ Macpherson, *The Political Theory of Possessive Individualism*, 158.

²⁴⁴ Locke, *Political Essays*, ed. Goldie, 146.

²⁴⁵ *Ibid.*, 152.

²⁴⁶ *Ibid.*, 148.

²⁴⁷ Wootton (ed.), *John Locke: Political Writings*, 38.

teleological argument, mark this essay out as again squarely within the natural law tradition.

Furthermore, against Goldie, is the later document *The Fundamental Constitutions of Carolina* (1669),²⁴⁸ which states that: “No man shall be permitted to be a freeman of Carolina, or to have any estate of habitation within it, that does not acknowledge a God, and that God is to be publicly and solemnly to be worshipped”; and “No person above seventeen years of age shall have any benefit or protection of the law ... who is not a member of some church or profession [faith].”²⁴⁹ The state can decide what is a recognised church or faith, and there is to be a public state record of membership. This document holds that if you are not a member of a state recognised church or faith, then you have no civil rights at all. We see the supremacy of the state over the church, and, indeed, over individuals.

In defence of Locke, Jeremy Waldron proposes the notion that there is an early Locke – characterised variously as tentative, unsure, undeveloped, or hard-line – and a later mature, liberal Locke.²⁵⁰ We shall therefore examine the later texts to see if Waldron’s claim is correct. I will show, against Waldron, that a number of the same themes recur (that there is a consistency running through Locke’s writings), providing evidence which at least calls into question the argument for a later Locke with substantially different views.

Locke’s *A Letter concerning Toleration*, published in 1689, is thought to have been written in late 1685 (i.e. during the reign of James II). The letter can be understood as a defence of the dissenters against the Anglican Royalists. “The issue of toleration was the most important political issue of the seventeenth century,” remarks Wootton, “alongside, and inseparable from, that of the choice between constitutionalism and absolutism.”²⁵¹ In the letter, Locke clearly sets out the boundaries between civil matters and religious matters, arguing that the civil power only relates to civil interests. The business of civil society and church ‘society’ are separate and distinct; the care of souls does not belong to the magistrate.

²⁴⁸ It is thought that Locke had a large hand in this document.

²⁴⁹ Locke, *Political Essays*, ed. Goldie, 177-179.

²⁵⁰ See, for example, Waldron, *God, Locke, and Equality*, 6, 209-214, 222-223.

²⁵¹ Wootton (ed.), *Divine Right and Democracy*, 67.

For Locke, there is no toleration for Catholics or atheists,²⁵² or for “Opinions contrary to human Society.”²⁵³ The ‘right’ to toleration is, in the Lockean scheme, granted by the civil magistrate; for it is a “Privilege of a toleration.”²⁵⁴ Locke is not the defender of individual liberty that his proponents sometimes claim him to be; rather he is the defender of the public good: “The Publick Good is the Rule and Measure of all Law-making.”²⁵⁵ For Locke, toleration is not mine by individual right; it is rather the best thing for the public good, in that toleration promotes peace. That is, toleration *derives from* the public good – it is in the interests of the common good for the state to *grant* toleration. Not only is toleration a privilege that is conferred by the state, it is in Lockean thought conferred upon certain groups rather than individuals by right.

Waldron tries to defend Locke here by arguing that it is not clear that Locke is excluding Catholics from toleration in the 1685/1689 letter.²⁵⁶ Waldron’s argument is that the text in the letter does not explicitly refer to Catholics and that in other texts Locke deems Catholics to be acceptable. However, in this letter it seems fairly clear that Locke can only be referring to Catholics when he denies toleration to those who “arrogate unto themselves the Power of deposing kings,” based on “their asserting that *Kings excommunicated forfeit their Crowns and Kingdoms*,” and where the power of excommunication is “the peculiar Right of their Hierarchy”; and where to grant toleration would mean that “the Magistrate would give way to the settling of a foreign Jurisdiction in his own Country.”²⁵⁷ While we might not agree with Waldron’s reading – it seems too much like special pleading – it ultimately does not matter; for the crucial point remains that there clearly are groups in society to whom Locke wishes the state to deny toleration.²⁵⁸ This seems to undermine Waldron’s defence of Lockean political ‘equality’.

In *A Letter concerning Toleration*, Locke admits that the magistrate must be careful not to misuse his authority under the pretence of the public good.²⁵⁹ Locke

²⁵² Locke, *A Letter concerning Toleration*, 50-51.

²⁵³ *Ibid.*, 49.

²⁵⁴ *Ibid.*, 51.

²⁵⁵ *Ibid.*, 39.

²⁵⁶ Waldron, *God, Locke, and Equality*, 218-223.

²⁵⁷ Locke, *A Letter concerning Toleration*, 50.

²⁵⁸ Lorenzo argues that Locke’s understanding of rights relies on distinctions and exceptions, so that some groups are selectively excluded from enjoying rights and significant amounts of religious regulation by the magistrate are justified. (Lorenzo, ‘Tradition and Prudence in Locke’s Exceptions to Toleration’, 249-255.)

²⁵⁹ Locke, *A Letter concerning Toleration*, 42.

recognises that there may be disputes between the magistrate and the subjects about what represents the public good. His answer: “Who shall be judge between them? I answer God alone.”²⁶⁰ What distinguishes Locke from the Levellers then is that the Levellers start from the freedom of the individual and want to limit the magistrate’s powers with respect to the individual (especially on religious matters); and precisely because of the historic experience of magistrates misusing their authority, the Levellers want to fix the magistrate’s powers by means of a formal written contract.

Unlike Locke, the Levellers realised that for toleration to be *true* toleration, it had to be toleration for all, including atheists, Catholics, anti-Trinitarians; and not some partial position determined by the state. Toleration was for all people and groups, for the Levellers, because each person had religious liberty by right. In contrast, Locke’s toleration leaves the state with considerable powers. “Locke left considerable scope for state intolerance towards ideas and arguments,” notes Wootton: “The real weakness of the text lies ... in its failure to argue for freedom of thought.”²⁶¹ The implication of Locke’s writing is that certain beliefs of groups and individuals, by their very essence, require the civil disqualification of certain people; that is, there is no liberty of conscience for all here.²⁶²

Unlike Locke, the Levellers held that political rights, such as freedom of conscience, had to belong to all people equally. The basic equality was theirs in Christ, and should be recognised by the state; and the fundamental equality was not in some distant past, but in today’s political society. Whereas, for Locke, freedom, political equality, and rights are compromised by membership of groups or by individual beliefs. “Locke’s doctrine” of basic political rights, remarks Rawls, “improperly subjects the social relationships of moral persons to historical and social contingencies that are external to, and eventually undermine, their freedom and equality.”²⁶³

There is a further legacy to Locke’s view of toleration, and one which has been identified by some (such as William Cavanaugh)²⁶⁴ more generally with the liberal tradition: his desire, in the name of peace, to relegate the church to the ‘salvation of

²⁶⁰ Ibid., 49.

²⁶¹ Wootton (ed.), *John Locke: Political Writings*, 109-110.

²⁶² This seems to undermine somewhat the recent claims of Grayling that Locke’s *Letter Concerning Toleration* “proved to be a vital” contribution “to establishing the trend of liberty,” and that his “writings on toleration breathed the ... Erasmian spirit” (Grayling, *Towards the Light*, 73, 77).

²⁶³ Rawls, *Political Liberalism*, 287. See also Rawls, *Lectures on the History of Political Philosophy*, 155.

²⁶⁴ Cavanaugh, *Torture and Eucharist*, 191-192.

souls', an interior place that does not affect the civil order and which concerns itself purely with heaven and salvation, as matters of subjective individual belief.²⁶⁵ This, combined with his view that the state can regulate the church, means that we should be careful before claiming that Locke held to a separation of church and state.²⁶⁶ It is probably more accurate to see the church as subservient in his thinking, with faith made individualistic and separate from temporal affairs, with the result that the state is effectively given more power. The paradox is that Locke supports what seems to be an individualistic approach to faith, whilst supporting a more collectivist approach to the state's control of religion.

2.7.6 Summary

We have now seen that there are a number of potential weaknesses with those accounts of Locke's political theory which either (like Waldron) grant him a major role in developing the notion of political equality, or which, more generally (like Manent and Grayling),²⁶⁷ emphasise his leading place in the genealogy of political liberalism. These weaknesses extend even to the work of the so-called more mature Locke. In key periods in the seventeenth century, England's political position was not so much one of the people versus the ruler, but of deep divisions amongst the people.²⁶⁸ In society, according to Locke, the act of the majority, by the law of nature and reason, has the power of the whole. There appears no consideration of the rights of minorities or individuals – his account could thus effectively support the tyranny of the majority. He does not seem to address the possibility that a democratic majority-ruled society can be as much a tyranny as an absolute monarchy.²⁶⁹

Perhaps more importantly, in Sections 205 and 208 of the *Second Treatise*, we can see the original natural right of individual self-preservation being made subservient to

²⁶⁵ See, for example, Grayling, *Towards the Light*, 78.

²⁶⁶ Zagorin, for example, claims that Locke calls for a separation of state and religion (Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton NJ: Princeton University Press, 2003), 265).

²⁶⁷ See Manent, *An Intellectual History of Liberalism*, viii, 37, 39-52; and Grayling A C, *Towards the Light*, 13, 63, 73, 127-128, 260.

²⁶⁸ Ashcraft points out that Locke "was engaged in promoting a revolution which, in fact, most of his contemporaries did *not* support." (Ashcraft, 'Revolutionary Politics and Locke's *Two Treatises of Government*', 430.)

²⁶⁹ Dunn argues that Locke's "insouciance ... on such points as the status of majorities and the merits of different forms of government" is because of Locke's concern with formal theories rather than actual forms of social organisation, and with his overriding criterion of whether actions of authority are in accord with God's natural laws and purposes. (John Dunn, *The Political Thought of John Locke* (Cambridge: CUP, 1995), 127-129.)

the safety of ‘the Body’ of the community: “It being safer for the Body, that some few private Men should be sometimes in danger to suffer”²⁷⁰ Consent, judgement, withdrawal of consent, and resistance thus seem to move away from the individual, as envisaged by the Levellers, to a more communitarian or majoritarian level; yet even at this level, as we have seen, it remains unclear as to who has a say, who consents to the government, and indeed who counts as a member of society. Whatever the answers, it is evident that Locke’s theory posits a society of people with clearly unequal political rights (and of some people with no political rights).

Where Macpherson perhaps missed an important point is in his claim that in Locke’s state of nature, far from there being equal natural rights, there are actually unequal natural rights (viz. property), an inequality which is then cemented when the original compact is made. We can accept Locke’s claim that he holds to equal natural rights in the state of nature (which is critical for his attack on Filmer’s natural inequality); but note that it is in the transfer to political society at the point of the original social contract, and from then on, that there arise differential *political* rights. Macpherson is right that there is a fundamental inequality in Locke’s understanding of people’s political rights, but incorrect in seeing it as being about property-as-estate. In Locke’s thought, all people had equal natural rights in the state of nature; however, once they live in society, certain groups of people have less political rights than others because of the groups that they belong to, or what they think, or what they do or do not do. In modern terminology, Locke in effect legally privileges some groups above members of other groups.

Perhaps Waldron, in his claim for Locke’s unique contribution to the doctrine of political equality, missed the main point in Locke’s later work: Locke is less interested in vindicating equality as such, than in attacking those who in his view endanger our rights because of their absolutism. To put it another way, Locke is interested in establishing original natural equality as a premise for his argument against Filmer, but he is not a believer in political equality. In this, he is fundamentally different from the Levellers.

It might be argued that the mixed constitution of the Whigs at the close of the seventeenth century is a reaction to both the absolute monarchy of the Stuarts and the Parliamentary tyranny of the Republic. However, Locke seems fairly indifferent to the

²⁷⁰ *Second Treatise*, Section 205.

form that the Commonwealth takes (saying it can be a democracy, oligarchy or monarchy);²⁷¹ he is more interested in what it does, how it exercises power: whether it acts in accord with the law of nature (the end of government), or with arbitrary power or no settled laws. Throughout his account, he is thinking about the power and end of the body, the state, and not about individuals as such. Again, this teleological focus on the state and the public good differentiates his thinking from that of the Levellers.

Skinner rightly says that it would be a mistake to trace the development of the modern liberal theory of constitutionalism back merely to Locke. According to Skinner, Locke and his successors developed their views of popular sovereignty and the right of revolution from the scholastic tradition and the radical Calvinist tradition.²⁷² Whilst this is so, Locke's own writings raise a number of profound doubts about the role of Locke in the development of political liberalism: either questions about Locke's role (potentially undermining the school of thought that sees Locke as seminal in the struggle for religious liberty),²⁷³ or questions about what we mean by political 'liberalism' (including the matter of liberalism representing a broad family of related but somewhat different political philosophies).

Waldron seems to be on very uncertain ground when he claims that "Locke's political views were more radical – rather closer to the Levellers – than has sometimes been supposed."²⁷⁴ Locke's view of human equality is a natural law view: it is about equal natural rights *qua* humanity, and not about individual political rights. This is what enables Locke to deny rights to certain groups, in the name of the common good. Locke's exclusion of Catholics, atheists, slaves, and others from political equality is possible because of his natural law understanding of equality. The common good comes above the equality of each person. It is not political liberalism as we would understand it today: it certainly departs from several of the key tenets of what might be described as 'Classical Liberalism', understood, as we saw in the Introduction, as a focus on individual freedom and property rights; limited and minimal government; the rule of law, including equality under the law; religious liberty and the rights of conscience; and the exercise of caution and restraint with respect to government power

²⁷¹ *Second Treatise*, Section 132.

²⁷² Skinner, *The Foundations of Modern Political Thought*, Volume 2, 347-348.

²⁷³ See, for example, Grayling, *Towards the Light*, 63, 73-78, 127-129.

²⁷⁴ Waldron, *God, Locke, and Equality*, 84. Similarly, Laslett suggests (wrongly in my view) that there is a marked resemblance between Locke's final political doctrines and those of the English radicals between 1640 and 1660 (Locke, *Two Treatises of Government*, ed. Laslett, 21.)

and coercion.²⁷⁵ Even allowing for the notion of liberalism as a family of similar but disparate political philosophies, we are left asking if some elements of Locke's thought sit uncomfortably with the label of 'liberalism'.

It certainly seems reasonable to conclude that the liberal tradition of individual rights, limiting the state's powers over individuals, did not start with Locke.²⁷⁶ So although there do appear to be some individualist elements to his thinking (particularly around the right of property), there are also very strong collectivist elements that empower the state over the lives of individuals. "It is not clear in what sense Locke may properly be called a liberal," writes Robert Song. "Strictly, he should be located in the line of neo-Thomist natural law contractarians and Calvinist revolutionaries."²⁷⁷

The discussion of Locke in this section should have enabled us to see how the Levellers developed the natural law tradition in new directions, that both predate Locke's views and are quite distinct from them. The legacy of that distinction will be explored in the next section when we examine traces of Leveller thought in the 1689 Bill of Rights and in colonial American constitutions.

2.8 After Locke

The Levellers' political tenets on the rights and freedoms of the individual vis-à-vis the state, and the contractual relationship between individual and state based on continuing consent that can be withdrawn, were taken up a few decades later by others, and these views were incorporated – to varying degrees – into British and American constitutional theories. Certain Leveller demands appear to be included in the English Bill of Rights of 1689 (though we cannot be certain of any direct influence), and this Bill is held to have influenced the later American Declaration of Independence and the American Bill of Rights.

However, if we look at the text of the 1689 Bill of Rights there seems to be an interesting mix of influences. On the one hand, we have rights that appear to be in keeping with Leveller demands: the right to petition, frequent Parliaments, and rights in

²⁷⁵ See Ryan, 'Liberalism', in Goodin and Pettit (eds), *A Companion to Contemporary Political Philosophy*, 293-295.

²⁷⁶ Grayling, for example, sees Castelli, Milton and Locke as the three seminal figures in the early struggle for liberty (Grayling, *Towards the Light*, 63).

²⁷⁷ Robert Song, *Christianity and Liberal Society* (Oxford: OUP, 2006), 18.

the legal system (juries, fines, punishments).²⁷⁸ Indeed the Act's long title states that it is "An Act Declaring the Rights and Liberties of the Subject", and the Act includes other demands familiar from Leveller tracts, such as the demand not to have a standing army in time of peace. Yet, on the other hand, we also have elements that the Levellers would have opposed: compulsory oaths, Parliamentary and royal powers to settle religion, and the exclusion of Catholics from government and both Houses of Parliament. These less tolerant elements relate directly and indirectly to the second half of the Act's long title, "Settling the Succession of the Crown", and are more in keeping with Locke and the Whig circle. Indeed the 1689 Act of Toleration reinforces this legal intolerance²⁷⁹ – Catholics excluded from sitting in Parliament, dissenters barred from meeting for worship with doors locked, compulsory public oaths,²⁸⁰ compulsory tithes, no tolerance for those that deny the Trinity, legislated attendance at some prescribed form of divine service on Sundays, and no congregation or assembly for religious worship to be permitted without the Church of England's or the local justice of the peace's certification.²⁸¹

The pertinent question is whether the Leveller influences and the Lockean influences thus present different parallel paths – providing separate influences in, for instance, North America. It is outside the scope of this thesis to understand the key source influences of Paine, Franklin, John Adams, Jefferson and Madison, for example; however, there does seem to be some evidence of this idea of two separate paths. To take one example, Sam Adams in *The Rights of the Colonists* in 1772 openly endorses Locke's intolerant approach to the civil rights of Catholics (that is, they should be excluded from toleration). This contrasts with William Penn's 1701 Charter of Privileges which grants freedom of conscience and worship to monotheists. Going

²⁷⁸ Some of these demands predate the Levellers, being found in the Petition of Right and in the enactments of Parliament in the early 1640s (the Triennial Act, the Act for the Abolition of the Court of Star Chamber, for example).

²⁷⁹ The 1689 Act of Toleration (enacted earlier in the year, before the Bill of Rights) is also significant for its failure to repeal the Corporation Act of 1661 and the Test Acts of 1673 and 1678. (Cf. Charles F. Mullett, 'The Legal Position of English Protestant Dissenters, 1689-1767', *Virginia Law Review* 23:4 (1937), 389.) In the years following the Act of Toleration, Parliament passed a number of laws to restrict religious freedom: the Blasphemy Act of 1697, the Occasional Conformity Act of 1711, and the Schism Act of 1714 (ibid., 392-394).

²⁸⁰ In taking the compulsory public oaths, the subject has to make a payment to the justice of the peace. If the subject refuses to take the oaths, they are to be sent to prison without bail. The justice of the peace has the power to demand, at any time, that any person going to any religious meeting take the required oaths.

²⁸¹ Despite this, Grayling wishes to argue: "It is not too much to claim that by the time Locke published his *Letters [Concerning Toleration]* the intellectual argument for religious liberty had been won" (Grayling, *Towards the Light*, 78).

further than Penn, James Madison in his 1789 speech for amendments to the Constitution states: “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.”²⁸²

In America there is some slight evidence that, with a number of Levellers eventually becoming Quakers, Leveller ideas spread by this route to North American colonies and for example fed directly into the framing of the Pennsylvania constitution,²⁸³ the rights in the original Pennsylvania constitution of 1776 are striking for their apparent, but unacknowledged, affirmation of Leveller principles. Leveller ideas also seem to have spread, perhaps via the Baptists, into Rhode Island.²⁸⁴ The Charter or Fundamental Laws of West New Jersey in 1676 has a clear Leveller-style statement of the right to religious liberty as well as a number of rights with respect to the law.

There seem to be some affinities – though this is no more than speculation – between the Levellers’ political theories and what might be called the Jeffersonian position on inalienable individual rights, the sovereignty of the people, and limited government.²⁸⁵ We can see this in Jefferson’s Virginia Statute for Religious Freedom, which holds to freedom of individual conscience, complete religious toleration, separation of church and state, full civil rights and right to hold office irrespective of religious opinions, and abolition of tithes. Peterson notes that Jefferson and Madison dropped the term ‘toleration’ as used by Locke, because it implied an official and preferred religion, and instead adopted the term ‘liberty’ which included both freedom from the oppressions of a state church and freedom to worship according to conscience without any hindrance or discrimination.²⁸⁶ In his 1785 *Memorial and Remonstrance Against Religious Assessments*, Madison seems to echo Leveller ideas with his notion of the free exercise of religion as an “unalienable” right, in the first article, and the

²⁸² James Madison, speech of June 8 1789, at http://www.constitution.org/bor/amd_jmad.htm (accessed 4 July 2009).

²⁸³ Brailsford, *The Levellers and the English Revolution*, 640.

²⁸⁴ The Royal Charter of 1663 for Rhode Island upholds religious freedom; the ratification of the US Constitution by the State in 1790 seems to show possible Leveller influence; as does the State’s own constitution adopted the following century. This should not be surprising, given Roger Williams’s leading role in establishing Providence in 1636 and his involvement in the colony in later years.

²⁸⁵ See for example Merrill D. Peterson, *Thomas Jefferson and the New Nation* (New York: OUP, 1975), 93-96.

²⁸⁶ *Ibid.*, 138.

implications of that for limiting the role of the government, in the second article.²⁸⁷ In an essay on ‘Property’ in the *National Gazette*, Madison uses language that appears to echo the Leveller concept of self-propriety:

A man has a property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. ... In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. ... Conscience is the most sacred of all property, other property depending in part on positive law [but] the exercise of that being a natural and unalienable right.²⁸⁸

We do know, from a letter that Jefferson wrote,²⁸⁹ that he had read Walwyn’s 1651 tract on juries called *Juries Justified*. Jack Lawrence traces some likely links from the Levellers to Jefferson and others in the American Revolution,²⁹⁰ centring round the role of juries.²⁹¹ The Levellers insisted on the right to be tried before a jury of one’s locality; but they also argued for the idea that juries tried the law as well as the fact of the case (and thus juries could acquit someone by effectively nullifying a statute that conflicted with common law.)²⁹² In George Mason’s Virginia Declaration of Rights, we find sections on jury trial, bail, and warrants, which seem clearly to be Leveller inspired, even if indirectly. In the US Bill of Rights the first amendment echoes the first reserved right in the first and second Leveller Agreements relating to freedom of religion. The fifth amendment of the Bill of Rights repeats the Leveller declarations in the second and third Agreements and in various of the petitions against self-incrimination in criminal cases. The US Bill of Rights would appear to owe more textually to Leveller influences (even if indirect), especially in the areas of religious liberty and legal due process, than it does to the English Bill of Rights or to Locke.²⁹³ However, we cannot be certain and this remains speculative.

²⁸⁷ James Madison, *Memorial and Remonstrance Against Religious Assessments*, at http://religiousfreedom.lib.virginia.edu/sacred/madison_m&r_1785.html (accessed 12 September 2009). Cf. Vincent Phillip Muñoz, ‘James Madison’s Principle of Religious Liberty’, *The American Political Science Review* 97:1 (2003), 20-25.

²⁸⁸ James Madison, ‘Property’, *National Gazette*, 27 March 1792, in Lance Banning (ed.), *Liberty and Order: The First American Party Struggle* (Indianapolis: Liberty Fund, 2004), 107. Cf. Muñoz, ‘James Madison’s Principle of Religious Liberty’, 22 n. 14.

²⁸⁹ Thomas Jefferson, Letter to L’Abbé Arnond (or Arnoux), 19 July 1789, in Paul Leicester Ford (ed.), *The Works of Thomas Jefferson*, Volume 5 (New York: G.P. Putnam’s Sons, 1905), 483.

²⁹⁰ Like the Levellers, Jefferson often expressed distrust of the judiciary.

²⁹¹ Jack Lawrence, ‘Who Nullified Jury Nullification?’, at <http://www.juryduty.org/lawrence.htm> (accessed 25 May 2009).

²⁹² The jury’s verdict in Lilburne’s 1649 treason trial being a good example of this.

²⁹³ This is not to deny that some elements of the US Bill of Rights do appear to derive from the English Bill of Rights – the eighth amendment, for example.

2.9 Conclusion

“The Levellers are,” writes Wootton, “not merely the first modern democrats, but the first to seek to construct a liberal state. ... We cannot have any sense of how extraordinary their proposals are unless we remind ourselves that not a single one of their key demands had previously been recognized by any actually existing government.”²⁹⁴ Part of the explanation for this lies in the way that they broke with certain elements of natural law traditions, whilst keeping and emphasising other elements and amalgamating these with various distinct traditions, religious and otherwise.

The natural law traditions, within which Locke’s work is located, with their abstract focus on teleological ends and origins in the state of nature, tend to emphasise the authority of the community as a whole, the source of government power in the consent of the people, the common good, and the natural rights of the people as a whole.²⁹⁵ In a contrast of emphases, the more novel Leveller position places more focus on restrictions on government, the legal rights of individuals, and inalienability – ideas that are derived not from man’s nature understood teleologically, but from Christology (as we shall explore in the next chapter). Put another way, the natural law tradition places a key emphasis on ‘the good’, the end purpose of government, whilst the Leveller position places more of an emphasis on the priority of each person’s freedom and the need to protect individual freedom. Nevertheless, we should not try to oppose Leveller political thought here to earlier natural law thinking; for the very notion of individual personhood, with rights, is rooted, as Tierney tells us, in discussions going back to twelfth-century jurisprudence.²⁹⁶ Perhaps what is novel in the Leveller position is the emphasis on the individual, to include full religious liberty, and the more ‘negative’ attitude towards the state.

Dunn has a pertinent observation on Locke’s *Two Treatises*, that one of the theological premises of Locke’s political arguments is the notion that all that God has created is for some good purpose.²⁹⁷ For Locke, government is good as it is oriented to our ultimate good, our end. We can see an Aristotelian scholastic tradition

²⁹⁴ David Wootton, ‘The Levellers’, in John Dunn (ed.), *Democracy: The Unfinished Journey* (Oxford: OUP, 1992), 71.

²⁹⁵ See, similarly, Sommerville, *Royalists & Patriots*, 102.

²⁹⁶ Tierney, ‘Religion and Rights’, 164, 166.

²⁹⁷ Dunn, *The Political Thought of John Locke*, 95.

underpinning this. Whereas, for the Levellers, there is a more Augustinian sense of the state's role being as a result of the Fall, the state being neutral rather than good (see Chapter Four), and the state having no role in teaching us virtue. By contrast, Locke's state does have a role in promoting virtue, as this is oriented to the 'end' of human society. Although Locke differentiates himself from Hobbes in how the contractarian state is conceived, Locke's state is not the minimal 'night-watchman state' of Robert Nozick, there merely to protect each person's life, liberty, and property. For Locke the state has a positive role, which has an effective primacy over individuals.

In contrast to Locke and those natural law traditions that adopt a broadly positive view of the state's foundation and role, the Levellers seem to be inheritors of the conciliarist natural law tradition of Gerson, Mair, and Almain, that secular societies have arisen as a result of sin.²⁹⁸ The Levellers take ideas that are inherent within natural law traditions and, through combining them with a number of religious and legal traditions, as well as shifting the emphases within natural law thinking (giving a greater role to conscience, for example), posit a political position of the individual, freedom and rights. This enabled them to stand apart from the Puritan view of what should be the polity, with their more 'Jeffersonian' distrust of all political power. As Perry Miller puts it: "Puritan opinion was at the opposite pole from Jefferson's feeling that the best government governs as little as possible."²⁹⁹ We have seen in this chapter, particularly at the Whitehall Debates, that the Levellers are in stark opposition to the Puritans; and thus, descriptions that portray the Levellers as part of Puritanism,³⁰⁰ as the left wing of Puritanism, are both highly misleading and inaccurate. We will explore this further and see this more clearly in the following two chapters when we look at soteriology and ecclesiology, where the theological gulf becomes clearer.

The liberal tradition, desiring to limit the state's powers with respect to individual freedoms, did not start then with Locke, as Tully has suggested, for Locke was still operating within a particular natural law understanding of freedom that emphasised community, its teleological end, and the common good. For the Levellers, in contrast, freedom is rooted in the individual. As we have seen, this political conception of freedom was founded on a religious conception of freedom – under the New Testament

²⁹⁸ Skinner, *The Foundations of Modern Political Thought*, Volume 2, 116-118.

²⁹⁹ Perry Miller, *Errand into the Wilderness* (Cambridge MA: Belknap, 1984), 143.

³⁰⁰ For example, see Lamont, 'Puritanism, liberty and the Putney debates', in Mendle (ed.), *The Putney Debates of 1647*, 241-255.

dispensation we are each set free. As a result, those scholars³⁰¹ who have suggested some links from Leveller thought to Locke's political thought have to face the significant differences in thinking between the two.³⁰²

In some respects, Macpherson is right in seeing the roots of the modern liberal-democratic state in the English seventeenth century; with the struggle surrounding Parliament, the Civil War, and the republican revolution; and with the belief in the value and the rights of the individual.³⁰³ However, his account neglects to consider that these seventeenth-century political roots had much earlier religious, philosophical, and legal roots. "Every single one of the principles enumerated ... as being those of the American Declaration of Independence can be traced back before Locke to the Levellers," says David Wootton, "and almost all of them can be traced back even further."³⁰⁴ As Tierney has described, modern theories of rights have roots in medieval discussions of rights, of the balance between the individual and the corporate community, in the struggle for the autonomy and the freedom of the church, and the subsequent tension between church and state and the role of the church in limiting the power of the state.³⁰⁵

We can begin to question the adequacy of the accounts by those scholars, such as Grayling and Manent, who see political liberalism as arising in a struggle against the church ("the history of liberty proves to be another chapter ... in the great quarrel between religion and secularism");³⁰⁶ with the West before the sixteenth century as an "ice pack of illiberality";³⁰⁷ and liberty being impossible without the advent of secularism. The discussions in this chapter surrounding the growth of the ideas of rights, consent, inalienability, and popular sovereignty, point to the inadequacy of aspects of these accounts. For, as Tierney has shown us, the very concept of each human as a person with individual rights lies in twelfth-century canon law.³⁰⁸ Indeed, as Harold Berman describes, our modern Western legal systems stem from the struggles for the freedom of the church from secular control, beginning in the late eleventh

³⁰¹ Such as Richard Ashcraft: see Ashcraft, 'Revolutionary Politics and Locke's *Two Treatises of Government*', 431, 458-459, 467-468.

³⁰² Cf. Harris, 'The Leveller legacy', in Mendle (ed.), *The Putney Debates of 1647*, 228-230; and Worden, 'The Levellers in history and memory, c. 1660-1960', in *ibid.*, 265-266.

³⁰³ Macpherson, *The Political Theory of Possessive Individualism*, 1.

³⁰⁴ Wootton (ed.), *John Locke: Political Writings*, 12.

³⁰⁵ Tierney, 'Religion and Rights', 163-175.

³⁰⁶ Grayling, *Towards the Light*, 8.

³⁰⁷ *Ibid.*, 11.

³⁰⁸ Tierney, 'Religion and Rights', 164.

century.³⁰⁹ This, in a sense, has analogies with the Leveller calls for legal reforms and codification to protect religious freedom from the secular authorities.

The Levellers may have modified natural law understandings of rights in a new direction, but they did not reject the whole natural law tradition. Although de-emphasising those elements that stressed community and necessity, they continued to use its language, as they continued to hold that there are God-given laws, given within creation, that apply in society (laws relating to theft and murder for example). For the Levellers, society's human positive law should reflect natural rights. The Levellers reject the Puritan vision of the state, for that curtails our freedom in the name of one group, allowing no room for freedom of religious opinion and no boundary around personal actions that do not affect others; but the Levellers do not reject a Christian basis to the laws. Those who argue that the Levellers wanted a secular democracy assume too much in their unstated definition of what 'secular' would mean in such a case. We will return to this point in the later chapter on the common law. It is certainly the case that the Levellers held that the law should recognise (should yield to) those prior rights that are God-given and given to each of us equally.

Waldron's important contribution in this debate over rights is to recognise that claims for equal human rights probably do not make sense without a religious foundation that understands that humans are equal.³¹⁰ In the next chapter we will look further at the soteriological foundations of this claim, as the Levellers understood them.

³⁰⁹ Berman, 'Religious Foundations of Law in the West: An Historical Perspective', 5-10. The accounts of Manent and Grayling fail to engage with current scholarship, especially in medieval history and legal studies, that shows that many of what we take as modern rights developed in pre-Reformation times, and were informed by religious debates rather than secularism. For example, the right to due process – core to political liberalism, and especially dear to the Levellers – developed within the context of natural law and common law discussions of a right not to be judged without a fair trial (Gratian, *Decretum*, Causa 30, q. 5, c. 10), the move from trial by ordeal caused by the decree of the Fourth Lateran Council (Canon 18), the need for a formal accusation (Aquinas, ST, II-II, q. 67, a. 3), the notion that one is innocent until proven guilty (Johannes Monachus's gloss on Boniface VIII's *Rem non Novam*), the need for summons to court and public judgement/sentence (ibid.), the requirement for solid evidence before judgement (Gratian, *Decretum*, Causa 30, q. 5, c. 11), the right against self-incrimination (William Durantis (Durandus), *Speculum iudiciale*), the right of defendants to a defence (Paucapalea, *Summa*), and the right of appeal (Gratian, *Decretum*, Causa 2, q. 6, cc. 22, 28; and Causa 35, q. 9, cc. 3-9); not to mention the Assize of Clarendon and Magna Carta. See, for example, Kenneth Pennington, 'Innocent until Proven Guilty: The Origins of a Legal Maxim', *The Jurist* 63:1 (2003), 106-124. On supreme appellate right, see Brian Tierney, "'Tria Quippe Distinguit Iudicia ...'" A note on Innocent III's Decretal *Per Venerabilem*', *Speculum* 37:1 (1962), 48-59. We will return to the subject of due process in the chapter on common law. I am indebted to the work of Pennington for the legal history in this footnote.

³¹⁰ Cf. Waldron, *God, Locke, and Equality*, 13, 235. This perhaps reflects Aquinas's view that "nature made all men equal in liberty" (Tierney, *The Idea of Natural Rights*, 279) and the views of Las Casas that the American Indians have rights because "they are our brothers, and Christ gave his life for them" (Tierney, *The Idea of Natural Rights*, 273).

3. SOTERIOLOGY

3.1 Introduction

The thesis is that the Levellers developed a political principle of genuine religious freedom as the core of individual liberty, based on their belief in free grace and universal redemption (soteriology) and their understanding of the voluntary believers' church (ecclesiology). In this chapter we will examine the soteriological basis of this claim, leaving the ecclesiological claim to the next chapter. The discussion will show how a theological category, soteriology, becomes one of the pillars upon which the Levellers erect their distinctive notions of individual political liberty and liberty for all. This examination will enable us to see how the Levellers developed a notion of individual freedom that could encompass religious liberty, including freedom for non-believers, and freedom from the state.

The chapter will show how the Levellers built a political understanding of liberty upon a Lutheran doctrine of Christian liberty. This understanding was modified by General Baptist and Anabaptist soteriology and the antinomianism of the free grace preachers, and thus significantly shifted from the positions of Luther and Calvin. It is these basic soteriological differences between the Levellers and the Calvinist Puritans¹ – both the Presbyterians and Independents – that laid the foundations for the political differences between the Levellers and their Puritan contemporaries. The Levellers develop the Lutheran understanding of the freedom of the individual believer, but move beyond it to emphasise external liberty, the freedom of the non-believer, and the importance of what one does in life: notions that include genuine religious liberty for all and the consequent limiting of the state. With the Levellers, individual Christian liberty entails restricting the role and powers of the state, and leaves no room for Luther's Christian ruler or Calvin's Christian magistrate enforcing religious orthodoxy.

¹ We should note here that there were also Calvinists in England who were not Puritans. Within the broad Calvinist 'family' or tradition, there was a variety of beliefs with respect to Calvin's soteriology and with respect to Puritanism. For example, on the one hand, the Particular Baptists occupy what might be called a grey area; whilst, on the other hand, there were moderate Calvinists and Arminians (more on these later) amongst those who supported an episcopal established church.

We will see in this chapter that the Levellers take the natural law anthropological insight (as seen in the previous chapter) that we are all equal in Christ, and graft on the doctrine of Luther that we are individually made free in Christ; but that, unlike Luther's doctrine, this freedom in Christ is for all. The Leveller position centres on their understanding that all people alike are made free by the grace of Christ. The research examines whether this 'universal' understanding of freedom is directly influenced by the general redemption soteriology of the General Baptists, and perhaps in some way indirectly influenced by earlier Anabaptist soteriology. For with the Levellers it seems that certain soteriological insights are used as the basis for the demand for religious liberty for all. The account provides a corrective to those scholars who have either seen the Levellers as the extreme end of Puritanism;² or who have seen the source of Leveller thinking in more secular terms.³ It also provides a contribution to the wider debates about the influences of continental Anabaptism in English religious and political movements. At the same time, the research sheds light on our understanding of political liberty, and the sources of certain modern conceptions of liberty in pre-Enlightenment thought and indeed their partial roots in pre-Reformation thought; thus placing the development of several key modern ideas such as religious toleration within their proper context, and avoiding a deracinated approach to such development. As Wootton remarks, "to write the Leveller view on toleration ... into a constitution would be to adopt a theological position."⁴

One of the distinctive contributions of the chapter to scholarship about the Levellers is to show how any account of the sources of Leveller philosophy has to be highly nuanced in order to show how they take what appear to be quite different sources and yet synthesise them – as we noted more generally in the Introduction. To give but one example: we seem to have ideas from Luther, Anabaptism, and scholasticism as theological sources for the understanding of the key concept of freedom. In turn, this has a number of implications: firstly, any account that fails to recognise the primacy of liberty in Leveller thought risks being partial; secondly, our understanding of the wider history of the development of our idea of liberty may be incomplete if we fail to appreciate the religious sources; and finally, contemporary schools of Christian thought

² For example, Wolfe, Woodhouse, Haller, D.B. Robertson, Pease, and Shaw. Even as recently as 2007 Geoffrey Robertson has repeated the description of the Levellers as "Puritans" (Geoffrey Robertson, *The Levellers: The Putney Debates* (London: Verso, 2007), ix).

³ For example, Wolfe, Brailsford, and Aylmer.

⁴ Wootton, 'Leveller democracy and the Puritan Revolution', 442.

that seem to deny the Christian basis of certain tenets of classical liberalism may be, to a degree, myopic.

The chapter thus continues the themes running through the thesis of liberty and the law. We saw in the previous chapter the use made of aspects of the natural law inheritance; in this chapter, we will see the Lutheran introduction of the key note of liberty, especially liberty from the old Law. We will discover among the free grace theologians the presence of antinomianism (though they would deny being antinomians), and this will lead us into an understanding of how the Levellers use the doctrine of Christian liberty to assert an individual liberty for each and for all, and to assert a higher law that checks the role and claims of the state. The antinomianism, which is inherent in the Lutheran claim that the Law and its observance are set aside, is used by the Levellers but without reducing this freedom to an inner spiritual freedom, as Luther does. The Levellers develop the idea that the freedom is external and physical, and is for each and all. Furthermore, the setting aside of the old Law has wider implications for the role of the magistrate, for the antinomianism of the free grace theologians is not an anarchic denial of the law, but a specific denial that the Old Testament model of Israel is applicable to the church and state under the New Testament.⁵ That is, the antinomianism is not used to promote individual licence, particularly with respect to others, but to limit the powers of the state.

3.2 Luther

We will first examine Luther's understanding of Christian freedom, in order to analyse the important elements in Luther's thinking of the individual, the law, and freedom. This will allow us to understand the soteriological influences that he was to provide, as well as the points of departure in Leveller thought. What follows is, therefore, designed to be a brief overview of Luther's soteriology, focussing on the theological understanding of freedom, in which the most salient points for our discussion are highlighted – namely, freedom from the old Law and an emphasis on the individual, in which Christian liberty appears as an inner, spiritual freedom of the individual

⁵ Ibid., 438-439.

conscience, as an almost legal or forensic change in status,⁶ of which the believer is a passive recipient, and which is freely given to some predetermined people.

In the previous chapter we briefly discussed Luther's treatise *On Christian Liberty (the Freedom of a Christian)*; in this chapter we will focus on his *Commentary on Galatians* – a work which was popular in England and widely available⁷ – which develops the doctrine of justification and its understanding of freedom along more theological lines. As we will later see, the free grace theologians of the 1640s build on the theology expressed in Luther's *Commentary on Galatians* and his doctrine of Christian liberty: liberty from the Law, purchased by Christ, with the old Law abolished. Luther though limits liberty to a spiritual freedom – freedom from God's wrath, with the freedom existing in the conscience, explicitly there and no further.

“This Scripture speaketh plainly of the abolishing of the law, and of Christian liberty,” Luther says on Galatians; “... a Christian, laying hold of the benefit of Christ through faith, hath no law, but all the law is to him abolished.”⁸ As a result, “there is now no bondage any more, but only liberty and adoption.”⁹ For the Christian, he asserts, “the promise is the inheritance itself ... deliverance from the law, sin, death, and the devil, and a free giving of grace, righteousness, salvation, and eternal life. This promise is not earned, it is given. By whom? By Jesus Christ”¹⁰ Furthermore, and most importantly:

The promises of the New Testament have no such condition joined to them, nor require anything of us, but bring and give unto us freely, forgiveness of sins, grace, righteousness, and everlasting life for Christ's sake.

... we speak of the liberty of the spirit, whereby we are dead to the law, to sin and death, and we live and reign in grace.¹¹

Luther's *Commentary* is a sustained attack on the idea that we can do anything towards our salvation, and an assertion of our freedom in Christ from the Law which condemns

⁶ It should be noted that, although Luther's doctrine of justification is often read in forensic terms, there is a Finnish body of Luther scholarship with a revisionist reading that finds an important role for sanctification in Luther: see, for example, Carl E. Braaten and Robert W. Jenson (eds), *Union with Christ: The New Finnish Interpretation of Luther* (Cambridge: Eerdmans Publishing, 1998); and Tuomo Mannermaa, *Christ present in Faith: Luther's View of Justification* (London: Augsburg Fortress, 2005).

⁷ As we noted in Chapter Two, Section 2.3. A number of different full editions and abstracts of this commentary (translated into English) had been published in London, making it one of the most widely published of Luther's works in England at this time.

⁸ Martin Luther, *Commentary on Galatians*, trans. Erasmus Middleton (Grand Rapids MI: Kregel Publications, 1979), 287. We use here a modern (1850) translation for the quotations from this commentary, as we cannot be sure exactly which contemporary edition the Levellers would have read.

⁹ *Ibid.*, 250.

¹⁰ *Ibid.*, 209.

¹¹ *Ibid.*, 281-282.

us. Nothing that we can do is relevant to this justification. We are freed from condemnation and we are also freed from the tyranny of observance and works. This is what Luther means by freedom from the Law:

This then is the proper and true definition of a Christian: that he is the Child of Grace and remission of sins, because he is under no law, but is above the law, sin, death, and hell. And even as Christ is free from the grave, and Peter from prison, so is a Christian free from the law; the conscience by grace is delivered from the law.¹²

The freedom of the Christian is freedom from the Law. “Christ ... is called my law, my sin, my death, against the law, sin, and death: whereas, in very deed He is nothing else but mere liberty,” writes Luther; “So then, while Christ is the law, He is also liberty. ... we might behold this joyful conflict: to wit the law fighting against the law, that it may be to me liberty.”¹³

This is why the *Commentary* appears as a sustained polemic against a Catholic view of merit, works, sanctification,¹⁴ and human action in the salvation process; we are set free and nothing that we do or can do is relevant. Nevertheless, for Luther, this freedom from works gives us reassurance: we must be assured that we are under grace. The only appropriate response from us is faith – for Luther faith is trust in God’s mercy: “Is there not also grace, remission of sins, righteousness, consolation, joy, peace, life, heaven, Christ and God? Trouble me no more, O my soul. Trust in God”¹⁵ Luther adds that “we live in joy and safety under Christ, who now sweetly reigneth in us by His spirit. Now, where the Lord reigneth there is liberty.”¹⁶

Luther is no antinomian and holds that we ought to behave morally, but doing good is always secondary, a fruit, a subsequent moral command, and not intrinsic to salvation. Indeed, Luther is quite explicit that charity is not of faith, and that the believer obtains righteousness and everlasting life without charity (*Commentary on Galatians* 3:12). As a believer, it might thus appear that what you do in life is of no

¹² Ibid., 85.

¹³ Ibid., 86-87.

¹⁴ As already noted, we need to be nuanced in what we say about Luther and sanctification, given the different scholarly readings of Luther’s works and interpretations of his doctrines. For example, Luther is able to talk of growth in righteousness – see the Second Article of his *Defence and Explanation of all the Articles* (Martin Luther, *Defence and Explanation of All the Articles of Dr Martin Luther Unjustly Condemned by the Roman Bull*, at http://www.godrules.net/library/luther/NEW1luther_c4.htm (accessed 13 June 2009)). Indeed, this thesis does not set out to present a critique of Luther’s views. That said, what matters here for the purposes of this thesis is how Luther’s soteriological ideas were received by his contemporaries, especially the Anabaptists, and it is their understanding of Luther’s doctrine and its implications which we will examine.

¹⁵ Luther, *Commentary on Galatians*, 214.

¹⁶ Ibid., 219.

effect; that there is no sense that you will be judged on the basis of what you have done in life for others; that salvation has become an inner private matter, and that once you are a believer the church's role and importance is diminished. A possible trajectory of such a reading of Luther's views might be that what you do in life seems emptied of long-term relevance, that the moral life has no essential role in salvation. This is how some of the Anabaptists read Luther, as we will discuss below, and this becomes important when we consider later in this chapter why the Anabaptists reject certain key elements of the Lutheran doctrine of justification.

Without making a judgement on his soteriology, we can observe that there is a mainstream reading of Luther's soteriology that sees his theory turning on his fundamental premise of how atonement is understood: what we might think of as a legal conception. Because of sin, we stand condemned; Christ takes on this condemnation; thus the condemnation is lifted and we are made free from death. The forensic account of justification leads to the individual being considered as though moving from a state of being worthy of damnation to a state of redemption in a quasi-legal manner. Guilt is lifted and the believer is now free; moreover, this is binary – black or white – we are either justified or not. Grace is the external forgiveness that changes us from the condemned state to the redeemed state. This binary move in states, and our lack of cooperation in it, means that grace appears primarily as freely-given mercy. The only appropriate response of the believer can be faith in Christ setting them free – since faith alone suffices, nothing is needed but faith. Whilst Luther's account emphasises Christian freedom, it does so within the context of an almost legal sense of salvation: we are rightly condemned as humans as sinners; Christ alone takes away this condemnation, with no action on our part; though we are still sinners, believers are now counted justified by Christ.

On this reading, the idea that there is no action or cooperation on our part is central to Luther's soteriology. In *The Bondage of the Will* Luther denies free-will and puts forward a corresponding form of predestination that again appears to deny any value to what we do in life: the human will is “merely the passive subject of the work of grace.”¹⁷ Because salvation does not depend on my will, this provides a comforting certainty. Our will is corrupt and impotent, and whatever we do is done “necessarily

¹⁷ Martin Luther, ‘The Bondage of the Will’, in Dillenberger (ed.), *Martin Luther: Selections from His Writings*, 175.

and immutably in respect of God's will."¹⁸ Only God has free will; man has no free will, but is captive either to the will of God or to the will of Satan. Grace, the offer of God's mercy, is only offered to some to whom God ordains and wills. We can see here a foundation for Calvin's doctrine of predestination (which we will return to later in this chapter).¹⁹

What is important here is that freedom is given by God, and given only to some people, those with faith. As Hill remarks, this creed "proclaimed *Christian* liberty, liberty for the elect."²⁰ The freedom that is so given, is that of being set free from the penalty due, and a freedom of assurance that this is so. Such a view strengthens the sense of inner reliance on God, and of the faith of the individual, but may appear to weaken the sense of what you do in life being important, and may seem to weaken the importance of charity, of love. As a result, this doctrine of predestination (both the issue of free will and the moral life, and the issue of limited atonement) will prove to be a point of departure for the Anabaptists, as we will see.

Luther seems to move from the tenet that we are justified by Christ alone and that faith alone can apprehend this, to justification of believers by faith alone, to faith alone justifies some predetermined persons. This is reinforced by Luther's views on unbelievers: for a non-believer, not only are sins not forgiven, but even their good works are sin (the works are indeed not good but evil).²¹ All serving of God, without Christ, is idolatry: even if one does works of mercy, the works of apostles, if these are done by an unbeliever, the works are wicked and damnable sins. This is because the unbeliever is an idolater and thus abides under wrath. This means that, for an unbeliever, what they do in the world is literally irrelevant. There is no liberty for the unbeliever, a point that will carry important political implications. For Luther, it is also the case that Catholics, 'Turks' (i.e. Muslims), Jews, and 'heretics' (such as Anabaptists) serve a god of their own devising and therefore are idolaters too and thus

¹⁸ Ibid., 181.

¹⁹ Calvin too denies free will: see his *Institutes of the Christian Religion*, Book 1, Chapter 15, Section 8; and Book 2, Chapters 2 and 5 (John Calvin, *Institutes of the Christian Religion*, trans. H. Beveridge (Grand Rapids MI: Eerdmans Publishing, 1997)). Examples of Calvin's doctrine of predestination can be found in his work, *Concerning the Eternal Predestination of God*, especially VIII.4 and VIII.5 (John Calvin, *Concerning the Eternal Predestination of God*, trans. J.K.S. Reid (Cambridge: James Clarke, 1961)); and in *Institutes of the Christian Religion*, Book 3, Chapters 21-24. This doctrine is reflected in the 1646/47 Westminster Confession of Faith, Chapter III, Sections III and VII.

²⁰ Hill, *The World Turned Upside Down*, 156.

²¹ Luther, *On Christian Liberty*, 40-42.

abide under the wrath of the true God.²² Hence Luther limits redemption to believers, and a specific group of believers at that.

Luther in a way moves the understanding of salvation into a position where it is the individual believer before God. The ‘corporate’ sense of salvation within the Catholic tradition seems to be lost: salvation as a member of the Body of Christ, the church. The individual is no longer alone just at the moment of Judgement after death, but fundamentally alone in terms of faith and justification in this life. That it is now the individual that is saved becomes both a strength and a potential weakness in his theology. The weakness might be that it could tempt the believer into a selfish assurance of their own individual salvation divorced from other people (divorced from any communal action), or into passivity (a weakness which the Anabaptists note, as we shall see shortly); the strength is that it begins to emphasise freedom and the individual (based on the divine action with regard to the individual).

For Luther, this salvation and the freedom that it entails arise in a direct relationship between the believer and God, without human mediation – not through church, pope, priest, or any human rites or authority. This liberty comes directly from God, and is ours, anthropologically, in Christ: freedom is not granted by any human authority or society. We can see here the immediate individual liberty that is a platform for Leveller thinking: the notion that freedom belongs to individuals through Christ’s redemptive act, the key idea that freedom is rooted in Christ and belongs primarily to people as individuals: it is not granted by the state or the common law; and it inheres in individuals in some sense inalienably, having been set free by Christ.

However, Luther’s doctrine of Christian liberty stops short of going beyond spiritual freedom: “Now although the gospel make us not subject to the judicial law of Moses, it doth not exempt us from all politic law, but maketh us subject during this corporeal life, to the laws of that government under which we live; and to obey the magistrate and the law, ‘not’ as Peter saith, ‘because of wrath, but for conscience’ sake’.”²³ Christian freedom is the inner freedom from spiritual condemnation and death. “We speak of that glorious liberty whereby Christ hath made us free,” states Luther, “not from an earthly bondage, from Babylonian captivity, but from Christ’s everlasting wrath. And where is this done? In the conscience.”²⁴ For Luther, Christian

²² Luther, *Commentary on Galatians*, 254-259.

²³ *Ibid.*, 289.

²⁴ *Ibid.*, 298-299.

liberty is that we are made free of the wrath of God for ever, free from sin and death, and free from the observance of the Law; it is a liberty of the spirit, whilst we remain subject to the governance of the temporal realm.²⁵

Although Luther lays the foundation for the doctrine of Christian liberty within the Reformed tradition, we can see that his ‘freedom’ remains somewhat restricted. It is limited to inner spiritual freedom within the conscience; and it is limited to believers (there is no freedom for non-believers, i.e. there is no freedom to practise idolatry.) We will discover in the next section how the Levellers take this notion of individual Christian liberty, our freedom in Christ, but shift it significantly: with more consequences for external freedom, and to include freedom for all.

3.3 Soteriology in Leveller writings

“Whosoever means to settle good lawes, must proceed in them with a sinister opinion of all mankind, and suppose that whosoever is not wicked, it is not for want only of opportunitie,” writes Lilburne, reminding us that sin is ever present.²⁶ “We are as evill to our selves in all things as we can be possible,” notes Walwyn.²⁷ In the tract, *Man’s Mortallitie*, Richard Overton sets out his doctrine of original sin: “All, and every part, even whole Man was lyable to Death by Sinne.”²⁸ The whole man Adam was made mortal in his sin and thus the whole man will now die; the whole man is fallen, corrupt. Man’s immortality, beatitude, “comes through Faith.”²⁹ In the tract, *The Vanitie of the Present Churches*, Walwyn praises Luther’s doctrine of free justification by Christ alone.³⁰ On the face of it, these various quotations might seem to be evidence of a broadly Lutheran approach. Indeed, an anonymous Leveller writer (possibly Wildman) said of the Levellers that “they are all professors of the Christian reformed Religion, and do all agree in these general Opinions about Religion.”³¹

²⁵ Francis Oakley, ‘Christian obedience and authority, 1520-1550’, in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 169-172.

²⁶ John Lilburne, *The Peoples Prerogative and Priviledges*, quoted in Robertson, *The Religious Foundations of Leveller Democracy*, 94-95.

²⁷ William Walwyn, *The Power of Love*, in McMichael, 84.

²⁸ Richard Overton, *Mans Mortallitie*, Thomason E.29(16), 1.

²⁹ *Ibid.*, 3.

³⁰ See McMichael and Taft (eds), *The Writings of William Walwyn*, 319.

³¹ John Wildman, *The Leveller*, Thomason E.968(3), 10.

However, we should note in the above quotation from Overton the evidence of his belief in Mortalism – the idea that the soul sleeps or dies between the time of the death of the body and the General Resurrection.³² While accepting that Overton did believe in Mortalism, we should also note that he appears to be the only Leveller writer to accept this belief. We should be wary of overstating the significance and implications of Overton’s views on Mortalism – for example, Hill claims that Overton had a perfunctory view of the ultimate resurrection,³³ a claim that seems at odds with Overton’s own stated views³⁴ – given the wider context in which many mainstream figures (including Hobbes and Locke) have been accused of Mortalism, and in which there are in fact a variety of different forms of Mortalism.³⁵ Indeed, Watts states that Overton’s view of the soul was a widely-held Anabaptist view,³⁶ and we will see the significance of Overton’s links to the Mennonite Anabaptists during this and the next chapter. It would certainly be stretching the evidence to claim, as Hill does, that one of Overton’s religious beliefs supports the idea that the Levellers are linked back to the Lollards,³⁷ or that Overton reached similar conclusions to Winstanley that heaven and hell are an “upper-class invention”.³⁸

Overton does appear to adopt a non-Lutheran position with regard to grace and salvation: “None can be condemned into Hell, but such as are actually guilty of refusing Christ.”³⁹ He further appears to move away from the strict Lutheran and Calvinist positions with his statement that “at the day of Judgement we must receive our reward according to our deeds good or bad.”⁴⁰ So, although we know from their explicit statements that several of the Leveller leaders had read Luther, and lay great emphasis on the doctrine of free justification (as we shall see in the next section), we can begin to see here the crucial move towards the notion of judgement based on deeds.

³² Hill, ‘Irreligion in the “Puritan” Revolution’, 201-202.

³³ Ibid., 201.

³⁴ Overton is opposed to the doctrine of the immortality of the soul, because he holds that it undervalues the sufferings of Christ and denies the Resurrection and is thus a blasphemous heresy (Overton, *Mans Mortallitie*, 55). Hill’s account fails to do justice to the way in which Overton uses mainstream scholastic language to argue his case: God, in creating Adam, gives “that lifelesse Body a communicative rationall Facultie or property of life, in his kind” (ibid., 1). Because of sin, “Death reduceth this *productio Entis ex Non-ente ad Non-entem*,” whereas the Resurrection “restoreth this non-ented Entitie to an everlasting *Being*” (ibid., 3).

³⁵ See C.A. Patrides, Book Review of *Christian Mortalism from Tyndale to Milton* by Norman Burns, *Renaissance Quarterly* 27:3 (1974), 375-376.

³⁶ Watts, *The Dissenters*, 46 n. 2.

³⁷ Hill, ‘From Lollards to Levellers’, 60.

³⁸ Hill, ‘Irreligion in the “Puritan” Revolution’, 201.

³⁹ Overton, *Mans Mortallitie*, 5.

⁴⁰ Ibid., 25.

Walwyn advocates a life of faith and “to live righteously, godly, and soberly in this present world”⁴¹ and “manifesting our universal love to all mankind, without respect of person, Opinions, Societies, or Churches.”⁴² He praises Luther’s doctrine of free justification by Christ alone, adding that Christ is the propitiation not just for our sins, but for the sins of the whole world. Indeed, his statement that the love of God “bringeth salvation unto all men”,⁴³ is open to interpretation, but possibly seems to move away from the strict Lutheran position. We can see this in the response to this tract of Walwyn’s, which is criticised in an anonymous Puritan pamphlet as being Jesuitical and antinomian and as being an attack on all churches, especially Presbyterian and Independent;⁴⁴ and he is assailed for making “his Disciples as full of good works, as they are of knowledge.”⁴⁵

The question, then, is whether we are seeing here traces of a theory of universally offered salvation, the notion that grace is offered to all (rather than just an elect remnant) and so all have the opportunity of salvation unless they reject it. Firstly, Walwyn talks about innocent cannibals that commit no sin, and by implication are thus amongst the saved; so he seems implicitly to accept some idea of general redemption that goes beyond the believers. Secondly, he attacks those who call themselves ‘Saints’ and yet who condemn people for their sins – unlike God who passes by the sins of David. For with God “there is mercy, his mercies are over all his works; he delighted in showing mercies, he considers that we are but dust: and putteth away our sins out of his remembrance.”⁴⁶

The Levellers themselves repeatedly note in their tracts that they are vilified as atheists, Jesuits, and deniers of Scripture. Walwyn’s assertion that “we have no Preacher of the Gospel but the Scriptures; which being the infallible Word of God ...”⁴⁷ rebuts the last of those claims. However, Walwyn’s son-in-law and defender, Humphrey Brooke, acknowledges that Walwyn’s view that every wicked man has “a Hell in his own Conscience; as on the contrary, every good man to have the Kingdom within him” could be misinterpreted; and affirms that Walwyn believes that there is a Hell succeeding Judgement, as according to Scripture – though Brooke adds the sting:

⁴¹ Walwyn, ‘The Vanitie of the Present Churches’, in Haller & Davies, 266.

⁴² *Ibid.*, 272.

⁴³ *Ibid.*, 266. (For the biblical allusion, see Titus 2:11.)

⁴⁴ Anon., *Church-Levellers, or, Vanity of vanities and certainty of delusion*, Thomason E.561(5), 10.

⁴⁵ *Ibid.*, 11.

⁴⁶ Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 378.

⁴⁷ Walwyn, ‘The Vanitie of the Present Churches’, in Haller & Davies, 261.

“though it seems contrary to reason that a man should be punished everlastingly for a little sinning.”⁴⁸

It is significant that Walwyn explicitly invokes the Epistle of James: “... and Saint James, his pure and undefiled Religion, is, to visit the fatherless, and the widows in their distresse And as for Riches, Saint James, whom I am exceeding in love with, had no great opinion thereof.”⁴⁹ He describes the judgemental and charity-less ‘Saints’ as like the Pharisees:

... not he that saith Lord, Lord, shall enter into the kingdom, but he that doth the will of my father which is in heaven: requireth, That our light so shine forth before men, that they, seeing our good works, may glorifie our heavenly father and at the last day, he will say unto those on his right hand, Come ye blessed of my Father, receive the kingdom prepared for you; for when I was an hungry, ye fed me, naked, ye clothed me⁵⁰

Although within the Protestant tradition, we find here a re-emphasis on the notion that what you do in life is important (good deeds). The explicit positive references to the Epistle of James are also perhaps revealing as distancing Walwyn from Luther.⁵¹ As Wildman puts it: there are two parts of true Religion – the first is reception of God, and the “second part of it, consists in works of righteousness, and mercy, toward all men.”⁵²

For Walwyn a true church is “a true Church in the Scripture sence; being such only, as wherein the very word of God is purely and infallibly preached.”⁵³ If people “deserve the name of Saints”, then it is not for belonging to some particular church but for being “practicall Christians” – feeding the hungry, clothing the naked, supporting poor families, etc.⁵⁴ “In doing good,” he notes, “nothing is more acceptable to God.”⁵⁵ Equally, Walwyn says that some of the (Puritan) churches are mock churches. In the tract, *The Vanitie of the Present Churches*, he lambasts all churches and preachers – the Church of Rome, the former bishops of the established church, the “Presbyters” (Presbyterians), and the Independent Congregationalists; believers in infant baptism, and believers in adult baptism; believers in election and reprobation, and those who

⁴⁸ Humphrey Brooke, *The Charity of Church-men*, Thomason E.556(20), 4.

⁴⁹ Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 382-383.

⁵⁰ *Ibid.*, 381.

⁵¹ See Luther’s ‘Preface to the Epistles of St James and St Jude’, in Dillenberger (ed.), *Martin Luther: Selections from His Writings*, 35-37. That said, it must be noted that Luther had an ambivalent – perhaps, even, contradictory – attitude to the Epistle of James. Although he famously criticised this epistle, he did include it in his 1522 New Testament in German.

⁵² Wildman, *The Leveller*, 11-12.

⁵³ Walwyn, ‘The Vanitie of the Present Churches’, in Haller & Davies, 255.

⁵⁴ *Ibid.*, 272.

⁵⁵ *Ibid.*, 274.

believe in general redemption. What he is attacking is their each claiming the truth, each claiming God's Spirit for themselves. Because of this, the people end up divided into "Factions, Sects and Parties"⁵⁶ and the Gospel is "made use of, as a fire-brand of quarrells and dissentions."⁵⁷ He accuses them of ignoring justice, peace and freedom in favour of endless disputes. This is reflected likewise in Overton's statement:

So that the businesse is, not how great a sinner I am, but how faithfull and reall to the Common-wealth; that's the matter concerned my neighbour, and whereof my neighbour is only in this publick Controversie to take notice; and for my personall sins that are not of Civill cognisance or wrong unto him, to leave them to God, whose judgement is righteous and just. And till persons professing Religion be brought to this sound temper, they fall far short of Christianity.⁵⁸

Nevertheless, Walwyn condemns those who invoke the Spirit of God in order to neglect the Scriptures (claiming direct inner experience of the Spirit), who reject sin and evil, and who take all their inclinations, likings or dislikings to be immediately from God.⁵⁹ "Admit any mans judgement be so misinformed," states Walwyn, "as to believe there is no Sinne; if this man now upon this government should take away another mans goods, or commit murder or adultery; the Law is open, and he is to be punished as a malefactor, and so for all crimes that any mans judgement may mislead him unto."⁶⁰

In the Leveller writings we have seen some evidence that the Levellers adopt a Reformed soteriology, but that it departs from Luther's soteriology in significant points: the role of works and the breadth of redemption. We now need to explore in more detail the theology of grace in Leveller thought, and especially the crucial role of free grace theology.

3.4 Levellers and Free Grace

In *Walwyns Just Defence*, Walwyn sets out his theology of grace: "I, through God's goodnesse, had long before been established in that part of doctrine (called then, Antinomian) of free justification by Christ alone For the truth is, whosoever is

⁵⁶ Walwyn, 'The Vanitie of the Present Churches', in Haller & Davies, 270.

⁵⁷ *Ibid.*, 39.

⁵⁸ Richard Overton, in a letter included in the pamphlet 'The Picture of the Council of State': see John Lilburne, Richard Overton, and Thomas Prince, *The Picture of the Council of State*, in Haller & Davies, 231.

⁵⁹ Walwyn, 'The Vanitie of the Present Churches', in Haller & Davies, 259.

⁶⁰ Walwyn, *A Helpe to the Right Understanding of a Discourse concerning Independency*, 8.

clearly possest with this one Doctrine of Free Justification, hath such a touchstone as presently discovers the least contradiction either in Praires, or Sermons ...”⁶¹ He continues: “But having digested that *Unum necessarium*, that pearle in the field, free justification by Christ alone; I became master of what I heard, or read, in divinity.”⁶² In his work, *The Power of Love*, Walwyn writes that “yee are all justified freely by his grace through the redemption that is in Jesus Christ” and “we are justified freely by his grace.”⁶³ This is explicitly referring to a free grace theology – as preached by the likes of John Saltmarsh (see next section).

Is Walwyn admitting to being an antinomian, or rather claiming to be a believer in free grace, which is called by his detractors ‘antinomian’? Let us look at what these terms mean. ‘Antinomian’ was the term for those Christians who believed that they were saved and that salvation was enduring such that they were not bound by the law. At its extreme this has been caricatured as a belief in no moral law – a member of the elect is allowed to do what they want. Although a caricature, it is easy to see how this could be taken as a logical extension of Luther’s and Calvin’s predestinarian theology: if the elect and the reprobate are predestined and what you do in life has no effect on this, then you might conclude that you are free to do what you wish with no effect on your salvation. Although some groups with antinomian beliefs did exist and did move towards the extreme (such as the Ranters and the Diggers), mainstream antinomianism in fact was about the distinction between the Old Testament Law and the New Testament emphasis on grace. Walwyn seems to be holding the view that by Christ’s grace you are free from the old Law (the Law of the Old Testament) and instead are commanded to follow Christ’s commandment to love one another. So it is not a licentious freedom; instead it is the freedom to love. We should read Walwyn therefore as emphasising not freedom from morality, but a positive moral freedom to love. He tells the author of *Gangraena*, Thomas Edwards, that Edwards should not consider himself a Christian until his soul is “possessed with the spirit of true Christian love, which doth no evil to his neighbour, and therefore is the fulfilling of the Law.”⁶⁴

Let us look at what is meant by a free grace theology. ‘Free grace’ is the belief that grace is unearned and unconditional and thus, while the saint might transgress, they

⁶¹ Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 361-362.

⁶² Ibid., 363-364.

⁶³ Walwyn, ‘The Power of Love’ in McMichael, 89-90.

⁶⁴ Walwyn ‘A Whisper in the Eare’, in McMichael, 181.

remain one of the elect. The gift that is freely given is that of salvation. There are two sides to this theological freedom: a) the gift of Jesus Christ, the gift of justification in Christ, freely given; and b) the believer's freedom, being set free from bondage and fear, set free from the Law, with the freedom that comes from assurance. A free grace belief is thus liberating and gives the believer confidence. We can see this confidence in Lilburne: "I have the assurance of God in my own conscience, that in the day of the Lord I shall be found to have been faithful."⁶⁵ In *The Just Defence of John Lilburn*, Lilburne states: "I had in some years before, enjoyed the comfortable fruition of a gracious God and loving Saviour."⁶⁶ He records:

Gods sweet and fatherly discovering, and distinct, and assured making known of his eternall, everlasting and unchangeable loving kindnesse in the Lord Jesus unto my soul, to this day, although I am confident it is now above 13 years, since I knew God as my loving and reconciled father, that had particularly washed and clensed my soul with the precious bloud of Jesus Christ, and had caused the grace of God to appear in my soul.⁶⁷

Overton also reflects the assurance given by this doctrine, in his work *The Proceedings of the Councel of State*: "I know my Redeemer liveth, and that after this life I shall be restored to life and Immortality I know my life is hid in Christ."⁶⁸ Intrinsic to the attraction of the free grace theology is the reassurance that it gives to the believer: the believer is set free from worry, knowing that they have been redeemed by Christ.

This concept of free grace was preached by a number of Army chaplains, including John Saltmarsh, who were very close to the Levellers. In 1645 Saltmarsh published *Free Grace*, and was accused by his opponents of being antinomian. David Wootton maintains that the doctrine of free grace and the debate over antinomianism (in particular the relation of the Old Testament to the New) was the central issue between the separatists and those who advocated religious uniformity:

If sinners could be saved, it was impossible to know who were the saints who should rule and who the reprobate who should obey; free grace had democratic implications If grace was free, then the magistrate was not obliged to punish the wicked for their own moral good and as an example to others, but only insofar as was necessary for the protection of society. He no longer had any role to play in the salvation of men's souls. Or any obligation to prevent the ungodly from sharing power with the godly.⁶⁹

⁶⁵ John Lilburne, 'The Just Defence of John Lilburn', in Haller & Davies, 453.

⁶⁶ Ibid., 457.

⁶⁷ Lilburne, 'Legal Fundamentall Liberties', in Haller & Davies, 402-403.

⁶⁸ Richard Overton, 'The Proceedings of the Councel of State', in Morton, 218-221.

⁶⁹ Wootton, 'Leveller democracy and the Puritan Revolution', 441.

The free grace theologians – the likes of Roger Williams, John Saltmarsh, Henry Denne,⁷⁰ and William Dell⁷¹ – shared close links to the Levellers and often various links to the early General Baptists. We cannot understand the Parliamentary Army, the Army chaplains, the Baptists, free grace preachers, and the Levellers unless we understand how closely entwined these groups sometimes were, or might appear to be. The connections were more than theological or political; they were often social and ecclesial. The life of the Leveller movement was, at certain times, closely wrapped up with the life of the Parliamentary Army in particular; with links in terms of officers,⁷² soldiers, and preachers, and in terms of religious and political ideas, pamphlets, and petitions. Brailsford is one of the most persuasive historians for detailing these links between the Army and the Levellers and the importance of each for the other,⁷³ though these links have been questioned by some scholars.⁷⁴ As well as being a political membership and petitioning party, the Levellers had large numbers of agitators in the Army⁷⁵ and officers sympathetic to its cause – and many of these were fuelled by Baptist religion. Underwood details how extensive the Baptist influence was in the Army, even at senior officer level.⁷⁶ The Army chaplains played a highly significant role within the Army and many of these were Baptists or free grace preachers, or both,⁷⁷ in the next section we will look at the influential theology of the Army chaplain, John Saltmarsh, in more detail.

⁷⁰ See Glossary of key names.

⁷¹ See Glossary.

⁷² Captain Bray, for example, lists himself, Colonel Rainsborough, Cornet Joyce and Cornet Thomson alongside the civilian Leveller leaders of (former Lieutenant Colonel) Lilburne, Overton, Walwyn and Prince. (See William Bray, *A plea for the peoples fundamentall Liberties and Parliaments*, Wing 731:20, 9.)

⁷³ See Brailsford, *The Levellers and the English Revolution*, 181-223, 255-265, 294-300. The first *Agreement of the People*, for example, was presented in the name of nine regiments of horse and seven regiments of foot, and signed by ten Army agents from five of the cavalry regiments.

⁷⁴ For example, see Mark Kishlansky, 'The Army and the Levellers: The Roads to Putney', *The Historical Journal* 22:4 (1979), 796, 805, 811, 823-824.

⁷⁵ Any claims about the relationship between the Army agitators and the civilian Levellers needs to be nuanced by historical research that raises questions over that relationship: see, for example, Morrill and Baker, 'The case of the armie truly re-stated', in Mendle (ed.), *The Putney Debates of 1647*, 104-105, 108-109, 116-117; and Kishlansky, 'The Army and the Levellers: The Roads to Putney', 824.

⁷⁶ A.C. Underwood, *A History of the English Baptists* (London: Kingsgate Press, 1947), 74-77.

⁷⁷ Although Kishlansky argues that we should not overstate the role of radical chaplains in the Army (Mark Kishlansky, 'The Case of the Army Truly Stated: The Creation of the New Model Army', *Past and Present* No. 81 (1978), 73).

3.5 John Saltmarsh

If Luther's soteriology emphasises Christian liberty and the importance of grace alone, the free grace preachers pick up the central notion of freely given grace and the reassurance that this provides. Bearing in mind the influences of the free grace theologians upon the Leveller movement, it is pressing to examine the similarities and differences of their theology with that of Luther, in order to understand the import for Leveller thinking.

One of the leading proponents of free grace theology in the 1640s was John Saltmarsh. He was an Army chaplain, an antinomian preacher, and associated with the Levellers – along with Walwyn (and Goodwin) he was one of the principal subjects of attack by the Presbyterian, Thomas Edwards, in *The second part of Gangraena*; and a subject of attack alongside Overton and Lilburne in *The third part of Gangraena*. In his book *Free Grace*, Saltmarsh sets out his doctrine of free grace: man is freely restored by God in Christ, by grace and mercy, God loving us freely and making us free. There are some obvious questions here – in particular how is salvation understood; and, secondly, if believers are made free, is it possible that *non*-believers are equally made free?

An initial reading of Saltmarsh might lead one to think that his fundamental soteriology is that of Luther – the almost legal sense of atonement and justification, whereby Jesus has made satisfaction for sins. Saltmarsh does indeed use the word 'justification'; however, the key frequently-used words in *Free Grace* are 'love' and 'fellowship' (the word 'love' being an important term in the works of his fellow free grace preacher, William Dell, and in the works of Walwyn). For Saltmarsh, the sufferings of Christ (being God and man) wrought compassion in God towards men. In Christ we achieve union or communion with God, and this can only be achieved in Christ who is both God and man. God's free grace is his mercy – "God in free grace had mercy on us, and gave Christ for us."⁷⁸ He loves fallen man, he loves a sinner as a sinner: "No sin can make one lesse beloved of God or lesse in Christ The mercies of God are called sure mercies, his love an everlasting love To whom he is once merciful he is ever merciful; whom he once loves he ever loves Nothing in us can

⁷⁸ John Saltmarsh, *Free Grace*, Thomason E.1152(1), 114.

make God love us lesse.”⁷⁹ This is the characteristic statement of the reassurance that the free grace teaching gives.

Saltmarsh sets out a classic Lutheran position: “The Spirit of Christ sets a believer ... free from Hell, the Law, and bondage here on Earth.”⁸⁰ As a result, “all bondages, fears and doubtings are removed and his [the believer’s] Spirit is free; For the Son hath made him free.”⁸¹ It is because of this being set free that we “enjoy the precious liberty of the sons of God.”⁸² As a result, we are not under the Law, but under grace, and the Law has no more dominion over us. Saltmarsh contrasts the Gospel with the Law: the Gospel persuades, exhorts, draws us, commands by pattern, and its end is to love. We are under grace and no more under the Law, and “where there is no Law, there is no transgression.”⁸³ We thus have spiritual freedom, with souls at liberty. Though Saltmarsh explicitly distances the free grace doctrine from the charge of antinomianism, we can see here antinomian elements.

Saltmarsh talks of free grace, free redemption, the Spirit freely working, our freely obeying. God acts by promise, grace, and free-love: “The promises that God makes thus in Christ are free.”⁸⁴ There is a free gift and promise of mercy and forgiveness. Particular sins do not mean that we have fallen back from Christ, and if we lose faith we do not cease to be justified. Man is restored freely, by grace and mercy; God’s free love carries out the work of salvation in people. The Spirit brings an implanting with Christ, a melting of the heart, making the soul clean, and with this goes a spiritual power, transforming and changing the whole man. Saltmarsh distinguishes this from the Catholic concept of sanctification which he equates with self-made righteousness. He talks of our fellowship and union in Christ, including fellowship in his resurrection, as being like the glory of light shining in through a window.

This seems to move the free grace theology beyond the more forensic Lutheran concept of justification towards salvation as fellowship, communion and union, with a vocabulary of our change, transformation, and becoming clean,⁸⁵ that is, we move beyond what could be characterised as the more binary black and white position of

⁷⁹ Ibid., 79-80.

⁸⁰ Ibid., 140.

⁸¹ Ibid., 144.

⁸² Ibid., 158-159.

⁸³ Ibid., 44.

⁸⁴ Ibid., 165.

⁸⁵ Similarly, Lilburne speaks of Christ “by communicating of himself to me; hath restored, confirmed, and enlarged” the image of God that God has created in him. (Lilburne, ‘Postscript to Londons Liberty’, in Aylmer, 74.)

Luther that we noted earlier, whereby what is new comes from outside to be a legal ‘stamp’ of redemption on the corrupt man. Furthermore, while Saltmarsh certainly rejects Arminianism,⁸⁶ he utilises the concept of fellowship which is key in Baptist thinking: although Saltmarsh pulls away from the explicit covenant theology espoused by several other theologians at this time⁸⁷ (for he sees covenant as dangerously leaning towards the contractual and the law, and man in some way making his side of the contract), he does use the fellowship concept which has some analogy to the rich non-forensic thinking behind covenant; and the idea hints at the sense of salvation as renewal⁸⁸ (with the response being discipleship) that comes from Anabaptist soteriology. Of course, further, it most obviously links in with the Anabaptist ecclesiology of the fellowship of the church – a fellowship which is voluntary, freely undertaken by the believers.

We will now examine whether Saltmarsh limits the resulting freedom of people to believers only. In *The Fountaine of Free Grace opened* (which is thought to be by Saltmarsh),⁸⁹ Saltmarsh reaffirms repeatedly the truth that Christ suffered for the sins of all: the doctrine that Christ died for all “is the very foundation of saving faith.”⁹⁰ Christ suffered for the sins of all, including those that are unbelievers – the price is paid for all. Those that do not yet believe are to have the gospel preached to them, and are not to be condemned because they do not as yet believe (only those who knowingly, without excuse, still refuse to believe are condemned). He accepts the doctrine of election set out in Romans 8:30, but does not accept the Calvinistic decree of damnation (the eternal predetermination of the mass of humanity to damnation, a mass for whom Christ did not die); for the author, those who are not saved are inexcusable and effect their own destruction, because they refuse to believe.⁹¹ Whilst this might perhaps sound like an

⁸⁶ The existence of Arminianism within the Calvinist ‘family’, including in England, serves to complicate the picture. I am referring here to the Arminianism that stems from the Calvinist theologian Jacobus Arminius who wished to modify Calvin’s strict predestinarianism, rather than the Arminian term used against the traditional sacramentalists like Laud (see Pearse, *The Great Restoration*, 210).

⁸⁷ See Miller, *Errand into the Wilderness*, Chapter 3.

⁸⁸ See, for example, the Anabaptists Rothmann, Philips, and Riedeman, in Walter Klaassen (ed.), *Anabaptism in Outline* (Waterloo ON: Herald Press, 1981), 61-62, 67-68, 77-78.

⁸⁹ Wright disputes this, holding that the work is by Thomas Lambe (because the work is issued by “The Church of Christ in London” whilst Saltmarsh was not a member of this church; Stephen Wright, *The Early English Baptists* (Woodbridge: Boydell Press, 2006), 99 n. 83). However, the language and style of the work seem closer to Saltmarsh’s other works than to Lambe’s.

⁹⁰ John Saltmarsh, *The Fountaine of Free Grace opened*, Thomason E.1181(3), A3.

⁹¹ *Ibid.*, 20.

Arminian position, Saltmarsh continues explicitly to criticise Arminianism, for he does not want free grace to seem to depend in any way on us and our will.

Saltmarsh's position could be summarised thus: all are offered salvation, but not all are saved; only those who knowingly reject God's mercy are condemned. Furthermore, we do not know who is elected, and many godly-appearing people are enemies to the truth. In *Free Grace* Saltmarsh states that the blood of Christ is "offered at every *ones door* for receiving" and when Christ "is held out to sinners as sinners, all are in a *condition* for him."⁹² He explicitly discusses whether Christ died for all, which he affirms, though notes that only some are saved and not all. He also seems sympathetic to the view that God will not arbitrarily damn some people just because He wills it (which distances Saltmarsh from Luther and Calvin.) For Saltmarsh, predestination is that we are predestined to be sons of God.

Saltmarsh holds to a universal redemption (though not all are in fact saved) and thus all are made free in Christ; indeed, in *Free Grace*, one of the chapters is headed "General Redemption". This is very significant, for this is the General Baptist position, and it is for holding this universalist position that Saltmarsh came into conflict with the authorities. It is noteworthy that Saltmarsh was defended by the radical Member of Parliament Henry Marten (another friend of the Levellers) who himself wrote: "For as God created every man free in *Adam*: so by nature are all alike freemen born; and are since made free in grace by Christ: no guilt of the parent being of sufficiency to deprive the child of this freedome."⁹³ One of the attacks upon Saltmarsh was from the Presbyterian Robert Baillie:

M. *Saltmarsh* so great a Champion for the Antipaedobaptists that he rests not till he have exploded the Baptism as well of old as of young, makes it now his greatest work to write against our orthodoxe Divines in favour of the Antinomians.⁹⁴

David Wootton argues that many historians mix up Leveller discussion of free grace with belief in free will or in universal salvation. For example, J.C. Davis confuses free grace antinomianism with universal salvation.⁹⁵ Most free grace theologians believed in universal redemption as offered, but not in universal salvation itself. Therefore trying to draw out political implications from universal salvation, as Davis does, is mistaken.

⁹² Saltmarsh, *Free Grace*, 186-187.

⁹³ Marten, *Vox Plebis, or, The Peoples Out-cry*, 4. As previously noted, the author of this tract might be Overton.

⁹⁴ Robert Baillie, *Anabaptism, the true fountaine of Independency*, Thomason E.369(9), 95.

⁹⁵ Davis, 'The Levellers and Christianity', 231.

The role of free will is a third separate matter, with many free grace theologians distancing themselves from anything that appeared Arminian, and yet following the Anabaptist line against Calvinist predestinarianism. Wootton maintains that it is in fact the sharp dichotomy between the Old Testament and the New that is entailed by this doctrine of free grace, that is key to the Levellers' understanding of freedom – freedom from the Old Testament Law, which is characterised by opponents as antinomianism. This approach to the Old Testament Law entails the notion that we move from the duty of the state to impose conformity with the law upon the civil population, to the rights and freedom of the individual under the freely given grace of Christ.⁹⁶ Thus, for the Levellers, “the Ordinances, Lawes, Rights and Ceremonies of the Church of the Jewes were types and figures, which were only to last and endure till the coming of Christ, which he by his death did abolish.”⁹⁷

Nevertheless, the concept of universal redemption, properly understood, is important for the Levellers. Whereas Calvinism, amongst the Puritans, tended towards the notion (or at least the practice) of the rule of the elect, with the mass of the population being regarded as rightly subject to this rule (and if non-believers, then certainly unfree); for the Levellers, as for the free grace theologians, the non-believers are regarded more as worthy of missionary activity as potential future believers and members of the church – no-one has the right to rule and no-one is to be treated as irredeemably ‘lost’ and unfree. Freedom thus takes on a more universal distribution: because Christ died for all, all are made free in Christ, even if some go on to reject Christ's offer of salvation. Therefore, universal redemption does have political implications for how liberty is to be understood and who is regarded as having it.

It is clear from reading Saltmarsh that the free grace of God makes people free in the sense of free from the legalism of works, self-righteousness, and the Law; and it is understandable why it would be attacked as antinomian. One significant point is that it focuses this freedom on the individual, directly, without human mediation, in such a way that the freedom is granted by God alone and not by human authority. Although this freedom has social dimensions – we are alike made free because Christ dies for all sins (and therefore we have equality of freedom) – it is primarily an individually located freedom and one that is once and for all so that it is enduring, in a sense inalienable.

⁹⁶ Wootton, ‘Leveller democracy and the Puritan Revolution’, 434-442.

⁹⁷ John Lilburne, *A Copie of a Letter*, Thomason E.24(22), 3.

There is an individual assurance of salvation that has been freely given and will not be taken away, and this free gift and assurance provide the ground of the individual's freedom.

“The liberty of the subject is that of soul as well as body,” states Saltmarsh in *Smoke in the Temple*, “and that of soul more *dear, precious, glorious: the liberty wherein Christ hath made us free.*”⁹⁸ Bodily liberty derives from spiritual liberty – the liberty given by Christ. From this flows certain things, relating to the voluntary church and the role of the state in religious matters: “Men are not to be forced into Christ's kingdom as into the kingdoms of the world. . . . but let the church only be gathered up by a law of a more glorious and transcendent nature.”⁹⁹

This runs squarely against the Calvinist concept of the Christian magistrate defending the church, ensuring uniformity across church and state, and enforcing the Mosaic Law on blasphemy and idolatry. It provides the building block for the Leveller idea that the civil society is forced to reckon with fundamental freedoms that derive from the individual rather than being granted to the individual by society (or by the king, or by the common law). The Levellers then do not pursue political liberty for all *because* that guarantees Christian liberty (although they do pursue it); it is much more fundamental than that – our freedom in Christ is the *basis* of political freedom, freedom is rooted in individuals (as we saw in Chapter Two), and conceptions of the magistrate enforcing religious orthodoxy belong to an Old Testament view of the Law, which is now set aside. The attack on such an idea, of the civil magistrate now enforcing the old Law against idolatry and blasphemy, is perhaps most clearly seen in the writings of William Dell and Roger Williams. Saltmarsh and Dell are the specific joint targets of a long (239 page) tract by the Presbyterian Samuel Rutherford, who attacks their call for liberty of conscience and describes them as antinomian, libertines, seekers, familists and Anabaptists.¹⁰⁰

The free grace preacher, Dell – who seems to push the antinomian elements in free grace theology further than Saltmarsh – contrasts the imperfection of the worship of the old Law, with its outward rights and duties, with the New Testament and the ministration of the Spirit; the letter of the law of Moses with the Spirit and life of the

⁹⁸ John Saltmarsh, ‘Smoke in the Temple’, in Woodhouse, 185.

⁹⁹ *Ibid.*, 184-185.

¹⁰⁰ Samuel Rutherford, *A survey of the spirituall antichrist*, Wing 290:12, ‘A free Epistle to the friends’, no page.

New Testament. These old rights and duties were only to continue until the time of Christ and “then all that *outward* Religion was to be *abolished*.”¹⁰¹ These outward things are not imposed on the church to continue for ever:

Now if the *law of Moses* could not make men perfect, as pertaining to the *Conscience*, much lesse can any *new lawes* invented now. And if any *such* lawes should be *imposed* on the people of God now, the *Gospel* hath the same *strength* in *it self* to make them *void*, as the former; and also the same *ground* from them, because all such *lawes* and *ordinances* devised by men, cannot make them that obey and practise them *perfect as pertaining to the conscience*: and therefore are *all* to be at an *end*, when the time of *Reformation* comes [i.e. when Christ came].¹⁰²

It is the political ramifications of the free grace view of the sharp discontinuity between the old Law and the New Testament that are so important for our understanding of the sources of Leveller thought. From an entirely theological position Dell, like Saltmarsh, draws conclusions that oppose the Puritan polity. Both Dell and Williams are subject of an attack by Rutherford in another, even longer (410 page), tract in which he accuses them of undermining magistracy itself and all laws.¹⁰³

3.6 Roger Williams

In his great polemical defence of liberty of conscience, *The Araignment of Mr Persecution*, Richard Overton, writing as Martin Mar-Preist, has Roger Williams appear as ‘Mr Truth & Peace’, the author of “*The Bloody Tenent*”.¹⁰⁴ Williams was one of the great theological and philosophical influences on the Levellers. He seems to go further than Saltmarsh in explicitly drawing out the political implications of his theology. In this section we will see how free grace, Christian liberty, and the Gospel superseding the old Law, are used to support the political notion of liberty of conscience.

In his book, *The Bloody Tenent of Persecution*, Williams writes that, in Romans,

[St Paul] handled that great point of free justification by the free grace of God in Christ [H]e has fair occasion to speak largely concerning their subjection to magistrates in the thirteenth chapter. . . . *He that loves has fulfilled the law* [T]he apostle . . . lays open the sum and substance of the whole law, which is

¹⁰¹ William Dell, *Right Reformation*, Thomason E.363(2), 3.

¹⁰² Ibid.

¹⁰³ Samuel Rutherford, *A free disputation against pretended liberty of conscience*, Thomason E.567(2), 358-359.

¹⁰⁴ Richard Overton, *The Araignment of Mr Persecution*, Thomason E.276(23), 31.

love; and he that walks by the rule of love toward all men, magistrates and subjects, he has rightly attained unto what the law aims at, and so in evangelical obedience fulfils and keeps the law. ... *therefore, love is the fulfilling of the law.*¹⁰⁵

Although Paul urges believers to be subject to the civil authorities with respect to the civil law, he does not urge believers to yield subjection to the civil authorities on religious matters. For Williams, Caesar the civil magistrate ought to defend Paul from civil violence, but Paul does not appeal to Caesar in spiritual matters. The civil sword is to be used for civil justice – the defence of persons, estates, liberties – but this cannot extend to spiritual matters and punishments relating to them:

Because the proper end of the civil government being the preservation of the peace and welfare of the state, they [the civil magistrates] ought not to break down those bounds, and so the censure immediately for such sins which hurt not their peace. ... the magistrate has no power to punish any for any such offences as break no civil law of God, or law of the state published according to it.¹⁰⁶

Williams puts a strong case for the separation of church and state and that there should be no compulsion by the state in matters of religion and that there should be religious liberty for all. He sees the opposite – a state or national church – as being based on the model of Israel in the Old Testament. “That Christ’s ordinances and administrations of worship are appointed and given by Christ to any civil state, town, or city, as is implied by the instance of Geneva, that I confidently deny,”¹⁰⁷ he asserts. This Israelite model is now superseded by the Gospel of Jesus. Williams explicitly contrasts the New Testament church and Christian life with the Old Testament: “The state of the land of Israel ... is proved figurative and ceremonial, and no pattern nor precedent for any kingdom or civil state in the world to follow. ... God requires not a uniformity of religion to be enacted or enforced in any civil state.”¹⁰⁸ When Jesus came he fulfilled the former types of Israel and dissolved the national ‘church’ model of Israel.

From the important Lutheran insight that the old Law is superseded by the Gospel, Williams builds his argument that the model of the church under the Israelites is likewise superseded, including religious conformity. Therefore, under the Gospel, the model of the church must be voluntary, without compulsion, with religious liberty for all. As a result, he rejects those writings of Calvin and Beza which are in favour of

¹⁰⁵ Williams, *The Bloudy Tenent*, 89-90.

¹⁰⁶ *Ibid.*, 238.

¹⁰⁷ *Ibid.*, 139.

¹⁰⁸ *Ibid.*, 3.

punishing heresy. Moreover, in defining the limits of the civil state with respect to the church, he limits the power of the state. “The sovereign, original, and foundation of civil power lies in the people,” writes Williams, and so,

a people may erect and establish what form of government seems to them most meet for their civil condition. It is evident that such governments as are by them erected and established have no more power, nor for no longer time, than the civil power, or people consenting and agreeing, shall betrust them with.¹⁰⁹

For Williams, the fount of all civil power is “the people’s choice and free consent”,¹¹⁰ and the object of that power is the common weal or safety of the people. The sovereign power of all civil authority is founded in the consent of the people, and civil power is given to the magistrate by the people, with their consent. The magistrate can receive no more power than the people give:

For in a free state no magistrate hath power over the bodies, goods, lands, liberties of a free people but by their free consents. And because free men are not free lords of their own estates, but are only stewards under God, therefore they may not give their free consents to any magistrate to dispose of their bodies, goods, lands, liberties at large, as themselves please, but as God, the sovereign Lord of all, alone. ... Neither the people give consent nor the magistrate take power to dispose of the bodies, goods, lands, liberties of the people, but according to the laws and rules of the Word of God.¹¹¹

Here Williams takes up and develops the critical notion of inalienability, that we saw first developed within scholasticism (Chapter Two): the notion that we can only give someone else power over our bodies to the extent that this accords with the law of God, that as stewards of God we can only loan out certain powers in a limited manner. He is thus able to emphasise freedom and consent: “All true civil magistrates, have not the least inch of civil power, but what is measured out to them from the free consent of the whole.”¹¹² So government is not just by consent but is limited to that which is given by the people to the governors. The limiting of civil power is derived from his understanding of Christian liberty: the Christian sense of freedom is founded on the Gospel which sets aside compulsion by the state in matters of religion. Individual civil liberty is derived from religious liberty, and this liberty is for all – including Catholics, Jews, Turks, (native American) Indians, and anti-Christians.

¹⁰⁹ Ibid., 154-155.

¹¹⁰ Ibid., 219.

¹¹¹ Ibid., 157-158.

¹¹² Ibid., 227.

Williams's book *The Bloody Tenent* was regarded as so dangerous that, when it was published, Parliament ordered that it be burned. As we saw in the previous chapter, the thinking of Williams was to be much used by the Levellers at the Putney Debates and the Whitehall Debates, when the Army leadership entered into serious discussions with the Levellers about the proposed constitutional document *An Agreement of the People*. The discussion of Williams, who is credited as the first Baptist on American soil, has led us into the wider issue of Baptist soteriology and Baptist influences on the Levellers.

3.7 General Baptists

It is the General Baptists who are most closely associated with the Levellers, both in terms of ideas as well as individuals,¹¹³ and we have already noted some of the links between the General Baptists and the Levellers. The specific claim in this chapter is that one can trace certain soteriological ideas from continental Anabaptism to the first Baptist congregation in England (the Helwys/Murton congregation) and to the General Baptists of the late 1640s (especially Lambe's congregation). Because of the influence of the latter upon the Levellers, the second part of the claim of this chapter is that one can find General Baptist ideas providing source material for Leveller thought. As ever, these claims have to be caveated and nuanced in the light of the complexity of establishing any direct links or explicit influences.

The Baptists stand in contrast to the Puritans at this time, as gathered churches, or believers' churches. These had separated from the Church of England, usually not recognising the Church of England as a true church or its sacraments, and therefore their members would not attend the local parish church. Even if the primary literature itself is confusing in its use of terms, it is helpful to distinguish the Baptists from the Independents. The Baptists were genuine separatists – by principle and choice. Whatever their apparent affinities to Puritanism, they were not Puritans, as they had no wish to be in and to purify the Church of England, and were opposed to the very idea of a national, established, comprehensive, state church. The believers' churches rejected

¹¹³ For example, see Haller and Davies (eds), *The Leveller Tracts*, Introduction, 6; and Wolfe (ed.), *Leveller Manifestoes*, Introduction, 2-4.

much of the Puritan polity, including many of Puritanism's important political and religious assumptions, as well as much of the underlying theology. This is something to which we shall return in more detail in the next chapter. Furthermore, the voluntary separatism of groups like the Baptists is quite different from that of the late sixteenth-century separatists.¹¹⁴

It should be noted that the term 'Baptist' is used rather too loosely in much secondary writing about this period. There were in fact two fairly distinct groupings at the time of the Levellers: the General Baptists and the Particular Baptists (though we will address later the argument of Stephen Wright that the distinction between the groups was less fixed than previously thought). The General Baptists were closer to some of the Anabaptists in theology, as we shall see, and they had rejected several important tenets of Calvinism in favour of the notion of general redemption (Christ died for all, although not all are saved). We should thus observe that the General Baptists were specifically *not* Calvinist, with there being important differences in soteriology between General Baptists and Calvinists, including Particular Baptists. The Particular Baptists kept to Calvin's predestinarianism – that is, they were Calvinist in soteriology – but emphasised believers' baptism and held to toleration and separation of church and state (but with the elect involved in the state): they wanted toleration for sects and so believed in toleration for others; however, the degree of proposed toleration varied and did not match the full toleration proposed by the General Baptists and the Levellers. In elucidating this distinction within the Baptists of this period, the point is not to place modern scholarly constructs upon the period, but to provide a light through the potential confusion and thus illuminate the religious context within which the Levellers were located.

The Particular Baptist ministers in London ultimately played a significant role against the Levellers – although Thomas Collier, a Particular Baptist minister in the West country and sometime Army chaplain, supported the Levellers; one of his works,

¹¹⁴ The separatism of the late sixteenth-century separatists can be rather difficult to understand as there were degrees of physical separatism (including what might be called semi-separatism); separatism was sometimes more by force of circumstance than by choice; and there were differences in ecclesiology (from outright rejection of the Church of England and its sacraments to a view that these were just corrupt and in need of reform). That is, the separatism was more along the lines of non-conformity than of conviction in the essential need for gathered churches. Nearly all these sixteenth-century separatist groups maintained their Calvinist belief in the need for one true state church; they were not advocates of a multi-denominationalism; rather there should be a new pure state church (theirs); and there would be no room for toleration once the true church was re-established. See, for example, Pearse, *The Great Restoration*, 162.

for example, has a section that reads like a Leveller tract and is clearly Leveller inspired.¹¹⁵ Indeed, Collier's support of the Levellers provides an example of how complex this matter is and warns against any simplistic equation of Particular Baptists to one position or another. Nevertheless, although Collier rejects religious compulsion and the notion that the magistrate should have any power over the church or in matters of faith, he does accept that the magistrate should take action against Catholics (as enemies of the civil state)¹¹⁶ and against certain forms of blasphemy.¹¹⁷

So when Brailsford says that the breach with the "Baptists is startling, because the Leveller doctrine is a rendering in secular terms of the traditional Anabaptist gospel of toleration and equality",¹¹⁸ we can respond that it is only startling if one uses the term 'Baptists' loosely and fails to distinguish between those Particular Baptist ministers who join with the Independents in attacking the Levellers in 1649, and the General Baptists who continue to support the Levellers. This necessary digression into early Baptist taxonomy serves to highlight the main point – the difference between Particular and General Baptists in soteriology, despite the boundaries between the two sometimes appearing blurred, and the important role of the General Baptists in the Leveller story.

"The General Baptist church of Lambe," notes Wright, "all of whose leaders were active Levellers, supplied the party with its chief organised religious support."¹¹⁹ The Lambe congregation played a leading role in the Large Leveller Petition and in subsequent petitions, agitation and campaigns, including for the Agreement of the People.¹²⁰ "All the preachers named by Edwards [in *Gangraena*] as evangelists associated with Lambe are also individually identifiable with the Levellers," records Wright, "in their political activity in London and/or in the struggle in the army."¹²¹ Indeed, Wright can only find one single instance of a General Baptist opposing the Levellers (in one particular vote, by one man, on one day at the Whitehall Debates).¹²² If it is evident that the General Baptists of the late 1640s are closely associated with the

¹¹⁵ Thomas Collier, 'A Discovery of the New Creation', in Woodhouse, 395.

¹¹⁶ Thomas Collier, *Certaine Queries*, Thomason E.1183(5), 26. (Cf. Kenneth Dix, 'Baptists and Toleration during the period of the Civil Wars', *Strict Baptist Historical Society Bulletin* No. 26 (1999), 10.)

¹¹⁷ Thomas Collier, *The Decision & Clearing*, Wing 1438:17, 15-16. (Cf. Dix, 'Baptists and Toleration during the period of the Civil Wars', 10.)

¹¹⁸ Brailsford, *The Levellers and the English Revolution*, 541.

¹¹⁹ Wright, *The Early English Baptists*, i.

¹²⁰ *Ibid.*, 178-183, 204.

¹²¹ *Ibid.*, 204.

¹²² *Ibid.*, 213.

Levellers, then the task at hand is to investigate if the soteriological ideas of these Baptists may have influenced the Levellers and may thus provide a path back to earlier Anabaptist ideas.

The ideas of universal redemption that we have seen in Leveller tracts seem to reflect those of the General Baptists. “Iff sin be the cause off condemnation, then God’s decree is not the cause,” states the early General Baptist leader, Thomas Helwys; “no man is condemned because God hath decreed him to condemnation: mans sin being the cause of condemnation.”¹²³ Helwys notes that the doctrine of particular redemption means that “God did not so love the World, but he loved some few particular persons.” Therefore this doctrine “doth exceedingly diminish & lessen, that great worke off grace wrought by Christs redemption, making Christ a perticuler private redeamer for some private men.”¹²⁴ Helwys argues that the decree of election encourages presumption in men (those that believe themselves elect), and the decree of damnation from before Adam makes some despair. More than that, it makes God the author of sin. Helwys is clear that “Christ hath redeemed al men, & that he would have no man perish.” Against the “deceiving opinion” and “iniquitie” of particular election & reprobation and of particular redemption, he argues for universal or general redemption: the mercy of God “is advanced by Christs redeaming off all.”¹²⁵

In a document to the Waterlander Mennonites (Dutch Anabaptists),¹²⁶ Helwys affirms his belief in Adam’s free will and that there can be no eternal decree to condemnation – “and if God decreed no man to condemnation before the beginning of the world, then the lambe slayne from before the beginning of the world, must needs be given a Redeamer for all men.”¹²⁷ In *A Declaration of Faith of English people remaining at Amsterdam*, authored by Helwys, Article 5 restricts predestination to God’s foreknowledge and states that God does not predestine some to be wicked and thus damned.¹²⁸ Commenting on the fifth article from this declaration (regarded as the earliest General Baptist confession), Helwys writes that “God hath not in his eternal decre apointed some perticuler men to be saved: and some perticuler men to be

¹²³ Thomas Helwys, *A short and plain prooffe by the word*, STC 889:11, A5.

¹²⁴ *Ibid.*, B2.

¹²⁵ *Ibid.*, B5.

¹²⁶ To the leader of the Waterlanders, Hans de Ries, and to Reynier Wybrands, preacher.

¹²⁷ Thomas Helwys, *An advertisement or admonition, Unto the Congregations*, STC 13053, 89.

¹²⁸ See James Coggins, *John Smyth’s Congregation* (Waterloo ON: Herald Press, 1991), 136.

condemned and so hath redeamed but some: But that Christ is given a ransome for all men, yea even for the wicked, that bring swift damnation upon themselves.”¹²⁹

The importance of Helwys for the Leveller story, aside from his role in the genesis of the General Baptists, is that Helwys advanced in this country demands for universal religious liberty – to include heretics, Muslims, and Jews.¹³⁰ This is taken up two years later by Leonard Busher, one of the early General Baptists, who argues that the King and Parliament should permit “all sorts of Christians, yea, Jews, Turks, and Pagans, so long as they are peaceable.”¹³¹ It should be lawful, he argues, for every person, including Jews and Papists, to write and dispute. Heretics should not be burnt, banished, or imprisoned, but be rejected out of the church after admonitions. Busher uses the Parable of the Tares from Matthew 13 to show that the tool of persecution will pluck up wheat and leave tares behind; and that, instead, Christ wishes the tares left until the harvest.

In *Obiections answered by way of dialogue*, Helwys (or perhaps the author is his successor as leader of the General Baptists, John Murton) returns to Matthew 13:30 and the parable of the tares: Christ commands us to let the good and the bad grow together.¹³² Compulsion in religion belongs to the ordinances of the Old Testament; the sacrifices of the New Testament are spiritual and cannot be compelled.¹³³ Putting to death blasphemers belongs to the old Law; indeed, Helwys/Murton argues, if we still followed this logic, then we would have to put to death all Papists, all Jews, and so on – and even St Paul was once a blasphemer. We saw earlier how Roger Williams utilised this very argument.

Murton, in *A Discription of what God hath predestinated concerning man* (1620), rebuts the predestinarian doctrine of Calvin, the council (synod) of Dort, and the Puritans, and rejects the Calvinism of John Knox (“a most violent *Calvinist*”) and his “blasphemies”.¹³⁴ For Murton, God “is the principall cause and author of all good, and consequently of salvation to all men, not willing that any should perish, but that all men

¹²⁹ Helwys, *A short and plain prooffe by the word*, A3.

¹³⁰ See his *A short Declaration of the Mistery of Iniquity*, (1612), quoted in Underwood, *A History of the English Baptists*, 47.

¹³¹ Leonard Busher, *Religions Peace*, Thomason E.334(7), 11.

¹³² Thomas Helwys / John Murton, *Obiections: Answered by way of Dialogue*, STC 1143:04, 14. It is not clear whether the author of this work is Helwys or Murton.

¹³³ *Ibid.*, 25.

¹³⁴ John Murton, *A Discription of what God hath predestinated concerning man*, STC 6773, 2.

should repent & live.”¹³⁵ Whatever is good comes from God, but whatever is evil comes from the Devil. The slain Lamb is sent into the world as “a Saviour for all men; to purchase the very wicked that deny him; yea, even his enemies ... yea as he liveth, not consulting that any man should perish, but that all come to repentance.”¹³⁶ Murton rejects the doctrine that

God hath Reprobated the greater part of man-kinde without all cause of desert, who cannot but bee Damned by any manner of meanes, Christ not dying for them: Which Doctrine, how it impeacheth not onely the Iustice of God, mercy of God in Christ, and protestations of God to the contrary in the Scriptures, but also the sufficiencie, and meritoriousness of Christs most precious Death and sufferings, and laying the imputation of Mans damnation not on his own sinne and unbeliefe, but on God and Christ ...

The cheife maintayners of this Destination (as wee see by experience) are the *Calvinists*, or *Puritans* as they are called ...

Consider ... whether anything can be more repugnant to the *Nature* of God, or more defacing his *Iustice*, then to say, That *God* punisheth *Man* with the torments of *Hell* in everlasting *Fire*, for doings those things which hee himselfe hath *Predestinated*, *Ordayned*, *Decreed*, *determined*, *appointed*, *willed* and *compelled him to doe*, by the force and compulsion of his *Predestination*.¹³⁷

In a section on free will, Murton argues that election must be “in libertie”, must involve choice.¹³⁸ He attacks the Calvinist view that man has no free will and liberty in this matter, and states that a man may resist God’s grace and refuse salvation. The repeated scriptural statement that everyone will receive according to their works, makes no sense, he asserts, if there is no free choice. He asks what justice it could be for God to torment people for their sin and wickedness, if it was impossible for them to do otherwise. We are called to choose to obey God and his commandments; and salvation comes through faith and obedience, which is regeneration. Through regeneration, man becomes a “co-worker” with God.¹³⁹

There seems to be evidence then for the claim that one can find certain soteriological ideas of continental Anabaptism – with a marked anti-Calvinist bent – resurfacing among the first Baptist congregation in England, that is the Helwys/Murton congregation; this will be explored in the following section. The challenge is to establish if these continue into the General Baptists of the late 1640s. One reason why this is a challenge is because between the early Baptists of the Helwys/Murton group

¹³⁵ Ibid., 4.

¹³⁶ Ibid., 3.

¹³⁷ Ibid., A4.

¹³⁸ Ibid., 96.

¹³⁹ Ibid., 110.

and the General Baptists of the Lambe group (that is, from the late 1620s to the early 1640s) the historical records are somewhat obscure; however, it is not the role of this thesis to analyse Baptist history. Nevertheless, there do seem to be some continuities in theology, however unclear the historical developments of the Baptists might be.¹⁴⁰ Richard Overton appears to have been associated at some stage with Thomas Lambe's congregation in London, and so the links between the wartime General Baptists and the Levellers seem perhaps clearer. The Presbyterian Thomas Edwards, in *Gangraena*, describes Overton acting as a moderator at a debate in 1646 involving Thomas Lambe, who is referred to as an 'Anabaptist'.¹⁴¹

"Neither can wicked men nor unbelievers be required to believe," states Lambe, the General Baptist pastor; and Christ gave himself as "a ransome for all men" and a "propitiation for the sinnes of the whole world." Without this truth, "the Gospell of Gods free grace cannot be preached to all men."¹⁴² Lambe asserts that God gave Christ, and Christ gave himself, "for all alike" even though only some are called, justified, and glorified. Lambe sees no contradiction between "universall redemption and particular election."¹⁴³ Christ died for all though not all are saved:

Christ hath made, or purchased away of recovery for all men, if they doe not reject him and it also; but election is a fore-apointment that such persons are elected, shall believe and be recovered, and if the rest doe not it is their owne fault, because they beleeeve not the truth which preached ... and so it doth not follow that ... he is not the cause of his owne destruction by the refusall of *grace* offered.¹⁴⁴

For Lambe, God has decreed to permit some to do wickedly and to refuse grace, and he punishes them accordingly. He specifically answers this against the charge that God

¹⁴⁰ In his recent book, *The Early English Baptists*, Wright argues that there are no identifiable historical links between the Murton congregation and the later Lambe congregation, and that seeing a continuity of General Baptist views between them is made difficult by the existence of what he calls 'Calvinists' in what are thought of as General Baptist congregations in the early 1640s (with Lambe's theological views being allegedly at variance with the earlier Helwys/Murton views). The second part of this argument (concerning Calvinism and Lambe) rests, it seems, on a potential misunderstanding by Wright about the doctrine of election: he cannot see that one can accept a form of particular election, whilst accepting general redemption and being non-Calvinist. First of all, there are a variety of ways in which election can be understood, including election understood as God's fore-knowledge rather than predetermination. Secondly, one can accept a doctrine of election whilst holding that Christ died for all (i.e. not all are saved). Thirdly, one can accept a doctrine of election whilst rejecting the Calvinist decree of damnation. These matters are, nevertheless, complicated by the existence of a wider Calvinist tradition or 'family' of beliefs, that included Arminianism. Wright might anyway be correct, in so far as the boundaries between the Calvinist Particular Baptist congregations and the General Baptist congregations may have been occasionally blurred.

¹⁴¹ Thomas Edwards, *The second part of Gangraena*, Thomason E.338(12), 18.

¹⁴² Thomas Lamb(e), *A treatise of particular predestination*, Wing 1953:02, A2.

¹⁴³ *Ibid.*, B2.

¹⁴⁴ *Ibid.*

has decreed some to do wickedly. Adam's posterity is permitted to do evil, to break the Law; God could foresee this and so punishes a man accordingly. For Lambe, particular election means the salvation of only some people, rather than all, even though Christ has redeemed all. Indeed, the Presbyterian Robert Baillie attacks Lambe's congregation for being Anabaptists and Arminians:

Certainly M. *Lambs* Congregation, the greatest, as they say, and most fruitfull of all their Societies without comparison, is pestered with this gangren; the great Preachers in that flock, M. *Oats* and M. *Den* [Denne] make it their ordinary Theme, that Christ died for all, for *Judas* as well as for *Peter* (XX); That all the sins of the first Covenant are actually taken away from all mankinde; That the common doctrine of election and predestination is false (YY); ... That the will of man has power to reject the most efficacious grace These men be the chief Apostles and Evangelists of the Ananaptistick Churches ...

Unto the Arminian many of them do joyn the Antinomian Errors, ... It is not only *Oats*, *Den*, *Lamb*, *Clarkson*, and the like, who preach against the Law and all duties; ... they have nought to do with *Moses* nor any of his Laws ...¹⁴⁵

We can perhaps now see why, for example, the General Baptist (and future Leveller Army mutineer), Henry Denne, is also attacked by Edwards in *Gangraena* for being an antinomian, an Arminian, and for believing that Christ died for all, including Turks and pagans.¹⁴⁶ Although a polemical attack, there is an underlying truth linking these issues.

We have seen then that Helwys and the General Baptists reject the double predestination soteriology of Calvin. "These early General Baptists believed that no man was predestined by a divine decree to damnation but that all men might repent and believe the Gospel – none were irretrievably lost," writes Underwood; "They, therefore, drew the inference that to destroy a man for his mistaken beliefs might defeat the purpose of God for that man's salvation."¹⁴⁷ The doctrine of general atonement leads to an understanding that, because Christ died for all, unbelievers are in urgent need of hearing the Gospel – in which the emphasis becomes a missionary approach instead of a condemnatory or coercive approach. What is noticeable is how marked the contrast is between the General Baptists and their Puritan contemporaries; the differences in soteriology are part of the explanation for this. Indeed Helwys explicitly attacks Puritanism by name, as a false profession with false prophets.¹⁴⁸

¹⁴⁵ Baillie, *Anabaptism, the true fountaine of Independency*, 94-95.

¹⁴⁶ Underwood, *A History of the English Baptists*, 72.

¹⁴⁷ *Ibid.*, 49.

¹⁴⁸ Thomas Helwys, *A shorte declaration of the mistery of iniquity*, STC 1833:14, 102-122. Helwys's

Not surprisingly, the Baptists, as we have seen, were subject to attack, both in terms of imprisonment in the early days and then of polemical tracts. As early as 1615 John Murton notes that his group of General Baptists were ‘falsely’ being called Anabaptists.¹⁴⁹ Although the polemical authors, Edwards and Baillie, describe the Baptists as Anabaptists, it is worth noting that both writers in fact tend to be fairly accurate in their descriptions and labelling. The Levellers themselves use the word ‘Anabaptist’ to describe their supporters, when referring to the Baptist groups,¹⁵⁰ and so the pressing question is what the possible Anabaptist soteriological influences, or parallels, might be.

3.8 Anabaptist Influences or Parallels

In adopting the general redemption ideas of the General Baptists, the Levellers seem to have moderated a Lutheran doctrine of free justification with what appears to be an Anabaptist soteriology. The strong links between the General Baptists and the Levellers¹⁵¹ might help explain this apparent influence. Nevertheless, we have to examine whether there is evidence for possible influences, or perhaps parallels, between earlier Anabaptist soteriology and the ideas of the Levellers. This section will establish the claim that Leveller thinking does owe something, even though indirectly, to Anabaptism; and, in particular, that important aspects of Leveller thought are more likely to come, for theological reasons, from the General Baptists and from Anabaptism, than from Elizabethan separatists, whose predestinarian soteriology shows strong discontinuities with the Levellers.

Direct links from the General Baptists back to Anabaptism are hard to prove, and are the subject of scholarly debate,¹⁵² but there would seem to be evidence of some

attack on Puritanism should certainly be a caution against the loose use of the term ‘Puritan’ to include the General Baptists.

¹⁴⁹ Murton, *Obiections: Answered by way of Dialogue*, Preface. As previously noted, this work is also sometimes attributed to Thomas Helwys.

¹⁵⁰ See, for example, Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 352.

¹⁵¹ See, for example, Pearse, *The Great Restoration*, 228.

¹⁵² An overview of the historical debate on the links between continental Anabaptism and the English General Baptists can be found at Underwood, *A History of the English Baptists*, Chapter 2 (especially 52-55); B.R. White, *The English Baptists of the Seventeenth Century* (Didcot: Baptist Historical Society, 1996), Chapter 1 (especially 16-17); Coggins, *John Smyth's Congregation*, 24-25, 196 n. 36; and Wright, *The Early English Baptists*, 4-10.

direct or indirect potential influence, or at least parallels, and we will explore this in detail in the chapter on ecclesiology.¹⁵³ That chapter argues that via Smyth and Helwys, and especially via their ecclesiology, aspects of the Anabaptist theology were transmitted, even allowing for certain particular theological differences between the Mennonites and the early Baptists.¹⁵⁴ This section will focus on the possible theological links in terms of soteriology, arguing that one can trace apparent influences – or parallels – in soteriology between the early General Baptists and the continental Anabaptists.¹⁵⁵

The Leveller writings on the subject of faith and works certainly move away from a Lutheran and Calvinist position, and appear to reflect an Anabaptist view. Certain mainstream Anabaptist views seem to be one of the foundation blocks for the Leveller doctrine of Christian liberty, upon which they then built their political philosophy of liberty. It is noteworthy that Overton tried to join the Waterlander Mennonites in his youth (although he appears to have been unsuccessful).¹⁵⁶

The ideas of Williams from 1644 are clearly forerunners of the concepts adopted by the Leveller leaders in their writings in subsequent years. It is significant that they derive, at least in part, their political theories from this separatist writer who was accused of being an Anabaptist. The Anabaptist parallels can perhaps be seen in the universal redemption¹⁵⁷ position of Saltmarsh and Williams, which most clearly moves soteriological thought away from Luther and Calvin. The general redemption soteriology appears to reflect that of the sixteenth-century Anabaptists Hoffman,¹⁵⁸ Denck,¹⁵⁹ and Hubmaier.¹⁶⁰ In the next chapter we will demonstrate the possible links

¹⁵³ There is a school of thought that there were no English Anabaptists as such at this time (Pearse, *The Great Restoration*, 119); that the term in England was often used as a term of abuse; and the real Anabaptists were in Holland, Germany, and Switzerland (though this is not at all to deny Anabaptist influence in England). Indeed, the term ‘Anabaptist’ was frequently used as a form of attack to accuse someone of supporting anarchy, harking back to the Anabaptist blood bath at Münster.

¹⁵⁴ In the next chapter we will examine these differences, particularly those relating to Christ’s flesh and to Christian magistrates, which we can see mentioned in Helwys, *An advertisement or admonition*, 8-9, 60.

¹⁵⁵ For an analysis of the soteriology of the Helwys congregation back to the Smyth congregation and further back to the Mennonites, see Coggins, *John Smyth’s Congregation*, 133-141.

¹⁵⁶ Wright, *The Early English Baptists*, 201.

¹⁵⁷ Not to be confused with actual universal salvation.

¹⁵⁸ See Melchior Hoffman, ‘Quellen’, in Klaassen (ed.), *Anabaptism in Outline*, 59-60. See the Glossary of key names at the end of the thesis for further biographical details of Hoffman.

¹⁵⁹ See John (Hans) Denck, ‘Whether God is the cause of Evil’, in George H. Williams and Angel M. Mergal (eds), *Spiritual and Anabaptist Writers* (Philadelphia: Westminster Press, 1957), 102. See the Glossary for further biographical details of Denck.

¹⁶⁰ See Balthasar Hubmaier, ‘On Free Will’, in *ibid.*, 132-135. See the Glossary for further biographical details of Hubmaier.

in ecclesiology from the early Anabaptists, through Hoffman to the Dutch Anabaptists (Dirk and Obbe Philips and Menno Simons),¹⁶¹ and from the Dutch Anabaptists to the nascent English General Baptists¹⁶² (and ultimately to the Levellers). In this chapter we will limit ourselves to soteriology and its related implications (leaving, for now, discussion of Hoffman's unorthodox Christology).

As Walter Klaassen notes, the Anabaptists reject Luther's doctrine of the bondage of the will and the doctrine of predestination: "There was definitely an element of synergism present which related the Anabaptist view of justification more to the late medieval than to the Protestant view."¹⁶³ In order to understand if the theology behind Leveller thinking is picking up elements of the soteriology of the Anabaptists, we will first examine the writings of the early Anabaptists, Denck and Hubmaier.

Denck's starting point is that "since God is good, he cannot in truth create anything but the good. Therefore all creation has by God been made good, which in a certain sense is like God."¹⁶⁴ Denck argues that people sin of their own choice, and this is not willed or brought about by God. Christ died for all, even though all are not saved: "Since love in him was perfect and [since] love hates or is envious of none, but includes everyone, even though we were all his enemies, surely he would not wish to exclude anyone. And if he had excluded anyone, then love would have been squint-eyed."¹⁶⁵ We can already see here foreshadowings of later General Baptist thought.

God "gives everyone the chance, grace, and strength to be converted," writes Denck: "For God has been in the world from the beginning and He gives everyone who will accept it free choice to become a child of God God desires everyone to be saved, but knows full well that many condemn themselves."¹⁶⁶ As well as his attack on the doctrine of particular redemption, Denck advances the notion that you will be judged on what you have done in this life, thus supporting 'works' and undermining predestination:

God will give each according to his work. The evil eternal punishment according to his justice; the good eternal life according to his mercy. It is not that someone earns something from God or that God should owe man something

¹⁶¹ See Obbe Philips, 'A Confession', in *ibid.*, 208.

¹⁶² In fact, the General Baptists, once back in England, continued to correspond with the Waterlander Mennonites over the following years.

¹⁶³ Klaassen (ed.), *Anabaptism in Outline*, 41.

¹⁶⁴ Denck, 'Whether God is the cause of Evil', 89.

¹⁶⁵ *Ibid.*, 102.

¹⁶⁶ Hans Denck, 'Divine Order', in E. Furcha (ed.), *Selected Writings of Hans Denck* (Pittsburgh: Pickwick Press, 1975), 78-79.

... but that he pays us according to the promise which he has previously given us. He looks to faith and good works; he is pleased and rewards them. ... whoever submits his will to the will of God, he is free for good and imprisoned for good. Whoever does not so submit his will is free for evil and imprisoned for evil.¹⁶⁷

Denck's work on whether God is the cause of evil (written in 1526 against Luther's *The Bondage of the Will*) was used by Hubmaier the following year in the latter's work on free will. "But we find also a revealed will of God [voluntas revelata], by which he makes all men to be saved," states Hubmaier, and God "does not want to harden, to blind, to damn anyone, save those who of their own evil and by their own choice wish to be hardened, blinded, and damned."¹⁶⁸ He makes use of a scholastic understanding of the will of God (indeed George Williams notes that Hubmaier was virtually alone among the Anabaptists in using scholastic categories),¹⁶⁹ to argue that God's will, although omnipotent, acts towards us not according to his omnipotence but according to his mercy.¹⁷⁰ Hubmaier defends free will and universal redemption, and denies the Lutheran concept of predestination: "The attracting will of God is that God wills all men to be saved. Therefore he draws all men to him by the offer of his grace and mercy. ... he wills and draws all men unto salvation. Yet choice is still left to man"¹⁷¹

Hubmaier is quite clear that our free will is involved in the matter of whether we are saved or not: "If I will, I can be saved, by the grace of God. If I will not, I shall be damned – and that by my own fault, from obstinacy and self-will."¹⁷² He describes those who deny the freedom of will in man as introducing "rubbish" into Christendom.¹⁷³ Moreover, he asserts:

Whoever denies the free will of man and says that 'free will' is nothing but an empty and useless term without any reality, the same slanders God as a tyrant. ... If man were robbed of his free will God could never justly condemn the sinner for his sins. ... Christ would be robbed of his just accusation which he will bring against sinners on the last day saying: I was hungry and you did not feed me. ... Certainly sinners could excuse themselves with good reason and say: It was impossible for us to feed and visit you since we have no free will. Indeed, because of your eternal foreknowledge and judgement we must go with the devil into eternal fire in order to fulfil your eternal foreknowledge. It follows moreover from this destructive teaching that man may justifiably put his guilt on

¹⁶⁷ Hans Denck, 'Recantation', in Klaassen (ed.), *Anabaptism in Outline*, 46. Although this work is called a 'recantation', Denck does not recant his beliefs but in fact restates his views.

¹⁶⁸ Hubmaier, 'On Free Will', 132.

¹⁶⁹ Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 113, 131 n. 9.

¹⁷⁰ Hubmaier, 'On Free Will', 133.

¹⁷¹ *Ibid.*, 134-135.

¹⁷² *Ibid.*, 127.

¹⁷³ *Ibid.*, 131.

God and say: my stealing and my robbing was not my fault but God's will which no one can resist (Rom. 9).¹⁷⁴

“Faith alone and by itself is not sufficient for salvation. ... faith must express itself also in love,” argues Hubmaier; otherwise we are nothing but “mouth Christians” and “paper Christians” – and about “these St James severely admonishes us in his Christian and useful epistle when he writes: What does it profit, my brothers, if a man says he has faith but has not works?”¹⁷⁵ One can perhaps see here a prefiguring of some of Walwyn's similar ideas.

Writing later, the Anabaptist Melchior Hoffman, who probably provides a key link between the early Anabaptists, like Denck and Hubmaier, and what will become the Dutch Mennonites (and thus a possible link to the Helwys-led Baptists),¹⁷⁶ states that “faith cannot make one justified, if one does not bring in therewith his fruits.”¹⁷⁷ He quotes James 2:17 to support his statement that faith without fruits is dead and cannot justify. Moreover, if a man “is to be condemned he must freely choose the second death. Such death takes place of his own choice. For God's will will not burn in hell, only self-will.”¹⁷⁸ Hoffman attacks the idea of predestination to damnation as an insult to God,¹⁷⁹ and he argues that:

God did not create a single person from the beginning of the world until the last day for condemnation. All are created for eternal salvation, and the son of God suffered for all. ... he is an atoner not only for the sins of the believers, but for the sins of the whole world Christ Jesus did not suffer for half a world but for the whole world, that is the whole seed of Adam.¹⁸⁰

We can see these Anabaptist views reflected in the English General Baptist, Richard Stooks,¹⁸¹ who denies that God “did decree any evil, or any man to be damned,” for God's decrees are good.¹⁸² Predestination is God's foreknowledge, and not a decree that some should be damned. “What justice will appear to condemn men for ever for sin, and wickednesse,” asks Stooks, “when it was impossible to do otherwaies? ... what Law will punish a man with death for doing a thing unavoidable, for it lay not in their

¹⁷⁴ Balthasar Hubmaier, ‘Justification’, in Klaassen (ed.), *Anabaptism in Outline*, 44-45.

¹⁷⁵ *Ibid.*, 44.

¹⁷⁶ See next chapter.

¹⁷⁷ Melchior Hoffman, ‘Ordinance of God’, in Klaassen (ed.), *Anabaptism in Outline*, 58.

¹⁷⁸ Hoffman, ‘Quellen’, in Klaassen (ed.), *Anabaptism in Outline*, 59.

¹⁷⁹ Melchior Hofmann (Hoffman), ‘The Ordinance of God’, in Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 198.

¹⁸⁰ Hoffman, ‘Quellen’, in Klaassen (ed.), *Anabaptism in Outline*, 59-60.

¹⁸¹ See Wright, *The Early English Baptists*, 250-252.

¹⁸² Richard Stooks, *Truths champion*, Wing S5740B, 17.

power to avoid it?”¹⁸³ He attacks Calvinist Predestinarianism, for “to what purpose do ye preach, seeing the elect can never fall from their salvation, no more then the reprobate can be saved.”¹⁸⁴ If people lack free choice, it also calls into question the Scriptures’ repeated assertions that “every man will receive according to his works.”¹⁸⁵ Moreover, he states:

If God have ordained a certain number to condemnation, from which they shall never be freed, then we may live as we list [please]; for if we are ordained to be damned, we can never be saved; and if we live never so wickedly, yet if we are ordained to be saved, we can never be damned.¹⁸⁶

This echoes the Anabaptist balance between the liberating antinomian claims of the Gospel and the idea that what you do in life is relevant to your salvation. Although Denck contrasts the spirit with the law (“All commandments, customs and laws which are laid down in writing in either the Old Testament or the New are abrogated for the true student of Christ. In other words, he has written upon his heart the one word, which is that he loves God alone”),¹⁸⁷ he states that a person is only free of the law to the extent that he is one with God, to the extent that he loves. If you fulfil the law in love, the law is abrogated; if you lack the law, you are subject to it. Thus the Anabaptist pioneer leaders attack what they perceive as the negative impact of the magisterial Reformers’ soteriology on Christian conduct: Hut¹⁸⁸ describes it as a faith from which no moral improvement follows; Sattler¹⁸⁹ accuses the Reformers of erecting a faith without works; and Hubmaier shows that faith without works is dead.¹⁹⁰

Likewise, the Levellers’ use of the doctrine of Christian liberty based on free grace theology does not lead them into accepting the possible corollary that what you do in life is unimportant. Leveller writings consistently distance themselves from one of the key perceived weaknesses of the soteriologies of Luther and Calvin, that effectively one’s moral life becomes irrelevant. The Levellers repeatedly emphasise that we shall be judged by what we do, and thus implicitly reject predestinarianism and indeed core elements of Luther’s and Calvin’s soteriologies. This claim, that we shall be judged by

¹⁸³ Ibid., 68-69.

¹⁸⁴ Ibid., 25.

¹⁸⁵ Ibid., 68.

¹⁸⁶ Ibid., 25.

¹⁸⁷ Hans Denck, ‘The Law of God’, in Furcha (ed.), *Selected Writings of Hans Denck*, 66-67.

¹⁸⁸ See Glossary.

¹⁸⁹ See Glossary.

¹⁹⁰ See Leonard Verduin, *The Reformers and their Stepchildren* (Sarasota FL: Christian Hymnary Publishers, 1997), 105 n. j; Henry Vedder, *Balthasar Hubmaier* (New York: AMS Press, 1971), 190.

what we do in life, is a key Anabaptist belief and one of the major things that differentiates the early Anabaptists from Luther and Calvin. As Denck says in his work, *Recantation*, of 1528: “God will give each according to his work.”¹⁹¹ (This is rendered in another translation as: “God shall reward everyone according to his works.”)¹⁹²

With the Dutch Anabaptist, Dirk Philips, we find that sense of salvation as renewal which perhaps is one of the inspirations for Saltmarsh. Believers are “renewed” by the Holy Spirit and “have free access to God and to the throne of grace.” We “receive that lost image of the knowledge of God.” As a result, we are “a child of God, and an heir of the Kingdom of heaven covenanted (*verbonden*) with God, born anew of God.”¹⁹³ Likewise Hoffman (Hofmann) talks of baptism as a “covenant” with Jesus Christ,¹⁹⁴ and the believers as covenanted with the Lord.¹⁹⁵ It is possible that this thinking might have derived from Hubmaier who says that “God, by his own word, is caught, bound, overcome by the believers.”¹⁹⁶ Denck similarly describes baptism as a sign of the covenant and believers as fellows of the covenant.¹⁹⁷

Klaassen states that “we find, among the Dutch [Anabaptists] especially, the conviction that once God works in human life by his Spirit an ontological change takes place. ... There is therefore also a rejection of Luther’s view that even a Christian is at the same time a sinner and justified.”¹⁹⁸ This emphasis on the Spirit is probably derived from the ‘Spiritualist’,¹⁹⁹ Caspar Schwenkfeld,²⁰⁰ who was the source for a number of Dutch Anabaptist ideas.²⁰¹ Echoes of this ‘spiritualism’ are found in William Dell, the English free grace preacher, who emphasises the presence of the Spirit in the believer. Dell is able to talk of the Spirit as a power in each of us, the Spirit “continually *active*” in us; the Spirit imparting grace to us, and grace as a strength in us, “each mans *measure of grace*” as each man’s measure of the Spirit.²⁰² The Spirit changes our nature and

¹⁹¹ Denck, ‘Recantation’, in Klaassen (ed.), *Anabaptism in Outline*, 46.

¹⁹² Denck, ‘Recantation’, in Furcha (ed.), *Selected Writings of Hans Denck*, 126.

¹⁹³ Dietrich (Dirk) Philips, ‘The Church of God’, in Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 237.

¹⁹⁴ Hofmann, ‘The Ordinance of God’, in *ibid.*, 187, 188, 190.

¹⁹⁵ *Ibid.*, 192, 196.

¹⁹⁶ Hubmaier, ‘On Free Will’, 134.

¹⁹⁷ Hans Denck, ‘Concerning Genuine Love’, in Furcha (ed.), *Selected Writings of Hans Denck*, 109.

¹⁹⁸ Klaassen (ed.), *Anabaptism in Outline*, 42.

¹⁹⁹ A form of Anabaptism that placed particular emphasis on the Holy Spirit, the Johannine Gospel and Epistles, mysticism and piety, sanctification, and the celestial flesh of Christ. However, it should be noted that some scholars would not describe Schwenkfeld as an Anabaptist.

²⁰⁰ For more on Schwenkfeld, see the Glossary of key names.

²⁰¹ Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 162.

²⁰² William Dell, *Christ’s spirit a Christians strength*, Wing 350:07, 13-14.

“makes it conformable to the *divine nature*,” communicating the divine nature to our human nature.²⁰³ Indeed, Rutherford attacks Dell for being Schwenkfeldian and states that the ideas of the antinomian free grace preachers like Dell can be traced back to Schwenkfeld.²⁰⁴

In John Smyth’s defence of the Mennonites, he explicitly supports the Schwenkfeldian emphasis on sanctification as prior to justification; the mortification of sin is a result of the new creation: “The new creation is not something outside us but in us, not righteousness imputed to us but righteousness ingrafted in us ...; the remission of sins accompanies it as its handmaid.”²⁰⁵ Likewise, in Dell we find the language of the Spirit of God indwelling in us and mortifying sin.²⁰⁶ This Spirit is the Spirit of righteousness, and thus Dell picks up a Schwenkfeldian theme of Smyth: that sanctification is part of justification. On this soteriological basis, Dell builds two important ideas, one anthropological and one political. The first is that we are made one in the Spirit; by grace many are made one. The second is that there are two realms, one of the Spirit (the church) and one of the magistrate, with no role for the latter over the former. Not surprisingly, in *The third part of Gangraena*, Edwards attacks Dell’s spiritual doctrine and claims that Dell is like Thomas Müntzer and the Münster Anabaptists, destructive to all kind of government.²⁰⁷ There does seem then to be evidence of certain soteriological ideas from within Anabaptism being echoed by the free grace preachers associated with the Levellers. We can perhaps see soteriological ideas from within Anabaptism that, through the English Baptists and free grace preachers, have provided a certain *milieu* for Leveller thought.

Beyond the sphere of soteriology itself, there also appear to be ideas within Leveller thinking that closely parallel certain key Anabaptist ideas, particularly those in the social and political spheres. The Schleithem Confession of 1527, the oldest Anabaptist confession, states in Article 6:

In the law [the Law] the sword is established over the wicked for punishment and for death, and the secular rulers are established to wield the same. But within the perfection of Christ only the ban is used for the admonition and exclusion of the one who has sinned, without the death of the flesh, simply the warning and the command to sin no more. Now many, who do not understand

²⁰³ Ibid., 27.

²⁰⁴ Rutherford, *A survey of the spirituall antichrist*, 15.

²⁰⁵ John Smyth, ‘Defense of De Ries’s Confession’, in Coggins, *John Smyth’s Congregation*, 185.

²⁰⁶ William Dell, *Power from on High*, Thomason E.282(8), 13-14, 30.

²⁰⁷ Edwards, *The third part of Gangraena*, 262.

Christ's will for us, will ask: whether a Christian may or should use the sword against the wicked for the protection and defense of the good, or for the sake of love. ... Now Christ says to the woman who was taken in adultery, not that she should be stoned according to the law of His Father ... but [be treated] with mercy and forgiveness.²⁰⁸

In this Article the Anabaptists clearly set out that the civil authorities have no power over religious matters and thus lay the foundation for the concept of separation of church and state. This example of the woman taken in adultery is also used in Hubmaier's work *On the Sword* of 1527 to illustrate the separation of the church and the civil government.²⁰⁹ Also, rather significantly, this very same example of the woman taken in adultery is used by Williams in precisely the same argument in a footnote in *The Bloody Tenent*,²¹⁰ and in the same way by Thomas Collier²¹¹ for the Leveller position at the Whitehall Debates.²¹²

Hubmaier writes that although the ban (what amounts to excommunication)²¹³ and the secular sword are both offices of God, they are two very different commands given by God. The church should use the ban, and the government the sword, and neither should usurp the other's office.²¹⁴ The Dutch Anabaptist, Dirk Philips, another possible link between the Anabaptists and the English General Baptists,²¹⁵ says in *The Church of God* that

the Christians persecute no one on account of his faith. ... The parable of the Lord in the Gospel proves clearly to us that he does not permit his servants to pull up the tares lest the wheat be pulled up also; ... From this it is evident that no congregation of the Lord may exercise dominion over the consciences of men with the outward sword, nor seek by violence, to force unbelievers to believe, nor to kill the false prophets with sword and fire.²¹⁶

Philips is blunt that God's command to Moses to put false prophets to death is a command of the Old Testament and not the New. We have already seen this very argument used by the later English Baptists. Also, significantly, the parable of the tares is one of the major themes in Williams's *The Bloody Tenent* used in exactly this

²⁰⁸ John Howard Yoder (ed.), *The Schleithem Confession* (Scottsdale PA: Herald Press, 1977), 14.

²⁰⁹ Balthasar Hubmaier, 'On the Sword', in H. Vedder, *Balthasar Hubmaier*, 290-291.

²¹⁰ Williams, *The Bloody Tenent*, 140.

²¹¹ See Glossary.

²¹² Woodhouse (ed.), *Puritanism and Liberty*, 165.

²¹³ On the theory and practice of the ban, see Williams and Mergal, *Spiritual and Anabaptist Writers*, 261-262.

²¹⁴ Hubmaier, 'On the Sword', 288-291.

²¹⁵ See next chapter.

²¹⁶ Philips, 'The Church of God', 252-253.

argument. Philips points to the absurd logical conclusion of those who hold that the Old Testament commands with respect to idolatry etc. hold true today:

Now, if, according to the Old Testament command, false prophets were to be put to death, then this would have to be carried out, first of all, with those who are looked upon as false prophets and antichrist by the God-fearing and understanding persons, yea, by almost the whole world. Likewise the higher powers would be obliged to put to death not only the false prophets but also all image worshipers, and those who serve idols ... and all adulterers, and all who blaspheme the name of the Lord, and who swear falsely by that name.²¹⁷

The very same argument is repeated almost verbatim by Williams, repeatedly, in *The Bloody Tenent*, and by Wildman and Goodwin for the Leveller position during the Whitehall Debates. What is noteworthy is that the Anabaptists develop, from the single idea that certain Old Testament commands are set aside, more general theological ideas and indeed important 'political' ideas.

“To burn heretics is to recognize Christ in appearance, but to deny him in reality,” notes Hubmaier rather pithily; “Now let this saying be evident to everyone, even to the blind: the heretic is an invention of the devil.”²¹⁸ Denck likewise comments: “With practice of the true gospel each will let the other move and dwell in peace – be he Turk or heathen, believing what he will – through and in his land, not submitting to a magistrate in matters of faith.”²¹⁹ This idea that Muslims and heathens are to have full religious liberty is a key concept that is picked up in Baptist thought and in Leveller political thought. The Anabaptist Aurbacher²²⁰ similarly observes that “it is never right to compel one in matters of faith, whatever he may believe, be he Jew or Turk.”²²¹ These ideas directly feed into Williams’s statements in *The Bloody Tenent*.

This also reflects the Anabaptist Denck’s position in his *Recantation* that “a man ought to know that in matters of faith, things should be voluntary and without

²¹⁷ Ibid., 253.

²¹⁸ Balthasar Hubmaier, ‘Concerning Heretics and Those who Burn them’, in Klaassen (ed.), *Anabaptism in Outline*, 292. There are some parallels within the Reformed tradition – Castellio, for example, opposed the civil punishment of heresy. See Zagorin, *How the Idea of Religious Toleration Came to the West*, 97-142. Although it should be noted that Castellio still thought that blasphemy (the denial of God) should be punished by the magistrate, even with death (ibid., 118, 128). Castellio eventually departed from the Reformed tradition into Antitrinitarianism, as a precursor of Socinianism (ibid., 140). Similarly, within the Reformed tradition in the Netherlands there were diverse approaches to toleration, with thinkers like Grotius opposed to punishing heretics. Nevertheless, we should be careful about equating Grotius’s tolerant approach to heresy with Anabaptist religious liberty, for he held to a non-dogmatic, Erastian state church subservient to the state (ibid., 172-176).

²¹⁹ Hans Denck, ‘Commentary on Micah’, in Klaassen (ed.), *Anabaptism in Outline*, 292.

²²⁰ Aurbacher was a Moravian Anabaptist.

²²¹ Kilian Aurbacher, ‘Hulshof’, in Klaassen (ed.), *Anabaptism in Outline*, 293.

coercion.’²²² The Levellers’ consistent and prominent opposition to religious compulsion, to oaths, and to tithes, picks up such key Anabaptist themes. The Leveller tracts in calling for freedom of conscience and religious toleration also call for the abolition of statutes demanding the swearing of oaths – a key Anabaptist demand. It would seem therefore that the Leveller concept of religious liberty partly derives from the Anabaptist separation of church and state, that is entailed by the Anabaptists’ emphasis on the believers’ church, which is to be freely entered into by adult believers, and on the setting aside of the Old Testament Law and the state thus having no role with respect to idolatry. These ideas seem to have inspired Roger Williams and the General Baptists and thus to have influenced the Levellers. Although, as already noted, the existence of direct links between the General Baptists and the continental Anabaptists have been disputed by some historians, there do seem to be parallels in certain key theological ideas. This will be explored in greater detail in the next chapter, where it will be noted that any account of potential influences or parallels needs to be highly nuanced to recognise that there were also elements of Dutch Anabaptist thought that were *not* taken up by Helwys and his group.

The Levellers advocate standing above church disputes and ecclesial bodies and denominations, without withdrawing into an inner spiritualised Christianity. They propose the separation of church and state, without rejection of the state and involvement in the state – i.e. without separating away from the state. Is this picking up ideas from Hubmaier, perhaps the only Anabaptist leader who clearly believes in both separation of church and state and the Christian duty to be involved in the state? Again, we will return to this question in the next chapter.

3.9 Conclusion

We have seen that the Levellers took a doctrine of Christian liberty from the likes of Williams and Saltmarsh (who in turn brought strands of General Baptist and Anabaptist soteriology into play), but an idea of liberty which was significantly shifted from the understandings of freedom of both Luther and Calvin; and on this doctrine they built (like Williams) a political understanding of liberty.

²²² Denck, ‘Recantation’, in Furcha (ed.), *Selected Writings of Hans Denck*, 127.

The Levellers make use of Luther's concepts of individual liberty and free justification; yet they move away from the inner, spiritualised notion of freedom, and emphasise the idea of genuine freedom for all, including non-believers. What might be perceived by some as the potentially fatalistic side of Luther's doctrine (that denies any action or involvement on our part, no matter how charitable, in salvation) is also dropped, in favour of a Christianity that is explicitly lived out in love of neighbour. The Lutheran idea, that the old Law is set aside by the new Gospel of grace, provides a basis, under the influence of free grace theology, for the notion that the individual is also free from the state in many key respects.

The account of the differing soteriologies in this chapter has shown that those scholars (such as Woodhouse) who describe the Levellers as part of, and on the radical wing of, Puritanism, have perhaps misunderstood where the Levellers stand.²²³ For not only do the Levellers reject Puritan soteriology, but they reject the Puritans' sacral state and all that this entails. Of course, it is possible that the mistaken description of the Levellers as Puritans results from an overly-wide understanding of the term 'Puritanism', which seems to be the case with Shaw.²²⁴ However, casting the term so widely that it embraces all those opposed to the King and episcopalianism ultimately risks rendering the term almost meaningless, as well as causing confusion and masking the important soteriological differences between the Puritan Calvinists and, for example, the General Baptists. For, not only do the Levellers likewise reject some of the key tenets of Puritan Calvinism, we will fail to understand the sources of Leveller thought if we wrongly paint them as Puritans.²²⁵ The Levellers oppose Puritanism and its political face, and this opposition seems to be influenced by an Anabaptist and

²²³ Woodhouse describes the Levellers as "Puritans of the Left". He sees the Calvinist doctrine of election, with its notions of the liberty and equality of believers, as one of the main bases of Leveller thought. He further sees the Levellers arguing for the liberty of all, in order to ensure the liberty of the regenerate – as though the liberty of all is necessary for pragmatic reasons. This account misses the Levellers' Christological insight into the liberty and equality *of all* in Christ, including those who are currently non-believers; and that political liberty is thus for all by right.

²²⁴ Shaw, *The Levellers*, 8. It is Shaw's wide definition of Puritanism that allows him repeatedly to describe the Levellers – and, implicitly, groups such as the General Baptists – as Puritans when in fact these groups did not wish to purify the Church of England but rejected it as false, as not being a church at all; and when these groups rejected the Calvinism at the heart of Puritanism.

²²⁵ For example, Shaw states that "there can be no doubt that Puritanism was the main source of" Leveller ideas (Shaw, *The Levellers*, 3; cf. *ibid.*, 8, 90.) He sees the Calvinist understanding of the elect as well as Anabaptism as the sources of Leveller ideas, claiming that "Anabaptists shared with Calvinism the doctrine of election" (*ibid.*, 5). We can see that these claims are not supported by the evidence. Similarly, Pease paints a confusing picture of the Levellers and the Puritans by consistently describing the Levellers as "Independents" (from whom they supposedly broke away eventually) and Independency as the source of the Leveller platform (Pease, *The Leveller Movement*, 50-51, 120, 125, 156).

General Baptist rejection of Luther's and Calvin's soteriologies. We will return to Puritanism and the Levellers in the following chapter.

Conversely, those scholars (like Aylmer), who hold that the source of Leveller thinking is not religious but of a more secular basis, can now be seen to have understated the complexity of the varying sources of Leveller thought. Indeed, a merely historical approach to the Levellers, without understanding the particular theological sources of their political thought, risks providing an incomplete picture. The Levellers' understanding of political freedom is built on an anthropology which is Christological in its basis. As we saw in the previous chapter, they take the scholastic insight from natural law thinking that we are all equal in respect of our humanity, being created in the image of God; but, as well as this, we are all redeemed in Christ. We thus each have an individual liberty that is given to us. What we have seen then is that the Levellers are able to use a theological category – soteriology – to draw out two important political conceptions: a) an individual anthropology in which each and every person is free; and b) an understanding of the role of the state in which, with the Gospel superseding the Law, theocracy has no place, and the powers of the state are thus curtailed. Hence, a Christological liberty is used as the basis of a political conception of liberty.

This allows us to recognise that the sources of certain modern conceptions of liberty have their roots partially in Reformation theology and indeed partially in pre-Reformation thought; this is perhaps to anticipate a reflection that we will have on the political thought of Rawls in a later chapter, but at this stage we are placing a marker to which we shall return. At the same time, to Christian critics of political liberalism, such as Hauerwas, who reject such liberalism *in toto*,²²⁶ this chapter has gone some way towards suggesting that certain tenets of classical liberalism may well have a Christian basis in parts.

We have seen that, although the Levellers emphasise individual rights and liberty, they should not be thought of as proponents of a narrow or selfish individualism. The claims of liberty are made against the state rather than against other individuals. The Levellers are quite clear that people are not born for themselves only but are obliged to

²²⁶ See, for example, Hauerwas, 'Where would I be without friends?', in Nation and Wells (eds), *Faithfulness & Fortitude*, 325; Stanley Hauerwas, 'Reforming Christian Social Ethics', in John Berkman and Michael Cartwright (eds), *The Hauerwas Reader* (Durham NC: Duke University Press, 2001), 114, where Hauerwas describes liberalism as "particularly pernicious"; and Stanley Hauerwas, *A Community of Character* (Notre Dame IN: University of Notre Dame Press, 2005), 12, 289 n. 8.

employ their endeavours for the advancement of the community.²²⁷ We are members of one body and should be sensible to others' suffering; an attack on one person's liberty is an attack on the common liberty.²²⁸ They thus reflect perhaps the Anabaptist concern with the life and actions of the believer.

Nor should the emphasis on individual liberty and the separation of church and state be taken to mean that the state is to pass whatever laws it wants, irrespective of higher claims about law and truth; on the contrary, for the Levellers the civil laws are to accord with the natural law. For them, antinomianism does not give licence to ignore law. In their view, Christianity restores morality, civility, and justice to their first perfection. It is the notion of laws deriving from the Old Testament model of the role of the civil powers, that is set aside. So again, this is a claim about the limited role of the state.

So how do the Levellers decide what moral matters are purely religious (and therefore outside the power of the civil law), and what moral matters are within the scope of the civil law such that the civil law should uphold the Christian morality in those matters? The answer lies in Overton's statement that personal sins are not a matter for the civil authorities, but are to be left to God; only that which affects others is a matter for others. What affects others is what threatens their persons, liberty, or property. In these cases our actions fall under the power of the civil law. The law in these cases, according to the Leveller philosophy, should conform to the natural law. So the Levellers would expect that the law should defend life, punish theft, defend property, and defend the safety of the community. I am free, but I am not free to take away the rights of others. For Wildman, this is a judgement that can be made by the light of nature: a magistrate can judge evil matters that are "between man and man, of things that [tend] to destroy human society";²²⁹ but matters of the worship of God are not determinable by the light of nature. We will return to this subject in greater detail in the chapter on the common law.

Thus, antinomianism could never be taken literally for the Levellers. Moreover, the use of soteriology in political theology is perhaps a useful reminder of the notion of sin in political discourse. For Luther, the doctrine of Christian liberty sits squarely on

²²⁷ See the opening sentence of the Leveller tract *A Manifestation* (William Walwyn, 'A Manifestation', in McMichael, 335).

²²⁸ See Lilburne, 'The Just Defence of John Lilburne', in Haller & Davies, 455.

²²⁹ Woodhouse (ed.), *Puritanism and Liberty*, 161.

the recognition of human sin and evil; that is, the starting point for a discussion of human freedom is human sin. As Denck says in his pamphlet, *The Law of God*: “Only he who rightly proclaims God’s wrath, may also proclaim His grace fruitfully.”²³⁰ Likewise, Hubmaier states that “we are in the kingdom of the world, which is a kingdom of sin, death and hell.”²³¹ Like these mainstream Anabaptists, the Levellers realised that mere antinomianism could never be viable: total freedom would lead, because of sin, to anarchy. The constitutional ‘revolution’ that the Levellers proposed with the Agreement of the People was based, not on utopian notions of human liberty, but on the opposite – the recognition of sin and the need for law, but also of the dangers of the state’s arbitrary powers and thus of the need to curtail state tyranny. Thus, some socialist accounts of the Levellers risk being unnuanced in so far as they fail to recognise the primacy of individual liberty in Leveller thought and the caution towards all state power in the light of the reality of sin.

Finally, the research has demonstrated that the Levellers were influenced by free grace preachers and General Baptists²³² more than by earlier Puritans (cf. the claims of Haller²³³ and Wolfe²³⁴) or the earlier Elizabethan separatist tradition (cf. D.B. Robertson²³⁵), for those separatists were Calvinists to the core, whose religious views drove them to reject the notion of gathered churches of true believers but who found themselves separatists by circumstance.²³⁶ That is, those Calvinists in England who found themselves separatist by force of circumstance, remained Calvinist in their soteriology and there is little evidence that their ideas influenced the Leveller ideas of religious liberty and freedom of conscience for all. The chapter has argued that we should look, instead, for potential sources of Leveller thinking in continental Anabaptism.²³⁷ However, it should be noted that the term ‘Anabaptism’ is perhaps too

²³⁰ Denck, ‘The Law of God’, 62.

²³¹ Hubmaier, ‘On the Sword’, 279.

²³² Scholars such as Michael Watts, who discuss the Levellers and the ‘Baptists’ without always differentiating between General and Particular Baptists in that discussion, provide a somewhat confusing picture which fails to do justice to the role of the General Baptists in Leveller thinking. Watts, *The Dissenters*, 117-129. Similarly, see Morton (ed.), *Freedom in Arms*, 62-63.

²³³ Haller and Davies (eds), *The Leveller Tracts*, 37.

²³⁴ Wolfe (ed.), *Leveller Manifestoes*, 4-5.

²³⁵ Robertson, *The Religious Foundations of Leveller Democracy*, 24-25.

²³⁶ Cf. Pearse, *The Great Restoration*, 162. See, for example, Helwys, *A shorte declaration of the mystery of iniquity*, 152-155, 176-179, where Helwys rejects the false separation of the Brownists and the soteriology and ecclesiology of John Robinson.

²³⁷ We should note that Watts claims that continental Anabaptism influenced sixteenth-century English dissenters who derived from earlier Lollards, and that this stream re-emerged with the seventeenth-century General Baptists. (Watts, *The Dissenters*, 6-14, 283-284.) The weakness in the claim that the

simplistic and that we ought probably to be talking of different strands of Anabaptism. There seems to be one particularly relevant strand that reaches back to Hubmaier, who intriguingly makes explicit use of scholastic categories in his thinking. We shall pick this strand up in the following chapter.

In the next chapter we will complete the investigation of the apparent links between the Levellers' theological understanding and the Anabaptists, via General Baptist ecclesiology. This will help us understand how the Levellers could synthesise certain natural law ideas from within scholasticism (on rights, consent, inalienability, for example) with the theological ideas of the voluntary gathered churches (on freedom, consent, and the individual, for example) and come up with the remarkable "idea of starting a state *de novo*, which had simply never been considered by previous thinkers."²³⁸

General Baptists were heirs to the Lollards is this: Lollardy and General Baptism may share the same religious and political circumstance of being in dissent, and even of geographic commonality, but there are also significant differences of belief between the two. For example, many major elements of Lollard doctrine (e.g. most of the 'Twelve Conclusions of the Lollards') can be found as much amongst the Presbyterians as amongst the General Baptists; and significant aspects of Wycliffite thought (such as those on the role of the king and secular lords in the temporal affairs of the church, and on war and battle) are directly contrary to General Baptist thinking. Likewise, we can see that Shaw's claim, that the Levellers stand firmly in the tradition of Wycliffe (Shaw, *The Levellers*, 104), is equally questionable. Shaw here follows the line of Hill, who situates the Levellers in a historical context of religious radicalism, an ongoing stream of radicalism opposed to authority and orthodoxy going back to Wycliffe and Lollardy. (See Hill, 'Irreligion in the "Puritan" Revolution', 210; and Hill, 'From Lollards to Levellers', 50-51, 56-57.) Hill's attempt to link the Levellers in some way back to Wycliffe and the Lollards does not take into account the serious point that significant aspects of Wycliffite thought are directly contrary to Leveller thinking: such as those on the source of royal power, the defence of the power of the state, the role of the king and secular lords in the temporal affairs of the church, the denial of the property rights of those in sin (the unrighteous), and the denial of the civil lordship of an unrighteous person: "God does not approve the lordship of any unrighteous person." (John Wyclif, 'Civil Lordship', in Oliver O'Donovan and Joan Lockwood O'Donovan (eds), *From Irenaeus to Grotius* (Cambridge: Eerdmans Publishing, 1999), 492.) Because, for Wycliffe, the "sinner forfeits body and soul, and consequently the lordship of all temporal goods," the "temporal lords would do right in distributing these goods once they have expropriated them" (ibid., 502). Indeed, Wycliffe denies even legal rights in courts of law to the unrighteous: "God confers no right on the unrighteous; so no creature can give judgement for the unrighteous rightly" (ibid., 494). At the level of ideas there is little in the Leveller primary material to link Leveller thought to Wycliffe or to Lollardy. Indeed, I can only find one reference to Wycliffe in the Leveller tracts: in the late tract of 1653, *The Just Defence of John Lilburn*, which is either written as a retrospect of his life or as another form of justification for his actions and his sufferings, Lilburne refers to Wycliffe amongst a list of people and groups whom he holds up as examples of faithful servants of Christ. This is a passing reference and no more is made of it. Moreover, certain aspects of Wycliffite thought, especially relating to the role of secular rulers in the temporal affairs of the church, are arguably more likely to be found in seventeenth-century episcopalianism and Presbyterianism than in Leveller thinking. "The single, most striking and controversial aspect of his [Hill's] method was the way in which he subtly identified intellectual connections, currents and continuities between the most unlikely pieces of evidence," notes Christopher Hill's Obituary in *The Guardian*, 26 February 2003 (see <http://www.guardian.co.uk/news/2003/feb/26/guardianobituaries.obituaries>, accessed 22 August 2009).

²³⁸ Wootton, 'Leveller democracy and the Puritan Revolution', 435.

4. ECCLESIOLOGY

4.1 Introduction

The Levellers argued for a limitation of the power of the state, particularly with regard to the church¹ and the individual, and part of this political thinking derived from their religious thinking, influenced, as I shall show, by General Baptist ecclesiology (which itself seems to derive in large part, I will argue, from continental Anabaptist ecclesiology). The thrust of the argument in this chapter is that the Levellers utilised and built upon prior ecclesiological ideas – we have already touched upon this in our earlier brief discussion of conciliarism and natural rights in Chapter Two; in this chapter we will focus on Anabaptist ideas. It must be admitted that the notion that there is a link from Anabaptism to the Levellers may be an apparently difficult claim; nevertheless, we shall explore the genealogy of ideas via the early General Baptists. The claim faces at least two potential hurdles: a) the fact that the Levellers were a political movement rather than a religious group, unlike the Anabaptists; and b) the difficulty of establishing direct links from continental Anabaptism through to the General Baptists of the 1640s.

This chapter will confirm that there seem to be patterns of similar thinking that we can trace from the Anabaptists through to the Levellers – that there are parallels between certain ecclesial concepts that developed within early Anabaptism and the political ideas of the Levellers. This can be seen both in terms of the Leveller understanding of freedom, consent, and religious liberty, but furthermore in what they oppose: the ecclesial polity of the Puritans. Also, as we will discover, there are plenty of explicit positive references to Anabaptism in general in the Leveller primary material. That said, despite these positive general comments by the Levellers, it is much harder to trace specific concrete influences from Anabaptism; so the search for possible avenues of influence goes through intermediaries – the General Baptists and the antinomian free grace preachers (especially Saltmarsh and Dell, whom we met in the previous chapter).

¹ I use the term ‘church’ with a lower case ‘c’ when I am referring to the church generally. However, when I am referring to a proper name, such as the ‘Catholic Church’ or the ‘Church of England’, then these terms are appropriately capitalised.

In this chapter I seek to show that whilst Anabaptist ecclesiology represents one of the indirect source influences on Leveller thought, at the level of ideas, at the same time the Levellers depart significantly from the political tenets of many of the Anabaptists; therefore, any account of similarities in patterns of thought between Anabaptism and the Levellers has to recognise certain important dissimilarities. As in previous chapters, we will look at both continuities and breaks in lines of thinking.

A result of this exploration should be that it will become clear as to why the Levellers held such fundamentally different political views from their contemporaries. I shall argue that what differentiated the Levellers from their Royalist and Puritan contemporaries was a position that refused to conflate church and state, and that denied the state any role in our salvation.² As in the previous chapter, we will observe that the Levellers consistently oppose the Puritan church-polity. For the Levellers, an understanding of the church as a *voluntary* group of believers informed a political understanding of individual liberty and consent and of the role of the state. From this, we can begin to see how the political understanding of liberty is formed as part of how the church is conceived: the Leveller view of the fundamental importance of individual voluntary agreement means that individual liberty is intrinsic to ecclesial and societal organisation, and so we have the importance of individual formal consent, freedom of conscience, delegated power, and restrictions on power; with the state having no role in religious matters.

A key corollary of this chapter is that our modern liberal notions of equality under the law, religious toleration, and individual freedom of conscience – including political values like voluntary agreement and individual consent – are in fact partly derived from *religious* ideas, in this case partly from ecclesiology, rather than from the Enlightenment rejection of religion. A second key corollary is that several fundamental tenets of political liberalism (the separation of church and state, toleration and religious liberty, limitation on the state's coercive powers in support of religion, for example) derive in part, via the Levellers, from Anabaptism. That elements of constitutional liberalism derive in part from seventeenth-century separatist and antinomian ecclesiologies, from sixteenth-century Anabaptist ecclesiologies, and from the silver-age conciliarism of the late fifteenth and early sixteenth centuries (and indeed from earlier conciliarists, like Gerson) has an import for two modern groups of thinkers: for

² Cf. Insole, *The Politics of Human Frailty*, 82.

those Christian theologians, such as Hauerwas, who reject political liberalism *in toto*;³ and for those defenders of political liberalism who see its roots in the modern-period struggle between church and state or in the political settlement after the ‘Wars of Religion’.⁴

We can note that political theology and theological social ethics are often strongly influenced by one’s soteriology and ecclesiology; in particular, one’s view of the relation between what we do now and the end Kingdom, the relation between the visible church and the Kingdom, and the relation between the visible and the invisible church. Where there is a conflation of any of these, there can be a lack of what might be called eschatological ‘reserve’, and various consequences emerge, as we see with the contemporaries of the Levellers, particularly amongst the Puritans. As Insole has written, when the Puritans combine the desire to transform the visible church into the invisible church of the saints, with an attempt to inaugurate the Kingdom of God, alongside an identification of the English church and state, then the reform of the church extends to the purification of the state – so that public political power is to be used coercively for the salvation of souls.⁵ The Puritan is strongly aware of sin and evil, but believes that these can be cut out of the church and state; indeed it is the state’s job to suppress sin, introduce ‘Godly Rule’, and educate and coerce people into leading morally upright lives (along lines determined by a godly few). Such use of public power is deemed justified on the grounds that it is for the good of the people and civil society and is in accord with the word of God.⁶ This is something that the Levellers repudiated consistently over time and amongst their different leaders. Again, this chapter will confirm my earlier claim that to categorise the Levellers as Puritans, as some historians have done, is unhelpful and confusing.

Against both the Puritan tendency to conflation (as exemplified by Cromwell and by Puritan talk of ‘Godly Rule’)⁷ and the separatist tendencies amongst some of the

³ See the previous chapter.

⁴ See, for example, Manent, *An Intellectual History of Liberalism*, xvii, 9, 21, 26, 32, 114; and Grayling, *Towards the Light*, 3, 8, 13, 130-131, 171, 233, 239, 245.

⁵ Insole, *The Politics of Human Frailty*, 54-55. Though technically, the Puritans, being Calvinists, would formally deny the straight conflation of the visible church with the elect, given that the elect are strictly speaking unknown to us; although Calvinism does at the same time lead to believers trusting in God that they are elect and thus will persevere, assured of salvation (see Miller, *Errand into the Wilderness*, 71-74). Certainly in some of the Puritan language, there appears the conflation in, for example, the way that they talk of being ‘the saints’.

⁶ For a brief overview of the Reformed tradition’s ideal of a society under the word of God, see, for example, Fergusson, *Church, State and Civil Society*, 72-73.

⁷ As examples of the certainty that his activities are God’s will, see Cromwell’s speeches in Roots (ed.),

Anabaptists, I will show that the Levellers stand in continuity with a moderate Anabaptism whilst breaking from those elements of Anabaptism that lead to more extreme separatism. The chapter suggests that the Leveller view of church and state is very different to that of Puritanism; and that, because of the break with more extreme separatist forms of Anabaptism, the continuity with a particular moderate Anabaptist understanding of church and state appears perhaps closer to an Augustinian model, even if unconsciously so. The Leveller understanding of political freedom and a limited state crystallises in a battle with both political absolutism and with Puritanism, and, whilst we cannot trace direct links from Augustine to the Levellers, we can see in the Leveller attitude to the state an Augustinian approach, as we saw in Chapter Two with our discussion of the conciliarists' approach to the state. The Levellers do not see the state as either dispensable (to be shunned by Christians), or as having the authority to try to save us; instead they recognise the necessity of the state, but hold that the state should be limited in its role.

4.2 Anabaptist ecclesiology

In the previous chapter we discussed possible influences from Anabaptist soteriology, through the English General Baptists, to the political thought of the Levellers. That chapter provided a conceptual map in which there did appear to be some links or parallels. In this section we will develop the conceptual map by examining early Anabaptist ecclesiology, its various strands, and how one of these strands emerged that would later be paralleled in General Baptist ecclesiology in England and, through the General Baptists, in the political thought of the Levellers. The key aim of this section is to show that there are in fact various Anabaptist ecclesiologies (both multiple and diverse). This picks up a key finding of the previous chapter (that Anabaptism is not monolithic)⁸ and provides the basis for the claim that, for all the obstacles raised by discontinuities and problems tracing theological ideas through to later political ideas, aspects of Anabaptist ecclesiology are reflected in Leveller thinking.

Speeches of Oliver Cromwell, 54, 71, 72, 109, 146, 194. William Lamont has also described how the Puritans' idea of 'Godly Rule' entails the assumption that God's will was intelligible to the Calvinist elect (Lamont, *Godly Rule*, 126).

⁸ Cf. Fergusson, *Church, State and Civil Society*, 42.

The Anabaptists broke with the view of church and state held by the Magisterial Reformers, and emerged with their own ecclesiology: the church as a voluntary gathering of believers. For the Radical Reformers, who rejected predestination in favour of free will, as we discussed in Chapter Three, there is a clear church of those who have voluntarily joined and been baptised, as adults with faith, thus creating a believers' church. It is in this key Anabaptist idea of the voluntary church that we can perhaps find, in embryo, the Leveller idea of a voluntary compact – leading to the important notions of free consent, individual consent, and formal compact.

The early Anabaptists reject the idea that the state has a legitimate coercive role and duty in upholding true religion and they reject the very notion of a state church. Hence the importance in Anabaptist thinking of separating from false churches and of the separation of the legitimate roles of church and state; and we can see a clear expression of the latter in the 1527 Schleithem Confession (Article 6) – which is regarded as a founding confession by many present-day Anabaptists – and also in Hubmaier's work of 1527, *On the Sword*.⁹ Again, in this key idea that religious faith and church membership is to be freely entered into, with no state coercion, we can see a parallel with core political ideas of the Levellers with regard to church and state.

Where the Anabaptists differed amongst themselves was on the ramifications of this separatist ecclesiology: with some advocating an extreme militant approach to the corrupt world, and, at the opposite end of the spectrum, others advocating effective withdrawal, with Christians not allowed to hold political office. That is, it is important to recognise that there were quite different streams within Anabaptism, and that Anabaptism is a myriad phenomenon. We can usefully draw out at least four different strands, though these are heuristic rather than descriptive. There was an extreme Münsterite stream,¹⁰ committed to chiliastic utopianism and the violent inauguration of the New Jerusalem; a pacifist stream that can be seen,¹¹ for example, amongst the Mennonites of the Netherlands, with an emphasis on separation from the world and from sinners; and, for the purposes of this thesis, at least two other streams, such as that characterised by Hubmaier, which moderates between the extremes of the militant and

⁹ Hubmaier, 'On the Sword', 288, 290-291.

¹⁰ We will return to the matter of Anabaptists and the violence of Münster during this chapter. That said, there is some scholarly debate on whether the utopian revolutionaries of the Peasants' War (Thomas Müntzer) and of Münster (Jan Matthijs, John of Leyden, Bernard Rothmann, Bernhard Knipperdolling) were fully Anabaptists or represent a deviation from Anabaptism.

¹¹ It is perhaps more accurate to think of there being several pacifist streams.

the pacifists, and the more spiritualist stream typified by Schwenkfeld,¹² with its individualistic and mystical tendency. Although modern Mennonites look back to the Schleithem Confession as a foundational agreement of Anabaptist leaders, it needs to be remembered that this Confession is only an agreement of certain Anabaptist groups. In particular, it frames a pacifist stance (withdrawing from citizenship of the world) in opposition to what it calls (in the Cover Letter preceding the Seven Articles) the “false brothers among us,” who are thought to include Anabaptists like Denck and Hubmaier, as well as extreme antinomian Anabaptists in the Swiss town of St Gall.¹³

Although the Anabaptists focused on the radical idea of the separation of church and state, they derived quite different ideas on what that separation should mean in theory and in practice. What we will discover is that from the beginning of Anabaptism there is a moderate Anabaptism that holds to a separation *between* church and state (typified by Hubmaier’s notion of two offices and two commands), as distinct from the pacifist Anabaptist calls for a separation of church *from* state (the withdrawal of Christians from political life). The answer to how these differences arose lies in how the secular state, the non-church, is viewed. In the covering letter to the Schleithem Confession it is stated that the children of God “have been and shall be separated from the world in all that we do and leave undone.”¹⁴ Article 4 of the Confession talks about separation from the evil and wickedness in the world and that the believers should “have no fellowship with them.”¹⁵ Those who are not believers are described as “a great abomination before God,”¹⁶ and there is a revealing use of opposites: good and evil, believing and unbelieving, light and darkness, those who are out of the world and the world itself. As a result, God

admonishes us therefore to go out from Babylon and from the earthly Egypt, that we may not be partakers in their torment and suffering, which the Lord will bring upon them.

From all this we should learn that everything which has not been united with our God in Christ is nothing but an abomination which we should shun.¹⁷

For the Schleithem Confession the church is in the perfection of Christ, whereas the secular sword is outside the perfection of Christ, as Article 6 states:

¹² As already noted, it is debatable as to whether Schwenkfeld can properly be called an Anabaptist.

¹³ Yoder (ed.), *The Schleithem Confession*, 22-23 n. 9.

¹⁴ *Ibid.*, 8.

¹⁵ *Ibid.*, 11.

¹⁶ *Ibid.*, 12.

¹⁷ *Ibid.*

We have been united as follows concerning the sword. The sword is an ordering of god outside the perfection of Christ. ...

But within the perfection of Christ only the ban is used for the admonition and exclusion of the one who has sinned, without the death of the flesh, simply the warning and the command to sin no more.

Now many, who do not understand Christ's will for us, will ask: whether a Christian may or should use the sword against the wicked for the protection and defense of the good, or for the sake of love.

... Second, is asked concerning the sword: whether a Christian shall pass sentence in disputes and strife about worldly matters, such as the unbelievers have with one another. The answer: Christ did not wish to decide or pass judgment between brother and brother concerning inheritance, but refused to do so. So should we also do.

Third, is asked concerning the sword: whether the Christian should be a magistrate if he is chosen thereto. This is answered thus: Christ was to be made king, but He fled and did not discern the ordinance of his Father. ...

Lastly one can see in the following points that it does not befit a Christian to be a magistrate: the rule of the government is according to the flesh, that of Christians according to the Spirit. Their [the unbelievers'] houses and dwelling remain in the world, that of the Christians is in heaven. Their citizenship is in this world, that of the Christians is in heaven.¹⁸

In contrast to the Schleithem position, Hubmaier's work *On the Sword* is written, as he states at the start, against those brothers who repudiate Christian magistracy and hold that Christians should not bear the sword. For Hubmaier, both the church and the state are from God:

See now, dear brothers, that these two offices and commands, of the ban and the secular sword, are not opposed to each other, since they are both from God. ... Hear then, dear brothers, how Christ so properly exercises his own office, and lets the judicial office stand as its own value. So must the Church also do with its ban, and the government with its sword, and neither usurp the other's office.¹⁹

For Hubmaier, the world is a kingdom of sin (God gave temporal authority to Adam after the Fall, and "in like manner God also entrusted the sword to certain other god-fearing men")²⁰ but God has appointed and ordained the secular sword for the protection of the innocent and the punishment of evil-doers. Moreover, states Hubmaier, Christians can rightly play their part as civil judges:

Now a blind man can see, that a Christian may properly and with a good conscience sit in court and council, and judge and decide about temporal cases; ... If a Christian therefore may and should in the power of the divine word, be a judge with the mouth, he may also be a protector with the hand of him who wins

¹⁸ Ibid., 14-15.

¹⁹ Hubmaier, 'On the Sword', 290-291.

²⁰ Ibid., 289.

the suit, and punish the unjust. For whoso shall judge righteousness ought not to hesitate to execute and fulfil punishment against the malicious. Who soles a shoe, if he dare not put it on? See, dear brothers, that council, courts, and law are not wrong.²¹

God has given the sword to the magistrate to protect oppressed and persecuted people – indeed the sword of government is an office of God, and “punishment with the sword” is one of the “commands given by God.”²²

We can see that Hubmaier adopts a Lutheran approach to the civil magistracy as being ordained by God, and, for him, the separation of church and state is about the two very separate roles, with the civil authority to have no control over the church – i.e. a separation *between roles* which are both ordained by God – which is where he departs heavily from Luther. Whereas, for the Schleithem Confession, the separation is about the state belonging to the secular world outside Christ and thus Christians are to play no part in it – i.e. a separation *from the world*. We suggested in the last chapter that there may be soteriological influences from Hubmaier to the General Baptists in England; likewise, the approach of Hubmaier to church and state seems to prefigure that of the Levellers – however, any notion of a link in ideas remains speculation.

For the author(s) of the Schleithem Confession,²³ the church’s requirement for holiness requires that the Christian should separate from the world and not even play a part in the running of civil society as this taints them. Even moderate Anabaptists like Denck talk of “the separation of the children of God from the children of the world” and “separation from the fellowship of the world”;²⁴ Christians should not

deal with evildoers any more than to teach and admonish them toward their betterment; in case they do not listen, one ought to leave them as heathen and avoid them; for those who are outside (these are the unbelievers), are of no concern to the community of Christ, except where they may serve them through teaching.²⁵

For this reason, Denck states that it is not permitted for any Christian “to use force and govern,” and that “a friend of God should not get into government but out of it.”²⁶ Ultimately, for Denck “holiness means to have separated oneself once and for all from

²¹ Ibid., 286-287.

²² Ibid., 288.

²³ The Schleithem Confession, written in 1527, is thought to be primarily by Michael Sattler.

²⁴ Denck, ‘Concerning Genuine Love’, 112.

²⁵ Ibid., 116.

²⁶ Ibid., 116-117.

the evil world.”²⁷ So although both Denck and Hubmaier may have been targets of criticism by the Schleithem author (Denck was a target for his emphasis on Spirit and liberating love), it seems that Denck is certainly closer to the spirit of Schleithem than Hubmaier. The explanation for this probably lies in the diversity of Anabaptist ecclesiologies and what can be thought of as corresponding ‘political theologies’.

This diversity was not confined to the political realm, but extended to Christology too. Dutch Anabaptism suffered a number of problems due to its emphasis on church purity, an ecclesiology of the pure which stemmed partly from an unorthodox Christology that emphasised the purity of Christ and his ‘celestial flesh’. Melchior Hoffman,²⁸ Menno Simons,²⁹ and Dirk Philips³⁰ emphasised the divinity of Jesus, stating that Jesus did not receive his flesh from Mary, since only a body pure from sin could save us.³¹ Hoffman was a major influence in bringing Anabaptism to the Netherlands and his unorthodox Christology was thus imported too. For Dirk Philips, Christ is the spotless Lamb of God and without sin; Christ is of flesh and blood, truly a man, but not of our sinful flesh and blood.³² With the Christological claim that Jesus’s flesh must be pure (i.e. celestial) if it is to redeem us, and the ecclesiological understanding of the church as the Body of Christ, then it follows that the church must be pure and kept pure (through the removal of sinners). As Klaassen puts it: “This doctrine of the heavenly flesh ... had important implications for their doctrine of the church as the body of Christ. It led to an almost impulsive concern for the purity of the church and directly into the harsh discipline of early Dutch Anabaptism.”³³ We can

²⁷ Ibid., 110.

²⁸ It seems that Hoffman was the source for the quasi-docetic Christology of Philips and Simons. Hoffman’s Christology was also shared by Rothmann and Schwenkfeld. He converted Dirk Philips and others, and laid the ground for the successful Dutch Anabaptists that became the Mennonites. See Pearce, *The Great Restoration*, 78-85.

²⁹ Simons worked in the Netherlands and northern Germany and emerged as the leader of what were to become known as ‘Mennonites’. Simons and Dirk Philips had many struggles with the use of the ‘ban’ (excommunication) and one of the groups of Mennonites that broke away was the ‘Waterlanders’ of North Holland who would be influential in the story of Smyth and Helwys and the development of English Baptism.

³⁰ Dirk Philips is regarded in Mennonite circles as an important teacher of Anabaptist doctrine.

³¹ Hoffman: “If it should be established that Christ’s flesh was Mary’s natural flesh and blood, we would all have to wait for another redeemer.” (Melchior Hoffman, ‘Truthful Witness’, in Klaassen (ed.), *Anabaptism in Outline*, 27-28.) Philips: “Now if the body of Christ had been formed by Mary ... there would be no difference between the body of Christ and that of Adam. ... How then should Christ have a pure body, if he had been formed of human seed which is unclean? ... But the apostle does not say – nor does he mean – that he became man of our human flesh and blood. ... Hence the holy flesh of Christ, which is meat indeed and makes alive, did not originally come from our flesh and blood.” (Dirk Philips, ‘The Incarnation of Jesus Christ’, in *ibid.*, 37-38.)

³² See Philips, ‘The Incarnation of Jesus Christ’, in *ibid.*, 38.

³³ Klaassen (ed.), *Anabaptism in Outline*, 24.

thus see that the variant Christologies of certain Dutch Anabaptists led to certain separatist forms of ecclesiology. The reason that this is important to our work is that in the next section it will be argued, just as we contended in the previous chapter, that English General Baptism³⁴ appears to inherit certain theological ideas from Dutch Anabaptism; yet at the same time, it did not inherit this unorthodox Christology – and its ecclesial implications.

In Dirk Philips's work *The Church of God* – which plays an important role within the Mennonite tradition – we can see this emphasis on the church's purity: "the church of God is a congregation of holy beings."³⁵ This leads to an almost dualist approach to the world:

there are two kinds of people, two kinds of children, two kinds of congregation on earth, namely, the people of God and the devil's people, God's children and the devil's children, God's congregation and the synagogue or assembly of Satan.³⁶

The members of the church on earth are the believers who have been 'born again'.³⁷ He seems fairly clear that the church on earth is for the saved. Within the church itself, open sinners are to be excluded – offending members are to be cut off. Thus the church members are also to separate even from the sinners formerly within the church: the congregation "should separate, avoid, and shun the false brethren" and "expel those in the congregation who are found wicked."³⁸ For Dirk Philips, 'evangelical separation', as he calls it, is the fourth ordinance of the church. Menno Simons states that this separation is to extend to not eating with, or greeting, such former brothers and sisters; a husband and wife should even shun each other: "the husband should shun his wife, the wife her husband, parents their children, and the children their parents."³⁹ The 'ban' (their term for the ecclesial separation from the excommunicated) includes "daily company, conversation, society and business."⁴⁰

Philips argues that the sinner, the sickly lamb, must be removed from the flock so as not to contaminate the whole flock ("one scabby sheep contaminates the whole

³⁴ Although the term 'General Baptism' is not used too often in current secondary literature (though it is in the occasional dictionary of theology), I use this term as short-hand for the doctrine and practice of the General Baptists of this period.

³⁵ Philips, 'The Church of God', 229.

³⁶ *Ibid.*, 231.

³⁷ Philips uses the Dutch word 'Gemeente' for church, which is accurately translated as 'congregation'.

³⁸ Philips, 'The Church of God', 252-253.

³⁹ Menno Simons, 'On the Ban', in Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 265.

⁴⁰ *Ibid.*, 267.

flock”), just as a sick part of the body may need to be cut off to save the body.⁴¹ Open sinners must be excluded so that the whole congregation is not defiled: the congregation should “not have spot nor wrinkle.”⁴² This seems to derive from Philips’s belief in the purity of Christ’s flesh, which is spotless and not derived from human flesh. Now, given that the ban and this approach to purity are not taken on by the General Baptists, we would be entitled to ask whether this undermines notions of continuity. At this stage, this is to get ahead of ourselves, and this question will be answered in the coming section.

The legacy of Anabaptist thinking is the powerful ecclesiology that the church need not and in fact does not comprise everyone in the parish; the church is and must be a voluntary group of believers; it is formed by the common agreement or compact of its members; it can accept and reject members; the church has the power to elect and dismiss its officers; and it is entirely independent of the state. Believers’ baptism thus becomes a revolutionary concept – and we can immediately see how these theological concepts might ‘translate’ into Leveller political concepts, and thus provide the basis of continuities or parallels in thought. Believers’ baptism both destroys the old order of Christendom, and opens up new possibilities. Of course, the destruction of the old order and the new emphasis on a small visible church of believers famously led, in the case of the Anabaptists at Münster, to a violent end (in the years 1534-1535). Although such militant Anabaptism was very much in the minority within the Anabaptist movements, the blood-bath at Münster provided a rhetorical weapon to the opponents of the Anabaptists for years to come. All Anabaptists were made guilty by association: Anabaptists were pictured as religious and political extremists, wanting to make property communal and being liable to violence and overthrowing the order of the state. This is why, over one hundred years later, the Levellers were attacked by their opponents with the label of being ‘Anabaptists’.

Although there is a something of a unity to certain aspects of Anabaptist ecclesiology (with respect to a visible church of adult believers), I have shown that we need to recognise that there were quite different streams of ‘political’ thought within Anabaptism about the ramifications of that ecclesiology, based on how the church should relate to the rest of the world. The extreme Münsterite stream came to a violent

⁴¹ In his definition of the fourth ordinance of the seven ordinances of the true church. See Philips, ‘The Church of God’, 247.

⁴² *Ibid.*, 256.

end; the stream that advocates withdrawal ran through the Mennonites of the Netherlands and can perhaps be seen today in the United States, in some of the thinking of John Howard Yoder and his intellectual heirs such as Hauerwas;⁴³ but there is a third stream, that of Hubmaier, which, somehow through English General Baptism, has parallels in Leveller thinking. I am not of course saying that there were only three streams, for one of the features of Anabaptism is its diversity; but I am claiming that there is a stream, characterised by Hubmaier, that moderates between the extremes of the militant and the pacifists.

In the next section, we shall look in more detail at how elements of continental Anabaptist ecclesiology appear to have influenced what became General Baptist ecclesiology in England, and from there at parallels in patterns of Anabaptist thought and Leveller thought. We should note that the links from the continental Anabaptists to the General Baptists are still debated amongst historians, as discussed in the previous chapter, with there being at least agreement that Smyth and Helwys (the founders of English General Baptism) spent time in the Amsterdam area with one of the groups of break-away Mennonites known as the ‘Waterlanders’ in the early seventeenth century.⁴⁴ As Pearse puts it: “The Waterlanders were that faction of the [Anabaptist] movement who had taken the least rigorous line in the ugly disputes concerning the ban which had so disfigured the Dutch and North German movement in the second half of the previous century.”⁴⁵ It is significant that the embryonic General Baptists were in close contact and discussions with the Anabaptist Waterlanders, who had broken away from the rigorous separatist Mennonites precisely over the issue of evangelical separation. When Smyth and Helwys went their separate ways, Helwys’s group came back to England, while Smyth’s group eventually merged with the Waterlanders a few years after his death.

4.3 The Levellers and General Baptist ecclesiology

Having shown the diverse strands in Anabaptist ecclesiology, this enables us to ask

⁴³ Although, strictly speaking, both Yoder and Hauerwas would deny that their ecclesiologies are those of withdrawal. That said, both have an ambivalent view of Christians being involved in the political process of the state.

⁴⁴ See White, *The English Baptists of the Seventeenth Century*, 16-17.

⁴⁵ Pearse, *The Great Restoration*, 197.

whether the moderate ecclesiology characterised by the Anabaptist Hubmaier in some indirect way may have influenced the Levellers – or at least whether one can find parallels between the two – via the English General Baptists.

4.3.1 Background

In Chapter 23 of the Westminster Confession of Faith of 1646/47, Section 3 states that the civil magistrate

has authority, and it is his duty, to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administrated, and observed.⁴⁶

Yet, at this time, one political group stood up for genuine religious liberty in England, for full religious liberty for all – the Levellers. This does not just distinguish the Levellers from their political contemporaries; it also distinguishes them from the political positions held in previous decades in England. As Overton says to the Presbyterian-controlled Parliament in 1646 in *A Remonstrance of many Thousand Citizens*: “It is not for you to assume a Power to controule and force Religion, or a way of *Church Government*, upon the People, because former Parliaments have done so.”⁴⁷ When the Levellers fought to change laws and to implement a contractarian political programme in England, what distinguishes them is that they became the first political party in England to call for religious freedom explicitly and to build this into the heart of their political programme. As the Levellers tried to introduce religious toleration and liberty of conscience, they did so not by withdrawing from secular society but by actively trying to change the laws and the political constitution of society.

The Levellers combined the then-radical idea of the separation of church and state, with the notion that Christians should be very much engaged in forming and

⁴⁶ See http://www.reformed.org/documents/westminster_conf_of_faith.html (accessed 4 July 2009). Although the Westminster Confession was fundamentally Presbyterian (and thus the particular view of church and state roles at that time is to be expected), it is worth noting that the later Independent-controlled Parliament passed legislation that was in a similar spirit. For example, the 1650 Blasphemy Act prescribes capital punishment for those publishing atheistic and blasphemous opinions. The House of Commons in 1650 clearly saw its role in promoting true religion and suppressing false religion. The House of Commons Journal for 19 July 1650 is revealing: on that day the House ordered that a Bill be brought in to settle preaching ministers under the general heading of “propagating the gospel”, and then resumed the debate on the Blasphemy Bill under the general heading of “suppressing ranters” (in House of Commons Journal, Volume 6, 1648-1651, at <http://www.british-history.ac.uk/source.aspx?pubid=111> (accessed 27 June 2009)).

⁴⁷ Overton, *A Remonstrance*, in Wolfe, 122.

changing the state, its constitution and its laws. They adopted, via the Baptists, I shall argue, the Anabaptist conception of political and religious separation, although this never involved any notion of withdrawal or separation from society. As David Wootton puts it: “The Levellers ... systematically opposed any division of the political world between godly and ungodly.”⁴⁸ The very name ‘Leveller’ started as a term of abuse, used by opponents to suggest that the Levellers were the same as the Anabaptists of Münster.⁴⁹ Indeed, throughout the Leveller tracts, the Leveller authors note that they are accused of being Anabaptists (along with other terms of abuse of a separatist or antinomian nature):⁵⁰ “some have said I am a great Anabaptist,”⁵¹ notes Walwyn in *A Whisper in The Ear*. In *The Compassionate Samaritan*, Walwyn defends the Anabaptists of England from being likened to the extreme German Anabaptists and from the charge of being against civil government. He then sets out at length what the English Anabaptist opinion of government is – an opinion that is in fact almost his own.

Most Leveller leaders and agitators in the Army tended to be separatists religiously, with a significant number being Baptists. By ‘religious separatist’ we mean those who had separated themselves at this period from the established church into the relatively new gathered churches of believers. This had two impacts for these Levellers: a) they inherited the emphasis on the believer’s voluntary church membership, and b) they did not imbibe the Calvinist view of the state and the state-church held by their Puritan contemporaries. Lilburne provides us with some of the strongest Leveller statements of religious separation: he rejects the notion of “Nationall” churches,⁵² and states that

the Church of England as at this day it stands, is Antichristian, both in Power, in Matter, in Ministrie, in Forme and in Worshipp.

... all Gods people are bound in duty & conscience, to separate away from it, & to have no communion with it.⁵³

For Lilburne, the Church of England

is a true *Whorish Mother*, and ... she may have Children as proportionable as Children of a true wife; yet this doth not prove her Children which are *Base-begotten* are *true-begotten* Children ... even so say I, the Church of England,

⁴⁸ Wootton, ‘Leveller democracy and the Puritan Revolution’, 423.

⁴⁹ See William Walwyn, ‘The Fountain of Slaunder Discovered’, in McMichael, 352-353.

⁵⁰ The Levellers are accused of being ‘sectaries’, with designs of Anarchy, ‘community’ (i.e. communism), and of ‘rule by the sword’. All these are code-words for violent Münster-type Anabaptism.

⁵¹ Walwyn, ‘A Whisper in the Ear’, in McMichael, 183.

⁵² John Lilburne, *Come out of her my people*, STC 15596, 4.

⁵³ *Ibid.*, 35.

neither is, nor never was truly married; joyned, or united to *Jesus Christ*, in that Espousall bond which his true Churches are and ought to be: but is one of *AntiChrists* Nationall, *Whorish* Churches.⁵⁴

Now Lilburne is not just attacking the Laudian Church of England in these statements; he does something much stronger: he attacks the very ecclesiology of a national church and argues that it cannot be purified as it is not even a church and cannot be. He denies that

the Church of England is a true Church of *Christ* being the Whol *Nation*, good or bad, wicked or righteous, godly or ungodly

That the true visible Church of *Christ* under the *Gospell*, doeth not consist of true Beleevers, that is to say Saints by calling and practice, but of all sorts and kinds of wicked persons

Ergo, It is no true Church of *Christ*, but a false and *Antichristian* Church of *Antichrists*.⁵⁵

For Lilburne, “the forme of a true Church is *for a company of believers who are washed in the blood of Christ by a free and voluntary Consent*” and so the Church of England is “no true Ch. of Christ” but is “a whorish and Antichristian Church, and none of Christs, having nothing to doe with Jesus Christ.”⁵⁶

Indeed, the Church of England cannot be a true church for Jesus Christ “did abolish the National Church of the Jewes.”⁵⁷ It is not a deformed church which should be reformed, for national churches are of Antichrist; whereas true churches consist only of true Believers. For him, “the true definition of a true visible Church of Iesus Christ” is that “every true visible Church of Christ, are a company of people called and separated out of the world,” by voluntary profession of faith, and each such true church “is an independent body of it selfe.”⁵⁸ Lilburne’s church, in an echo of some of the Anabaptist language, is a “City walled”, a “Garden enclosed”, a “Spring shut up”, a “fountaine sealed”.⁵⁹

Although many Levellers tended to separatism at the ecclesial level, they were not within the political separatist tradition (shunning society and particularly government) of some of the continental Anabaptist groups that we saw in the previous section, as, for example, expressed in the Schleithem Confession. The Levellers somehow seem to

⁵⁴ John Lilburne, *An Answer to Nine Arguments*, Thomason E.25(7), 4.

⁵⁵ *Ibid.*, 10-11.

⁵⁶ *Ibid.*, 28-29.

⁵⁷ *Ibid.*, 37-38.

⁵⁸ John Lilburne, *A Light for the ignorant*, STC 1245:16, 20.

⁵⁹ Lilburne, *An Answer to Nine Arguments*, 36-37.

have been indirectly influenced by the more balanced (in terms of the role of the church with regard to the state) approach typified by Hubmaier. The next sections maintain that this is something to do with the General Baptist influence of Roger Williams, Thomas Lambe, and others. The Anabaptist theology was transmitted, as we shall see, through the likes of Smyth, Helwys, and Williams, and especially via their ecclesiology. Indeed Walwyn puts into the mouth of the Presbyterian Thomas Edwards, in *A Parable*, the words “you have nothing else against him [the sectaries], but Rebaptizing and generall redempcion” – a clear reference to the General Baptists.⁶⁰

4.3.2 Smyth, Helwys, and Dutch Anabaptism

In order to trace the potential links in ecclesiological understanding from the Anabaptists to the Levellers, we must turn in detail to the beginnings of the General Baptists.

The separatism of Smyth, the co-founder of English General Baptism, developed to the position where he placed less stress on being separated from secular society and more on being a believers' church.⁶¹ In his *Principles and Inferences concerning The Visible Church* in 1607, Smyth writes that there is an invisible church of the elect; and that “the visible church is a visible communion of saints” freely joined together with God and with each other: “A visible communion of Saincts is of two, three, or moe [sic] Saincts joyned together by covenant with God & themselves, freely to use al the holy things of God.” The outward form of the true visible church includes a mutual covenant between the faithful, and visible churches “are either true or false.” For Smyth, the “true matter of a true visible Church are Saints” and “Saints are men separated from all knowne syn.” If a church allows an open sin to continue unadmonished then “the whole church is defiled and leavened.”⁶² The purity of the visible church means that no open sin must be suffered; this shows clear links to the thought and language of the Dutch Anabaptists. Smyth emphasises excommunication which is described as the avoidance of religious and civil communion – again the same as the Dutch Anabaptist ‘ban’. Smyth continues that people may separate from a defiled church in order to avoid pollution. He permits princes to erect true visible churches and to command their

⁶⁰ Walwyn, ‘A Parable’, in McMichael, 253.

⁶¹ Peter Hallihan, ‘The Immediate Pre-history of the English Particular Baptists’, *Strict Baptist Historical Society Bulletin* No. 15 (1979), 7.

⁶² John Smyth, *Principles and inferences concerning The visible Church*, at <http://www.baptistlibraryonline.com/library/smyth/principles.pdf> (accessed 4 July 2009).

subjects to enter into them, a surprising statement but one which perhaps marks the early part of his thinking.

However, in Smyth's 1609 Short Confession of Faith he distances himself from the Mennonite position – those who are excommunicated are not to be avoided in what pertains to worldly business.⁶³ What we can see in this work are both clear Anabaptist influences, in terms of soteriology and ecclesiology,⁶⁴ on Smyth's thinking and yet the beginning of a distinctive position that would become English General Baptism. It is this distinctiveness that complicates the picture of continuities, as it appears to suggest discontinuities. The argument of this thesis is that we have *both* continuity and discontinuity; and that the extent of each may be down to the different genealogies within Anabaptism.

In the 1611 Helwys Confession, known as *A Declaration of Faith of English people remaining at Amsterdam*, we find that although the church of Christ is a company of faithful people separated from the world (Article 10), the church members are not to avoid excommunicants in respect of civil society (Article 18). In Article 24 it states that magistracy is a holy ordinance of God and with respect to Christian magistrates: "they may be members of the Church of Christ, retaining their magistracy."⁶⁵ Indeed, it is sinful to despise civil government; and the magistrate bears the sword of God. There is an echo of the language used by Hubmaier here. This Helwys Confession has a similar structure to Smyth's 1609 Short Confession of Faith and again shows the influence of Anabaptist theological ideas, particularly in soteriology and ecclesiology.⁶⁶

Although Helwys allows for Christian magistrates, no role is given for the magistrate with respect to the church. Each church is to be small and entirely self-

⁶³ Article 18 of Smyth's 1609 Short Confession of Faith. This personal Confession is interesting for setting out a clear early version of what would become a General Baptist position, accepting a number of Anabaptist beliefs and denying a number of Calvinist teachings. However, to confuse matters, Smyth was one of the signatories of a Confession of Faith in 1610 that contains a Mennonite avoidance of the impure (Article 34) and a Mennonite statement that Christians should not be civil magistrates (Article 35). Helwys opposed the latter Mennonite view.

⁶⁴ In the twenty articles of Smyth's 1609 Short Confession of Faith we find soteriological ideas that have clearly come from Anabaptism (Articles 2, 3, 5, 8, 9, 10, 11, 20), ecclesiological ideas from Anabaptism (Articles 12, 13, 14, 15, 16, 17); and yet some articles that oppose Anabaptist ideas (Article 18), or are ambiguous (Articles 6, 7).

⁶⁵ *A Declaration of Faith of English people remaining at Amsterdam*, at <http://baptiststudiesonline.com/wp-content/uploads/2007/08/helwys-confession.PDF> (accessed 27 June 2009).

⁶⁶ The 1611 Helwys Confession contains soteriological ideas that show Anabaptist influence (Articles 3, 4, 5, 6, 7, 27), and ecclesiological ideas that show Anabaptist influence (Articles 10, 11, 12, 13, 14, 16, 17, 20, 21, 22). It also contains an article which repudiate certain Anabaptist ideas on the flesh of Christ (Article 8).

governing, with entry by voluntary faith and baptism; anything else is not a church according to Christ's Testament. Helwys wrote in his work *A shorte declaration of the mistery of iniquity* in 1612 that none should be punished (under the civil law) for transgressing against spiritual ordinances. The king has no power to compel any to be subjects of the kingdom of Christ; the king does not have power to command men's consciences in the things between God and man. Helwys's 1611 Confession marks the formal beginning of what can be called General Baptism.

In the 1612-1614 *Propositions and Conclusions concerning True Christian Religion*, by Smyth's followers as they sought to join the Mennonites, Articles 64 and 65 contain the statements that the visible church consists of penitent persons who are believers and whose lives bear fruit and "the visible church is a mystical figure outwardly of the true, spiritual invisible church, which consisteth of the spirits of just and perfect men only, that is of the regenerate."⁶⁷ The Confession contains the Mennonite view that the impenitent are to be shunned lest they pollute (Article 80). The Confession also contains the historically important statement (in English church history) that the office of the magistrate is an ordinance of God but the "magistrate is not by virtue of his office to meddle with religion, or matters of conscience, to force and compel men to this or that form of religion or doctrine" (Article 84).⁶⁸

Contrast this statement with the English Separatist True Confession of 1596 which contains Calvinistic Double Predestination, supports infant baptism, and holds that princes and magistrates are to root out and suppress false ministries, voluntary religions, and counterfeit worship of God. There are thus serious weaknesses in the accounts of those historians of the Baptists (such as J.F. McGregor)⁶⁹ who have tried to claim that the English Baptists derived from the sixteenth-century English 'Separatist' tradition, rather than the continental Anabaptists (despite the acknowledged sojourn of Smyth and Helwys amongst the Dutch Anabaptists). This historical claim ignores the explicit attack on the ecclesiology of the 'Brownist' separatists by Helwys;⁷⁰ and, secondly, ignores the vast and clear theological differences between the General Baptists and the earlier Elizabethan separatists (who were essentially Calvinists). There

⁶⁷ *Propositions and Conclusions concerning True Christian Religion*, Article 65, at <http://www.reformedreader.org/ccc/acof1612.htm> (accessed 27 June 2009).

⁶⁸ *Ibid.*, Article 84.

⁶⁹ See J.F. McGregor, 'The Baptists: Fount of all Heresy', in McGregor and Reay (eds), *Radical Religion in the English Revolution*, 26-28.

⁷⁰ Helwys, *A shorte declaration of the mistery of iniquity*, 123-155.

were a number of early Separatist groups in Elizabethan England, including ‘Brownists’ and ‘Barrowists’; but these were mostly groups whose Calvinism drove them out of the Church of England, rather than staying to purify it as their Calvinist colleagues, the Puritans, tried to do. However, they remained Calvinist in their theology and principles.⁷¹

The historical claim also ignores contemporary usage by the Levellers themselves who call the Baptist congregations that support them ‘Anabaptists’.⁷² In fact, throughout their tracts, the common Leveller term to describe Baptists in England is ‘Anabaptists’.⁷³ The voluntarist principle of General Baptists, in their ecclesiology and soteriology (involving particularly the offer of general redemption), simply cannot have derived from the Calvinist separatists; it seems more clearly Anabaptist. The Smyth-Helwys congregation did physically derive from a former Barrowist congregation (which was Separatist) that had left Gainsborough-on-Trent; but during its sojourn in Amsterdam, through links with the local Waterlander Anabaptists, its theology changed significantly. If we focus on the theology of the participants it is possible to see an apparent link back from the English General Baptists through Smyth and Helwys to the Anabaptists, and to the *milieu* of the discussions with the Dutch Anabaptists. Likewise, we can see that such a theological link cannot be traced back to the Calvinist Elizabethan separatists. That is, despite the discontinuities, there do appear to be ecclesiological ideas that go back from the early English General Baptists to the continental Anabaptists – and this provides the first step in the claim that certain Leveller ideas ultimately reach back to certain Anabaptist ideas.

That said, there are still some discontinuities. As we noted, Helwys sought to detach himself from the attempt to join the moderate Waterlander Mennonites which Smyth was pursuing.⁷⁴ In 1611, Helwys wrote a document known as *An Advertisement or Admonition Unto the Congregations* in which he affirms that Christ took his flesh of Mary (rejecting their unorthodox view of heavenly flesh as heresy);⁷⁵ and that magistracy, being a holy ordinance of God, debars no-one from being a member of the

⁷¹ Pearse, *The Great Restoration*, 161-162, 167-178.

⁷² See, for example, Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 352. Walwyn also calls the Particular Baptist congregations ‘Anabaptists’.

⁷³ See, for example, Richard Overton, ‘A Remonstrance of Many Thousand Citizens’, in Wolfe, 121.

⁷⁴ There is some scholarly debate on whether the split with Helwys occurred before, or after (and as a result of), Smyth’s attempts to join the Mennonites.

⁷⁵ Helwys, *An Advertisement or Admonition*, 8.

church of Christ.⁷⁶ Both these assertions distance Helwys's position from the more extreme Mennonites. In 1612 Helwys brought a congregation back to England and established what is considered to be the first General Baptist congregation on English soil.

4.3.3 The General Baptists and Levellers

Building on the analysis of the links between the ecclesiology of the Anabaptists and that of the early General Baptists, the second step in the claim that certain Leveller ideas ultimately reach back to certain Anabaptist ideas is to show that the Levellers were influenced by the General Baptists.⁷⁷

As noted in the previous chapter, a significant number of Leveller leaders and agitators in the Army were Baptists. In the 1640s, we find a group of preachers, army chaplains and religious leaders who either share membership of, links to, or share similar ideas with, the General Baptists – men like Roger Williams, Thomas Lambe, John Saltmarsh, Henry Denne, and William Dell⁷⁸ – who also have close links to the Levellers. We will briefly examine some of the writings of Williams to show how several of the key thoughts are taken up by the Levellers, Williams being an early influence on the Levellers as we saw in the previous chapter. This will further help us to see the intellectual links between the Anabaptists, English Baptists, and the Levellers – intellectual parallels that we noted in the chapter on soteriology – and to see the use of the moderate Anabaptism that holds to a separation *between* church and state (Hubmaier's two offices and two commands), rather than separation of church *from* state (withdrawal of Christians from political life).

In his influential book of 1644, *The Bloody Tenent of Persecution*, Roger Williams writes that although believers are subject to the civil authorities with respect to the civil law, believers should not yield to the civil authorities on religious matters. The civil sword is to be used for civil justice but not for spiritual matters and punishments relating to them. That said, St Paul

denies not civil weapons of justice to the civil magistrate (Rom. 13), but only to church officers. And yet the weapons of such officers he acknowledges to be

⁷⁶ Ibid., 60.

⁷⁷ In the previous chapter I have already answered Wright's contention that there is a historical gap between the first General Baptists (the Helwys/Murton congregation) in England and the General Baptists of the 1640s (such as the Lambe congregation).

⁷⁸ Saltmarsh and Dell are not Baptists, but antinomian free grace preachers.

such, as though they be spiritual, yet are ready to take vengeance of all disobedience (2 Cor. 10:6), which has reference, among other ordinances, to the censure of the church against scandalous offenders.⁷⁹

In his use of the two weapon analogy and his recognition “that magistracy in general is of God,”⁸⁰ Williams stands in the moderate Anabaptist tradition of Hubmaier – there is “a just and righteous taking of the sword in punishing offenders against the civil peace.”⁸¹ His added twist is that magistrates are but agents of the people, require the free consent of the people, and have only that power that the people choose to give to them (“all true civil magistrates have not the least inch of civil power, but what is measured out to them from the free consent of the people”);⁸² the people are the source of these powers (“the sovereign, original, and foundation of civil power lies in the people”);⁸³ there are certain matters over which magistrates have no powers; and power is only for so long as it is entrusted. So, although government in general is from God, the government’s power is “mediately from the people.”⁸⁴ He concludes:

But, to wind up all, as it is most true that magistracy in general is of God (Rom. 13), for the preservation of civil order and peace – the world otherwise would be like the sea, wherein men, like fishes, would hunt and devour each other, and the greater devour the less – so also it is true, that magistracy in special for the several kinds of it is of man. (1 Pet. 2:13) Now what kind of magistrate soever the people shall agree to set up, whether he receive Christianity before he be set in office, or whether he receive Christianity after, he receives no more power of magistracy than a magistrate that has received no Christianity. For neither of them both can receive more than the commonweal, the body of people and civil state, as men, communicate unto them, and betrust them with.

All lawfull magistrates in the world, both before the coming of Christ Jesus and since, (excepting those unparalleled typical magistrates of the church of Israel) are but derivatives and agents immediately derived and employed as eyes and hands, serving for the good of the whole: hence they have and can have no more power than fundamentally lies in the bodies or fountains themselves, which power, might, or authority is not religious, Christian, etc., but natural, human, and civil.⁸⁵

Williams puts a strong case for what we would call the separation of church and state, and for the idea that there should be no compulsion by the state in matters of religion. He sees the church’s problems as beginning with Constantine and Theodosius – “under

⁷⁹ Williams, *The Bloody Tenent*, 22.

⁸⁰ *Ibid.*, 246.

⁸¹ *Ibid.*, 260.

⁸² *Ibid.*, 227.

⁸³ *Ibid.*, 154.

⁸⁴ *Ibid.*, 213.

⁸⁵ *Ibid.*, 246.

Constantine Christians fell asleep on the beds of carnal ease.”⁸⁶ He attacks the Constantine/Theodosius settlement which seeks to establish a state church: Christendom turned the churches into a wilderness and did more harm to Christ’s kingdom than the persecutors like Nero. He likewise attacks the Independents and Presbyterians for wanting to use the civil power for their religious ends; he is in favour of separatist churches and against anything that looks like a national church – “A state church, whether explicit, as in Old England, or implicit, as in New, is not the institution of our Lord Jesus Christ.”⁸⁷ For this reason he also opposes enforced tithes, as being of a national compulsory church. For Williams, there can be no state church or national church from Christ; only particular gathered churches. Nor can civil magistracy be linked to church membership: if magistrates have to be chosen from within the church, and if they have to be deposed when they cease to be of the church, then he asks

if this be not to turn the world upside down, to turn the world out of the world, to pluck up the roots and foundations of all common society in the world, to turn the garden and paradise of the church and saints into the field of the civil state of the world, and to reduce the world to the first chaos or confusion?⁸⁸

He explicitly opposes Calvin, Beza and the New England Puritan ministers for persecuting people for their conscience – citing Calvin’s procuring the death of Michael Servetus, and Beza’s book on heretics in which Beza argues that heretics are to be punished with death. Likewise he sees the Presbyterians and the Independents as united in their slaughter of the innocents.⁸⁹ He accuses the Presbyterians and the Independents of sheltering under the wing of the civil magistrate, whilst being opposed to each other and “striving as for life who shall sit down under the shadow of that arm of flesh.”⁹⁰ The Presbyterians, according to Williams, make the magistrate the judge of the true and the false church and thus make him the head of the church, and make their ministers to be ‘state-bishops’. Similarly, the Independents want to be both “the state’s and the people’s bishops.”⁹¹ For Williams, what ‘prelacy’, Presbyterians and Independents have in common is that they all try to give the crown of the Lord Jesus to the civil magistrate and to make the magistrate the antitype of the kings of Israel and Judah.

⁸⁶ Ibid., 227.

⁸⁷ Ibid., 121.

⁸⁸ Ibid., 257.

⁸⁹ Ibid., 263.

⁹⁰ Ibid., 217.

⁹¹ Ibid.

Against these, states Williams, the separatists try to follow the ways of the Son of God, in holiness, poverty and patience, rejecting the external pomp of the world. Williams is adamant that “God requires not a uniformity of religion to be enacted and enforced in any civil state.”⁹² There should thus be religious liberty for all, including atheists, Jews, and Muslims – “it is the will and command of God that ... a permission of the most paganish, Jewish, Turkish, or anti-Christian consciences and worships be granted to all men.”⁹³

The free grace theologian Saltmarsh, who backed the Levellers, gives a number of statements in his 1646 work *Smoke in the Temple* that illustrate the call for a believers’ church of voluntary membership: “Men are not to be forced into Christ’s kingdom as into the kingdoms of the world” and “let the church only be gathered up by a law of a more glorious and transcendent nature.”⁹⁴ He calls for liberty of the press, freedom of debate, an end to compulsion in belief and persecution and unwarrantable use of the magistrate, and an end to church rights and privileges. This runs squarely against the Calvinist concept of the Christian magistrate defending the church and ensuring uniformity across church and state. “The interest of the people in Christ’s kingdom is not only an interest of compliancy and obedience and submission,” adds Saltmarsh, “but of consultation, of debating, counselling, prophesying, voting, etc. And let us *stand fast in that liberty wherewith Christ hath made us free.*”⁹⁵

In Walwyn’s 1644 tract, *The Compassionate Samaritane*, we find an early indication of the close association of the Baptists with ideas that will later emerge amongst the Leveller group, and the tract is also noteworthy for its defence of continental Anabaptism. Walwyn answers the charge that the Anabaptists are against civil government: he affirms that the societies of Anabaptists in the Kingdom (what we know as Baptists) defend government and assist Parliament “against those that would dissolve our free government, and bring in tyranny.”⁹⁶ This tract shows not only Walwyn’s sight of the clear links between continental Anabaptism and what he calls Anabaptism in this country, but also that the Baptists in England stood in a line with a moderate pro-civil government Anabaptism (as taught by the likes of Hubmaier). Walwyn’s Anabaptists are not enemies of government but of oppression in government.

⁹² Ibid., 3.

⁹³ Ibid.

⁹⁴ Saltmarsh, ‘Smoke in the Temple’, in Woodhouse, 184-185.

⁹⁵ Ibid., 184.

⁹⁶ William Walwyn, *The Compassionate Samaritane*, Wing 1079:14, 64.

It is also historically noteworthy that, in his defence of the separatists, Walwyn demands that “the Presse may be free for any man,”⁹⁷ which is one of the earliest political calls for the freedom of the press.

In his satire, *A sacred decretal, or Hue and cry*, Overton links his own work, *The Arraignment of Persecution*, with Williams’ *The Bloody Tenent* and Walwyn’s *The Compassionate Samaritane*, in an attack upon tithes – an attack that runs through many of his satires and tracts.⁹⁸ For Overton, the scandal of tithes is that they are ‘Mosaicall’, that is, they belong to an ordinance of the old Law of Moses and mean that the Law is above the Gospel.⁹⁹ These writings of Overton – of the Leveller leaders, the closest one to the Baptists and continental Anabaptism – certainly call into question the claims of some scholars that Overton develops political principles on a more secular, non-religious basis.¹⁰⁰ The Leveller strike at tithes is a strike against a national compulsorily-maintained church; and the Leveller campaign against tithes reflects the Baptist call for the end of tithes.¹⁰¹ For the Levellers, just as believers come together to make a voluntary covenant (in which compulsory tithes have no place), so also in the political sphere should members of society come together to make a voluntary compact or agreement.

General Baptist pastors like Thomas Lambe, Samuel Oates, Jeremiah Ives and Henry Denne are closely involved in the Leveller campaigns.¹⁰² In *Walwyn’s Just Defence*, Walwyn writes that the Anabaptist congregations are, with the Levellers, behind the great Leveller petitions.¹⁰³ He identifies with the ‘Sectaries’, or ‘Antinomianians’, in not observing the prescribed fast days, and tells the Independents to go to the Catholic Montaigne and to the pagans to learn charity and Christianity. In this tract the divide between the Particular Baptists and the General Baptists becomes clear, with the Particular Baptist church leaders having attacked Walwyn.

Any account of Baptist influence on Leveller thinking has to be tempered by the more antinomian influences of the free grace preachers, as witnessed in Walwyn’s work, *The Vanitie of the Present Churches*. Walwyn’s own ‘ecclesiology’ appears to be

⁹⁷ Ibid., 76.

⁹⁸ Richard Overton, *A sacred decretal, or Hue and cry*, Thomason E.286(15), 1-2.

⁹⁹ Richard Overton, *The Ordinance for Tythes dismantled*, Thomason E.313(27), 3-4.

¹⁰⁰ See, for example, Aylmer (ed.), *The Levellers in the English Revolution*, 49, 68.

¹⁰¹ See Wright, *The Early English Baptists*, 183.

¹⁰² Pearse, *The Great Restoration*, 228; and Wright, *The Early English Baptists*, 178-183, 200-205, 210-213, 223.

¹⁰³ See McMichael and Taft (eds), *The Writings of William Walwyn*, 387, 390.

based on a highly spiritualised Christianity that stands apart from ‘mocke Churches’ and indeed from the ‘Church way’. This seems to combine the freedom of the believers’ church with the more antinomian claims (derived in part from Luther) of the free grace preachers in which all that counts is the Spirit in the believer rather than the form of a church. Standing aside from questions of church government and differences of religious opinion, Walwyn upholds a Christianity that finds expression in love, charity, and practical action. This is very close to the ecclesiology of the antinomian free grace preacher Dell, who, as we mentioned in the previous chapter, has a highly spiritualised approach to Christianity – rather similar to Schwenkfeld. For Dell, the

kingdom of God stands not in Presbytery or Independency, *but in* righteousness, *and* peace, *and* joy in the Holy Ghost; ...

... *Now some spiritual Christians may be among those that are called Presbyterians, and some among those that are called Independents; and all these, though called by different names, are of one Spiritual church ... and so shall the true spiritual Church be delivered from these distinctions of flesh and blood, and be separated from the world.*¹⁰⁴

Dell’s spiritualism leads him to focus on the Holy Spirit and to see the church as a spiritual reality, above the man-made divisions relating to church order, traditions, and discipline. He places great emphasis on the true church being “the Spiritual Church of the New Testament.”¹⁰⁵ For him, it is the spirit of Antichrist that conveys the doctrine that

*the Spiritual Church of the New Testament, should be made up of all the people that live in a Kingdom, ... For God doth not now make any people, or kinred, or nation his Church; but gathers his Church out of every people, and kinred, and nation.*¹⁰⁶

For Dell, the house of God is God’s own work, and no state or council can bring it about, for the gathering is the Lord’s own doing. They are great enemies of the true church who would have every person in a kingdom a member of the church, for the church can only be built up by the Spirit. Dell’s ecclesiology leads to a rejection of the idea of a national or state church, and of a single established church, and instead to a gathered church, formed freely by believers in the unity of the spirit with no compulsion:

¹⁰⁴ William Dell, *The Building and Glory of the truly Christian and Spiritual Church*, Thomason E.343(5), ‘To the Reader’, no page.

¹⁰⁵ *Ibid.*, 10-11.

¹⁰⁶ *Ibid.*, 15.

The right Church then is not the whole multitude of the people whether good or bad, that join together in an outward form or way of worship. ... But the church I shall speak of is the true Church of the New Testament, which, I say, is not any outward or visible society, gathered together into the consent or use of outward things, forms, ceremonies, worship, as the churches of men are; neither is it known by seeing or feeling, or the help of any outward sense, as the society of mercers or drapers, or the like; but it is a spiritual and invisible fellowship, gathered together ... by the Spirit; wherefore it is wholly hid from carnal eyes, neither hath the world any knowledge or judgment of it.¹⁰⁷

Basing himself on John 3 and John 17, Dell rejects the outward confession of faith and the outward covenant for church membership; instead, membership of the true church is through a new birth in the Spirit, and our union with Christ makes our union with the church. (This Johannine theology has echoes of certain earlier Anabaptists, as we will shortly see.) Now Dell begins to draw out the political implications of this highly spiritualised ecclesiology:

The churches of men have human officers ... But in the true Church, Christ and the Spirit are the only officers ...

The churches of men have the government of them laid on men's shoulders. ... But the true Church hath its government laid only on Christ's shoulders. ... Wherefore the true Church reckons it sufficient authority that they have Christ and his word for the ground of their practice; and whatever they find in the Word, they presently set upon the practice of it, and never ask leave either of civil or ecclesiastical powers. But the churches of men will do nothing without the authority of the magistrate or assembly, though it never be so clear in the word of God. For in their religion they regard the authority of men more than the authority of God.

The churches of men are still setting themselves one above another, but the assemblies of the true Church are all equal, having Christ and the Spirit equally present with them and in them. And therefore the believers of one congregation cannot say they have power over the believers of another congregation But Christ in each assembly of the faithful is their head, and this head they dare not leave, and set up a fleshly head to themselves whether it consists of one or many men, seeing Antichrist doth as strongly invade Christ's headship in many as in one man, in a council, as in a pope.

... In this true Church or one body of Christ, notwithstanding diversity of members and offices, there is still an equality among them all, seeing all alike make up one body.

... And no one is called to this hope [of obtaining the kingdom of God] more than another, or hath more interest or share in it than another.¹⁰⁸

We can see here how Dell's ecclesiological ideas may well have influenced Leveller political thought: the voluntary church, the agreement amongst members, individual

¹⁰⁷ William Dell, 'The Way of True Peace and Unity', in Woodhouse, 303.

¹⁰⁸ *Ibid.*, 305-306.

consent, the end of religious compulsion, no role for the magistrate in ecclesial matters, the limitation on the power of office, and the basic equality of all. On this basis he criticises those who try to make people join the church that are not one spirit with it. Indeed, he makes it a rule “not to bring or force men into the Church against their wills.”¹⁰⁹ He specifically attacks the notion that the magistrate has power to suppress error by the sword. Dell rejects the Old Testament basis for this notion, and asserts that the Gospel way is to conquer error by truth (a classic free grace contrast, as we saw in the chapter on soteriology). Instead, he argues for a separation of church and state:

As nothing hath more troubled the Church than to govern it and give it laws, after the manner of the world, by secular force and power; so nothing hath more troubled the world than to govern it and give it laws after the manner of the Church, by the aforesaid compulsion. Wherefore as the government of the world is not to be spread over the Church, so neither is the government of the Church to be spread over the world. But as the world and the Church are distinct things in themselves, so they are to be contented with their distinct governments.¹¹⁰

Dell attacks the Presbyterians for making “the whole Kingdome a Church.”¹¹¹ For him, true reformation is clearly different from “State-Ecclesiasticall Reformation” and “Civill-Ecclesiasticall Reformation”, for Christ “*is the only Reformer of the Church of God.*”¹¹² He denies that the “*Spiritual Church of Christ*” may “*be Reformed with worldly and secular power.*”¹¹³ Thus, Dell rejects key elements of the Puritan polity.

Dell draws parallels between a free society and a church and argues that it is a rule “to keep the officers of the Church in subordination to the whole Church or community”,¹¹⁴ and similarly an alderman or councillor in the city “differs nothing from the rest of the citizens, but only in their office, which they have not of themselves neither, but by the city’s choice.”¹¹⁵ He adds the important provision that the “true Church hath power to choose its officers, and, if there be cause, to reform them or depose them.”¹¹⁶ Indeed, he posits the radical view that the people are the judge of the doctrine of the ministers and are to receive it or reject it, as they judge it to be of God or not:

¹⁰⁹ Ibid., 312.

¹¹⁰ Ibid., 308-309.

¹¹¹ Dell W, *Right Reformation*, ‘The Epistle Dedicatory’, no page.

¹¹² Ibid, 10.

¹¹³ Ibid., 20.

¹¹⁴ Dell, ‘The Way of True Peace and Unity’, in Woodhouse, 313.

¹¹⁵ Ibid., 312.

¹¹⁶ Ibid., 310.

And Paul gives this liberty to Christians – yea we have it from Christ himself whether Paul had allowed it or not – to try the very Apostles themselves and the very angels of heaven, whether they bring the right word or no.¹¹⁷

The doctrine of Christian liberty is here made by Dell to be spiritually revolutionary: questioning, judging, and subversive of power. Again, we can see elements of a resistance theory based on ecclesiology here, a theory that surely informs Leveller political thinking. Christian liberty also provides our equality – another hallmark of Leveller thought – for by our “second birth, whereby we are born of God, there is exact equality.”¹¹⁸

At this point the reader might well ask if the antinomian or spiritualised ecclesiology of Dell represents a problem for the claim that certain Leveller ideas can be traced to the ecclesiology of the General Baptists and through them ultimately back to the continental Anabaptists. In particular, the ecclesiology of Dell seems in some ways quite different from Baptist ecclesiology: rather than a visible church of believers, we have a spiritualised church above human divisions and groups; that is, the church seems to become almost invisible. The answer to the question is: no, it does not undermine the claim; if anything the spiritualised ecclesiology of Dell represents another – that is, an additional – source of Leveller ideas¹¹⁹ alongside that of the General Baptists. Moreover, this spiritualised ecclesiology strongly echoes some of the thinking of the Spiritual Anabaptists, so may in fact represent yet another link back to Anabaptism or to those at the fringes of Anabaptism in the Radical Reformation. Indeed, as we noted in the previous chapter, Rutherford, an opponent of the free grace preachers, saw links from Schwenkfeld to the antinomian preachers Dell and Saltmarsh.¹²⁰

It might again be helpful here to think of different strands within sixteenth-century Anabaptism: with the ‘Evangelical Anabaptism’ of people like Hubmaier providing the important concept that “only the New Testament was normative for doctrine, ethics, and polity”,¹²¹ while the ‘Evangelical Spiritualism’ of people like Schwenkfeld provides a tolerant individualism that looks to the mystical Spirit of the Johannine Gospel and

¹¹⁷ Ibid., 311.

¹¹⁸ Ibid., 313.

¹¹⁹ We need to be cautious about asserting that Dell is a source for the Levellers, as we must note that Dell is not explicitly quoted. Rather, I am suggesting that Dell’s theological ideas are one of the unstated sources of Leveller ideas. For example, it seems fairly clear that Walwyn’s language and his concept of the church is influenced by Dell’s language and ecclesiology.

¹²⁰ Rutherford, *A survey of the spirituall antichrist*, 15, 22, 33.

¹²¹ Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 30.

Epistles.¹²² What may be noteworthy is that Schwenkfeld, like Hubmaier, is one of the few Radical Reformers of his time to look to Augustine for some of his doctrines. While most Anabaptists rejected Augustine in strong terms,¹²³ Schwenkfeld is interesting in that he freely quotes Augustine's works and references in the *Decretum* to Augustine (having been trained in canon law).¹²⁴ Both Schwenkfeld and Hubmaier provide a pathway in the Radical Reformation to pre-Reformation thought, with both of them representing a break with the Magisterial Reformers (Schwenkfeld with Luther, and Hubmaier with Zwingli). It is facts like these which should caution us against any temptation to ascribe neat simple genealogies in the development of political ideas. In the case of the Levellers, the complexity is a sign of the fecundity that they find in varied sources, and the thesis argues that a nuanced account of the sources of Leveller thought has to recognise this. At the same time, the Leveller synthesis acts as a prism that sheds light on the development of political ideas up to our time – whether it be religious liberty, the separation of church and state, or the role of the state.

Apart from the apparent similarities to aspects of Spiritual Anabaptism, Dell's ecclesiology also uses the language of many of the Anabaptists, as we noted earlier with people like Sattler, Denck and Philips: separation from the world, the gathering out, the distinction between those of the flesh and those of the spirit. Indeed there is a strong use of polarities in his language: contrasting the carnal and the spiritual, the church and the world, the seed of the woman and the seed of the serpent, light and darkness, Michael and the devil. He notes that those born of the flesh are always persecuting those born of the spirit.¹²⁵ In phraseology that is close to Anabaptist language, he states:

The true Church is to preserve itself distinct from the world Wherefore it is not the way of peace to mingle the Church and the world, but to separate them, and to keep them distinct; For to separate the Church from the world, in its communion of Saints, is the only way to preserve peace in both.¹²⁶

¹²² Ibid., 34-35.

¹²³ For example, Grebel attacks Augustine's view that baptism saves (see Conrad Grebel, 'Letters to Thomas Müntzer', in Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 80-81). Likewise, the Anabaptist Ulimann (Ullmann) attacks Augustine for the widespread practice of infant baptism ('Confession of Wolfgang Ulimann' in Klaassen (ed.), *Anabaptism in Outline*, 165). Franck calls Augustine an "apostle of Antichrist" (Sebastian Franck, 'A Letter to John Campanus', in Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 151).

¹²⁴ See Caspar Schwenkfeld, 'An Answer to Luther's Malediction', in Williams and Mergal (eds), *Spiritual and Anabaptist Writers*, 166-167, 177.

¹²⁵ Dell, 'The Way of True Peace and Unity', in Woodhouse, 302-303.

¹²⁶ Ibid., 311.

We can see direct influences of Dell's antinomian ecclesiology in Walwyn's views of the church and in Lilburne's spirituality in his latter years. Nevertheless, whilst we might see parallels here with the Schwenkfeldian Spiritualism that we met in the previous chapter, we should note that Walwyn's religion is actively 'political' and engaged and thus distanced from the quietism of the mainstream spiritual Anabaptists: "True Christianity hates and abhorres tyranny, oppression, ... and true Christians [are] ... most severe punishers thereof."¹²⁷ We will examine some of these ethical aspects in the next section.

Nevertheless, in his long and detailed attack upon 'Anabaptism', the Presbyterian, Robert Baillie, lists those works that, in his view, provide testimony of modern Anabaptism in England: he includes works by Walwyn, Overton, Saltmarsh, and Williams.¹²⁸ Baillie is clear that the call for full liberty of conscience and a general liberty in religion and the corresponding restriction on the power of the magistrate is an article of faith brought over from the Anabaptists.¹²⁹ Baillie's criticisms here are an accurate reflection of the Levellers' views: in *A Remonstrance of Many Thousand Citizens*, for example, it is stated that neither the House of Commons nor anyone else can have any power at all to 'conclude' the people in matters that concern the worship of God.

In *A New Petition of the Papists*, in 1641, Walwyn urges the toleration of all professions of faith, leaving everyone to their own conscience, and not punishing or persecuting people because of their beliefs. Toleration and freedom of conscience should apply to all, whether Puritans, Arminians, Brownists,¹³⁰ Papists, Socinians,¹³¹ Adamites,¹³² or the Family of Love.¹³³ Likewise, in *The Compassionate Samaritane*, Walwyn argues that "Liberty of Conscience be allowed for every man."¹³⁴ In *Tolleration Justified*, he states that toleration is grounded in every person's freedom to worship and to serve God: all so-called sectaries have a like "right to Freedome," this

¹²⁷ Walwyn, 'The Power of Love' in McMichael, 94.

¹²⁸ Baillie, *Anabaptism, the true fountaine of Independency*, final page.

¹²⁹ *Ibid.*, 55.

¹³⁰ A common term for early separatists.

¹³¹ Unitarians.

¹³² Radical antinomians who believed in religious perfectionism, rejected constraints, and were thought to practise undress in private.

¹³³ English Familists who concealed their faith, and who focused on the inner spirit of God and were accused of being antinomian.

¹³⁴ Walwyn, *The Compassionate Samaritane*, 5.

being due to “the Equity of every mans being Free in the State he lives in.”¹³⁵ The State’s toleration must be just and equal and toleration is by right. He defends the right to blasphemy and to deny God, which is extraordinary for the time: it cannot be just to set limitations on toleration (any further than required by the safety of the people), and the more blasphemous an opinion is, the easier it will be to use reason and argument against it. Liberty is the principle that means that “every man ought to be protected in the use of that wherein he doth not actually hurt another.”¹³⁶

Unbelievers have as much right to be full members of society and to give or withhold their political consent as Christian believers, in Leveller thinking. They are full equal members of the political society in which they live, with the same rights. Unbelief is regarded as purely a matter for God to deal with at the Last Judgement. To support the argument for toleration, Walwyn makes particular use of the parable of the tares and of the so-called ‘golden rule’ that we should do unto others as we wish them to do unto us. The parable of the tares echoes the Anabaptist Dirk Philips, Roger Williams’s *The Bloody Tenent*, and of course Augustine; and it is because, as Augustine puts it, the reapers (i.e. God) will gather out the tares from the church at the harvest, that we should leave judgements about people’s true membership of the heavenly City to God.¹³⁷ The Levellers build on this Augustinian insight to argue, following the lines of Roger Williams, that therefore the state has no role with respect to people’s religious beliefs and practices (provided such practices do not harm their neighbour).

Our search for continuities and parallels in thought between the Levellers and the Anabaptists, has suggested that it is reasonable to postulate that there are indeed likely links in ideas and that any such links probably came via General Baptist ecclesiology (as well as via General Baptist soteriology and via antinomian ecclesiology). This is, of course, not to deny the roots of ideas also being from other sources, such as conciliarism. As ever, the claims in this thesis should not be taken as narrowing or closing down the debate on the sources of Leveller ideas; rather, I am pointing to the richness of the variety of the sources that they use, in order to open up an appreciation of their broad use of contemporary and earlier ideas. As Wootton puts it, the Levellers’ political principles were

¹³⁵ Walwyn, *Tolleration Justified*, 8.

¹³⁶ Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 392.

¹³⁷ See Augustine, *The City of God against the Pagans*, trans. R.W. Dyson (Cambridge: CUP, 2003), Book 1, Chapter 35; Book 11, Chapter 1; Book 14, Chapter 1; Book 15, Chapter 1; and Book 18, Chapter 49.

born out of second-hand scholastic philosophy ... combined with the practice and, equally importantly, the theology of the sects. Out of the disjointed and discarded arguments of Bellarmine and Buchanan, coupled with those of Saltmarsh and Williams, the Levellers built a coherent political philosophy.¹³⁸

We should now be able to see that certain modern liberal notions, such as political equality, religious toleration, and individual freedom of conscience, derive then, in part, from specifically religious sources – in this case ecclesiological – rather than from a rejection of the church.

4.4 Ecclesiology and Ethics

If we have, up to this point, established that General Baptist and antinomian (free grace) ecclesiologies influenced Leveller political thinking, and that these can be traced back to elements of Anabaptist thought, it is perhaps in the ethical implications of ecclesiology that we find the sharpest *discontinuities* with continental Anabaptism.

In the chapter on soteriology we discovered the importance that the Baptists place on ethics (as essential to soteriology, in a way that differentiated them from the Calvinists); likewise, with the ecclesial understanding of the separation of church and state adopted by the Levellers, we can see a rejection of both the ‘monist’ ethics of the Puritans (everything is of interest to the state from playing cards to morris-dancing)¹³⁹ and the separatist ethics of the Anabaptism of the Schleithem Confession (Christians not allowed to hold political office or have fellowship with the evil world).

The Levellers combined the key idea of the separation of church and state – based on a critical attitude to the state – with the notion that Christians should be very much engaged in forming and changing the state, its constitution and its laws. Although they adopted, via intermediaries, an Anabaptist conception of political and religious separation, this never involved any notion of withdrawal from society or of allowing the laws to be uninfluenced by Christian ethics. On the contrary, their religious views impelled them to want to change laws and to impose restrictions on the law – including defining matters about which the state could not enact laws. Lilburne calls for “a Government, that is founded upon the Basis of Freedom,” and “shall so ty the hand of

¹³⁸ Wootton, ‘Leveller democracy and the Puritan Revolution’, 442.

¹³⁹ See, for example, John Adair, *Puritans* (Stroud: Sutton Publishing, 1998), 224-228; and Roger Hainsworth, *The Swordsmen in Power* (Stroud: Sutton Publishing, 1997), 171-173.

the Governor.”¹⁴⁰ To protect individuals’ freedom, the Levellers wished to implement a constitutional agreement to bind and strictly limit the state’s powers. Their concern for justice, which arose from theological grounds, compelled them into the minutiae of constitutional change.

The great Leveller petitions (for example, those of March 1647, January 1648, and September 1648), like the Agreement, focus on legal reform, constitutional reform, religious freedom, and redress of grievances. The economic issues addressed include an end to imprisonment for debt, the abolition of tithes, an end to trade monopolies, the cessation of excise tax, and a way to keep people from begging. Within these petitions one can find calls for the poor to have better wages for their labour,¹⁴¹ the improvement of waste land for the use of the poor, and the enclosure of land only where it benefits the poor (“That you would have laid open all late Inclosures of Fens, and other Commons, or have enclosed them onely or chiefly for the benefit of the poor”).¹⁴² However, we have to accept that these are simply moderate calls for reform and have only a minor place in the overall scheme of demands. For example, the call to end begging is one of thirteen demands or grievances in the petition of March 1647 and is rather vague, just calling for some action: “That ye will provide some powerfull meanes to keep men, women, and children from begging and wickednesse, that this Nation may be no longer a shame to Christianity.”¹⁴³ In the petition of January 1648 the action demanded is more detailed: that the poor may be enabled “to discover all Stocks, Houses, Lands, etc. which of right belong to them, and their use,” and “that some good improvement may be made of waste Grounds for their use;” and “that Manufactures may be increased, and the Herring-fishing upon our own coasts may be improved.”¹⁴⁴ To this is added the call that excise tax, which lies heavily on the poor, may cease and that “all moneys be raised by equal rates, according to the proportion of mens estates.”¹⁴⁵ However, *pace* Hill and Manning, we should note that none of the grievances in the petitions contain a ‘class’ understanding or import; it is more that they are ethical demands arising from a theological understanding. What is clear in these writings is that there is no trace of the separatist ethics of Dutch Anabaptism.

¹⁴⁰ John Lilburne, *Strength out of Weaknesse*, Thomason E.575(18), 14.

¹⁴¹ Petition of January 1648.

¹⁴² Petition of September 1648 (in Wolfe (ed.), *Leveller Manifestoes*, 288).

¹⁴³ Wolfe (ed.), *Leveller Manifestoes*, 140.

¹⁴⁴ *Ibid.*, 270.

¹⁴⁵ *Ibid.*

The General Baptists and the Levellers saw that freedom could never rightly be limited to the church – the freedom was for all. Furthermore, there was to be no passivity in the struggle for freedom; struggling to change laws was seen as following God’s will. For example, Overton draws out the revolutionary nature of the natural law:

It is a firme Law and radicall principle in Nature engraven in the tables of the heart by the finger of God in creation for every living moving thing, wherein there is the breath of life to defend, preserve, award, and deliver itselfe from all things hurtfull, destructive and obnoxious thereto to the utmost of its power: Therefore from hence is conveyed to all men in generall, and to every man in particular, an undoubted principle of reason, by all ratioll and iust wayes and meanes possibly he may, to save, defend and deliver himselfe from all oppression, violence and cruelty whatsoever, and (in duty to his own safety and being) to leave no iust expedient unattempted for his delivery therefrom: and this is ratioll and iust; to deny it, is to overtur[n] the law of nature, yea, and of Religion too; for the contrary lets in nothing but selfe murther, violence and cruelty.¹⁴⁶

Such a clear statement of the natural law, God-given, right and duty to resist, stands in firm contrast to the non-resistance of certain Anabaptist groups. This latter non-activism stands apart from the Leveller insistence upon the natural law right and duty to protect oneself and to resist tyranny. That is, the Levellers find within the wider Christian tradition a right and obligation to take up arms where necessary for the defence of one’s own life or of others. From the natural law right to protect one’s self, they derive a right to resist a tyrannous government. As we saw in our discussion of Locke in Chapter Two, this is reflective of a Christian tradition stretching back, through the likes of Ponet, Buchanan, and Mariana, to the conciliarists.

Although such a right of resistance clearly differentiates the Levellers from the Anabaptist strand of non-resistance running from Grebel, Sattler, and Riedeman to Simons, it at least accords with the rejection of non-violence by Hubmaier that we noted earlier. Intriguingly, many of those Anabaptist leaders who preached pacifism also preached community of goods (as part of a restoration of the life of the early church as normative for Christians or of making present the eschatological communion of saints) – something that again Hubmaier rejects.¹⁴⁷ So any account of continuities and discontinuities between Anabaptism and Leveller thought, aside from the issue of how

¹⁴⁶ Overton, ‘An Appeale’, in Wolfe, 159-160.

¹⁴⁷ See Balthasar Hubmaier, ‘Conversation on Zwingli’s Book on Baptism’, in Klaassen (ed.), *Anabaptism in Outline*, 233.

firm or how tentative those claimed links might be, has to be highly nuanced to allow for the very different ethical stances amongst the Anabaptists themselves.

Although Hubmaier explicitly rejects community of goods, he does insist on the practical ethical requirement of a Christian to feed the hungry and clothe the naked¹⁴⁸ – a practical Christianity that resonates with Walwyn’s Christianity, for whom the Christian demand to love must be fleshed out in practical action to help the poor. With Menno Simons we find this even more clearly, with an attack on those Christians who “go about in silk and velvet” whilst ignoring the poor,¹⁴⁹ an attack that uses language directly comparable to Walwyn’s attack on the Puritans in some of his tracts. For example, in *The Power of Love*, Walwyn contrasts the “miserable, distressed, starved, imprisoned Christians” with the church-goers with “their silks, their beavers, their rings.” For God “regards neither fine clothes, nor gold rings, nor stately homes”, for “God is love” and “whosoever is possest with love” is “a true Christian.”¹⁵⁰ It is passages like these which have tempted Hill and Manning to make a socialist reading of the Levellers. However, when Walwyn writes about riches and the poor here, he is not making a socio-political ‘class’ comment about poverty and the poor, so much as making a profoundly theological comment about how God “regards nothing among his children but love.”¹⁵¹ The tract is in fact almost a hymn of praise to justification by the free grace of Christ, with true Christianity as the indwelling of the spirit of love. Yet, this inner love must be seen in external love of the poor and the neighbour. If anything, Walwyn is making an ecclesiological and moral point: criticising what appears to him to be the hypocrisy of some of the London churches.

The same is true of *The Vanitie of the Present Churches*, where he attacks those who are Christians in name only, with their extreme fasting and prayers and “their silks, their fine and delicate linnen, their Laces, Beavers, Plushes; their Fancies, Plate, Rings, and Jewells;”¹⁵² whilst true Christianity is about love of God, and shown through feeding the hungry and supporting families. This love of God, the simple doctrine that we are freely justified by Christ alone and cleansed from all sin, gives us peace and joy and sets “man on work to do the will of him, that hath so loved him,” and constrains

¹⁴⁸ See *ibid.*

¹⁴⁹ Menno Simons, ‘Reply to False Accusations’, in Klaassen (ed.), *Anabaptism in Outline*, 241.

¹⁵⁰ Walwyn, ‘The Power of Love’ in McMichael, 79-80.

¹⁵¹ *Ibid.*

¹⁵² Walwyn, ‘The Vanitie of the Present Churches’, in Haller & Davies, 264.

“him to walk in love as Christ hath loved.”¹⁵³ Walwyn is not attacking the rich but attacking the Puritan churches, and their doctrine and their worship, for putting doctrinal obstacles in the way of what he regards as the simple truth of free justification and the antinomian claim that all we need to do is love others. Again, Walwyn is making a theological statement, which is not best understood as a class-based socio-economic observation. From his theology of free grace, the inner spirit and love, Walwyn is prepared to make harsh comments about the Christianity of some of the churches, especially the Puritan ones. Walwyn’s spiritual ecclesiology leads to an ethical concern with the poor – but it is a concern that goes beyond mere charity to be an engaged political ethics.

Similarly, when the Levellers defend the poor in *The Mournfull Cryes of many thousand Poore Tradesmen*, they are in fact attacking excessive taxation, arbitrary government, and the lack of trade:

O you Members of Parliament, and rich men in the City, that are at ease, and drinke Wine in Bowles, and stretch your selves upon Beds of downe, you that grind our faces, and Flay off our skins, will no man amongst you regard, will no man behold our faces black with Sorrow and Famine, ...

Oh yee Great men of ENGLAND, will not (thinke you) the righteous GOD behold our Affliction, doth not hee take notice that you devour us as if our Flesh were Bread? ... What then are your russling Silks and Velvets, and your glittering Gold and Silver Laces, are they not the sweat of our Browes, and the wants of our backes and bellies?

Its your Taxes, Customes, and Excize, that compells the Country to raise the price of Food, and to buy nothing from us but mere absolute necessaries.¹⁵⁴

The Leveller appeal here is for a reduction in taxes (indeed, that “you may take off all Taxes presently”),¹⁵⁵ the payment of the government debt, the restoration of trade, a reform of the law and the application of impartial justice, an end to arbitrary government, and support for the ‘large Petition’.¹⁵⁶ Likewise, in *A Remonstrance of Many Thousand Citizens*, we must understand the textual context when the author attacks the Presbyterian-dominated Parliament and talks of the MPs rustling by the poor in coaches and silks:

Nay, yee suffer poor Christians, for whom Christ died to kneel before you in the streets, aged, sick and crippled, begging your halfe-penny Charities, and yee rustle by them in your Coaches and silkes daily, without regard, or taking any

¹⁵³ Ibid., 320.

¹⁵⁴ Anon., *The Mournfull Cryes of many thousand Poore Tradesmen*, Thomason 669.f.11(116), 1.

¹⁵⁵ Ibid., 1.

¹⁵⁶ The ‘large Petition’ here appears to refer to the Petition of January 1648.

course for their constant reliefe, their sight would melt the heart of any Christian, and yet it moves not you nor your Clergy.¹⁵⁷

These comments occur as part of a long tirade against Parliament, in the middle of a section attacking the legal system, imprisonment for debt, trade monopolies, and military impressment. Overton attacks the Parliamentarians for having no compassion for “the afflictions of the poore; your hunger-starved brethren.”¹⁵⁸ What Overton is actually attacking here is imprisonment under unjust laws, especially for debt. So what we can see here is an example of the engaged ethics of the General Baptists and a resonance with the ethics of Hubmaier, with Christians called to play their role in the state.

That said, it is not at all clear that even a moderate Anabaptist like Hubmaier would have supported armed resistance against the magistrate by Christians. The right of resistance represents a major discontinuity between Leveller thinking and mainstream Anabaptist thought. Of course, it could be perceived by opponents of the Levellers as a continuity with the violence of Münster.¹⁵⁹ The reality is that this is an example of where the Levellers depart from Anabaptism in their ethics and import resistance theories from Calvinists like Buchanan and Jesuits like Persons or Molina.

What is clear is that for the Levellers there is a strong moral angle to their political views, an ethic of action in the political world, an ethic that is built on and informed by Christianity – and ethical action is intrinsic to faith, as we saw in the previous chapter on soteriology. This is not mere use of religious language as would be expected for this era; rather, there is a clear religious imperative to action. Whatever religious and ecclesial differences there were amongst the Leveller leadership, there is a commonality of view here. Overton’s Baptist background and Walwyn’s antinomianism¹⁶⁰ lead them alike to a rejection of the Puritan polity and to an engaged ethic. Lilburne is harder to position in ecclesial terms – though he rejects the Church of England and Puritanism, in

¹⁵⁷ Overton, ‘A Remonstrance of Many Thousand Citizens’, in Wolfe, 125.

¹⁵⁸ Ibid.

¹⁵⁹ The term ‘Anabaptist’ was used by opponents of the Levellers as a term of abuse to imply that the recipient of this appellation held the same revolutionary political views as the violent Anabaptists at Münster; although, as we have already noted, there is some scholarly debate on whether the revolutionaries of Münster were truly Anabaptists.

¹⁶⁰ Walwyn’s free grace antinomianism should caution us against accepting D.B. Robertson’s statement, that Walwyn “never left his parish church,” at face value (Robertson, *The Religious Foundations of Leveller Democracy*, 98). It is probably more accurate to see Walwyn during the 1640s as going around from church to church, listening to sermons and criticising the various churches (cf. Aylmer (ed.), *The Levellers in the English Revolution*, 19), while himself remaining aloof from church organisation, doctrines and practices. The thesis thus distances itself from Pease’s view that Walwyn was “nominally Presbyterian” (Pease, *The Leveller Movement*, 245).

favour of some sort of separatism,¹⁶¹ we know that he was eventually to move to something close to Quakerism. Like Walwyn, he puts an emphasis on free grace theology and the inner light of the Spirit. However, this is not a withdrawn quietism; rather, the opposite. Again, this active non-pacifist ethic represents a discontinuity with the Dutch Anabaptism found amongst the Mennonites and the Waterlanders. Nevertheless, it does represent a continuity with the ethical stance of the English General Baptists, who played an active role in the Civil War.

Indeed, we find in Lilburne's works the language of people contending for freedom, standing firm against tyranny, and delivering their neighbour out of the hands of thieves. There is an obligation to act, in order to defend freedom. The political claim to liberty is now because of a precise theological claim, namely an event in the past – the work of Christ – which impels us to moral action: “Seeing that I am bought with a price by Redemption, that therefore I should not be the servant of men (to serve their lusts and wills) but entirely and solely the servant of God”¹⁶²

The religious imperative to moral action has to be carefully distinguished, however, from the Puritan call to implement the godly life in society. In earlier discussions of Puritanism and the Levellers, in previous chapters, we noticed that the Puritan trait has been to conflate private and public morality, and morality and law, whereas the Levellers recognise the distinctions. Put simply, that which is private and does not affect anyone else is, for the Levellers, no business of the magistrate. In such a vein, Overton asks that “for my personall sins that are not of Civill cognisance or wrong unto him [my neighbour], to leave them to God, whose judgement is righteous and just.”¹⁶³ The laws should be neutral with regard to religious matters in the sense that the laws should not compel in religion, they should not prohibit religion, and they should permit tolerance.

¹⁶¹ Aylmer seems to have misunderstood Lilburne's beliefs, when he writes that “it is hard to see doctrinally why Lilburne was not a mainstream, ‘low profile’ non-separating Congregationalist Puritan” (Aylmer (ed.), *The Levellers in the English Revolution*, 15). Similarly, D.B. Robertson appears to go awry when he describes Lilburne as “typically Puritan” (Robertson, *The Religious Foundations of Leveller Democracy*, 22). Taft's statement, that Lilburne was a Calvinist (at the time of the Levellers), whilst also a separatist, is misleading (McMichael and Taft (eds), *The Writings of William Walwyn*, 21). Likewise, Watts's claim, that Lilburne was “for most of his life, an orthodox Calvinist,” is too sweeping, certainly when it comes to the 1640s (Watts, *The Dissenters*, 119).

¹⁶² Lilburne, ‘Legal Fundamentall Liberties’, in Haller & Davies, 403.

¹⁶³ Overton, in a letter included in the pamphlet ‘The Picture of the Councel of State’, in Haller & Davies, 231.

Yet the Levellers recognise that, because of sin, some minimal state was required in order to protect life and liberty. Despite their criticisms of the state, the Levellers acknowledge that the state is necessary to deal with the effects of sin, that is, to protect people's lives, liberties, and property. Like the conciliarists, they see the state as a consequence of the Fall,¹⁶⁴ and thus, for all its faults, needed: "But by reason of his present corrupted estate, and want of perfection, [man] is something partial in his own case, and therefore wherein many are concerned, Reason tells him" that commissioners are to be chosen to act as judges.¹⁶⁵ The Levellers held that where our acts are public and affect others' rights – for example with regard to killing someone – then of course the laws should follow the Christian ethic that such killing is wrong and the law should thus prohibit and punish.

While the Levellers propose (following the Anabaptist/Baptist line) that all matters of religion, God, worship, heresy and blasphemy,¹⁶⁶ are to be exempted from the civil powers, they nevertheless are not completely antinomian or unconcerned with what the laws should be; far from it. The Petition of March 1647 states that all laws should be reduced "to the nearest agreement with Christianity."¹⁶⁷ The first Agreement of the People in November 1647 states that the laws should be "good", which entails not being destructive to the safety and well-being of the people. The Petition of January 1648 adds a new twist: Governors and magistrates are the ordinance of man, before they are the ordinance of God, and no authority that they have is from God but from the people. This clearly moves the Levellers away from the Lutheran and Calvinist conceptions of civil magistracy as ordained by God and therefore to be obeyed on that basis.

The Levellers, though they had a negative view of the contemporary government, were far from letting it be; instead, they wanted good government and saw it as their Christian duty to try and achieve it. That is, criticism is combined with active engagement in the attempt to defend individuals' rights in the face of the state. The self is simply not subordinate to the community in Leveller thinking, for the self is, in a sense, prior to the community: Leveller thought reflects the anthropology that we saw in Chapter Two in the discussion of scholasticism, based on Genesis 1:26-27 and the

¹⁶⁴ Cf. Skinner, *The Foundations of Modern Political Thought*, Volume 2, 116.

¹⁶⁵ Lilburne, *Strength out of Weakness*, 14.

¹⁶⁶ See the Petition of September 1648 for example.

¹⁶⁷ Wolfe (ed.), *Leveller Manifestoes*, 139.

imago Dei. The Levellers use this as the basis for their ideas of fundamental political equality: for Adam and Eve, created by God, are

the earthly, original fountain, as begetters and bringers forth of all and every particular and individuall man and woman, that ever breathed in the world since; who are, and were by nature all equall and alike in power, dignity, authority, and majesty, none of them having (by nature) any authority, dominion or majesteriall power, one over or above another, neither have they, or can they exercise any, but meereley by institution, or donation, that is to say, by mutuall agreement or consent.¹⁶⁸

For the Levellers, the natural law, knowable to all by reason, provides objectivity for morality: reason and nature are the benchmarks. “Reason is demonstrable of it self,” states Lilburne, “and every man (less or more) is endued with it; and it hath but one ballance to weigh it in, or one touch-stone to try it by, *viz.* To teach a man to do as he would be done to.” For Lilburne, reason is demonstrable by its innate glory and efficacy, and “*man being a reasonable creature, is Judge for himself.*”¹⁶⁹ As Glenn Burgess remarks, “Lilburne judged the laws of England on the basis of simple rational tests of its morality.”¹⁷⁰

Likewise, Overton asserts that “whatsoever is unreasonable cannot be *justly* tearmed *Morall* or *Divine.*”¹⁷¹ The perfection and fullness of right reason are in God; morality and divinity are different degrees but one and the same in nature. “God is not a God of irrationality ... [t]herefore all his communications are reasonable and just.”¹⁷² What is striking with Overton’s language here, is his clear theological base for the natural law: rationality, reason and God are interlinked in essence. The call to make the laws of the nation agree with Christianity is not a Puritan or theocratic call, but an appeal to the natural law. That is, there is no sense of an elect claiming to know God’s will and wishing to impose that will; rather there is an appeal to a morality knowable by all through reason.

There is an interesting paradox here: Overton’s separatist ecclesiology leads away from the monist tendencies of the Puritans and towards the notion that freedom is for all and morality knowable by all. The separatist ecclesiology, combined with a natural law inheritance, leads to a notion of the fundamental equality of all people – whether in a

¹⁶⁸ Lilburne, *The Free-mans Freedome Vindicated*, 11.

¹⁶⁹ Lilburne, *Strength out of Weaknesse*, 14.

¹⁷⁰ Glenn Burgess, *The Politics of the Ancient Constitution* (University Park PA: Pennsylvania State University Press, 1992), 93.

¹⁷¹ Overton, ‘An Appeale’, in Wolfe, 158

¹⁷² *Ibid.*

gathered church or not, and whether Christian or not. Freedom in Christ applies to all, equally, irrespective of church membership or faith.

In Leveller thought, the original creation of man by God is intimately linked to people's fundamental equality and to power, law, and consent. It is our rationality that makes us as beings in God's image; and it is "unnaturall, irrationall, sinfull" for someone to part with the power given by God in nature if that power can be used to destroy them; and it is "unnaturall, irrationall, sinfull" for someone to appropriate and assume power without people's free consent.¹⁷³ Indeed, upon this foundation Overton builds the principle that nothing which is against reason is just or lawful. Thus the Levellers can say that a man is treated unjustly if he is treated "contrary to Law, Reason, or Christianity"; and that any law that is made "contrary to Law and Scripture" and contrary to "the Laws of God, or Nature, is a meer nullity." Such a law is "unjust in it self, and voyd."¹⁷⁴ There are several important points evidenced in this quotation: no opposition is seen between the natural law and revelation; natural law is a higher standard against which we judge if something is just or not; thus the natural law can void a human law; and conversely it is implied that the laws of the state should reflect the natural law. Indeed, the author (William Bray) explicitly links together the Law of God, the natural law (the Law of Nature), and the common law (the legal Birthrights of the people).

In a separate tract, Bray writes that "Christ the glorious Sonne of God perfectly declared the Laws of nature and justice." Bray argues for his "rights of nature" which are "according to the reason of God." Indeed, "if you walke contrary to the Law of nature, by power you justifie the Crucifying, butchering and massacring of the Lord *Jesus*."¹⁷⁵ *Pace* Hauerwas, rights are seen here, not as being based upon an individualistic view of humanity,¹⁷⁶ but upon the very reason of God. So we can know the natural law through reason, because our reason reflects the reason of God. Rights and the natural law thus have a profound theological basis in Leveller thought. Acting against the natural law involves crucifying Jesus Christ; therefore the laws of the state should reflect the natural law. The tract takes for granted that a Christian ethic requires that we should work to ensure that we have just laws.

¹⁷³ Lilburne, *The Free-mans Freedome Vindicated*, 11.

¹⁷⁴ Bray, *Innocency and the blood of the slain Souldiers*, 9.

¹⁷⁵ Bray, *Heaven and Earth, Spirit and Blood, demanding reall Commonwealth-Justice*, 2-3.

¹⁷⁶ Cf. Stanley Hauerwas, 'Memory, Community, and the Reasons for Living: Reflections on Suicide and Euthanasia', in Berkman and Cartwright (eds), *The Hauerwas Reader*, 592.

If we identify elements of Leveller thought with constitutional liberalism, it would be equally incorrect to see the Levellers as the ethical libertarians of their day. Their view of public and private sin (that which is a concern of the magistrate and what is not) certainly differs from our own. For example, they hold that adultery is not only immoral but is a matter for the magistrate. It would not be correct to see this as merely an extension of property rights – the notion that adultery was somehow theft. Rather, they hold strongly to the natural law view of adultery and to the concept of harm that is important within the natural law traditions, and particularly with respect to which moral matters that are against the natural law should also be made illegal under the human positive law. It is reflective of the wider understanding of ‘harm’. For the Levellers, a person’s adultery with a neighbour’s spouse would indeed be a matter for that neighbour.

The crucial issue for the Levellers is that ethics must be built on the truth, the Christian religion. Any conception of justice must derive from what is truly just; and the basis of this, for them, is the natural law: everyone is “obliged by the Laws of Nature (which reaches all).”¹⁷⁷ It is the natural law that allows them to anchor moral claims in the truth and thus have an objective political ethic. (This is something that we shall explore in more detail in the next chapter when we look at law.) The just basis of government, for the Levellers, is the notion that the authority of the magistrate is derived “from the voluntary trust of the People,” all power being originally in the body of the people, and the magistrate has no more power than “what is in the People justly to intrust.”¹⁷⁸ Although this is a political idea that reflects the ecclesiology of the separatist churches, this is also perhaps more clearly a restatement of the natural law ideas that are found amongst the conciliarists (such as Mair and Almain). However, the Levellers add a new second notion on top of this: that some matters (those of conscience, such as religion) cannot even be entrusted to the magistrate “for we could not conferre a Power that was not in our selves.”¹⁷⁹ This is a development of the natural law theory of inalienability that goes back at least to Godfrey of Fontaines in the thirteenth century.¹⁸⁰ Hence, Overton is able to call (in a similar manner to Aquinas)¹⁸¹

¹⁷⁷ Walwyn, ‘A Manifestation’, in McMichael, 335.

¹⁷⁸ Overton, ‘A Remonstrance of Many Thousand Citizens’, in Wolfe, 123.

¹⁷⁹ Ibid., 122.

¹⁸⁰ See Tierney, *The Idea of Natural Rights*, 38.

¹⁸¹ Aquinas, ST, I-II, q. 91, a. 3; q. 97, aa. 1, 3.

for the laws of the nation to be reduced to an agreement with “*right reason*, which ought to be the Forme and Life of every Government.”¹⁸²

Now, although the Levellers share with the Puritans a focus on the importance of the natural law for morality, they depart from the Puritans on what should be considered part of public morality, or part of that morality which is subject to legislation. We have already seen that they do not think that blasphemy, heresy and idolatry should be moral matters that are to be enshrined in legislative prohibitions (although that is not to deny that, for them, these are moral matters which God will judge at the final Judgement). When it comes to lesser moral matters that exercised the Puritans – drinking, playing cards, etc. – then it seems that the Leveller leaders were happy to indulge in or tolerate such activities and indeed to organise their political party in taverns. In criticising certain London Particular Baptist ministers and Independent church members in 1649, Walwyn gives us a classic account of aspects of the seventeenth-century Puritan character (although of course it is debatable as to whether the Particular Baptists were Puritans):

These seeming Saints ... they are so solemn in their countenances, so frequent and so formall in their devotions, so sad at others chearfulnesse, so watchfull over others tripping, so censorious over others failings, having a kind of disdainfulnesse at others, bespeaking them in effect to stand farther off, I am holyer then thou; it being a great scruple amongst many of them, the lawfulnessse of playing at Cards, or the like recreation, as being a vane expence of time.¹⁸³

4.5 The Levellers and Puritanism

The momentum of the discussion in both this chapter on ecclesiology and the previous chapter on soteriology means that we are now in a position finally to resolve the ongoing question of whether we should describe the Levellers as ‘Puritans’. In the Introduction I noted that a large number of scholars have indeed so described the Levellers; yet, throughout the course of the thesis so far, I have offered arguments as to why such a description may not be helpful.

¹⁸² Overton, ‘A Remonstrance of Many Thousand Citizens’, in Wolfe, 124.

¹⁸³ Walwyn, ‘Walwyn’s Just Defence’, in McMichael, 429.

Whilst the thesis follows the convention set out in Chapter Two, utilising the terminology of Meic Pearse with respect to Puritanism,¹⁸⁴ – that is to say, that Puritans at this time were those who wanted a purified state church – the exact definition of Puritanism (if it were possible to gain a consensus view on such a definition) lies outside the scope of this thesis.¹⁸⁵ What I do suggest is that to describe the Levellers as Puritans is confusing and unhelpful, and fails to do justice to their very significant opposition to much of Puritan theology and polity. For example, Woodhouse’s picture of the Putney and Whitehall Debates as a debate between Puritans – between supposed Puritans ‘of the Centre’ and Puritans ‘of the Left’¹⁸⁶ – clouds the issue and obscures how Puritanism was in many ways inimical to the Leveller concept of political liberty.¹⁸⁷ Indeed, in the Puritan Commonwealth, as Walzer puts it, the keynote of political discipline was repression.¹⁸⁸ The Debates simply make much more sense when one sees them as a debate between Puritans on the one hand and those opposed to the Puritan polity, on the other. Likewise, the outright attacks on the Levellers, by Puritan polemicists, as Jesuits, atheists, and Anabaptists, begin to make sense if one realises that this is not merely empty or crude polemic but evidence of what a number of Puritans thought of the Levellers’ political views. These Puritans did not see the Leveller leaders as fellow Puritans.

When the Levellers appear to graft ideas from General Baptist ecclesiology, free grace soteriology, and Jesuit political thought onto earlier ideas, this is not a grafting onto Calvinism, but a rejection of a Calvinist model of church and state. Leveller political understanding stands in effective opposition to Calvin’s views on church and civil government in his *Institutes* (Book 4, Chapter 20);¹⁸⁹ to Article 36, on civil government, of the 1561 Belgic Confession of the Reformed churches;¹⁹⁰ to the polity

¹⁸⁴ Pearse, *The Great Restoration*, 163-164.

¹⁸⁵ For an overview of the historiography of Puritanism, see Peter Lake, ‘The historiography of Puritanism’, in Coffey and Lim (eds), *The Cambridge Companion to Puritanism*, 346-370.

¹⁸⁶ Woodhouse (ed.), *Puritanism and Liberty*, [14]-[18].

¹⁸⁷ Cf. Lamont, ‘Puritanism, liberty and the Putney debates’, in Mendle (ed.), *The Putney Debates of 1647*, 241-255.

¹⁸⁸ Michael Walzer, *The Revolution of the Saints* (New York: Atheneum, 1976), 302. Cf. Fergusson, *Church, State and Civil Society*, 72-73.

¹⁸⁹ For Calvin, the civil authority is to foster and maintain the external worship of God, to defend sound doctrine and the condition of the Church, and to ensure that “no idolatry, no blasphemy against the name of God, no calumnies against his truth, nor other offences to religion, break out and be disseminated among the people.” (Calvin, *Institutes*, Volume 2, 653.) “Thus all have confessed that no polity can be successfully established unless piety be its first care.” (Ibid., 658.)

¹⁹⁰ Article 36 states: “And the government’s task is not limited to caring for and watching over the public domain but extends also to upholding the sacred ministry, with a view to removing and destroying all

of the English Puritan divine Thomas Cartwright,¹⁹¹ and to Chapters 20 (on Christian liberty) and 23 (on the civil magistrate) of the Puritans' 1646/47 Westminster Confession of Faith. To the extent that the Levellers do use a Calvinist idea – for example, Buchanan's resistance theory – then this is an example of their use of earlier ideas; it does not place them amongst the Puritans (and indeed, as noted in the Introduction, they also quote in their tracts from that opponent of Puritanism, Richard Hooker).¹⁹²

It is the issue of religious liberty that reveals the extent of the gap between the Puritan Independents and the Levellers.¹⁹³ The leading Independent divine, John Owen, talks of religious toleration, but it is toleration granted by the magistrate and fairly restricted at that – it is liberty for the saints. In his work on toleration, Owen states that the supreme magistrate “being acquainted with the mind of God,” is “to take care that the truth of the Gospell be Preached to all the people of that Nation, according to the way appointed.”¹⁹⁴ The magistrate may lawfully defend the truth of the gospel with the sword; and he is to provide or grant church buildings and to maintain church ministers at the public expense, the magistrate being the nursing father of the church. The magistrate is to support both Presbyterians and Independents, but not Socinians or Catholics. He is “obliged to vindicate the honour of God, by *corporall restraints*” upon those who deny the Trinity,¹⁹⁵ and it is his duty to oppose the Mass and those church

idolatry and false worship of the Antichrist; to promoting the kingdom of Jesus Christ; and to furthering the preaching of the gospel everywhere; to the end that God may be honored and served by everyone, as he requires in his Word.” (See <http://www.reformed.org/documents/BelgicConfession.html> (accessed 27 June 2009).)

¹⁹¹ “It is not ... that the magistrate is simply bound unto the judicial laws of Moses; ... there are certain laws amongst the judicials which cannot be changed. And hereof I gave example in the laws which command that a stubborn idolater, blasphemmer, murderer, incestuous person and such like should be put to death.” (Thomas Cartwright, ‘The Second Reply against the Second Answer’, in O’Donovan and Lockwood O’Donovan (eds), *From Irenaeus to Grotius*, 705-706.) “It is true that we ought to be obedient unto the civil magistrate which governeth the church of God in that office which is committed unto him, and according to that calling. But it must be remembered that civil magistrates must govern it according to the rules of God prescribed in his word, and that as they are nurses so they be servants unto the church, and as they rule in the church so they must remember to subject themselves unto the church.” (Thomas Cartwright, ‘A Reply to an Answer’, in O’Donovan and Lockwood O’Donovan (eds), *From Irenaeus to Grotius*, 708.)

¹⁹² On Hooker and Puritanism, see Insole, *The Politics of Human Frailty*, 52-63. Insole’s reading of Hooker is based on work by Lake: Peter Lake, *Anglicans and Puritans: Presbyterian and Conformist Thought from Whitgift to Hooker* (London: Unwin, 1988).

¹⁹³ The thesis argues, therefore, that it is unhelpful to describe Lilburne, Walwyn and Overton as “radical Independents”, as Braddick does (Braddick, *God’s Fury, England’s Fire: A New History of the English Civil Wars*, 486).

¹⁹⁴ John Owen, *A sermon preached to the Honourable House of Commons, in Parliament assembled: on January 31*, Thomason E.540(25), 72.

¹⁹⁵ *Ibid.*, 81.

buildings and objects associated with it; for he has a restraining power with respect to those who promote false religious principles. Moreover,

If a man being perswaded that the power of the Magistrate, is in Christian Religion, groundlesse, unwarrantable, unlawfull, should therefore stir up the *people* to the abolishing, and removall of that *power*, such *stirrings up*, and such *actings* upon that instigation, are, *as* opposite to the Gospel of Christ ... so *prejudiciall* to humane society, and therefore to be proceeded against by them who bear not the sword in vain.¹⁹⁶

It is difficult to overstate the Levellers' opposition to Puritanism and Calvinist ecclesiology. Although the Leveller leaders were mostly all separatists of one form or another,¹⁹⁷ their understanding of a voluntary believers' church never led to any notion of the godly rule of the elect, of a godly people politically set apart to rule. As Wootton states, there is no distinction between the godly and the ungodly in Leveller thought: there is no division of the political world between the godly and ungodly.¹⁹⁸ Somehow, the ecclesiological influences in Leveller thinking lead to the political ramifications of the Augustinian insight that the saved and the damned are intermingled on earth and, who is which, is known only to God:¹⁹⁹ that is, to the rejection of ecclesial and political fusion or monism. Moreover, as Wootton has shown, the Levellers deny key tenets at the heart of the ecclesiology of Puritanism: namely the idea that there is continuity between the Israel of the Old Testament and the church of the New, in respect of a national church, Christian magistracy, religious uniformity and religious compulsion and prohibition.

Although a Leveller leader like Lilburne is able to use similar millennial language of the End-times that the Puritans use ('Antichrist', 'the Beast', 'the Kingdome of the Lord Jesus Christ', 'Christ's holy city', 'the New Jerusalem', and explicit reference to the book of Revelation, etc.), there is no sense of the Levellers being utopians wishing to build the Kingdom of God on earth. There is no role for the state in building up the church or creating a holy Commonwealth, a new Israel, a united 'Godly society'.²⁰⁰ The tendency towards theocratic utopianism at the fringes of Puritanism is not just

¹⁹⁶ Ibid., 80.

¹⁹⁷ Walwyn might appear to be the main exception, but, as previously noted, his 'ecclesiology' is of a highly spiritualised and antinomian nature. So, although he did not go off and join a separatist church, as such, he was attracted to the free grace preachers and fairly critical of most existing churches, especially the Puritans.

¹⁹⁸ Wootton, 'Leveller democracy and the Puritan Revolution', 423, 436.

¹⁹⁹ The two cities "are in this present world mixed together and, in a certain sense, entangled with another." (Augustine, *The City of God*, 450.)

²⁰⁰ Cf. Fergusson, *Church, State and Civil Society*, 72.

entirely absent from Leveller thinking, it is denied. What is effectively the political Augustinianism of the Levellers keeps them well away from any church-state monism, sacralisation of the state, or utopian ideas.²⁰¹

The novelty of the Leveller position, their key tenet of full religious liberty for all by right – an idea that seems most likely to have come from Anabaptism²⁰² – makes for an unbridgeable gulf with Puritanism. In their rejection of the rule of the saints in favour of an Agreement of the People, the Leveller leaders propose a new polity. The Agreement does not derive, *pace* Woodhouse and D.B. Robertson,²⁰³ from the covenant theology of Puritanism as it is expressed, for example, in the Solemn League and Covenant; rather, it derives from a voluntarist ecclesiology which informs a political understanding that promotes the liberty and consent of the individual – believer or not – and denies a religious role to the state.

To sum up: however confusing and blurred the ecclesial boundaries of this period appear to be, and however dangerous it is to attempt to impress a tightening up of the taxonomy on the period, I am suggesting that describing the Levellers as Puritans adds to the confusion and becomes misleading. This is not to place modern scholarly constructs upon the period, but to provide a light through the potential confusion by recognising the clear Leveller opposition to Calvinist soteriology and ecclesiology, to the Puritan polity, and to the Puritan way of life (as we have already seen with some of Walwyn's comments in the previous section).

4.6 Conclusion

The Levellers chose a middle path between the church-state monism of the Puritans and the withdrawal ethic of certain continental Anabaptist groups. Their use of a General Baptist-type ecclesiology led them to adopt what might be considered a middle path in their political ethics, especially with regard to the role of the state. The Levellers derive from the Baptist ecclesiology of the church as a voluntary group of believers (coming

²⁰¹ It may be significant that one of the few Anabaptist writers to cite Augustine approvingly, rather than to attack him, was Hubmaier (see for example his treatise *On Free Will*).

²⁰² Rather than from, say, Castellio or Grotius – I have been unable to find any mention in Leveller texts of Castellio or Grotius; and it is difficult to see their views of religious toleration as being the same as that of the Levellers (see the previous chapter).

²⁰³ Cf. Woodhouse (ed.), *Puritanism and Liberty*, [72]-[76]; and Robertson, *The Religious Foundations of Leveller Democracy*, 29.

together in a mutual agreement, with their own chosen ministers) a political understanding that society should be governed by consent, expressed in a formal agreement, and with liberty of conscience as a key freedom.

It seems reasonable to contend that the Levellers developed political ideas that partly had their genesis in the ecclesiology of conciliarism, General Baptism, and antinomianism. It is probably these latter two influences that allowed the Levellers to include religious liberty in their political proposals, beyond what the conciliarists would have accepted. Yet, there is still a debt to the conciliarists, in the heavy emphasis on the natural law: we have seen the Leveller ethics of political engagement with the world and their view that Christians should be very much engaged in forming and changing the state, its constitution and its laws; for them the laws should be influenced by Christian ethics and the natural law – this is something which we will pick up in detail in the following chapter on law.

The Levellers avoid both the Puritan and the extreme separatist approach to the world. The Levellers do not see the state itself as sinful, but merely hold that the state should be limited by the individual's freedom, rights, and consent. Like Hubmaier, the Levellers envisage Christians holding political office and working to reform the state. Such reform though is not in the utopian direction (there are no grand schemes to impose the common good), but rather in what we might today call a constitutionally liberal direction, characterised by a reserve about state power.²⁰⁴ The Levellers' proposals are to limit the state's powers in order to protect freedoms. The Levellers thus represent an approach to the state characterised by caution and suspicion.²⁰⁵

It would be naive to see societies as simply tending towards either anarchy or absolutism with the Levellers prescribing a *via media*. For one of the key insights of the Levellers is that arbitrary power exercised by the state has the same effect of living in anarchy for the person at the receiving end of that power, and that arbitrary power can include power exercised in the name of some 'common good' such as a godly reformation. One of the real distinctions between the Levellers and their political contemporaries was the Leveller position that wholesale constraints have to be placed on the state's powers, especially in religious matters, constraints which have their basis

²⁰⁴ Cf. Insole, *The Politics of Human Frailty*, 5, 14, 35, 41, 63.

²⁰⁵ Ian Gentles has described the Leveller vision as being not so much democratic as "libertarian and decentralist", with a "profound suspicion of all political power." (Gentles, 'The *Agreements of the People* and their political contexts, 1647-1649', in Mendle (ed.), *The Putney Debates of 1647*, 171.)

in recognising the primacy of the liberties of the individual – which liberties are grounded on religious commitments.

In order to protect us from both grand plans and arbitrary power that remove our freedom, constitutional liberalism has grown as a political theory that emphasises limitations on the state with respect to the individual. Like previous chapters, this chapter has demonstrated that many of the central tenets of such modern liberalism were in circulation well before the Enlightenment;²⁰⁶ it fell, in part, to the Levellers to try to systematise these into a political platform. A nuanced account of political liberalism, then, will distance itself from those Christian accounts that condemn liberalism *in toto*, whilst also distancing itself from those secular accounts that portray the growth of liberalism as being in opposition to the church and religion. We can thus see some truth in Cavanaugh’s attack on the myth of the early modern ‘Wars of Religion’, wars from which the modern nation state has saved us,²⁰⁷ and upon the cogency of this myth.²⁰⁸ The Leveller involvement in the development of political liberalism indeed points not so much to limitations upon the church in matters of the state, as to a limited state, respecting individual liberty, and with no role for the state over the church.

The Levellers follow an Augustinian approach in holding that the state is not there to improve us,²⁰⁹ but to minimise the human disorder that is the result of sin. Where the state fails to minimise this disorder, fails to keep the peace, fails to protect people, then the state itself has failed – whatever else it might claim to be doing. Because of the

²⁰⁶ In contrast to Yoder, who claims that it was the Enlightenment that “first affirmed the dignity of the individual citizen” (John Howard Yoder, *The Priestly Kingdom* (Notre Dame IN: University of Notre Dame Press, 2001), 152).

²⁰⁷ See William Cavanaugh, *Theopolitical Imagination* (Edinburgh: T&T Clark, 2002), 5, 9, 20-21. In this myth, the Peace of Westphalia in 1648, ending the Thirty Years’ War and the Eighty Years’ War, is presented as a major event. The myth is that these wars were a series of wars of religion, of Catholics against Protestants; and that the Peace of Westphalia ended this religious warfare, and gave birth to the modern nation state; and after this, nation states, when they did fight, did not fight along confessional lines any more. Therefore the modern nation state, with its setting aside of the old dominance of the church, has saved us from this religious warfare.

²⁰⁸ Cavanaugh presents convincing evidence that the nation state was being formed before the Wars of Religion (with Luther, Henry VIII and others), that these wars were the birth pangs (and thus a result) of the emerging nation states, and that the wars were far from the simplistic picture of Catholics versus Protestants. Importantly, the dominance of the civil authorities over the church predated the wars. The fact is that the last 12 years of the Thirty Years’ War saw Catholic France allying with Protestants to fight Catholic Habsburg Spain and the Habsburg Holy Roman Emperor; with the Peace of Westphalia effectively settling matters in France’s interest at the expense of Spain and the German lands. Also during the Thirty Years’ War, there was a war between Protestant Sweden and Protestant Denmark, 1643-1645, with Sweden emerging victorious. The Peace of Westphalia also ended the Eighty Years’ War – with France supporting the northern Protestant Netherlands as part of France’s campaign to weaken Spain. See *ibid.*, 22-31.

²⁰⁹ Cf. Robert A. Markus, *Saeculum* (Cambridge: CUP, 1970), 84, 89; and Augustine’s Letter 153, paragraph 16 (see O’Donovan and Lockwood O’Donovan (eds), *From Irenaeus to Grotius*, 125-126).

presence of sin, the state cannot embody the true social order nor lead people to the realisation of their own good; because of sin, there can be no ideal society.²¹⁰ It is not the state's role to make us good; there has to be something else that drives human relations (to cooperation, virtue, love of others, peaceful coexistence) within the society but which is not of the state.

The contribution of the Levellers is to recognise that we are not free because of our citizenship of the *polis*; nor is freedom just derived from being granted by ancient common law; nor granted by ruler or Parliamentary statute; nor by social contract or written constitution; nor by some agreement behind the veil of ignorance (see the following chapter). Freedom is ours because it is given by God and exists conceptually prior to our citizenship and to human law (and thus is prior to civil rights). What I am 'morally' free to do, and thus what the state should recognise that I am politically free to do, relates to truth – whether it is indeed true that I should be free to do something. For the Levellers, this truth derives from God's natural law and from the work of God in Christ. That is, notions of liberty are rooted not in the autonomous free individual but in a theological claim about liberty.²¹¹ The Leveller claim is that political liberty is rooted precisely in a metaphysical notion of liberty that underpins understandings of people, human equality, liberty, and truth.

Our challenge is to understand what the separation of church and state should mean; and, in this challenge, I believe that the Levellers can be helpful. The study of Leveller thought should alert us that a political liberalism which is divorced from its religious roots is in danger of being rootless and grounded in shifting sands. The political understanding of freedom cannot safely be divorced from the questions of what is the basis of our freedom, the freedoms that I morally have (and what limits there are), and the freedoms which I should recognise that others possess – and whether there is any objective basis to these claims. These are some of the questions that we will address further in the next chapter, on law.

²¹⁰ See Robert Markus, 'Refusing to Bless the State', in Robert A. Markus, *Sacred and Secular* (Aldershot: Variorum, 1994), 372-379. For Augustine, "the wretchedness of man's condition" means that even in a theoretically peaceful society there will be injustice. "Social life is surrounded by such darkness." See Book 19, Chapter 6, of *The City of God: Augustine, The City of God*, 927-928.

²¹¹ Cf. Onora O'Neill, 'Political Liberalism and Public Reason: A Critical Notice of John Rawls, *Political Liberalism*', *The Philosophical Review* 106:3 (1997), 412.

5. THE COMMON LAW

5.1 Introduction

In this chapter we will show how the Levellers used the English common law tradition and yet developed aspects of it away from the position of the common lawyers. In particular we will examine how the Levellers utilise the common law insights into individual liberty and rights; and how they nevertheless assert a source of legal freedom independent of the law, a right to religious liberty, a formal agreed constitutional law that is superior to statute and common law, and a critical approach to the legal system. Ultimately, they wish to reform the powers of the state, including its laws and legal powers, in order to protect the liberties of the individual, by upholding the rule of law in a written contractual constitution that limits the state. This makes them both heirs to the common law tradition and at the same time critics of it. The discussion of the common law in the first half of the chapter leads into an overview of the Levellers' legal philosophy. We will look at the Leveller conception of individual legal rights and equality under the law; the people as the source of sovereign power, and the need for individual consent; strictly limited government; freedom and the law; private property; and the constitutional Agreement of the People. Although much of their legal philosophy owes a debt to the common law tradition, we find an emphasis on constitutionalism which goes beyond the common law appeal to the ancient constitution and which expresses itself in a more formal contractarian approach that seeks a contemporary written constitution. The Agreement of the People, containing what is effectively a constitutional bill of rights, with religious freedom as the primary right, is central to Leveller thinking. It is this contractarian bill of rights that perhaps most sets the Levellers apart from the classic common law jurists like Sir Edward Coke (even though Leveller tracts frequently cite, or allude to, Coke).

In the second half of this chapter we will touch on the modern contractarianism of John Rawls in order to compare the Leveller understanding of the social compact and the law with that of Rawls, as a way of illuminating and appreciating the distinctive insights of the Levellers. Rawls will be employed as representative of a wider approach, of a strand of modern liberalism which adopts a broadly Kantian view of

human autonomy, as we noted early on in the thesis. In particular we will show that the Leveller social contract differs markedly from that of Rawls, especially around the Leveller desire to limit the state through the legal Agreement, and around the Leveller appeal to an objective natural law against which the state's laws are to be measured. More explicitly than the previous chapters, this chapter serves as a prism that reflects the various strands which meet in Leveller thought upon some of the current questions in political liberalism.

Given the sheer scale and consistency of the messages about the law that appear in Leveller writings, it is difficult to overstate how important considerations of law were to the Levellers – both attacks on the abuses of the law, and prescriptions for how the legal system should be organised. It is impossible to read Leveller tracts without observing again and again the demand for parliamentary and legal reform. However, the multitude of demands for specific legal reforms are not mere planks of a political platform; they are expressions of a wider political philosophy, as will be shown. We will see in more detail in the following sections how this Leveller political philosophy is fleshed out in a number of key themes: in relation to the common law tradition, in a philosophy of law centred on a Christological anthropology, and in comparison to the modern contractarianism of Rawls. This will help us understand how the Levellers appealed to common law liberties and yet shifted away from certain presuppositions of the common lawyers; how they built on the common law tradition, synthesised it with differing political and theological understandings which we have examined in the previous chapters, and thus modified it in certain key ways. It will also aid our appreciation of the importance of certain theologically-based anthropological claims to Leveller political philosophy – particularly the radical liberty that derives from the free grace of Christ, and which is one of the main sources of those shifts from the common law tradition. We will see that philosophical questions of law cannot be separated from questions of truth and of anthropology. Finally we will see that the Leveller conception of a constitutional Agreement differs from the modern Rawlsian social contract in a number of important and fundamental philosophical respects, especially in relation to anthropology and its implications for human law. We will see that the Leveller desire to limit the political, is based on theological truth claims.

5.2 Common Law

“The Levellers owed a great deal to both Coke and the natural tradition,” notes Sommerville, “though they put their sources to uses which earlier writers would have found surprising.”¹ We will see that the Levellers make use of the language of common law rights and rely heavily on Coke; but, at the same time, they move beyond the common law tradition in several important respects: in appealing to a written constitutional compact, religious freedom, and liberties that are anterior and superior to the law. Nevertheless, we must be careful to avoid setting up a false polarity between the Levellers and the common law theorists.

We will now examine in more detail what we mean by the ‘common law’. Alongside the natural law tradition which we discussed in Chapter Two, is the English common law tradition represented by the likes of Sir Edward Coke.² The natural law tradition, whilst abstract and focusing on origins, tends to emphasise the authority of the community as a whole, the source of government power in the consent of the people, and natural inalienable rights of the people. The common law tradition meanwhile emphasises the rule of law, positive law making, restrictions on government, and the legal protection of the liberties of individuals.³ In the common law tradition the personal liberty of the subject has a greater consideration: common law theorists emphasised the legal rights of the individual subject and the due process of the law, and they tended to place less emphasis on the notion of the common good. Nevertheless, common law is not regarded as opposed to natural law: the common law enshrines natural law truths, and is based on reason and common-sense.⁴

“The Law of the Land usually called the *Common-Law*, being grounded upon right reason and equity,” is, for Overton, “the true Rule and Directory, both for ruling and obeying.”⁵ The Levellers make great use of common law language and theory in their tracts and frequently cite Coke’s works (especially his *Institutes*) and maxims –

¹ Sommerville, *Royalists & Patriots*, 221.

² It should be noted that I am not claiming that Coke singly represents the common law tradition, for there were considerable differences amongst common lawyers, and recent scholarship (Glenn Burgess, for example) points out that in some areas of common law thinking Coke was untypical: see Burgess, *The Politics of the Ancient Constitution*, 21-27, 30, 58, 72.

³ Sommerville, *Royalists & Patriots*, 102.

⁴ As Coke records in his report of Calvin’s Case, the “Law of nature is part of the Laws of England” (Steve Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume I (Indianapolis: Liberty Fund, 2003), 174).

⁵ Mary Overton (Richard Overton), *To the right Honourable, the Knights*, Thomason E.381(10), 1.

indeed substantial parts of some Leveller tracts rely on quotations from him and references to his work.⁶ Coke appealed to ancient common law, dating from Saxon England; and to an ancient constitution that includes a role for the House of Commons (the representatives of the free people in Parliament). There is an immemorial common law, created by neither king nor people, and above both;⁷ and the law's binding force is derived from its customary nature. The succession of the ages has allowed it to be refined and refined by an enormous number of learned men, so that it is now like an artificial perfection of reason, obtained by long study, observation, and experience.⁸ For Coke, the law of the land *is* the common law; the common law is "the great and principal law."⁹

In the First Part of his *Institutes* (known as *A Commentary upon Littleton* and as *Coke on Littleton*), Coke describes how what we know as the common law is drawn from maxims and principles, records and legal authorities, previous judgements and precedents, use and custom, nature, the order of Religion, common presumption, and more intangible elements such as reason, end, and what is profitable, as well as the avoidance of negatives such as that which is impossible or absurd. These together, even though not written down, establish a custom through long use, the consent of our ancestors, and daily practice. This customary usage establishes rights and liberties.

In the seventeenth century, notes J.G.A. Pocock, the constitution is seen as ancient, identified with the common law and the common law with immemorial custom.¹⁰ Antiquity, custom, looking back in time, are the key modes of understanding; for the common lawyers, rights are justified by inheritance. We thus have a doctrine of the ancient constitution stretching back to pre-Conquest times,¹¹ and the ancient constitution, argues Pocock, was raised to the level of a cult surrounded by myths.¹²

⁶ See, for example, Lilburne's tract *The Lawes Funerall* (John Lilburne, *The Lawes Funerall*, Thomason E.442(13)).

⁷ Sommerville, *Royalists & Patriots*, 79, 101.

⁸ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume II, 701.

⁹ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume III, 1262.

¹⁰ John Pocock, *Politics, Language and Time* (Chicago: University of Chicago Press, 1989), 132-133.

¹¹ Though Sommerville notes that "the law's binding force was derived from its customary nature, not from its prehistory." (Sommerville, *Royalists & Patriots*, 86.) Corinne Weston also notes that, by itself, antiquity was not enough. (Corinne Weston, 'England: ancient constitution and common law', in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 376.)

¹² Pocock, *Politics, Language and Time*, 209-210. It should be noted that Burgess is critical of aspects of Pocock's account: see Burgess, *The Politics of the Ancient Constitution*, 58, 72, 78.

Experience and reason allowed the immemorial custom to be refined nevertheless (by the artificial reason and judgement of the lawyers).¹³

Under the common law, every free man has a property in his goods and estate; no-one is to be committed to prison without cause shown; nobody is to be convicted without due process of law;¹⁴ no free man is to lose his goods, liberties, or customs, without the lawful judgement of his peers, and by the law of the land; no tax should be levied without an Act of Parliament; and there should be no loans levied against the will of the subject.¹⁵ As Sommerville notes, the two maxims of the common law that came to be of great political importance during the reign of Charles I were the principles that subjects could not be deprived of their property without their consent, or be bound by a new law without their consent.¹⁶

These common law claims – the rule of law, due process, judgement by one’s equals, consent to laws and taxation – came to be standards of the Leveller platform. “The Lawes,” writes Wildman, “ought to be the sole Lords or Rulers of the Commonwealth, and ... Princes and Governours ought to governe by the Lawes, and cannot command what the Lawes do not command.” The king “should govern the people by rules of Law without regard to the person of any.”¹⁷ As well as the more general principles that justice should not be sold, denied, or deferred, the Levellers followed the common law emphasis on the liberties of the individual, the understanding that any ordinance against the common law liberty of the individual subject was against the law. Overton argues that right reason, rationality, necessity, and equity are superior to the letter of the law;¹⁸ and similarly, for Lilburne, equity (understood as a principle of fairness) must take precedence over Parliament in the latter’s dealings with free-men.¹⁹

Although the common law tradition gave a language of individual liberties, it would be wrong to think that it gave a particular political theory: amongst the Stuart

¹³ That is, there could be a degree of evolutionary change: see Burgess, *The Politics of the Ancient Constitution*, 27, 72. The degree of such change envisaged, and the balance between immemorial immutability and change in custom, vary between common lawyers.

¹⁴ For Coke’s use of the phrase “due proces”, see Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume II, 858-859.

¹⁵ “Loans against the will of the subject are against reason and the franchises of the land,” states Coke in his speech of 22 March 1628 on the Petition of Right (Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume III, 1228-1229).

¹⁶ Sommerville, *Royalists & Patriots*, 90.

¹⁷ Wildman, *The lawes subversion*, 1-2.

¹⁸ Overton, *An Appeale*, 2-5. Indeed, for Overton, nothing which is against reason is lawful (Richard Overton, *A defiance against all arbitrary usurpations*, Thomason E.353(17), 6).

¹⁹ John Lilburne, *Englands Birth-Right Justified*, Wing 2050:30, 6.

common lawyers there were substantial differences of political opinion on, for example, the constitutional powers of the king, Parliament, and subjects. This ancient but continually flowing river (cf. Sir Matthew Hale)²⁰ which is the common law does not prescribe the exact form of government but rather prescribes that there is an unwritten constitution with which the form of government must accord. For Coke, the ancient form of the government of England was Parliamentary (see the Fourth Part of the *Institutes*).

The common lawyers were able to argue that there are fundamental common law liberties that even bind the king and Parliament. The common lawyers constructed a constitutional model in which the king's powers are limited by the law, for any royal act contrary to the common law is void. Under this model, the Commons shared power with the king and the Lords in Parliament in producing written (statute) law; but the unwritten common law gave people rights and liberties without the king. Based on this, the House of Commons during James I's reign asserted certain privileges which were held independent of the king. For Coke, appealing to common law, the king's powers are subject to customary limitations.²¹ The powers of a current king in England in a sense derive from natural law modified by custom, and so the law limits or restrains the king.²² The king is thus under the law, and the common law is elevated above the king.²³ In particular, the king's prerogative cannot (legally) prejudice the inherited freedoms of the subject. In practice, this means that the common law forbids legislation without the consent of the people.

This customary law derives its authority from time immemorial, customary usage, common right, and reason, and not from Act of Parliament or king. In *Dr Bonham's Case* in 1610, (one of Coke's most famous cases and reports, a case involving a dispute in which the College of Physicians appeared to be a judge in a matter to which it was a party),²⁴ Coke ruled that the common law stood above Parliament and statute law: "In many Cases, the Common Law doth controll Acts of Parliament, and somtimes shall adjudge them to be void: for when an Act of Parliament is against Common right and reason, or repugnant, or impossible to be performed, the Common Law will controll it,

²⁰ Pocock, *Politics, Language and Time*, 221.

²¹ Sommerville, *Royalists & Patriots*, 67.

²² *Ibid.*, 102.

²³ *Ibid.*, 83. Coke will not accept that there is any sovereign power above the law: see Burgess, *The Politics of the Ancient Constitution*, 196.

²⁴ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume I, 264.

and adjudge such Act to be void.”²⁵ Similarly, the common lawyer and MP, Thomas Hedley, said in a speech in the House of Commons in 1610: “the common law is of more force and strength than the parliament” for Parliament derives its power from the common law.²⁶ Significantly, in *The Legall Fundamentall Liberties*, Lilburne quotes Bonham’s Case explicitly,²⁷ and equally states that common law can adjudge an Act of Parliament to be void if the Act is against common right.²⁸ Indeed Lilburne’s sweeping argument here is that the current (Rump) Parliament is itself illegal under the common law notions of common right, common reason, impossibility and repugnancy.

This argument is repeated by Lilburne at his later trial: he refuses to plead, on the grounds that the Act of Parliament under which he is charged “is a most sordid and illegal one.”²⁹ It is a “supposed Act”, a “pretended Act”, which is “void”, and the indictment under it “is erroneous and void in Law.”³⁰ An Act of Parliament which is contrary to the common law, (that is the law of the land), is a void law. All laws made by Parliament which are contrary to “the Ancient Laws and Liberties of *England*” are “null and void.”³¹ Again, Lilburne develops the argument a step further: the makers of the Act are “no Parliament.”³²

In a similar manner to Bonham’s Case, Coke held that “all statutes made against Magna Carta should be void,” for Magna Carta itself is but a confirmation of earlier common law.³³ Coke noted the wider theory of voiding in such court cases as the 1602 Case of Monopolies where it was resolved that, as monopolies were against common law, any grant of a monopoly was therefore void.³⁴ In the *Institutes* Coke is blunt: anything against reason has no force in law.³⁵ This extends to excessive customs tariffs and restraints on free trade – because they are a restraint on the liberty of the subject

²⁵ Ibid., 275.

²⁶ 28 June 1610. Quoted in Sommerville, *Royalists & Patriots*, 91.

²⁷ Diane Parkin-Speer notes that this “was only the second use of Dr Bonham’s Case in public controversy as opposed to in a private law matter.” (Diane Parkin-Speer, ‘John Lilburne: a Revolutionary Interprets Statutes and Common Law Due Process’, *Law and History Review* 1:2 (1983), 276.)

²⁸ Lilburne, *The Legall Fundamentall Liberties*, 51. Wildman also uses Coke’s exact language from Bonham’s Case to argue that an Act of Parliament can be null and void – see John Wildman, *Truths tryumph, or Treachery anatomised*, Thomason E.520(33), 11.

²⁹ Anon., *The Tryall of Mr Iohn Lilburn*, Thomason E.710(21), 6.

³⁰ John Lilburne, *The Exceptions of John Lilburne*, Thomason E.708(4), 4-5.

³¹ John Lilburne, *More Light to Mr John Lilburnes Jury*, Thomason E.710(23), 5.

³² Ibid., 7. The authors of *An outcry of the youngmen and apprentices of London* likewise describe the Rump Parliament as a “mock-Parliament, a shadow of a Parliament, a seeming Authority, or the like, pretending the continuance thereof” (*An outcry of the youngmen and apprentices of London*, 2).

³³ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume III, 1227.

³⁴ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume I, 398-399.

³⁵ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume II, 684.

they are void and against the law. Lilburne echoes Coke: monopolies and patents infringe “upon the Common right of all the free-men of England.”³⁶

Coke’s theory of voiding – that statutes that are against common law principles of reason, equity, or common right are void and thus not law – still seems far-reaching today. Yet Coke is effectively restating earlier scholastic views that unjust human ‘laws’ are simply not laws. In his work of canon law, *Decretum*, (circa 1140), as we noted in Chapter Two, Gratian wrote that any human law contrary to natural law was void.³⁷ Aquinas likewise holds that an ordinance that commands us to perform an action that is unjust, irrational, or against the eternal moral law, cannot be a law.³⁸ This runs counter to the ‘high’ sovereign view that the law is whatever is enforced by authority: Hugh Peter tells Lilburne that “there is no Law in this Nation, but the sword, and what it gives.”³⁹

When the Levellers talk of people being free-born and of birthright, they are using and developing the common law language. However, we should be wary of simply saying that they follow the common law theorists; for the Levellers move from talk of ‘free-born subjects’ to ‘free-born Englishmen’ – Foxley argues that this phrasing is not common before Lilburne and that its novelty has been overlooked.⁴⁰ What is particularly important is that this allows the Levellers to hold that all English people are free-born, rather than just a select group;⁴¹ and that the liberties of each individual are equal by birth, rather than different (i.e. all have the same liberties).⁴² Moreover, the Levellers certainly distance themselves from common lawyers when they lay special emphasis on the need for a written binding compact. This is something that flies in the face of the common lawyers’ preference for that elusive mix of precedents, maxims, custom, and equity. This elusiveness can be seen in the way that common law maxims have a habit of emerging or changing – for example Coke declared that free trade was a maxim of the law in 1621.⁴³

³⁶ Lilburne, *Englands Birth-Right Justified*, 8.

³⁷ Brian Tierney, ‘The Idea of Natural Rights – Origins and Persistence’, *Northwestern University Journal of International Human Rights* 2 (2004), Section 12.

³⁸ Aquinas, ST, I-II, q. 95, a. 2; cf. Colin Harte, *Changing Unjust Laws Justly* (Washington DC: CUA Press, 2005), 92-103.

³⁹ John Lilburne, *A Discourse betwixt Lieut Col John Lilburne close prisoner in the Tower of London, and Mr Hugh Peter*, Thomason E.556(26), 5.

⁴⁰ Foxley, ‘John Lilburne and the Citizenship of “Free-born Englishmen”’, 851.

⁴¹ *Ibid.*, 852, 871.

⁴² *Ibid.*, 854, 858, 861.

⁴³ See, also, Rachel Foxley’s comments on maxims and case reports in *ibid.*, 859-860.

It is particularly noteworthy that Roger Williams, who provides a key intellectual base to Leveller thought, was secretary to Coke for a time. Lilburne in 1646 produced what has been described as a panegyric on Magna Carta,⁴⁴ in his tract *Liberty Vindicated against Slavery*, but perhaps even more important is his explicit positive quoting from Coke throughout the same tract – indeed, the work begins with “Sir Edward Cook ... this learned Lawyer” and a close analysis of Coke’s writing on Magna Carta in the Second Part of *The Institutes*.⁴⁵ Coke is an “experienced and honest Lawyer” who shows that liberties are of “Right and Inheritance”.⁴⁶ Lilburne gives explicit chapter references to Magna Carta and folio references to Coke’s *Institutes*. He makes his own Coke’s argument that any law contrary to Magna Carta is null and void, and throughout the tract he bolsters his arguments with appeals to Coke: “... as Coke saith ...”, “observeth”, “sheweth”, or “tels us”.⁴⁷ In *Legall Fundamental Liberties*, Lilburne describes the maxims of the common law “recorded by that most excellent of English Lawyers, Sir Edw. Cook.”⁴⁸

In *The commoners complaint*, Overton provides an amusing description of wrestling to hang on to the second part of Coke’s *Institutes* (on Magna Carta). As he is arrested, in 1646, the gaolers

brought me into the lower roome in *Newgate*; called the Lodge, and there they threw me down upon the Bords, and having *Sir Edward Cookes* 2. part instit. upon *Magna Carta* the Mr. *Briscoe* offered to wrest it out of my hands: Then I demanded of him if he intended to *rob* me, and he told me he would have it from me whether I would or no.

To whom I replied, that he should not, if to the utmost of my power I could preserve it from him, and I would do my utmost, where upon I clapped it in my Armes, and I laid my selfe upon my belly, but by force, they violently turned me upon my back then *Briscoe* (just as if he had been staving off a Dog from the Beare) smote me with his fist, to make me let go of my hold, whereupon as loud as I could, I cryed out, murther, murther, murther. And thus by an assault they got the great Charter of *Englands Liberties and Freedoms* from me; which I laboured to the utmost of power in me, to preserve and defend, and ever to the death shall maintain, and forthwith without any warrant poore *Magna Charta* was clapt up close prisoner in *Newgate*, and my poore fellow prisoner derived [sic] of the comfortable visitation of friends: And thus being stript of my armour

⁴⁴ R.B. Seaberg, ‘The Norman Conquest and the Common Law: The Levellers and the Argument from Continuity’, *The Historical Journal* 24:4 (1981), 798.

⁴⁵ Lilburne, *Liberty Vindicated against Slavery*, 1.

⁴⁶ *Ibid.*, 2.

⁴⁷ *Ibid.*, 1, 2, 4, 7, 8, 10, 14, 15, 19, 20.

⁴⁸ Lilburne, ‘The Legall Fundamentall Liberties’, in Haller & Davies, 406.

of prooffe, the Charter of my legall Rights, Freedoms, and Liberties, after the aforesaid barbarous manner they hurried me up into the common Goale [sic].⁴⁹

In fact, we can observe that through many of the Leveller tracts there is extensive, positive, and explicit usage made of Coke.⁵⁰ Many tracts contain references to Coke either in the main body of the text or in margin notes that show, through the detailed references, precise knowledge of, and access to, Coke's works.⁵¹ As was mentioned in the Introduction, it is probably Coke and Magna Carta that are, aside from the Bible, the most quoted in Leveller tracts. Indeed, Aylmer's book on the Levellers contains an engraved image of Lilburne, portrayed at his trial in 1649, holding Coke's *Institutes*.⁵² Nevertheless, we see clear differences emerge between the common lawyers and the Levellers; and the role and importance of Magna Carta, for example, proves to be a point of divergence.

For a common lawyer like Coke, Magna Carta is regarded as a major enshrining of our liberties, something old to which we can appeal, and a restatement of earlier pre-Conquest English liberties. For the Levellers, there is a more ambivalent attitude to Magna Carta: sometimes they appeal to it ("by due processe or Law, according to *Magna Charta*,"⁵³ and Magna Carta as "that little Remainder of Light"),⁵⁴ and other times criticise it ("a beggerly thing,"⁵⁵ and "that messe of pottage").⁵⁶ They see it as part of statute law and as something that will not fundamentally guarantee our freedoms in the way that a binding constitutional Agreement today will. Walwyn in particular notes how Parliament has never made enlargements to the freedoms (in fact bounds) in Magna Carta, but rather abridgements.⁵⁷ Instead of patching up the old Charter, the people should make a new and better one, he says in *Englands Lamentable Slaverie*.

⁴⁹ Richard Overton, *The commoners complaint*, Thomason E.375(7), 14.

⁵⁰ See, for example, Bray, *Innocency and the blood of the slain Souldiers*, 8-11, where there are extensive explicit references to Coke and his *Institutes*, both in the main text and in the margins.

⁵¹ See, for example, the margin notes references to Coke in William Thompson, *Englands Freedome, Souldiers Rights*, Thomason E.419(23), 1-2, 6-9. Likewise, see the margin notes in the Petition of January 1648 (Wolfe (ed.), *Leveller Manifestoes*, 266-269).

⁵² Aylmer (ed.), *The Levellers in the English Revolution*, 8.

⁵³ Overton, *An Appeale*, 35.

⁵⁴ Richard Overton, *An Alarum to the House of Lords*, Thomason E.346(8), 6.

⁵⁵ Overton, *A Remonstrance of Many Thousand Citizens*, 15.

⁵⁶ William Walwyn, *Englands Lamentable Slaverie*, Thomason E.304(19), 4.

⁵⁷ See also Mordecai Roshwald, 'The Concept of Human Rights', *Philosophy and Phenomenological Research* 19:3 (1959), 374. Roshwald describes how Paine sees ancient English charters as statements of privilege, which grant rights to some, and take rights from others, leaving rights in the hands of a few. Walwyn in particular seems to foreshadow Paine: Walwyn describes how Magna Carta was an exercise in wrestling freedoms off the King whilst held in bondage, and so the freedoms are in fact the grants of our Conquerors rather than birthrights. It is called Magna Carta to blind the people (Walwyn, *Englands Lamentable Slaverie*, 4).

Overton too sees the laws made by Parliament since Magna Carta as oppressive and intolerable: “Magna Charta it self ... & the Lawes that have been since by Parliaments, have in very many particulars made our Government much more oppressive and intollerable.”⁵⁸ Furthermore, in *A Remonstrance of Many Thousand Citizens*, he develops a negative view of the Norman laws in general, as he attacks the corrupt trade of judges and lawyers that sell justice and injustice.

Coke on the other hand sees a fundamentally positive role for the law – we live under the law in order not to live under other people’s discretions.⁵⁹ Nevertheless, Coke does not recognise religious freedom as part of the common law. In a speech in the House of Commons on 6 June 1628 he holds to the state church, urges the execution of the laws against the papists, and argues against toleration.⁶⁰ Similarly, on 4 August 1606, in his charge from the bench to the jury at the Norwich Assizes, Coke identifies Catholicism with treason and states that the Brownist separatists are also not to be tolerated.⁶¹ In the *Institutes* he fully accepts the burning of heretics as being like the necessary removal of a leper from society lest he infect others. Coke’s main reason for accepting the legitimacy of burning heretics is, that this is what is prescribed by the ancient sources of law that he uses here: Bracton, Britton, *Fleta*, Stanford, and *The Mirror*.⁶² This view clearly separates the common lawyers from the Levellers. Because there is no tradition of religious freedom in England stretching back in time or in custom, the common lawyers can find no liberty that can be called ‘religious freedom’ and be ascribed to individuals. Indeed Coke holds that one of the prime roles of Parliament is the defence of the Church of England.⁶³

In the 1647 tract, *Rash oaths unwarrantable*, Lilburne quotes Coke heavily and yet attacks the Oath of Supremacy and the idea that the king, Parliament or magistrate could have anything to do with the church, any spiritual or ecclesiastical jurisdiction. Lilburne’s firm call for a separation of church and state goes against Coke’s own position on this matter. The Leveller demand for full religious freedom to be recognised by the fundamental law markedly sets out Leveller thinking on law from Coke and the common lawyers. The Levellers were also aware of countries that did not

⁵⁸ Overton, *A Remonstrance of Many Thousand Citizens*, 15.

⁵⁹ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume III, 1231.

⁶⁰ *Ibid.*, 1293-1294.

⁶¹ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume II, 533-547.

⁶² *Ibid.*, 1040, 1042-1043.

⁶³ Fourth Part of the *Institutes*, Chapter 1; see *ibid.*, 1080.

have the (English) common law tradition – such as the United Provinces of the Netherlands with their civil (Roman) law system – but whose citizens nevertheless would expect toleration and freedom.⁶⁴ Nevertheless, when Lilburne is in the Tower in May 1649 he has with him Coke’s *Institutes*, one of which books becomes the source for a discussion with Hugh Peter about what is law.

Where the Levellers further depart from the common law tradition is over some of the fundamental assumptions of the tradition. For the common lawyers, it is the English common law that gives us freedom: the law does not just enshrine and protect our freedoms, but is the locus of them – as Coke puts it, Magna Carta makes us free (“Carta libertatis quia liberos facit”).⁶⁵ However, for the Levellers, you are not free because some ancient custom, some immemorial law, gives you freedoms; it is because you are free that the custom recognises your freedoms. So, whereas Walwyn is happy to appeal to Coke, the Petition of Right and Magna Carta when it suits him,⁶⁶ he is also able to describe Magna Carta as an inferior thing because it calls “the grants of Conquerours their [the people’s] Birth-rights,” and thus calls “bondage libertie.”⁶⁷ Instead, for Walwyn:

That libertie and priviledge which you claime is, as due unto you, as the ayre you breath in; for a man to be examined in crimminall cases against himselfe and to be urged to accuse himselfe is as unnaturall and as unreasonable, as to urge a man to kill himselfe

And for any man to be imprisoned without cause declared, and witnessed (by more then one appearing face to face) is not only unjust, because expreslie against *Magna Carta* (both of Heaven and Earth) but also against all reason, sense, and the common Law of equitie and justice.

Now in such cases as these, no authoritie in the world can over-rule with out palpable sinne.⁶⁸

Walwyn is stating that we have liberties conceptually before Magna Carta and that it is alright to use Magna Carta to defend yourself tactically, but that you must not fall into the trap of thinking that the charter gives you rights; rather you have prior liberties, due to you as the air you breathe. That is, you have freedoms that precede your legal rights. This freedom is in the individual, directly, without human or legal mediation, from God.

⁶⁴ Overton, *The Araignement of Mr Persecution*, 5.

⁶⁵ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume III, 1229.

⁶⁶ Walwyn, ‘Walwyns Just Defence’, in Haller & Davies, 386.

⁶⁷ Walwyn, *Englands Lamentable Slaverie*, 5.

⁶⁸ *Ibid.*

As a result the individual can judge a law to be unjust using their own reason and common-sense.

Crucially, the common lawyers place great emphasis on the judges to decide what the common law is and thus to defend subjects (cases are to be decided by the artificial reason and judgement of law which requires long study and experience).⁶⁹ The Levellers, while placing a great emphasis in their tracts on the law, have little confidence in courts and judges – based on experience. Not only would the Levellers have opposed any judicial activism, which can smack of a quasi-legislative abuse of power by unelected judges,⁷⁰ but their personal experience was that judges could be just as arbitrary and capricious as the king. Judges denied the Leveller leaders the due process of the law on several occasions. That is why the Levellers placed such an emphasis on legal safeguards like trial by jury; and why, for example, in the Petition of March 1647, of the thirteen demands, six of them are about the legal process. The common law tradition allows judges of the day to decide what is, and what is not, in accord with custom and immemorial law. Coke, for instance, asks for one of his own earlier judgements not to be treated as a precedent, because that judgement was based on an earlier mistaken report that he was using as a precedent.⁷¹ As the Levellers realised, this placed enormous powers in the hands of the judiciary and could not be the basis or guarantee of our rights.

For that reason also, the Levellers wish to see sheriffs and justices of the peace elected annually, and for people to be permitted to be judges for no longer than three years.⁷² The Levellers argue for limited authority to be given to judges on the bench (with judges having but a “ministerial” role), and with the de facto judges to be fellow citizens on the jury (exercising a “judicial” authority).⁷³ Indeed, Walwyn describes juries as the “preservers” of England’s “essential liberty”.⁷⁴ For Lilburne, juries are the custodians of English liberties, and judges are not. Indeed, Lilburne puts forth the important doctrine that juries are judges of law as well as fact.⁷⁵

⁶⁹ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume I, 481.

⁷⁰ Though they would have supported a judge who set aside a statute that denied the ancient rights and liberties of an Englishman.

⁷¹ Sheppard (ed.), *The Selected Writings of Sir Edward Coke*, Volume III, 1240.

⁷² Petition of January 1648, Sections 6 and 11.

⁷³ In *Juries Justified*, Walwyn quotes Henry Marten’s view that juries have a judicial role, whereas judges have a merely ministerial role in a trial (William Walwyn, ‘Juries Justified’, in McMichael, 436).

⁷⁴ *Ibid.*, 435.

⁷⁵ Brailsford, *The Levellers and the English Revolution*, 601.

Now such Laws as these being void Laws, who are to know them to be such but chiefly Juries, who are the only Legal Tryers of all men in all causes, & they are bound in conscience to try all Laws made by Parliament, by the Fundamental Laws; ... Parliaments may err ... and that Juries only in such cases are the Judges; they being the only legal tryers of all causes.⁷⁶

That juries can ignore the direction of the judge and effectively declare a law void, is certainly far-reaching, and goes beyond Coke. Furthermore, Wildman and other Leveller writers add that judicial decisions of the House of Lords should not legally bind common people (because they would bind without consent, and because the House of Lords should have no jurisdiction over commoners), which effectively contradicts Coke.⁷⁷

Lilburne defines the laws of England as consisting of the ancient constitution and the laws enacted by Parliament – but, importantly, “*of these onely such as are agreeable to the word of God, and law of Nature, and sound Reason.*”⁷⁸ Lilburne is happy to accept the old constitutions and those customs that are received and approved by the people, provided that they are agreeable to the eternal law, the natural law, and the word of God; but any “*lawes, usages, and customes, not thus qualified; are not the law of the land.*”⁷⁹ This is a departure from the common lawyers on a number of fronts: only a subset of the current laws are accepted as laws;⁸⁰ reason here is the external reason of the natural law – of which each person is endowed, and so the law is open to all to judge – rather than the artificial reason of the common lawyers;⁸¹ and the customary nature of the ancient constitution and usages affords no automatic binding authority.⁸² Indeed, as Walwyn argues, episcopacy for the English church (archbishops and bishops) is enshrined in the ancient Magna Carta, but the government of the church (church order) is a disputable matter and there is no reason why anyone should be bound to one particular form.⁸³

Nevertheless, we should be careful, when describing the areas of divergence

⁷⁶ Lilburne, *More Light to Mr John Lilburnes Jury*, 6.

⁷⁷ Coke holds that the House of Lords has judicial power to hear and decide cases, including appeals from the King’s Bench. See the Fourth Part of the *Institutes*, Chapter 1; and ‘Prohibitions del Roy’ in Part Twelve of the *Reports*. Whereas Overton, for example, specifically denies that the House of Lords should be regarded as the “Supreme Court of Judicature of the Land” (Overton, *An Arrow Against all Tyrants*, 11).

⁷⁸ Lilburne, *London’s liberty in chains discovered*, 41.

⁷⁹ *Ibid.*

⁸⁰ Cf. Burgess, *The Politics of the Ancient Constitution*, 227.

⁸¹ Cf. *ibid.*, 93, 227.

⁸² Cf. *ibid.*, 92-93, 227.

⁸³ Walwyn, *Englands Lamentable Slaverie*, 5-6. Cf. Burgess, *The Politics of the Ancient Constitution*, 227.

between Leveller views and the common lawyers, not to set up a false polarity or to think that the Levellers somehow rejected the common law tradition. As Seaberg has demonstrated, in his criticism of Pocock, it would be wrong to place the Levellers as simple opponents of the (Cokean) common law idea of continuity who see the common law as part of the Norman yoke.⁸⁴ Seaberg shows that the Levellers criticise the administration of the law, rather than the law itself. That is, they attack the Norman practices surrounding the law – such as the use of the French language, the monopoly of lawyers, and non-local justice (central courts) – but still hold to the key common law notion of the rule of law. In *The Just Mans Justification*, Lilburne attacks the common law *practices* which “came in by the will of a Tyrant, namely William the Conqueror” who subdued the honest and just law of Edward the Confessor. The result was that the main stream of the practice of the common law “flowed out of *Normandy*.”⁸⁵ This quote contains several points: firstly, Lilburne criticises the new Norman practices and not the ancient common law itself; secondly, he harks back to the law of Edward the Confessor, a classic expression of the common law tradition;⁸⁶ and thirdly, he attacks Norman innovations and wishes to return to the ancient common law practices (of trial by jury in the local county or hundred, for example).⁸⁷

Likewise, Walwyn talks of “our true English Liberties, contained in Magna Charta,” and criticises those who “make bold to trample *Magna Charta* under their feet.” For, there are good things in it, like trial by jury, although these are included with “a French garb or cloathing, which the Conqueror and his successours, by main strength, forced our fore-fathers to put on.”⁸⁸ Thus, Walwyn praises “the *Petition of Right*, ... wherein trials *per* Juries is the principal”, whilst attacking the French “tyrannical heap cast upon” our English liberties.⁸⁹

⁸⁴ Seaberg, ‘The Norman Conquest and the Common Law’, 791-806. The Levellers do use the language of the ‘Norman Yoke’: in the *Womens Petition* of 1651, the authors state that “the Norman Yoke of Bondage and Oppression is still continued upon this Nation” (*The Womens Petition*, Thomason 669.f.16(30), 1).

⁸⁵ John Lilburne, *The Just Mans Justification*, Thomason E.407(26), 14-15. As Weston notes, later Royalist opponents of the common law cult of the Confessor’s laws (such as Robert Brady) put forward the view that “the bulk of English law after 1066 had come from Normandy with the Conqueror; and post-conquest common law was substantially feudal law.” (Corinne Weston, ‘England: ancient constitution and common law’, in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 408.)

⁸⁶ See, for example, Weston, ‘England: ancient constitution and common law’, in Burns (ed.), *The Cambridge History of Political Thought 1450-1700*, 381-382.

⁸⁷ Just how ‘ancient’ trial by jury is in England, is subject to scholarly debate.

⁸⁸ Walwyn, ‘Juries Justified’, in McMichael, 438.

⁸⁹ *Ibid.*

“In arguing the antiquity and continuity of the jury system,” notes Seaberg, “Lilburne (and then Walwyn) adopted Coke’s version as opposed to [those] who judged trial by jury a Norman custom.”⁹⁰ In 1652, in *A Remonstrance of Lieut. Col. John Lilburn* (commenting on his sentence of banishment, passed by Parliament by a vote of the House of Commons), Lilburne marks his resolution to stand firm to the fundamental laws of England, appealing to Magna Carta, Chapter 29 (no free man is to be taken, imprisoned, exiled or destroyed, but by the lawful judgement of his peers),⁹¹ these privileges being his birthright and inheritance. The law of England is indeed the inheritance of all the people of England, rich and poor. “Although the Law of England be not so good in every particular, especially in the administrative part of it,” he admits, it is “the principal Earthly preserver and safeguard of my life, liberty and property.”⁹² Indeed, the third Leveller Agreement explicitly invokes the 1628 Petition of Right (partly authored by Coke), which itself harks back to Magna Carta.⁹³

In the same tract in which Lilburne sets out radical doctrines beyond the common law understanding – that Parliament itself can be declared illegal or void, juries are able to ‘void’ Acts of Parliament – he nevertheless praises the common law and quotes Coke and Magna Carta in his defence.⁹⁴ Indeed, in many Leveller tracts we find the pairing of the Petition of Right and Magna Carta, referred to approvingly as items in defence of Leveller claims (usually relating to imprisonment and trial). Such usage is more than rhetorical flourish, or using the language of one’s enemies against them;⁹⁵ the usage forms the substance of significant arguments in Leveller works.

In spite of the above qualification, reminding us of the use that the Levellers make of the common law, we must conclude that the Levellers do differ from the common law theorists in some important respects, particularly with regard to religious freedom, freedoms that precede legal rights, and the need for a written constitution. The Levellers ultimately differ from the common lawyers with the novel and far-reaching proposal to introduce a national Agreement that enshrines our fundamental rights, including religious liberty, and which is superior to both law and Parliament: for the

⁹⁰ Seaberg, ‘The Norman Conquest and the Common Law’, 801.

⁹¹ Magna Carta, Chapter 29, is often explicitly appealed to in Leveller tracts.

⁹² John Lilburne, *A Remonstrance of Lieut. Col. John Lilburn*, Thomason E.652(5), 5. He also cites Coke’s *Institutes* in his defence.

⁹³ See Section III of The Petition of Right.

⁹⁴ Lilburne, *More Light to Mr John Lilburnes Jury*, 1-3.

⁹⁵ I think that Burgess overstates his case when he argues that Lilburne just uses such language for rhetorical advantage, tactically, as a polemical weapon (Burgess, *The Politics of the Ancient Constitution*, 91-92, 229).

Agreement is to settle “unalterably” the freedoms of the people,⁹⁶ such that it is not “in the power of any Representative, in any wise, to render up, or give, or take away any part of this Agreement,”⁹⁷ and “all Laws made, or that shall be made contrary to any part of this Agreement, are hereby made null and void.”⁹⁸ This is something that the common law jurists could never have accepted, the notion of a fixed written constitution being created to be superior to Parliament and superior to the law and the judges’ interpretation thereof. If the common lawyers think that the common law acts as a brake on Parliament and statute law, then the Levellers hold that only a written binding constitution, which formally sets out our rights and limits the state’s powers, can provide an overriding defence of our freedoms. As Woodhouse puts it: “They are at bottom individualists, distrusting the state and thinking in terms of safeguards.”⁹⁹ The Agreement would both formalise key common law tenets (due process for example), and enshrine ‘new’ political demands (religious freedom for example) that were not within the common law tradition. That the Agreement was proposed to be not only superior to Parliament, but could actually be used to assert the illegality of Parliament itself, would have caused the common lawyers to dissent.

Having investigated the way that Leveller thought both built on and yet diverged from the common law tradition, we can now turn to the core legal philosophy of the Levellers. This will show that the Leveller philosophy of the law is derived from certain theological positions, especially a Christological understanding of human liberty and equality – that is, from a particular theological anthropology. It is this anthropology that gives rise to their political conception of the state, law, and individual liberty.

5.3 The Leveller philosophy of the Law

“The Laws ought to be the protectors and preservers under God of all our person and estates.”¹⁰⁰ The Levellers consistently restate the classic legal maxim that the safety of the people is the supreme law; for them, this is clearly the ultimate role or purpose of the law. “That as the laws ought to be equall, so they must be good,” states one of the

⁹⁶ Postscript to the first Agreement (in Wolfe (ed.), *Leveller Manifestoes*, 233).

⁹⁷ Third Agreement, Section XXX (ibid., 409).

⁹⁸ Third Agreement (ibid., 410).

⁹⁹ Woodhouse (ed.), *Puritanism and Liberty*, [98].

¹⁰⁰ Wildman, *The Leveller*, 5.

Leveller Agreements, “and not evidently destructive to the safety and the well-being of the people.”¹⁰¹ The law must protect our rights and not deny them.

The Leveller discussions of the law move easily between high constitutional theories and jurisprudence on the one hand, and detailed legal practices on the other. When the Levellers call for justice to take place in local courts, in the English language, and before a jury of twelve local people, they are not arguing for these merely on the basis that these practices are good in themselves. Rather, they hold that liberty and impartial justice require access to the law for all, and for the law to protect all from arbitrary treatment; that is, these calls for legal reforms sit within a wider legal philosophy. In the following sections I intend to tease out the underlying elements of their legal philosophy. This will recapitulate and summarise key points that we have seen throughout the thesis. We will look at the Leveller conception of individual legal rights and the equality of those rights; the people as the source of sovereign power, and the need for consent; limited government, and its opposite, arbitrary rule and tyranny; freedom and the law; private property; and constitutionalism.

5.3.1 Individual Legal Rights

“I was borne in *England*, and the Lawes and Liberties of the Nation are my birth-right,” states Wildman.¹⁰² The Levellers emphasise native rights which belong to the individual as birthrights and make English people free-born. These rights are spoken of as ancient, natural, fundamental, common, individual, innate, and as properties of the self, that cannot be given up. Not that these rights should be seen as only applying to English people or those actually born in England; for the Levellers are attacked by their opponents for asserting the native rights of the Irish people.¹⁰³ So it is probably correct to see the Levellers as asserting universal rights. In *An Arrow Against all Tyrants* Overton sets this out:

To every Individuall in nature, is given an individuall propriety by nature, not to be invaded or usurped by any: for every one as he is himselfe, so hath a selfe propriety For by naturall birth, all men are equally and alike borne to like propriety, liberty and freedome, and as we are delivered of God by the hand of nature into the world, every one hath a naturall innate freedome and propriety ...

¹⁰¹ First Agreement, Section 5 (in Wolfe (ed.), *Leveller Manifestoes*, 228).

¹⁰² Wildman, *Truths tryumph, or Treachery anatomised*, 4.

¹⁰³ John Price et al., ‘Walwins Wiles’, in Haller & Davies, 289.

even so we are to live, every one equally and alike to enjoy his Birth-right and priviledge; even all whereof God by nature hath made him free.¹⁰⁴

These rights never give one person the right over another; again Overton is clear: “No man hath power over my rights and liberties, and I over no mans.”¹⁰⁵ As no man by nature may abuse and beat himself, so by nature he cannot give that power to another.¹⁰⁶

The Levellers, then, use both common law terminology and natural law terminology when speaking of rights. From within the common law tradition, they emphasise individual rights as liberties. However, in contrast to the common law, they hold that native rights are prior to legal rights – that is, there are rights that we have as individuals, independent of the law. Fundamental rights are not political rights granted by society, or the law, or ancient custom; society is to recognise legally the rights that we already have. Legal rights derive then from our individual innate freedoms, such rights inhere in individuals, and some rights are inalienable.

5.3.2 Equality of rights

“All and every particular and individuall man and woman” is, notes Lilburne, “by nature all equall and alike in power, dignity, authority, and majesty.”¹⁰⁷ The power amongst the people is equally held amongst the individuals in society. In *An Appeale* Overton states that “all men are equall and alike borne to like propriety and freedome, every man by naturall instinct aiming at his owne safety and weale.”¹⁰⁸ It is this statement of the equality of civil power and worth, irrespective of birth and position, that earned the Levellers their name. We each have the same inalienable freedoms and so the law should treat us equally.

That people should be treated equally under the law, derives from the Leveller tenet that people are equal in a most profound way: an equality in Christ. “We are assured of our Creation in the image of God, and of an interest in Christ, equal unto men, as also of a proportionate share in the Freedoms of this Commonwealth,” state the Leveller women authors of the Petition of Women of May 1649.¹⁰⁹ For the women petitioners of the July 1653 petition, “God is ever willing and ready to receive the

¹⁰⁴ Overton, *An Arrow Against all Tyrants*, 3.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 4.

¹⁰⁷ Lilburne, *The Free-mans Freedome Vindicated*, 11.

¹⁰⁸ Overton, ‘An Appeale’, in Wolfe, 162.

¹⁰⁹ (Petition of Women) *To the Supreme Authority of England*, 1.

Petitions of all, making no difference of persons. ... so that we claim it as our right to have our Petitions heard [by Parliament].”¹¹⁰ As we saw in Chapter Three, the Levellers derive human equality from Christology: all are equal in Christ, through the grace that he gives freely to all. They are making an important anthropological claim: all people, irrespective of belief and status, are equally alike *qua* their humanity, fundamental freedom, and rights.

The first Agreement holds that the people’s representatives in Parliament must be in a capacity to taste of subjection as well as rule, i.e. they must equally suffer with the people under any common burdens, for “the lawes shall bind all alike, without priviledge or exemption.”¹¹¹ Indeed, kings, queens, “Lords, and all Person, alike” should be “liable to every Law of the Land.”¹¹² No person is to be exempt from any laws by virtue of any tenure, grant, charter, degree or birth.¹¹³

The oft-repeated Leveller statement that “every man ... ought to be equally subject to the laws”¹¹⁴ emphasises their key claim of equality under the law. Much ink has been used, particularly by historians on the Left, to try and show that the Leveller call for equality was a proto-socialist one. This is to misread the texts: the Leveller concern was not about socialist egalitarianism but about Christology and jurisprudence – their call for equality is equality under the law, the idea that all must be subject to the laws of the land, without there being any persons or groups (whether king, lords, or members of the House of Commons) that enjoy special privileges that exempt them from certain laws. The rule of law requires that laws be applied to all people in an equal manner without exemption, favour, or disfavour. For where laws are applied only to some or in a particularly partial manner, then there lies arbitrary government which is the worst thing for a citizen – for then they do not know what might befall them. “God being no respecter of persons: the Law likewise admits of no Exceptions” remarks the Leveller newspaper, *The Moderate*, after the King’s execution.¹¹⁵

¹¹⁰ (Representation of Women-Petitioners) *Unto every individual Member of Parliament*, Thomason 669.f.17(36), 1. As Patricia Higgins remarks of the Leveller movement, “notions of equality between men and women in the state were derived from notions of equality between men and women in the church.” (Patricia Higgins, ‘The Reactions of Women, with special reference to women petitioners’, in Manning, *Politics, Religion and the English Civil War*, 218.)

¹¹¹ Letter appended to the first Agreement (see Wolfe (ed.), *Leveller Manifestoes*, 230).

¹¹² Petition of 11 September 1648 (ibid., 287).

¹¹³ Second Agreement (ibid., 300).

¹¹⁴ Wildman, *The Leveller*, 7.

¹¹⁵ *The Moderate*, Number 29, 23 January – 30 January 1649, Thomason E.540(20), 273.

5.3.3 The people as source of sovereign power

“The foundation of all law lies in the people,” states Rainsborough.¹¹⁶ All the power that the government should possess is from the people; for God has planted all human powers in his creatures (people), and from them all power proceeds.¹¹⁷ There is no other just power or source of legitimate power but the people. *The Case of the Armie truly Stated* asserts that “all power is originally and essentially in the whole body of the people of this Nation.”¹¹⁸ Indeed, the assumption or exercise of any power not derived from the people is a usurpation and oppression.¹¹⁹ This builds on some of the important scholastic observations in this area, as we have seen, and could be called a statement of popular sovereignty. However, the Leveller understanding of the power of ‘the people’ is true of each person (as we saw earlier with Overton);¹²⁰ it should not be read in the same way as the more collective approach to the people that we saw with Locke in Chapter Two.

“Wee are your Principalls, and you our Agents,” writes Overton to the House of Commons.¹²¹ The power of the Commons is derived from the people’s trust, so this power is only a power of trust that lasts as long as permitted: the power remains always revocable. Just power is derived from the people and ‘lodged’ with the House of Commons. “We could not conferre a Power that was not in ourselves,” continues Overton, and “if We could not conferre this Power upon you, yee cannot have it, and so not exercise it justly.”¹²² Walwyn adds:

The people of a Nation in chusing of a Parliament cannot confer more than that power which was justly in themselves: the plain rule being this: That which a man may not voluntarily binde himselfe to doe, or to forbear to doe, without sinne: That he cannot entrust or refer unto the ordering of any other ... therefore no man can refer matters [of] Religion to any others regulations. And what cannot be given cannot be received.¹²³

¹¹⁶ Colonel Rainsborough during the Putney Debates, 29 October 1647. (Woodhouse (ed.), *Puritanism and Liberty*, 56.)

¹¹⁷ Overton, *An Arrow Against all Tyrants*, 4.

¹¹⁸ John Wildman, *The Case of the Armie truly Stated*, in Wolfe, 212. The authorship of this document is subject to debate: see Morrill and Baker, ‘The case of the armie truly re-stated’, in Mendle (ed.), *The Putney Debates of 1647*, 103-124.

¹¹⁹ Overton, *A Remonstrance of Many Thousand Citizens*, 3.

¹²⁰ “To every Individuall in nature ...” (Overton, *An Arrow Against all Tyrants*, 3).

¹²¹ Overton, *A Remonstrance of Many Thousand Citizens*, 3.

¹²² *Ibid.*, 12.

¹²³ Walwyn, *A Helpe to the Right Understanding of a Discourse concerning Independency*, 4.

Where trust is forfeit, it reverts to the betrusters, which is the proper centre of power. Power in such case retreats “to the Fountaine” of power.¹²⁴ Persons in authority are only ministers of authority, and in the event of their tyranny, their authority ceases and returns to the original source, the people.

5.3.4 Consent

“All government is in the free consent of the people,” insists Wildman during the Putney Debates in 1647.¹²⁵ It is “the first principle of a Peoples liberty, that they should not be bound but by their own consent ... no Laws to bind our persons or estates, could be imposed upon us against our wills,” he adds in *The Leveller*.¹²⁶ For laws to be legitimate, the Levellers hold that those laws must be made by the people’s representatives, in order that the people – who must live under these laws – could be said to consent to them. At the Putney Debates Colonel Rainsborough states that “every man that is to live under a government ought first by his own consent to put himself under that government.” He adds that “every man born in England cannot ... be exempted from the choice of those who are to make laws for him to live under.”¹²⁷

It is worth noting how the Leveller theories echo those of Roger Williams (whose patron was Coke), who writes consistently about consent: sovereign power is founded in the consent of the people, and governments have no more power than the people consent to give them.¹²⁸ Williams writes in 1644:

For in a free state no magistrate hath power over the bodies, goods, lands, liberties of a free people but by their free consents. And because free men are not free lords of their own estates, but are only stewards under God, therefore they may not give their free consents to any magistrate to dispose of their bodies, goods, lands, liberties at large, as themselves please, but as God, the sovereign Lord of all, alone.¹²⁹

The consent that is required of the people is not theoretical or one-off: “All the Laws ... ought to be made by the Peoples deputies in Parliament, to be chosen by them successively at certain periods of time.”¹³⁰ This very basic statement of consent occupied a lot of the debates by the Levellers, especially at Putney, as we noted in

¹²⁴ Overton, *An Appeale*, 6.

¹²⁵ Woodhouse (ed.), *Puritanism and Liberty*, 66.

¹²⁶ Wildman, *The Leveller*, 6.

¹²⁷ Woodhouse (ed.), *Puritanism and Liberty*, 53, 56.

¹²⁸ Williams, *The Bloody Tenent*, 131, 154-155, 219, 227.

¹²⁹ *Ibid.*, 157-158.

¹³⁰ Wildman, *The Leveller*, 6.

Chapter Two. The role of the legislature, the House of Commons, as the people's representatives, receives quite detailed prescriptions in the Leveller Agreements, including reforms to the Parliamentary constituencies to make the balance more representative – an early attack on what came to be called the Rotten Boroughs.

The consent therefore must be actual explicit consent (in elections); it has to be given by a clear popular mandate (via almost universal manhood suffrage);¹³¹ and it must be regularly renewed (via regular frequent elections – sometimes proposed to be annual). Power is only conferred by joint and common consent; and this consent can be withheld if the government is unjust, and so resistance is justified,¹³² even revolution if necessary.¹³³ Where trust is forfeit, Overton holds that “there is a disoblegeth from obedience”; and where government degenerates “from safety to tyranny, their Authority ceaseth.”¹³⁴

Because of their understanding of consent, the Levellers are able to talk explicitly of a *contractual* relationship between citizens and their government: there is a “Contract betwixt the King and the People.”¹³⁵ For Overton, there is a contract between the individuals of the nation and their chosen deputies.¹³⁶ This contract – which is based on common agreement, mutual consent, and trust – sets duties and limits upon the governor. The contract binds, but if it is broken, the makers of the contract are disengaged from it.¹³⁷ This notion of a contract, consented to by the people, is used to place significant limits on what the government can and cannot do.

¹³¹ Although I recognise that there are heated scholarly debates on how ‘near universal’ this would have been. The Remonstrance of 21 September 1649 states that “every one” over the age of 20, except for servants, beggars and criminals, should have a vote in elections (Anon., *The Remonstrance of many Thousands of the Free-People of England*, Thomason E.574(15), 6).

¹³² In *An Arrow Against all Tyrants*, Overton asserts that individuals subjected to the illegal use of armed force may lawfully arm themselves and kill if necessary in defence of their persons, goods, and families (Overton, *An Arrow Against all Tyrants*, 9). There is an echo here of Semayne’s Case in Part Five of Coke’s *Reports*. In *An Appeale*, Overton likewise asserts the right of defensive opposition (including armed resistance) to that which is an enemy to our lives, laws, and liberties; any individual person or persons can so rise up (Overton, *An Appeale*, 21-22).

¹³³ *The Remonstrance of many Thousands of the Free-People of England* states that the Acts, ordinances and decrees of the current “pretended Parliament” (September 1649) are not to be obeyed or observed; and calls for armed rebellion against the tyrants and usurpers at Westminster (Anon., *The Remonstrance of many Thousands of the Free-People of England*, 7). *A Declaration of the Free-born people of England* (1655) is a call to arms against the Lord Protector, Cromwell, who is described as a usurper and tyrant (Anon., *A Declaration of the Free-born people of England*, Thomason 669.f.19(70)).

¹³⁴ Overton, ‘An Appeale’, in Wolfe, 162.

¹³⁵ John Lilburne, *Regall Tyrannie discovered*, Thomason E.370(12), 33. The notion of ‘contract’ appears four times on this one page. See, also, Kurrild-Klitgaard, ‘Self-Ownership and Consent’, 70.

¹³⁶ Overton, *An Arrow Against all Tyrants*, 4.

¹³⁷ Lilburne, *Regall Tyrannie discovered*, 9.

5.3.5 Limited government

“Parliament and all Authority” should be “so bounded, that they shall never be able to enslave the People more,” states Thomas Prince.¹³⁸ Government is to be limited to its role and end (the protection of the freedoms and the rights of the people); it is to be limited by natural law; by explicit limitations in the constitutional Agreement, (“the main purpose of the *Agreement of the People* was to establish things which Parliament could not do”);¹³⁹ and by the need for renewal of its right to exercise power. In *Englands Lamentable Slaverie* Walwyn writes that “a Parliament cannot justlie doe any thing, to make the people lesse safe or lesse free, then they found them.”¹⁴⁰ Overton, in *An Arrow Against all Tyrants*, states that the elected government is “singly and only empowered for their [the People’s] several weales, safeties and freedoms, and no otherwise.”¹⁴¹

The people communicate their power to their representatives only for their “better being, more safety and freedome, and no more; he that gives more, sins against his owne flesh; and he that takes more, is a Theife and a Robber to his kind.”¹⁴² The Levellers thus envisage a very limited role for government. The state has no role in the private affairs of the individual – i.e. in matters which do not impact the rights and freedoms of others. As Prince puts it in *The Silken Independents Snare Broken*, “Parliaments have no authority from the People, nor by the Law, to be Judge of mens lives.”¹⁴³

In *The Just Defence of John Lilburn*, the writer states that the fundamental law of the Land, and a liberty due according to God, is “that no man be questioned, or molested, or put to answer for any thing, but wherein he materially violates the person, goods, or good name of another.”¹⁴⁴ There are repeated references in the Leveller tracts to the ‘golden rule’: do unto others as you would have them do unto you. Not only is this a core of their political philosophy of the relation of the individual to others in civil society, but of course it is a conscious restatement of Matthew 7:12.¹⁴⁵ The state is limited to acting in those cases where the golden rule is infringed, by theft, injury, and

¹³⁸ Thomas Prince, *The Silken Independents Snare Broken*, Thomason E.560(24), 5.

¹³⁹ Manning, ‘The Levellers and Religion’, 86.

¹⁴⁰ Walwyn, *Englands Lamentable Slaverie*, 3.

¹⁴¹ Overton, *An Arrow Against all Tyrants*, 4.

¹⁴² Ibid.

¹⁴³ Prince, *The Silken Independents Snare Broken*, 6.

¹⁴⁴ Lilburne, ‘The Just Defence of John Lilburn’, in Haller & Davies, 457.

¹⁴⁵ See also Luke 6:31. (Cf. Augustine, *The City of God*, 594.)

murder, for example.

The Levellers state that one of the reasons for introducing the first Agreement was to make the power of Parliament clear – to clarify the power that has been committed to the representatives. Clarification means both making understandable but also circumscribing: “to set bounds and limits both to our Supreme, and all Subordinate Authority.”¹⁴⁶ The Third Leveller Agreement explicitly states what the Parliament may do and what it may not do. What it can legitimately do is limited to: a) conserving peace and trade with foreign countries; b) preserving the security of people’s lives, liberties, and properties; and c) raising money and related activities that are conducive to these ends, to the enlargement of freedom, the redress of grievances, and the prosperity of the Commonwealth. Parliament is limited from any activity in whole areas by a series of numbered restrictions, each beginning “we doe not impower” or “it shall not be in their power to”¹⁴⁷

The unmistakable reason why the Levellers are so insistent upon explicitly limiting government powers, is because they desire to prevent what they see as the opposite of limited government: arbitrary and discretionary power which tends to tyranny in one form or another.

5.3.6 Arbitrary Rule and Tyranny

“Arbitrary power ... is inconsistent with freedom, and with a *just government* of a people,” writes Wildman, “and renders any State wheresover it is, no other then a Tyranny, and the people no better then *Vassalls*.”¹⁴⁸ The Levellers see the greatest threat to people’s freedoms in arbitrary government, the subordination of law to will, which tends towards tyranny. In *A Remonstrance of Many Thousand Citizens*, Overton describes arbitrary government as “the highest capitall offence against the Commonwealth.”¹⁴⁹ However, they are acutely aware that those who ended the King’s tyranny can manifest the same tendencies. In *The Hunting of the Foxes*, (published in 1649, shortly after the King’s execution), Overton lambasts Cromwell and the House of Commons as “a more absolute arbitrary Monarchy than before. We have not the change of a Kingdom to a Common wealth; we are only under the old cheat, the transmutation

¹⁴⁶ Third Agreement (in Wolfe (ed.), *Leveller Manifestoes*, 402).

¹⁴⁷ *Ibid.*, 405-409.

¹⁴⁸ Wildman, *Truths tryumph, or Treachery anatomized*, 6.

¹⁴⁹ Overton, *A Remonstrance of Many Thousand Citizens*, 8.

of Names, but with the addition of New Tyrannies to the old.”¹⁵⁰ In *An Appeale* Overton states that if the Parliament does not protect the safety of the people, it becomes a tyrant and Parliament is defunct.

The people are subject to tyranny, states the Petition of January 1648, when the jurisdiction of courts and the power and authority of officers of the state and ministers of justice “are not clearly described, and their bounds and limits prefixed” and therefore these bounds and limits must be declared and set.¹⁵¹ Again, we see here the importance for the Levellers of strictly defining and limiting state powers in order to protect against tyranny and the encroachment upon the liberties of the individual.

The Levellers argue for the liberty of every subject to enjoy the benefit of the law and only to have their liberties and goods taken away by due process of law. Due process occupies a key place in Leveller thinking on the law, as a way of protecting individuals from arbitrary treatment by the state. If people can lose their lives and estates without due process, then they live at the wiles and pleasures of those who have usurped power.¹⁵² Tyranny is seen as not just attacking the individual’s freedoms, and ultimately placing their life in danger, but as attacking the society itself. In the event of tyranny, the people as individuals have the right and the duty to resist, based on the law of nature. As we have seen, this was a point that was crucial for Locke’s theory of the right of resistance. What perhaps marks out the novelty of the Leveller position from their contemporaries as well as from Locke, is their focus on government of whatever stripe as the source of threats to individual freedom. It is not just that they move the right of resistance clearly down from the level of the people to each and every person, but they move on to oppose not just the government of King Charles but that of Parliament and that of the new republic. If Locke wishes to resist only *particular* governments – those of Charles II and the future government of his brother, the Duke of York – then the Levellers are ready to oppose any government that attacks the individual’s freedom.

Furthermore, what differentiates the Levellers from their former comrades on the Parliamentary side, is that they do not see Parliament as a defence against tyranny. As Lilburne puts it, we need to preserve our ancient laws and liberties “from the tyranny”

¹⁵⁰ Richard Overton, ‘The Hunting of the Foxes’, in Wolfe, 372.

¹⁵¹ Wolfe (ed.), *Leveller Manifestoes*, 265.

¹⁵² Overton, ‘An Appeale’, in Wolfe, 167-168.

of “Parliament Innovations.”¹⁵³ Laws only protect liberty if the legislature enacts just laws that recognise the freedoms of the individual; where Parliament fails to do this, it itself becomes illegitimate and tyrannical, and can be resisted. Who has freedom, and what freedoms they have, should not be at the arbitrary discretion of Parliament. Thus tyranny “is resistable in a Parliament as well as a King”,¹⁵⁴ and where the House of Commons is tyrannical it is right “by force of Armes to root up and destroy these tyrants.”¹⁵⁵

5.3.7 Freedom and the law

Parliament is “chosen by the People to provide for their safety and Freedome, whereof liberty of conscience is the principall branch” states Walwyn in *Tolleration Justified*.¹⁵⁶ Part of this political liberty is the wide concept of freedom of religion, to include even Catholics.¹⁵⁷ Walwyn further talks of the “practice and exercise of ... Religion, wherein the ground of Freedome consists.”¹⁵⁸ It is notable that the words ‘freedom’ and ‘liberty’ occur with high frequency in the tracts. It is also significant that the believer’s freedom through Christ’s grace, giving rise to freedom of belief, both precedes and is the source (logically) of the political understanding of freedom. The doctrine of Christian liberty means that I should be politically free to hold whatever beliefs I choose: I am free even to be a pagan or an infidel, and only God can be the judge at the day of harvest.¹⁵⁹ Here are clear statements of the Leveller conception of freedom of religion as the basis of all political freedom.

There are two concurrent points being asserted by the Levellers: religious liberty is the prime liberty; and this is so because our freedom in Christ is the very basis of our political liberties. So there is a political claim to freedom of conscience, and a more philosophical claim about the law – namely, that the law does not grant liberty but must recognise liberty. There is thus a theological basis to their legal and political philosophy. We should consequently be wary of any reductionist accounts which argue

¹⁵³ Lilburne, *More Light to Mr John Lilburnes Jury*, 8.

¹⁵⁴ Lilburne, *Ionahs cry out of the whales belly*, 4.

¹⁵⁵ John Lilburne, *Rash oaths unwarrantable*, Thomason E.393(39), 47. Cf. Kishlansky, ‘The Army and the Levellers’, 812.

¹⁵⁶ Walwyn, *Tolleration Justified*, 15.

¹⁵⁷ It is difficult to appreciate just how radical this was.

¹⁵⁸ Walwyn, *Tolleration Justified*, 7.

¹⁵⁹ The parable of the wheat and the tares, Matthew 13:30; see Overton, *The Araignment of Mr Persecution*, 22.

that the Levellers offer a secular basis to political freedoms and the laws of the state,¹⁶⁰ or that the Levellers base their ideas on a secular version of natural law thinking.¹⁶¹ It is why, amidst their consistent demands for legal reforms and limitations on state power, there are always, throughout the petitions and Agreements, demands for liberty of conscience as well as the ending of compulsory tithes.¹⁶²

Individual liberty of conscience for the Levellers should not be confused with a liberty to do whatever you want – the Christian liberty and antinomianism in Leveller thought does not become libertinism or anarchism: you are free to believe what you want and to practise your religion, but you are not free to harm others. You are free to hold and express beliefs that others would think to be mistaken, and the law should protect this liberty; but this liberty cannot be used to deny others their freedoms. Freedom of conscience means that I am free to follow whatever religion I want; it does not mean that I am free to do whatever I morally want. “The knowledge of Christ,” says Lilburne, “doth not destroy morality, civility, justice, and right reason.”¹⁶³ Everyone should be obedient to the moral and civil laws of the land.¹⁶⁴

What did the Levellers mean by ‘liberty’? The answer in short is: a freedom from constraint and compulsion by the state, which is a freedom belonging to each and every person; an understanding that perhaps seems akin to the concept of ‘negative’ liberty,¹⁶⁵ although it is not just a negative liberty. For the Levellers freedom is contrasted with religious compulsion, unjust imprisonment, bondage, oppression, and tyranny; to remove a person’s liberty is to reduce them to slavery,¹⁶⁶ to ‘villeinage’.¹⁶⁷ The Levellers’ goal is that each person should be able to live their life unmolested by the state and protected by the law. The state, in all its manifestations of illegality, usurpations of power, tyranny and arbitrariness, is the central target of Leveller attack.

¹⁶⁰ See, for example, Wolfe (ed.), *Leveller Manifestoes*, 3; Aylmer (ed.), *The Levellers in the English Revolution*, 49, 68; Parkin-Speer, ‘John Lilburne’, 287; and Glover, ‘The Putney Debates’, 59, 71, 73.

¹⁶¹ See, for example, (on Overton), Kurrild-Klitgaard, ‘Self-Ownership and Consent’, 49-50.

¹⁶² Tithes are seen as a Mosaic institution, part of the old Law, which has been superseded by the Gospel of Christ. See Overton, *The Ordinance for Tythes dismantled*, 4.

¹⁶³ Lilburne, ‘A Postscript’ (to *London’s Liberty*), in Aylmer, 72.

¹⁶⁴ See Anon., *The Remonstrance of many Thousands of the Free-People of England*, 7.

¹⁶⁵ Cf. Chandran Kukathas, ‘Liberty’, in Goodin and Pettit (eds), *A Companion to Contemporary Political Philosophy*, 534-536. However, negative liberty can carry the connotation of being a metaphysically minimalist view of liberty (cf. *ibid.*, 541-544); whereas for the Levellers, as we have already observed in previous chapters, it is the opposite: negative political liberty is a corollary of their view of Christian liberty and so is based on a rich view of liberty in Christ and thus on metaphysical claims.

¹⁶⁶ The title of Lilburne’s tract, *Liberty Vindicated against Slavery*, captures the understanding of liberty in Leveller thinking.

¹⁶⁷ Sommerville, *Royalists & Patriots*, 137; and Foxley, ‘John Lilburne and the Citizenship of “Free-born Englishmen”’, 853.

Walwyn attacks the Parliaments since Magna Carta for restricting rather than broadening freedom: particularly the various Parliaments for regulating trade, interfering in hunting, what clothes people should wear, and “what wages poore Labourers should have.”¹⁶⁸ The true purpose of such Parliamentary regulation and busy activity is “to divert them from the very thoughts of freedome.”¹⁶⁹

The focus of the Leveller tracts is on limiting the state and its taxes, monopolies and abuses, in order to protect freedom. Moreover, the Leveller concern is to protect the freedom of all from the state, not to protect one class or group from another. Indeed, Overton defends “*both rich and poor*” against the government, as they are “*a free-born people*” who should be allowed to enjoy “*their own native freedome, that we may freely & unanimously engage our lives, fortunes and estates in the just defence of the Parliament,*” for the “*redemption of the Common Liberty of the Common people of England,*” so that “*wee may equally enjoy our Freedomes ... and be numbred amongst the Freeborne of the Land.*”¹⁷⁰ If the Levellers use language, then, that appears to reflect notions of negative liberty – liberty as freedom from interference by the state¹⁷¹ – we would do well to remember from earlier chapters that their understanding of freedom is rooted in a positive substantive view of liberty in Christ. It is this latter concept of Christian liberty that allows them to use such language.

The centrality of religious liberty in Leveller thinking, with individual freedom of conscience to be unmolested by the laws of the state, may appear to have secular connotations; but these Leveller ideas have to be placed within the context of the thinking underlying them to be understood. Thus, we should be cautious with those scholarly accounts which suggest that the Levellers propose secular laws or a secular republic.¹⁷² For example, the Petition of March 1647 calls for the reduction of all laws “to the nearest agreement with Christianity.”¹⁷³ That is, the Levellers hold that the human positive laws of the land should reflect the ultimate moral law of God. In the tract, *Rash oaths unwarrantable*, Lilburne appeals to an unchangeable moral law of God, citing as an example of God’s laws: “That Justice shall never be sold nor

¹⁶⁸ Walwyn, *Englands Lamentable Slaverie*, 4.

¹⁶⁹ Ibid.

¹⁷⁰ Richard Overton, *Martin’s Eccho*, Thomason E.290(2), 4.

¹⁷¹ Cf. Kukathas, ‘Liberty’, in Goodin and Pettit (eds), *A Companion to Contemporary Political Philosophy*, 534-536.

¹⁷² See, for example, Brailsford, *The Levellers and the English Revolution*, 151, 550; Parkin-Speer, ‘John Lilburne’, 287; and Watner, “‘Come What, Come Will!’”, 406.

¹⁷³ Wolfe (ed.), *Leveller Manifestoes*, 139.

impartially administered.”¹⁷⁴ Thus, in the same tract that argues for a full separation of church and state, Lilburne nevertheless argues for unalterable moral laws of God as the basis of human laws. “The foundations of the true law of England,” asserts Lilburne, are “built upon the pure law of God.”¹⁷⁵ In Leveller thinking, there is no contradiction here. The Levellers hold to the notion that there is an objective, underlying body of natural law and common law liberties which comprise ‘the Fundamental Law’, against which statutes can be judged (and found void). This fundamental law should be the law of the land (indeed it is the true law of the land), whatever one’s religion and beliefs.

The law of God is a law of Reason that “is written in the heart of every man, teaching him what is to be done,” writes Lilburne, and against this law no statute may prevail. This law “is never changeable by no diversity of place, no time.”¹⁷⁶ Lilburne distinguishes between those elements of statute law that are “rationally in processe of time upon just experimentall grounds alterable, and changeable,” and those elements contained in statute law which “are of universall concernment to all the sons of men, under any just Government in the world,” being “founded upon the principles of pure reason ... and the Morall Law of God ... his unchangeable laws.”¹⁷⁷ We seem to have here something that resonates with a Thomist view of the law: that there is an eternal law of God which is both divinely revealed (first to Israel in the old Mosaic law and then to believers in the Gospel),¹⁷⁸ and also naturally made knowable through reason as natural law, to all people irrespective of religious belief, though the knowledge is sometimes obscured by sin (but not fully blotted out).¹⁷⁹ For Aquinas, the divine law reveals all the aspects of the eternal law needed for our salvation (our supernatural end), whereas the natural law contains everything of God’s eternal law that all people need to know to live as humans, including living together in society, (*qua* our nature). Although human positive laws derive from this natural law (otherwise they are not just and not law), they are changeable and there can be a diversity among various peoples, and across time.¹⁸⁰ Nevertheless, there are certain general precepts of the natural law that are unchangeable, known to all, and common to all nations.¹⁸¹

¹⁷⁴ Lilburne, *Rash oaths unwarrantable*, 28.

¹⁷⁵ John Lilburne, *The Afflicted Mans Out-Cry*, Thomason E.711(7*), 2.

¹⁷⁶ *Ibid.*, 3.

¹⁷⁷ Lilburne, *Rash oaths unwarrantable*, 28.

¹⁷⁸ Aquinas, ST, I-II, q. 91. aa. 1, 5.

¹⁷⁹ *Ibid.*, q. 94. a. 6.

¹⁸⁰ *Ibid.*, q. 95, a. 2; and q. 97, a. 1.

¹⁸¹ *Ibid.*, q. 94, aa. 4-6; and q. 95, a. 4.

There are two significant implications of this Leveller appeal to natural law: the laws of the state are to be measured against something objective and transcendent, which allows one to judge if the laws of Parliament are arbitrary and based merely on the will of the legislators, in which case they are not legitimate law; secondly, the moral law of God is taken as superior to the state and its laws and thus limits the state.

For the Levellers, expressed most clearly by Overton, you should be legally free to do that which does not harm others. So the expectation would be that the state would indeed legally proscribe such human acts as murder and theft. This proscription is seen as being based on the natural law – murder and theft being immoral. Yet not all immoral actions are to be banned, for example those that do not harm others. Included in this group of actions are those related to religion. There is both a novelty in this position and also an echo of an earlier scholastic line of thought: Aquinas held that human law was not expected to forbid all vices, but “chiefly those that are to the hurt of others,” such as murder and theft.¹⁸² For Aquinas, human law permits (tolerates)¹⁸³ some moral evils (those that do not harm others) and in his support he cites Augustine’s view that human law leaves many things unpunished which will be punished by Divine providence.¹⁸⁴

5.3.8 Private property

The power to “level mens Estates, destroy Propriety, or make all things Common” is specifically denied to the elected representatives in the Levellers’ third Agreement.¹⁸⁵ Indeed the preservation of property and estates is made one of the ends of government (see Section 9 of the third Agreement): the second set of powers given to the government is “the preservation of those safe guards, and securities of our lives, limbes, liberties, properties, and estates.”¹⁸⁶ Indeed, the petition of September 1648 explicitly states that Parliament should be bound from “abolishing propriety, levelling mens Estats, or making all things common”¹⁸⁷ – wording almost identical to what we saw in the third Agreement.

¹⁸² Ibid., q. 96, a. 2. See Harte, *Changing Unjust Laws Justly*, 78, 83. Cf. Aquinas, ST, I-II, q. 91, a. 4.

¹⁸³ Cf. Gratian, *Concordia*, Dist. 3, post c. 3.

¹⁸⁴ Aquinas, ST, I-II, q. 96, a. 2; see also Aquinas, ST, II-II, q. 10, a. 11.

¹⁸⁵ Wolfe (ed.), *Leveller Manifestoes*, 409.

¹⁸⁶ Ibid., 405.

¹⁸⁷ Haller and Davies (eds), *The Leveller Tracts*, 153.

It should now be clear that the Levellers are firm defenders of the individual right to private property and that this is seen as a key freedom to be protected from the state. However, the right to private property is also seen by them as having wider implications in terms of the freedom to practise business and trade, unmolested and unrestricted. This can be seen, for example, in Walwyn's paean of praise to free trade, *W Walwins Conceptions; For a Free Trade*, which demands absolute freedom to individuals in foreign trade and the removal of all government restrictions: "All which, & probably much more may ... be justly said in behalfe of an absolute & universall freedome in forraine Trade."¹⁸⁸ Walwyn states that "freedome to all English men in all Forraine Trade" is "so antient a continuall claymed Right."¹⁸⁹ In this tract he explicitly sides with workers, farmers, merchants, owners of goods, and land owners, against state-granted monopolies,¹⁹⁰ and urges "the increase of Wealth and plenty" and of merchants.¹⁹¹ The more merchants, the better rates, and this is good for "workemen of all sorts, to Farmers, Owners & Land."¹⁹² He supports the market in goods, and states that this is best for prices and rates of pay; and supports the freedom of individuals to buy and sell, set prices, make profits, invest, and trade stocks.¹⁹³ The increase in merchants and trade will lead to more competition which will produce benefits for all. Risk will bring rewards and "even servants would venture their wages with [mariners], and they would in shorter time become able & profitable members of the Commonwealth."¹⁹⁴ Wealth will be spread so that "it will produce Thousands more of able men to beare publique Charges or what other Publique occasions they may be called unto."¹⁹⁵

This defence of free trade by Walwyn picks up similar defences in his earlier writings (*The Bloody Project*, for example), as well as similar calls in the Leveller Agreements and other tracts. Where Walwyn does talk about apostolic communal goods, he clearly states that the

Community amongst the primitive Christians, was Voluntary, not Coactive; they brought their goods and laid them at the Apostles feet, they were not enjoyned to bring them, it was the effect of their Charity and heavenly mindednesse, which

¹⁸⁸ William Walwyn, 'W Walwins Conceptions; For a Free Trade', in McMichael, 451.

¹⁸⁹ *Ibid.*, 448.

¹⁹⁰ *Ibid.*, 449.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*, 449-450.

¹⁹⁴ *Ibid.*, 450.

¹⁹⁵ *Ibid.*, 451.

the blessed Apostles begot in them, and not the Injunction of any Constitution, which as it was but for a short time done, and in but two or three places, that the Scripture makes mention of, so does the very doing of it ... imply that it was not esteemed a duty, but reckoned a voluntary act.¹⁹⁶

This is in a tract in which Walwyn repudiates any notion of an equalling of people's estates and taking away "the proper right and Title that every man has to what is his own."¹⁹⁷ Indeed he professes that the Leveller aim is "that the Commonwealth be reduced to such a passe that every man may with as much security as may be enjoy his propriety."¹⁹⁸ He also mentions the apostolic community of goods in one of his early works, *The Power of Love*, but this is a passing comment during a discourse on God's love and the ethical demands of a Christian towards his brother.¹⁹⁹ Apart from these two references to the communal holding of goods amongst the first Christians, all the other references to holding things in common are recorded in the Leveller tracts as attacks upon the Levellers which they deny. For example, Walwyn's statement in *Walwyns Just Defence* ("so far as that is, am I for plucking up of all the pales and hedges in the Nation; so far, for all things common")²⁰⁰ is ironic and meant as a rebuttal of what he called the "rambling scandals" about him, of the claim that he is for "turning the world upside down", when he just believes that people who work "should eat comfortably".²⁰¹

Not only are the Levellers against the levelling of property but it is outside the remit of Parliament and they will specifically restrain Parliament from going beyond that remit:

First, Then it will be requisite that we express our selves concerning Levelling, for which we suppose is commonly meant an equalling of mens estates, and taking away the proper right and Title that every man has to what is his own. This as we have formerly declared against, particularly in our petition of the 11 of Sept. so do we again professe that to attempt an inducing the same is most injurious, unlesse there did precede an universall assent thereunto from all and every one of the People. Nor doe we, under favour, judge it within the Power of a Representative it selfe, because although their power is supream, yet it is but deputative and of trust; and consequently must be restrained expresly or tacitely,

¹⁹⁶ Walwyn, 'A Manifestation', in McMichael, 338.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Walwyn, 'The Power of Love', in McMichael, 80.

²⁰⁰ Walwyn, 'Walwyns Just Defence', in Haller & Davies, 384.

²⁰¹ Ibid.

to some particulars essential as well to the Peoples safety and freedom as to the present Government.²⁰²

Admittedly, there is perhaps some ambiguity in this particular text (if there were universal assent, then would levelling of estates be a good thing?); however, we can observe the clear defence of private property running through the Leveller texts. At one level, Lilburne attacks “this Conceit of Levelling of propriety” for being foolish and against reason – the Levellers hold to the right to private property as existing in the state of nature – and because it would “destroy ... any industry in the world,” for “who will take paines for that which when he hath gotten is not his owne, but must equally be shared in, by every lazy, simple, dronish sot?”²⁰³ However, at a deeper, more philosophical, level, Overton posits the fundamental importance of property in his concept of “selfe propriety”²⁰⁴ – this property in oneself as the basis for other rights and freedoms.²⁰⁵

There is a consistent and clear defence of private property throughout the Leveller works: in several of the petitions, in the second and third Agreements, and in various tracts. “We profess therefore that we never had it in our thoughts to Level mens estates,” says Walwyn.²⁰⁶ In fact, Lilburne dismisses “all the erroneous tenents of the poor Diggers at George hill in Surrey.”²⁰⁷ Tithes, customs duties, and excise tax are certainly seen in the Leveller tracts as being “secret thieves, and Robbers, Drainers of the poor”; yet these taxes are equally seen as being unfair on the “middle sort of People”, as making food more expensive for all, and obstructing free trade.²⁰⁸ That is, they oppress industry and stop people working. Indeed, Lilburne attacks customs and excise taxes and calls for “Parliament to reduce the publick treasure of the kingdom, into the cheap, publick, and old good way of the kingdome,” that is, to raise less money.²⁰⁹ These economic demands are part of a wider set of legal and constitutional demands, whose primary focus is the power of the state and the freedom of the people. For example the attack on tithes is not just motivated by its impact upon the poor; the

²⁰² Walwyn, ‘A Manifestation’, in McMichael, 337-338.

²⁰³ Quoted in Robertson, *The Religious Foundations of Leveller Democracy*, 87.

²⁰⁴ Overton, *An Arrow Against all Tyrants*, 3.

²⁰⁵ Cf. Macpherson, *The Political Theory of Possessive Individualism*, 139-142; Watner, “‘Come What, Come Will!’”, 410-412; and Kurrild-Klitgaard, ‘Self-Ownership and Consent’, 50-63.

²⁰⁶ Walwyn, ‘A Manifestation’, in McMichael, 338.

²⁰⁷ Lilburne, ‘The Legall Fundamentall Liberties’, in Haller & Davies, 449.

²⁰⁸ John Lilburne, ‘Englands New Chains Discovered’, in Haller & Davies, 159.

²⁰⁹ Lilburne, *London’s liberty in chains discovered*, 57.

primary motivation for the attack is that tithes are coercive and thus negate freedom of religious conscience.

5.3.9 Constitutionalism

To provide “principles of common freedom” and “the foundations of freedom”,²¹⁰ the Levellers propose a legal constitutional Agreement, which, as we have already commented, marks them out from the common lawyers. The Agreement comes down to us in three main successive versions (published in November 1647, December 1648, and May 1649).²¹¹ If we take one of the most important Leveller texts, the third (and final) ‘Agreement of the People’, several significant words in the document stand out through their frequent use: freedom, liberty, and power. The most frequently used term is ‘power’ and its derivative words – the term and its derivatives occur more than twenty times. The whole tract is about reining in unlimited and arbitrary power: it establishes the supreme political authority in the elected Parliament, whilst immediately setting bounds and limits to that body’s powers. Executive government is reduced to a committee of the members of the Parliament that meets when Parliament is adjourned; when Parliament is in session, there is no separate Executive. The majority of the Agreement is about setting out powers that the Parliament does not have: nine sections describe the powers of the supreme authority whilst twenty one sections circumscribe or entirely remove powers.

Although the Leveller Agreement evolved over time, through the three different versions, all three versions of the Agreement contain the same tripartite pattern:

- a) A constitutional statement of how Parliament should be elected. In the first Agreement this is simply stated thus: “That the People of England being at this day very unequally distributed by Counties, Cities, & Burroughs, for the election of their Deputies in Parliament, ought to be more indifferently proportioned, according to the number of the Inhabitants.”²¹² Added to this is the stipulation that the election for a new Parliament will be every two years. By the second Agreement, a detailed list of counties and towns and the

²¹⁰ First Agreement (in Wolfe (ed.), *Leveller Manifestoes*, 233).

²¹¹ The three versions of the Levellers’ Agreement are contained in three main tracts which have slightly different titles: i) *An Agreement of the People*; ii) *Foundations of Freedom; or an Agreement of the People*; and iii) *An Agreement of the Free People of England*.

²¹² Wolfe (ed.), *Leveller Manifestoes*, 226.

number of MPs for each had been added, as well as exact details on the manner of elections.

- b) A brief statement of the powers that the elected representatives have. In the first Agreement this covers legislating, appointing magistrates and officers of state, making war and peace, and making treaties with foreign states. The third Agreement expresses this as “the conservation of Peace and commerce with forrain Nations”; the preservation of people’s lives, liberties and properties “contained in the Petition of Right”; and “the raising of moneys.”²¹³
- c) A long list of the areas – starting with freedom of religious conscience – over which the Parliament does not have power. Each Agreement establishes “common-right and freedom”,²¹⁴ and indeed the second Agreement is titled *Foundations of Freedom*; what runs through these documents is a clear stress on limiting government in order to protect individual freedom. This third element of the Agreement provides what is in effect the ‘bill of rights’.

One of the most important and original contributions of the Levellers is this idea that there is to be an Agreement of the People which is made by the people and not by Parliament, which supersedes successive Parliaments, and which cannot be destroyed by Parliament,²¹⁵ and is thus above statute law. As Wootton says, the first Agreement of the People “is the first proposal in history for a written constitution based on inalienable natural rights. ... It is hard for us, at this distance in time, to grasp how revolutionary this document was.”²¹⁶ The Levellers furnish us with the ideas of a written constitution, an enduring bill of rights, and the need for these to be agreed to by the people.

The heavy emphasis that the Levellers place upon the Agreement, that is, the centrality of the written constitution in their political thought, and particularly the fact that the point of the Agreement is to protect the liberties of the individual, together with the other elements of their legal thinking, would seem to place their political philosophy within the broad stream of constitutional liberalism, as we described it in the Introduction. That said, Leveller constitutionalism is not one of checks and balances – a

²¹³ Ibid., 405.

²¹⁴ Ibid., 225.

²¹⁵ See Lilburne, ‘The Legall Fundamentall Liberties’, in Haller & Davies, 426.

²¹⁶ Wootton, ‘Leveller democracy and the Puritan Revolution’, 412-413.

division or separation of powers (cf. Locke)²¹⁷ – but of denying power to the state, i.e. constitutionally limiting government in its entirety.

5.4 Contractarianism, the law, and the separation of church and state

We could argue that the Leveller Agreement is a possible basis for many later Western constitutional statements of rights, for the idea that the laws of a society are to be subject to a sort of overarching ‘supreme law’. Not only do the Levellers contribute perhaps to the development of the idea of a written national constitution, but they also stand within a contractarian stream of political philosophy. This is a stream that differs from earlier notions of an original compact as people move from a state of nature to form a society; as we noticed in Chapter Two, the Leveller focus is on a compact to be made now, that will cement in rights and establish a paramount law. Again, what perhaps differentiates their thinking from earlier contractarian thought, is that the primary role of the compact is to limit the state, especially in terms of removing it entirely from religious matters.

The important interlinked roles of contract, law, and the separation of church and state might suggest affinities with modern contractarian political philosophers like John Rawls, and this is something that we shall explore in this section – with the aim, not of critiquing Rawls, but of understanding the similarities and differences between the Leveller Agreement and Rawls’s contract, and thus of setting Leveller thought within a broad sweep or development of contractarian thought. We are using Rawls here as a representative ‘type’: as representative of a strand of modern liberalism which adopts a broadly Kantian view of human autonomy,²¹⁸ as we noted early on in the thesis. What makes Rawls particularly attractive for this reflection is that, like the Levellers, he makes liberty of conscience one of his fundamental liberties.²¹⁹ An ancillary purpose of engaging with Rawls here is to open up the textures and possible readings within the liberal tradition beyond the arguments of those like Rawls himself, as well as Manent

²¹⁷ See Locke’s *Second Treatise*, Chapters 12-13 (Sections 143-158).

²¹⁸ See, for example, Rawls, *A Theory of Justice*, xviii, 221-226, 452-456. See also Gerald Dworkin, ‘Autonomy’, in Goodin and Pettit (eds), *A Companion to Contemporary Political Philosophy*, 361-362; and Christopher Insole, ‘Two Conceptions of Liberalism: Theology, Creation and Politics in the Thought of Immanuel Kant and Edmund Burke’, *Journal of Religious Ethics* 36:3 (2008), 460.

²¹⁹ Rawls’s two fundamental liberties are liberty of conscience and freedom of association, and the basic liberties are those that are necessary to guarantee these first two (Rawls, *Political Liberalism*, 335).

and Grayling, who see in political liberalism an essential need to set aside religious claims.

As noted, each version of the Leveller Agreement contains a statement of individual rights that limits Parliament's powers (what we would call a 'bill of rights'). The first of these rights is freedom of conscience, i.e. religious liberty. That the state is, by explicit and binding political limitation, to have no power pertaining to the religious affairs of the people, is remarkable at this time and gives us what will be known as the political doctrine of the separation of church and state. The state is to make no laws touching upon religion, and, conversely, each person has full liberty of conscience and therefore is not to be subject to any religious laws. A question then is whether the Levellers advocate what might be thought of as a 'secular' political liberalism, for example of the type set out by Rawls in his books *A Theory of Justice* and *Political Liberalism*,²²⁰ a liberalism that sets aside religious and other metaphysical claims about people, the good, ethics, and justice, in order to achieve a consensus for living together amongst people with differing substantive conceptions of the good, that is, with differing 'comprehensive' philosophical, religious, or moral doctrines. The evidence of the last few chapters should make us very cautious of answering this in the affirmative. Indeed, we have already accumulated a lot of evidence that challenges the claims of those scholars,²²¹ who describe the Levellers as proposing an entirely secular polity. We have established that the Leveller texts are saturated with religious as well as legal language and ideas, and that this religious language is more intrinsic than just what might be typically expected for the age; that is, the religious concepts are part of the basis of their political ideas and legal demands. Moreover, the explicit Leveller appeal to the idea of divine moral laws as the basis for human law, as we have noted above, should mean that the answer to the question is in the negative. This does not necessarily mean that the Levellers failed to advance a liberal view of society; it may mean that

²²⁰ Strictly speaking, Rawls would deny that his political liberalism is secular – for that would be to base political liberalism upon a comprehensive nonreligious doctrine (ibid., 452, 458). In fact he distinguishes his political liberalism from “Enlightenment Liberalism, which historically attacked orthodox Christianity.” (Ibid., 486.)

²²¹ See, for example, Brailsford's claim that the Levellers called for a secular republic, with a complete divorce between religion and the state (Brailsford, *The Levellers and the English Revolution*, 550); and Parkin-Speer's claim that the Levellers had a secular conception of the state and that the assumptions behind the Agreement were secular (Parkin-Speer, 'John Lilburne', 287); and also Watner's statement that the Levellers have “the distinction of being the first movement in the modern world to call for a secular republic” (Watner, “Come What, Come Will!”, 406).

Rawlsian ‘liberalism’ is not in fact the same type of liberalism as that which characterises the Levellers.

Rawls envisages political liberalism as making possible the existence of a just and stable society of citizens who are profoundly divided by incompatible religious, philosophical and moral doctrines. For him, liberalism takes for granted the fact of reasonable pluralism.²²² The Levellers certainly accepted the pluralism of religious beliefs – a society of Protestants, Catholics, atheists, and others, with no compulsory state church (“the Majistrate ought to bind all Religions, that no Religion have power over other, that all ... have Toleration, ... without the power of Compulsion”).²²³ However, it is less obvious that they accepted the idea of plural incompatible moral doctrines when it came to the law and notions of harm. While it is possible to have incompatible moral doctrines in matters that do not harm others (the morality of watching stage plays, to use an example that exercised the Puritans), the Levellers certainly presumed that what harmed others would be illegal. The Levellers appear to take it for granted that their Agreement, whilst guaranteeing full freedom of conscience and therefore plurality of beliefs, assumes a common moral basis to the laws. Even as strong a proponent of the separation of church and state as Jefferson realised this: “It is strangely absurd to suppose that a million of human beings collected together are not under the same moral laws which bind each of them separately.”²²⁴

The Levellers certainly held that the objective reality with which human laws should accord was God’s moral law, understood within a natural law context, whereby that which harms one’s neighbour is to be illegal. There could be no cult of pluralism on this point. The Levellers were proponents of a liberal social contract – where liberalism is about limiting the state with respect to the liberties of individuals – but the contract was always envisaged as embodying some objective comprehensive view of what is just and what is freedom. The reason and rationality for judging whether laws are just is based, for them, on right reason, reason according with that which is the case; and impartiality is based on that which is objectively impartial and just.²²⁵ Thus the Leveller use of the term ‘reason’, from within a natural law tradition, has to be

²²² Rawls, *Political Liberalism*, xviii.

²²³ Overton, *The Araignment of Mr Persecution*, 29.

²²⁴ Thomas Jefferson, Letter to George Logan, 12 November 1816, in Paul Leicester Ford (ed.), *The Works of Thomas Jefferson*, Volume 12 (New York: G.P. Putnam’s Sons, 1905), 42.

²²⁵ Rawls does use the term ‘objective’ but redefines it so that he severs it from any notion of referring to objective reality and of truth. See Rawls, *Political Liberalism*, 110-119.

distinguished from Rawls's use of 'public reason' as a neutral language free from comprehensive doctrines of truth²²⁶ or right,²²⁷ a form of reason that is thought necessary in order to agree on principles so that we might live together.²²⁸

What seems to relate Leveller ideas to the thought of Rawls is the crucial role of the social compact in both their philosophies: an explicit agreement, a constitutional document, with the Levellers; and a hypothetical compact with Rawls. Both Rawls and the Levellers place the compact at the heart of their political thinking, yet there are disparities between them. Leaving aside the obvious point that the compact is just a hypothetical device for Rawls, there are some larger differences. Most marked perhaps is the way that for Rawls the contractual device comes at the beginning of the political system in order to generate the laws; whereas for the Levellers, the agreement comes at the end in order to guarantee prior liberties and to restrain the government with respect to them. We will explore these differences, and the implications of them, over the next few pages. At the heart of the differences are differing conceptions of justice – especially, whether justice relates to an external objective truth. This is why, in the end, the Leveller conception of justice is closer to that of Coke than to Rawls, with the social contract recognising and cementing common law liberties and looking to the natural law as the basis for justice.

“Which moral judgements are true, all things considered, is not a matter for political liberalism,”²²⁹ asserts Rawls, yet this statement seems to neglect some important questions, about what I am free to do with respect to others, that are at the heart of liberalism.²³⁰ Rawlsian liberalism tends to reject the idea that there are objective bases to morality and laws that are somehow ‘outside’ us or transcendent (the existence of objective moral facts against which actions and laws can be judged).²³¹ Ultimately, Rawls wishes to move away from whether a political conception of justice

²²⁶ For Rawls, the political conception of reason does without the truth (ibid., 94).

²²⁷ For Rawls, moral ‘facts’ are determined by the principles chosen by the people in the original position. There can be no appeal to any other higher standards, or exterior objective reality; the procedural system of principles is the final court of appeal in practical reasoning (Rawls, *A Theory of Justice*, 116).

²²⁸ Rawls, *Political Liberalism*, 441.

²²⁹ Ibid., xx.

²³⁰ Of course, Rawls would have an answer here: for example, I am not free to murder other people, because this offends against the First Principle of Justice. However, this might yet create problems for Rawls: it might mean that in a pre-societal group of individuals (say, on a hypothetical desert island), one is free to murder.

²³¹ Instead, moral principles are seen as generated by reason and the will, being the object of rational choice; and their ‘objectivity’ consists in self-consistency, impartiality, and applicability to all citizens. See Jean Porter, *Nature as Reason* (Grand Rapids MI: Eerdmans Publishing, 2005), 235-237, 251, 360; and Rawls, *A Theory of Justice*, 453.

is true, to whether it is reasonable.²³² However, can we have a just society if we do not know what is objectively just? Conversely, what is ‘unreasonable’ must surely relate in both substance and degree to some reality.²³³ Rawls of course would rebut these questions and points: he would answer that the mechanism for creating principles of justice would provide the answer as to what is just; and that this is the only way of resolving matters in society when people have a plurality of competing moral views. He thus attempts to split the domain of the political from the moral domain,²³⁴ in order to allow for political consensus in the midst of a plurality of moral doctrines.

Rawls aims for “a political conception of justice as a freestanding view” with “no wider commitment to any other doctrine.”²³⁵ That is, justice is not tied to any moral doctrine,²³⁶ but is a *self-standing* political conception of justice.²³⁷ Rather, justice becomes something that is minimal, neutral, public, reasonable, and consensual.²³⁸ For the Levellers, in contrast, justice relates directly to that which is just, and thus assumes something that is objectively true. For Rawls, the social contract is a hypothetical device (an intellectual artifice) that creates justice as fairness; for the Levellers the social contract is a real compact that limits the state, using legal prescriptions based on objective justice (that which is right). What we in effect have here is the contrast between the more constitutional, classical type of liberalism that we can see with the Levellers, with its focus on limiting the state, and the more Kantian modern liberalism represented by Rawls, with its starting-point in the autonomous individual. This latter

²³² Rawls, *Political Liberalism*, 94.

²³³ Although not for Rawls. For him, ‘reasonable’ does not relate to right reason, but instead operates at the levels of how we assess competing claims, and how we propose fair terms and abide by them. There is thus a semantic shift, away from notions of external reality, to self-referencing rules of a public game. See *ibid.*, 56, 58, 62. As Cavanaugh has written, Rawls has set the rules (e.g. the rule that the parties must reason only from general beliefs shared by citizens generally) such that it is a game which excludes the church (Cavanaugh, *Theopolitical Imagination*, 54).

²³⁴ Rawls, *Political Liberalism*, xv, 374.

²³⁵ *Ibid.*, 10, 13.

²³⁶ Cf. *ibid.*, 374.

²³⁷ See *ibid.*

²³⁸ Rawls raises the important distinction between procedural justice and justice of outcome (*ibid.*, 422-424). A procedure for a fair trial may be just, even though it results in the occasional guilty person going free or innocent person being convicted (which is unjust). He notes that the fairness of majority rule is a subject of debate – majoritarians hold that majority rule is a fair procedure and thus just, while opponents of majority rule hold that it results in unfair outcomes and is thus unjust. Rawls holds that justice must be substantive as well as procedural. However, it seems that what is ‘substantive’ for Rawls is not so because it corresponds to an exterior reality, but because it derives from the procedural rules of the original-position reasoning. On the one hand, Rawls admits that laws passed by majorities may be judged unjust (*ibid.*, 427); on the other, he argues that sometimes in disputed matters the majority vote has to carry sway, the resulting legal enactment is legitimate law, it is binding on each citizen, and it is unreasonable to oppose it with any force (*ibid.*, liii-lv, 446, 480).

form of liberalism tends to the notion that constraints and laws are to be measured against the voluntarist rational will of the autonomous individual; and it emphasises individual moral autonomy, the impartiality of ethics, the importance of free rational choice, and the neutrality of the state with respect to morality.²³⁹

A further differentiation between the contractarian position of Rawls and that of the Levellers, is that the Levellers did not envisage the Agreement as creating new laws *ex nihilo*.²⁴⁰ There is no return to some sort of legal *tabula rasa* where pre-existing moral positions are set aside. The Agreement was to set down, once and for all, the rights of the people – liberties that for the large part were already recognised by ancient common law, and that accorded with the moral law of the Gospel. That is, the Agreement does not create rights, but codifies rights. At a more fundamental level, for Rawls, the contract is used at the beginning of the process to create principles for how people might live; for the Levellers, the contract is at the end of the process to set in concrete certain prior principles. Likewise, the separation of the church and state for the Levellers is not envisaged as prior to principles; for the principles are based on anterior religious notions of liberty and equality, and the separation envisaged is a posterior necessity to keep the state out of religious affairs and thus protect those liberties.

Furthermore, we should perhaps think of the Leveller Agreement as setting in concrete people's rights in order to protect those rights from the government and the judiciary. Whereas, for Rawls, his social contract empowers the central state to be an arbiter between competing rights under his first principle of justice (the Liberty Principle), and to be even more than an arbiter – a redistributor – under the main part of the second principle of justice (the Difference Principle). This both enhances the power of the state (a criticism that Nozick levies) and sets the stage for disputed political and legal interference in people's lives.²⁴¹ As we saw, the Levellers realised that a weakness of the common law system was that it placed enormous power into the hands of the judiciary. Whereas under the common law system, judges looked backwards into history amongst precedents and maxims, none of which had been consented to by citizens; under the Rawlsian system, judges would be looking into the two principles of justice to decide cases in a constructivist manner from within a new internally coherent

²³⁹ See Song, *Christianity and Liberal Society*, 23, 41, 85.

²⁴⁰ See, also, Insole, *The Politics of Human Frailty*, 74-75.

²⁴¹ Nozick, *Anarchy, State, and Utopia*, 149, 163, 168-169, 206-207, 229. See, also, Cavanaugh's insight that the state grows as it claims to be the neutral arbiter between citizens (Cavanaugh, *Theopolitical Imagination*, 44, 52).

system, or else the government would be in a busy state of enacting new laws to balance and regulate the competing claims of citizens. As Cavanaugh has commented, such a political philosophy ultimately enhances the power of the state at the expense of other groups in society such as the church.²⁴²

The separation of church and state is interpreted by Rawls in his doctrine of liberalism in such a way that to impose one's moral beliefs on others through state power is unreasonable.²⁴³ Yet, in a sense, we could argue that this is what law-making is doing all the time. The key, as the Levellers saw it, was to ensure that the state's powers are heavily circumscribed and that the law is made to protect our liberties as understood within the Gospel of Jesus. The separation of church and state is understood as meaning that no one Christian group should have a legally privileged position, paid for by others, and with coercive powers. The magistrate cannot tell citizens which church to go to, or forbid attendance; but the magistrate can forbid theft and thus 'impose' the moral view that theft is wrong.

The constitutional separation between church and state in Leveller thinking moves the Levellers well beyond the views of the common lawyers. The Agreement does not just provide for individual religious liberty but represents a constitutional settlement whereby the state is to remove itself from religious ecclesiastical matters. Thus, for example, we have the proposal that there should be no religious tests for those holding public office,²⁴⁴ thereby guaranteeing the free exercise of religion. As we saw at the Whitehall Debates, this invited opposition from the Puritans. The Levellers point to a way out of the simple binary opposition between the coercive polity of Puritanism, on the one hand, and the secular understanding of the separation of church and state that requires a secular-based polity.

As we have observed in this chapter, the constitutional liberalism exemplified by the Levellers is ultimately about limiting the political, whereas the strand of modern liberalism represented by Rawls is about limiting metaphysical claims. The twist is that the liberalism which we are associating with the Levellers, desires to limit the political for robust theological reasons.²⁴⁵ Instead of fearing, like Rawls, that basing laws on substantive views of justice, ethics, liberty, and human good inevitably leads to coercion

²⁴² Cavanaugh, *Theopolitical Imagination*, 6, 72-74.

²⁴³ Rawls, *Political Liberalism*, 61.

²⁴⁴ Second Agreement, Section 11. However, this was amended in the third Agreement, Section 26, so that Catholics were disabled from holding public office.

²⁴⁵ I am grateful to Christopher Insole for this insight.

and an illiberal polity, the Levellers use substantive views of these as the very basis for their attempt to limit the political power of the state in favour of political freedom.

5.5 Conclusion

The individual quotations cited in this chapter from Leveller tracts, petitions, Agreements and debates, are examples from a much wider picture: if we could see these texts in their totality, we would appreciate the sheer scale and consistency of the message about the law that appears. It is difficult to overstate how important considerations of law were to the Levellers – both attacks on the abuses of the law, and prescriptions for how things should be organised (both constitutionally and detailed legal reforms). For example, nearly every section of the first ‘Large’ Petition (of March 1647) is about Parliament, legal matters, or religious matters; and the first Agreement (of November 1647) is likewise all about Parliament, laws, and religion.

In Chapter One, we briefly mentioned those historians, like Hill and Manning, who have chosen to see the Levellers as proto-democrats or proto-socialists. We can now see that such scholars have missed the more obvious message that comes across in the primary sources: that the Levellers are primarily concerned with freedom; and the rule of law as a way of protecting that freedom; and the need to reform and limit Parliament in order to protect freedom. They wanted to stop arbitrary rule and to protect the liberties of individuals, that is to protect us from the state; and for the state to be reduced to its proper, sole, and limited role of protecting the lives and liberties of all. When the Levellers attack arbitrary power, it is far from clear that this might include unequal wealth or social inequality *per se*. Rather, their focus is on the arbitrary power of government, Parliament, and the judiciary, and of those monopolies created by these. For the Levellers the twin pillars of attack are arbitrary power and tyranny. The remedy against these is equal treatment under the law, and clarity about who legitimately has which powers. The call for the rule of law owes more to a common law inheritance than to any early forms of ‘socialism’.

The Levellers took many of the key tenets of the common lawyers, yet departed from other fundamental principles of the common law tradition. They recognised that the common law might seem a shaky basis for rights. The Levellers sought to defend freedoms not recognised by the common lawyers – especially religious liberty – and to

erect a constitutional agreement that would be in some ways superior to the common law and the judiciary, precisely in order to protect liberty. The Levellers wanted a national written agreement even though this would flout one of the maxims of the common law, that Parliament cannot be bound by earlier statute law.

Nevertheless, the Levellers can be seen as playing a major role in the development of the key common law concept of the rule of law, in the way that they shifted elements of it and melded it with other traditions of religious and political thought. We have thus seen the continuities and discontinuities between Leveller thought and common law ideas. It is perhaps the common law emphasis on individual liberty, combined with ideas about the role of the state from various ecclesiologies, that helps move Leveller thinking about the law beyond the conception of some Thomistic readings that see law as promoting virtue and the common good,²⁴⁶ and away from the Puritan conception of law as achieving godly reform and repressing all vice.²⁴⁷ Instead they assert a view of law as that which limits the state in order to protect individual freedom. Law has a less ‘ambitious’ task, in a sense, in Leveller thinking; and yet a crucial task – to protect us from the arbitrary power of the state. In the name of ‘the law’, where individual human laws are unjust, they are to be changed, voided, or overruled by a constitutional agreement.

We can now see that the claim of Rawls and others, that the origin of political liberalism lies in the Reformation and its aftermath in the Wars of Religion, is somewhat short of the mark.²⁴⁸ The Levellers appealed to elements of the English common law that dated back to pre-Norman times. We have seen too in an earlier chapter how the Levellers built on intellectual foundations that included medieval jurists, and scholastic philosophers and theologians. The origins of the ideas of limiting the state’s powers, of individual rights, the rule of law, and due process, go back in part to pre-Reformation discussions of canon law, common law, and natural law.

The Leveller contribution was to synthesise and restate some of these discussions

²⁴⁶ Cf. Aquinas, ST, I-II, q. 90, a. 2: “Law is chiefly ordained to the common good”; *ibid.*, q. 92, a. 1: “It is evident that the proper effect of law is to lead its subjects to their proper virtue: and since virtue is ‘that which makes its subject good,’ it follows that the proper effect of law is to make those to whom it is given, good, either simply or in some particular respect”; and *ibid.*, q. 95, a. 1: “Now this kind of training [in virtue], which compels through fear of punishment, is the discipline of laws.”

²⁴⁷ “Calvin accepted politics in any form it took, so long as it fulfilled its general purpose and established an order of *repression*. This indeed may be taken as his definition of the state.” Walzer, *The Revolution of the Saints*, 42.

²⁴⁸ See Rawls, *Political Liberalism*, xxiv, 303; and Rawls, *Lectures on the History of Political Philosophy*, 11.

into a political platform of reform. One of the catalysts for this was theological – a soteriological understanding that we are set free by Christ. Their separatist understanding of the voluntary believers’ church did not lead them to withdraw from the world; on the contrary, it led to their desire to reform the powers of the state in order to protect the liberties of the individual, through the rule of law and a contractual constitution. The key elements at the heart of the Leveller political philosophy – limited government, government by consent, inalienable rights, freedom of conscience – derive from this fundamental understanding of religious freedom. We have religious freedom as the very foundation of political freedom, and, in its broadest sense, this is what drove them to attempt to limit the power of the state through the Agreement.

Where the contractarianism of the Levellers perhaps differs most from that of Rawls is on this point: for the Levellers the written contract had an essentially ‘negative’ role – to limit the power of the state;²⁴⁹ whereas for Rawls the social contract has a more positive role – to implement justice as fairness which includes a number of rather positive roles for the state in terms of welfare and employment. The Leveller call for tightly limited government operating under the rule of law, places them amongst the forerunners of classical liberalism.²⁵⁰ As we stated in the Introduction, classical liberalism emphasises, amongst other things, limited government, the rule of law, the avoidance of arbitrary and discretionary power, religious liberty, and indeed carries a fundamental scepticism about the political. In contrast, the liberalism represented by Rawls, with its scepticism about the metaphysical, especially religious truth claims, may inadvertently lay a path for empowering the state.

The Levellers’ social contract posits laws for society which are based on theological truth claims about morality that are higher than human law. For the Levellers, actions like jailing people without trial are not wrong because they go against the Agreement made by citizens; nor wrong because they are against the common law; such actions are wrong because they are objectively wrong in terms of fundamental God-given liberties. It is because they are wrong that the Agreement will outlaw them. A person’s rights do not depend on the Agreement and do not derive from it – the Agreement and the law are to recognise rights that are antecedent to both. It is because

²⁴⁹ At the Whitehall Debates, Ireton recognised that the Agreement was about restrictions and limits on power, so that the Agreement was more destructive, than confirmatory, of authority.

²⁵⁰ For classical liberalism and the minimal state see Ryan, ‘Liberalism’, in Goodin and Pettit (eds), *A Companion to Contemporary Political Philosophy*, 293-294.

we have been made free in Christ, that we should be free, and human law should reflect this.

Furthermore, the Agreement of the People is built on a prior theological anthropology of who the people are: all, equally and individually, created by God and redeemed by Christ's free grace. The challenge for those like Rawls, who wish to propose a secular or neutral liberalism,²⁵¹ a liberalism that sets aside all metaphysical claims, is to explain the basis for their truth claims about human liberty and equality²⁵² – why any humans should have any rights, and why only humans, and further, why all humans, and why all humans equally²⁵³ – which underlie their view of law and what laws should be enacted in society. Claims that the law should uphold and protect certain rights, and that these rights are to be regarded as universal, equal, and inalienable, may not make sense without a prior understanding that all humans are equal and why this is.²⁵⁴ We can see in Rawls's work that there is some ambiguity in the matter of just who counts as citizens (or potential or future citizens), legal persons, and humans with rights.²⁵⁵ Hence philosophical questions of law cannot be separated from questions of truth and of anthropology.²⁵⁶ As Aidan Nichols points out, it is this anthropological issue that explains “why all of a sudden bioethics has become so central a discipline.”²⁵⁷

There are two levels to the argument here. Firstly, if we take an example like infanticide, it is not completely obvious that we can merely leave this to a procedural negotiation, or adopt a majority vote decision in the event of non-agreement.²⁵⁸

²⁵¹ As stated earlier, Rawls would deny that his is a secular liberalism.

²⁵² “The freedom and equality of citizens are everywhere assumed,” remarks Song on Rawls's theory, “and nowhere defended.” Song, *Christianity and Liberal Society*, 109-110. Cf. E.A. Goerner, Book Review of *Political Liberalism* by John Rawls, *The Review of Politics* 55:4 (1993), 716.

²⁵³ See Song, *Christianity and Liberal Society*, 98.

²⁵⁴ “Basic equality is so fundamental to innumerable aspects of our ethical outlook that it requires a special sort of defence ... so that it can both underpin what are usually taken to be the starting points of public justification and also prevail in the face of the various temptations that invite us to start drawing distinctions between types and grades of human being.” (Waldron, *God, Locke, and Equality*, 14.) “It may be impossible to articulate certain important egalitarian commitments without appealing to what one takes to be their religious grounds.” (Ibid., 237.)

²⁵⁵ Rawls: “Accounts of human nature we put aside and rely on a political conception of persons as citizens instead.” (Rawls, *Political Liberalism*, 482.) However, he does set an undefined ‘required minimum’ for a person to be entitled to equal liberty (Rawls, *A Theory of Justice*, 441-446). Cf. Song, *Christianity and Liberal Society*, 114-115.

²⁵⁶ “If justice is not anchored in foundational ontological statements about human beings,” writes Song, quoting George Grant, “it will slide in accordance with convenience.” (Song, *Christianity and Liberal Society*, 114.)

²⁵⁷ Aidan Nichols, ‘Anglican Uniatism: A Personal View’, *New Blackfriars* 87:1010 (2006), 348.

²⁵⁸ See Fergusson, *Church, State and Civil Society*, 64.

Secondly, and this is implicit in Nichols’s remark, the very discussion presumes some agreement on whether new-born children count as legal persons or potential citizens – and that understanding is built on a comprehensive anthropological doctrine. Thus, our comprehensive doctrines cannot be left to one side as we enter the original position,²⁵⁹ in order to achieve a pragmatic just basis for society’s laws amidst the pluralism of doctrines.²⁶⁰ Rational choice and Rawlsian public reason may be insufficient bases for a truly just society. Indeed, the Levellers do not build their constitutional liberalism upon a deracinated individual and notions of autonomy and choice; their individual is free because of metaphysical claims about God and, in particular, Christ. So the driver for Leveller political notions of compact is not about how to get individuals to live together, but about how to protect all individuals from the state.

What I have described as the ‘myth’ of pluralism in Rawls’s thought, of modern liberal pluralism arising out of the religious wars of the post-Reformation period, seems to extend to how Rawls’s modern liberal society is to work. It is not clear that Rawls has fully accounted for the disjuncture between theory and reality: there seems to be an empirical gap.²⁶¹ There is an argument that modern Western democratic liberal societies do not really operate a sort of reasonable Rawlsian pluralism;²⁶² they could be envisaged as more like scenes of competing ideas and forces in which at any one time the dominant ideology is imposed.²⁶³ In that sense, there is less difference than sometimes appears to be the case between what Rawls would recognise as pre-liberal early seventeenth-century societies and our own. Admittedly, the debates now are less likely to be in overtly religious language; nevertheless, many of the debates of 1640s England are still heard today: for example, discussions about the limits of toleration,

²⁵⁹ Rawls does indeed admit the need for a ‘thin’ theory of the good (“the bare essentials”: Rawls, *A Theory of Justice*, 348-349), to allow the people in the original position to know that they want ‘primary goods’ like liberty, opportunities, and income and wealth (ibid., 54, 123, 125, 392).

²⁶⁰ As Fergusson points out, the fact that we do have substantive disputes that cannot be resolved by appeals to Rawlsian principles of justice, itself shows that Rawlsian procedural principles do not always work and that laws in these areas are instead embodying particular conceptions of the good. (Fergusson, *Church, State and Civil Society*, 63.)

²⁶¹ Rawls does recognise that any actual society is “more or less unjust” and that “the ideal of a just constitution is always something to be worked towards.” (Rawls, *Political Liberalism*, 400-401.)

²⁶² Song makes a similar criticism, noting that allegiance in modern capitalist societies is not gained by allegiance to a common set of public values, but by a variety of other mechanisms including dependency, passivity, and the neutralising of dissent. (See Song, *Christianity and Liberal Society*, 112.) See also Cavanaugh’s contention, that modern states maintain allegiance and monopoly through coercion, power, violence, co-option, disempowerment, marginalisation and exclusion (Cavanaugh, *Theopolitical Imagination*, 75-76).

²⁶³ See Lockwood O’Donovan’s criticism of liberal ‘hegemony’ in Oliver O’Donovan and Joan Lockwood O’Donovan, *The Bonds of Imperfection* (Cambridge: Eerdmans Publishing, 2004), 241, 244.

religious freedom, the role of the House of Lords, representation in the House of Commons, judicial review, imprisonment without trial, Executive powers, Orders in Council and Royal Prerogative, levels and forms of taxation, the establishment of the Church of England, access to law, and military service overseas. That we can still have these same debates nearly 400 years later, without resorting to civil war, may not be due to the ascendancy and success of liberal pluralism, but to other more complex factors including apathy or fatigue; or even to the ascendancy of the power of the state itself and its hegemony, which makes opposition appear futile and which diminishes human initiative and independence.²⁶⁴

The state that we live in today may not be the result of some ‘overlapping consensus’ built on healthy pluralism, so much as the result of a temporarily dominant culture that happens to control or influence the law-making process currently.²⁶⁵ If it seems possible or likely that some comprehensive doctrines will always be brought into the original position behind the veil (even by Rawls), then the question becomes: whose comprehensive doctrine predominates? The Leveller insight is that, precisely because state power tends to be wielded in arbitrary ways, the main task is to limit the state through constitution and law and thus prevent this arbitrary use. Limiting the state enables religious pluralism; but pluralism is not a means in itself. The Leveller movement accepted religious pluralism but never envisaged a pluralism about what constituted justice – they presumed a consensus about key moral notions of what constitutes harm. The Agreement then, far from putting views about morality aside, assumes a natural law basis for morality. There was no sense of pluralism on this: the magistrate should indeed punish those infringements of the natural law that cause harm to others and so the laws of the state should proscribe such infringements.

Rawls remains optimistic: if people behave reasonably, then they can live together despite the plurality of opposing comprehensive views. He presupposes and requires that citizens will be reasonable – willing to propose fair terms of social cooperation that others might also endorse; willing to act on these terms, even when contrary to one’s own interest; and tolerant towards other comprehensive doctrines.²⁶⁶ There seems little room for what we might call sin: that the ideal is not matched by how people actually

²⁶⁴ This idea is found in Joan Lockwood O’Donovan: see *ibid.*, 244-245.

²⁶⁵ Lockwood O’Donovan argues that our modern liberal-democratic polity is actually inimical to communal pluralism, no matter how much it professes support for pluralism. What we in fact have is ‘moral monism’. (*Ibid.*, 240-241, 244.)

²⁶⁶ Rawls, *Political Liberalism*, 375.

behave; and that there thus can be a tendency, even in modern liberal states, for a group effectively to take control of power and use the state to promote their own comprehensive doctrine. The Leveller view of the state is perhaps more Augustinian, whereby the political community is thought to be flawed as a result of the human sinful condition – rather than a more Thomist conception of the state as perhaps in some sense sinful yet good, an Aristotelian *societas perfecta*²⁶⁷ – leading to an approach to all state power that might be considered more sceptical, cautious, and critical.

The Levellers stand then in a tradition that resonates with the Jeffersonian distrust of central government, and that today is perhaps somewhat closer to the philosophy of classical liberalism than to Rawls. For Rawls, laws are to be enacted to implement justice as fairness: he sees a much more positive, strong, and active role for the state than that allowed under classical liberalism.²⁶⁸ In contrast, for the Levellers, laws are to be enacted to limit the state in order to protect the individual. It is this different conception of the role of the law that marks out the Leveller contribution to the theory of the role of the state.

The Levellers thus help highlight the parting of the ways between the more classical constitutional liberalism and the modern autonomy-based liberalism as represented by Rawls. The earlier scepticism about the state and its powers is replaced under Rawls by a positive view of an activist state that is the creator of a new common morality that is the basis of laws, the organ that saves us from religious conflict, the final arbiter between people, and the distributor of social and economic justice. Gone now, it seems, is the earlier notion, advanced by the Levellers, that a prime role of law is to limit the state. Put simply, the Levellers and their political heirs saw that it was the state itself that was the source of attacks on our freedom, and therefore what was needed was minimal government – a state that was hedged round by a written constitution and forced to operate under the rule of law.

²⁶⁷ “Human government is derived from the Divine government, and should imitate it.” (Aquinas, ST, II-II, q. 10, a. 11.) For the contrast between the older Augustinian view of the political community and the ‘newer’ Thomist view, see Joan Lockwood O’Donovan, ‘Subsidiarity and Political Rule in Theological Perspective’, in O’Donovan and Lockwood O’Donovan, *Bonds of Imperfection*, 240, 243.

²⁶⁸ Rawls’s state can and should discourage discrimination by strengthening the forms of thought and feeling that sustain social cooperation (Rawls, *Political Liberalism*, 195); it should provide economic and social measures that enable people to be full and active citizens, including a decent distribution of income and wealth, the prevention of excessive economic inequalities, and the regulation and evening-out of life prospects and historical contingencies (ibid., lvii, 202, 271-272); and it should provide long-term security, employment, and healthcare (ibid., lvii). On the other hand, he does not see the protection of private property as integral to his theory of justice – he regards private property as a question that is not settled by the first principles of justice (ibid., 338).

A doctrine of political liberalism has to address the prime issue of the power of the central state and the liberty of the individual; following the English common law tradition, this the Levellers did. We have noted how Rawls wishes to protect political liberty from coercive comprehensive doctrines, through a systematic scepticism about metaphysical claims, especially religious ones. In contrast, the Levellers synthesise common law notions with religious claims and arrive at a scepticism with regard to the political.

6. CONCLUSION

6.1 Overview

The research into the Levellers has established that their doctrine of Christian liberty can support certain aspects of what we now call constitutional liberalism. Against the narrative of Rawls, Manent and Grayling, we have demonstrated that certain concepts of modern liberalism are derived from Christian sources. As we have seen in various chapters, we will not understand how constitutional practices developed in the West in modern times, unless we understand the religious roots of that development and how the various traditions and sources melded and competed and were interrupted. The research into the Levellers has shed light onto aspects of this development.

The explicit debate with Rawls, and the implicit engagement with Christian critics of liberalism like Hauerwas, have made clear that political liberalism today is not (if it ever was) homogenous, and that there are in fact quite different strands within liberalism. In our discussion of Rawls, we can see that present-day liberalism is faced with competing claims about the nature of truth when it comes to understanding political liberty, justice, and rights. In particular, Rawls wishes to ground justice and liberalism without a substantive view of justice; whereas the Levellers wish to ground political liberty in a substantive notion of justice built on theological premises.

The Leveller understanding of liberty combines a conception of a liberal state with an appeal to an objective understanding of liberty and rights within the natural law, intelligible to all (in principle) without revelation. The political philosophy of the Levellers, whilst radical, appears significantly closer to liberalism than to socialism, and it is more akin to classical constitutional liberalism than to the modern type of liberalism represented by Rawls. Nevertheless, the political thought of the Levellers has its own distinctive contribution to make, combining as it does a formal constitutional approach to a limited state with a Christian anthropology as the basis for laws.

6.2 The Leveller Synthesis

Using our prism metaphor, we can see how the Levellers took, adapted, and synthesised a variety of existing traditions – legal, philosophical, and theological. The Levellers melded these into a distinctive political platform. During the preceding chapters the research has shown that the Levellers had a clearly articulated and coherent political philosophy, centred on liberty, and this was more than just a collection of specific political aims and demands. Especially in the previous chapter, on the law, we saw the clear articulation of a politico-legal philosophy. Whilst the exact details of particular demands might change in their expression, there was a consistent core philosophy held amongst the Leveller leadership and expressed in the key documents.¹ The key demands of the Leveller petitions and Agreements – on the franchise, representation, consent, reform of the legal system, religious liberty – sprang from an overall political understanding of the free individual and the corresponding need to limit the state’s powers. That is, there is a core theme of liberty and the individual running through Leveller tracts, both explicitly and also implicitly behind the programme of political demands. Because of this core theme, there is a corresponding theme: the need to limit the state.

In order to try and achieve this, the Levellers formed themselves into a political ‘party’: not a party standing in elections, but a petitioner party seeking constitutional change. Nevertheless, they put into practice early elements of what we now associate with political parties, including party membership, regular subscriptions, organisational structures, and a party newspaper. Whereas it is recognised that modern political parties tend to be ‘broad churches’, indeed almost internal coalitions, the Leveller tracts display a marked unity of purpose and message.

We have seen that their political philosophy was based on certain theological suppositions, Christological and ecclesiological (Chapters Three and Four), developed within scholastic natural law traditions and within legal traditions of canon law and of English common law. The Levellers effectively blend these varying sources; at the same time as utilising each tradition, they developed it and introduced new elements, whilst rejecting other elements. Although the Levellers were a political party and not a

¹ The evidence of the thesis, therefore, calls into question Purkiss’s claim that the Levellers did not have “an agreed manifesto”, “common views”, or “any kind of simple programme” (Purkiss, *The English Civil War*, 476).

religious group, we can still talk of an underlying theology. Their political philosophy was derived from theology, rather than being merely expressed in religious language (as would be expected for the age). Particularly important influences were free grace theology and Anabaptist ecclesiology, mediated through the English General Baptists, as we saw in Chapters Three and Four. The core of this theological understanding was held in common, whatever fringe differences there may have been amongst individuals. That is, although the Levellers did not hold all the same beliefs on every matter, there is an identifiable core theological understanding that is shared. The soteriological understanding of our freedom in Christ, and the ecclesiology of the voluntary church which people are free to join or leave, together provide the core theological basis for a shared doctrine of Christian liberty. This allows us to state that the radical political theory of the Levellers was derived from a doctrine of Christian liberty. From a theological understanding of liberty they derived a political understanding of liberty.

This political understanding of individual liberty has an immediate impact on their understanding of the role of the state. As a result, the Levellers broke away from their Puritan contemporaries on the Parliamentary side in the Civil War. In particular, we have seen the explicit Leveller rejection of the Puritan state and of Puritan theology. It has been shown that those historians who describe the Levellers as ‘Puritans’ have either made a major error in taxonomy, or perhaps are using the term ‘Puritan’ in too loose a way, that leads to confusion. Furthermore, attempts to explain Leveller opposition to key elements of Puritanism, by describing them as radical Puritans or Puritans of the left, can now be deemed to be inadequate and unhelpful.

Throughout the thesis it has become apparent that the Levellers stand as opponents of Puritanism and the slide towards a theocratic state, for they recognised that Puritanism entailed handing over to the state significant power over individuals and the subsequent diminution of freedom. The Leveller philosophy was centred on limiting the state in favour of individual liberty and this is what distinguished them from their contemporaries. The Levellers rejected the political and religious Calvinism of both the Presbyterians and the Independents. This has enabled us to see what is distinctive about the Leveller view of the state and to see how they provide a parallel source for later understandings of liberty – parallel to those who see Cromwell and the English Revolution as limiting Royalist Absolutism. The Levellers saw in Cromwell’s actions in the course of the ‘Revolution’, not constitutional reform in favour of the liberty of the individual, but Parliamentary tyranny.

The research in this thesis enables us to see that the description, by certain historians like Hill and Manning, of the Levellers as proto-socialists fails to do justice to the complexity of the Leveller understanding of the franchise and political equality. A socialist reading glosses too quickly over the central Leveller concern for liberty, individual freedom, and the desire for a minimal state: Leveller freedom includes a defence of private property and free trade, a small state, and a precisely limited government. As we saw in Chapter Two, even the Marxist political theorist Macpherson understood that the Levellers were ‘radical liberals’. The Leveller conception of equality was always that of political legal equality, rather than economic or social. Their understanding of Christian liberty informed a radical individual political liberty rather than anything collectivist or class-based. The state – how to protect people from it – is the prime object of their concern. Ultimately, their desire for constitutional legal and political reform, a minimal state, and individual liberty seems to suggest that the Levellers’ political philosophy is closer to what we would understand as constitutional liberalism than to socialism. This is not to deny that the Levellers were political radicals in their day; but it is to call into question the simplistic equation of Leveller political radicalism with early socialism,² or with pre-Reformation religious ‘radicalism’, heresy or unorthodoxy.³ The latter claims do not seem to be able to account well for the extent to which the Levellers draw ideas from very mainstream sources – including medieval canon law, scholastic concepts of the natural law, a Thomist notion of conscience, conciliarist ecclesiology, scholastic ideas of ‘constitutionalism’, and Jesuit political thought. If we can find ‘revolutionary’ ideas in Leveller thought – for instance, some of the notions of the right of resistance from within Jesuit political thinking – then we can equally find the Levellers utilising conventional ideas from, for example, the long heritage of the English common law.

² The thesis questions Hill’s statement, “that the constitutional Levellers were a very radical left wing of the revolutionary party.” (Hill, *The World Turned Upside Down*, 123.)

³ For example, Howard Shaw follows Hill’s line and asserts that the Levellers stand “firmly in the tradition of Wycliffe and John Ball” (the Lollard preacher who played a significant role in the Peasants’ Revolt of 1381). Shaw, *The Levellers*, 104. Shaw’s statement is offered here without any apparent evidence or basis.

6.3 Implications for today

6.3.1 The Christian basis to certain strands of Political Liberalism

Many aspects of Leveller philosophy have broad affinities with classical constitutional liberalism, and may be a source of several aspects of constitutional developments, particularly in the United States, as seen in the foundational documents of various States (Chapter Two). These findings raise questions for those modern theologians who reject political liberalism *in toto*; for there are quite different strands within political liberalism, including one that embraces the Levellers and which is built on theological grounds.

The Leveller promotion of individual liberty, freedom and rights was based on a doctrine of Christian liberty. Furthermore, we saw that this doctrine was partly derived from sources stretching back to scholastic discussions. The rejection of liberalism, by thinkers such as Hauerwas, seems to neglect the religious roots of aspects of political liberalism and to ascribe a homogeneity to liberalism that fails to appreciate the complexity of political liberalism: “Christians have no stake in Western civilisation nor should we try to rescue the epistemological or political forms of liberalism,” states Hauerwas. “The reason Christians should not underwrite the epistemology and politics of liberalism is very simple: they are not true.”⁴

The Levellers show to such Christian critics of liberalism that a certain liberal political tradition is in fact partly rooted in a Christian understanding, and that there are quite different types of liberalism. Not all liberalism is based on an anthropology which is autonomy-focussed and which can be characterised as promoting individualism. *Pace* Hauerwas, Christians can use the language of ‘rights’ without assuming the underlying philosophy of modern Kantian liberalism.⁵ As we discovered in Chapter Two, the notion of subjective rights has a long pedigree, stretching back to the medieval

⁴ Hauerwas, ‘Where would I be without friends?’, in Nation and Wells (eds), *Faithfulness & Fortitude*, 325.

⁵ Cf. Hauerwas: “I want to argue that America is the only country that has the misfortune of being founded on a philosophical mistake – namely, the notion of inalienable rights. We Christians do not believe that we have inalienable rights. That is the false presumption of Enlightenment individualism, and it opposes everything that Christians believe about what it means to be a creature.” Stanley Hauerwas, ‘Abortion Theologically Understood’, in Berkman and Cartwright (eds), *The Hauerwas Reader*, 608. Similarly, the Christian use of subjective rights language is also attacked by Lockwood O’Donovan – see Joan Lockwood O’Donovan, ‘Historical Prolegomena to a Theological Review of “Human Rights”’, *Studies in Christian Ethics* 9:2 (1996), 53-55, 65; and Joan Lockwood O’Donovan, ‘Rights, Law and Political Community: A theological and historical perspective’, *Transformation* 20:1 (2003), 31, 38.

canon lawyers, and roots in solidly religious sources. Against the critics of rights language, Fergusson observes that “it is not clear that the concept of human rights is necessarily tethered to the assumptions of liberal individualism. One might attempt to appropriate rights language while stressing its limitations and the need to root it in some substantial moral theory.”⁶

Throughout their tracts the Levellers asserted rights and liberties in the face of the state. Rights claims “are particularly important in those situations in which either there is no adequate positive law ... or the government itself, together with its legal systems, turns on its own citizens,” writes Jean Porter.⁷ Moreover, rights claims have a further role, in that they are seen as overriding, notes Porter; that is, “they also imply the existence of juridical standards that override positive law, not only from a moral standpoint but even considered *as* law.”⁸ This is a notion which the Levellers developed, both in their appeal to natural law and in their call for a paramount constitutional law.

Furthermore, in contrast to those like Yoder, Hauerwas and Cavanaugh, the Levellers remind us of the possibility of an engaged yet critical approach to the state, being on the watch for the state overstepping its role and legitimate powers, and being ready to oppose this and to attempt to reform the state. In opposing the sacral state, the Levellers avoid the tendency that can sometimes be seen, for example, in Yoder and Hauerwas of distancing Christians from the state and involvement in its political activities and law making.⁹ Thus, “theological reflection on society must extend beyond the elaboration of an ecclesiology,” asserts Song: “remarks in the spirit of Stanley Hauerwas’s comment on the state, ‘I do not need a theory of its existence’, must be deemed inadequate.”¹⁰

As was indicated in the preceding chapters, it would be mistaken to see the Leveller emphasis on individual rights and freedom as selfish individualism or some form of literal antinomianism, and their desire for minimal government as some form of anarchism or extreme libertarianism. The Levellers always recognised the reality of

⁶ David Fergusson, *Community, liberalism and Christian Ethics* (Cambridge: CUP, 1998), 168.

⁷ Porter, *Nature as Reason*, 366.

⁸ *Ibid.*

⁹ See, for example, Hauerwas, ‘Abortion Theologically Understood’, in Berkman and Cartwright (eds), *The Hauerwas Reader*, 608, 619-620.

¹⁰ Song, *Christianity and Liberal Society*, 226. “Some theological sense needs to be made of our social institutions prior to the eschaton,” observes Fergusson (David Fergusson, ‘Communitarianism and Liberalism: Towards a Convergence?’, *Studies in Christian Ethics* 10:1 (1997), 48). Thus, “some doctrine of the state is necessary” (Fergusson, *Community, liberalism and Christian Ethics*, 159).

human sin, and this kept them from being over-optimistic about human nature, and helped them to appreciate the need for government and laws. The challenge for liberty is always that there will be a tendency in people (which Christians call ‘sin’) to misuse their moral liberty in ways that might undermine the political and economic liberty of society.¹¹ The Levellers understood that individual liberty required the existence of the state and its laws in order precisely to protect liberty. Indeed, in Chapter Two we noted that the Levellers seemed to be inheritors of the conciliarist tradition which held that political societies (secular commonwealths) had arisen as a result of sin, and the state is thus necessary but certainly not to be regarded as good in itself.

It would also be a mistaken impression to see in the Leveller defence of the individual vis-à-vis the state an emphasis on individualism: an atomistic view of society as merely an aggregate of individuals. The Levellers are quite happy to use the ‘corporate’ language of our membership of one body: an attack on one person’s liberty is an attack on the common liberty. They do not envisage individuals relating to each other via the social contract of the state (as that contractarian model is caricatured by Hauerwas, Cavanaugh and Joan Lockwood O’Donovan);¹² people relate to each other directly, and the contract is there to restrict *the state* from interfering. The Levellers are quite clear that people are not born for themselves only, but are obliged to employ their endeavours for the advancement of the community.

Furthermore, the Leveller defence of individual liberty is always a defence of the freeman’s family or household (hence the issue noted in Chapter Five of how wide their proposed suffrage really was, being more akin to full householder suffrage than to universal adult suffrage), and of the believers’ church. That is, the primary social units in the Leveller view are the family (including the household) and the gathered church: both are to be left in freedom. This view of society is far from being an atomistic one and far from the destructive vision of community as nothing more than a collection of individual rights-possessors with competing rights claims to individual freedoms, based on an understanding of rights rooted in property.¹³

¹¹ See Roger Trigg, *Morality Matters* (Oxford: Blackwell, 2005), 91.

¹² See, for example, Lockwood O’Donovan, ‘Historical Prolegomena to a Theological Review of “Human Rights”’, 61-64; Lockwood O’Donovan, ‘Rights, Law and Political Community’, 30; and O’Donovan and Lockwood O’Donovan, *The Bonds of Imperfection*, 74-77, 96, 140-141.

¹³ Cf. Lockwood O’Donovan, ‘Historical Prolegomena to a Theological Review of “Human Rights”’, 55-61, 64; Lockwood O’Donovan, ‘Rights, Law and Political Community’, 36; and Joan Lockwood-O’Donovan, ‘Christian Platonism and Non-proprietary Community’, in O’Donovan and Lockwood O’Donovan, *The Bonds of Imperfection*, 76-77. See, also, Cavanaugh, *Theopolitical Imagination*, 44, 74.

Finally, the Levellers do not equate society with the state. They see the state as the judicial-political apparatus of society: the government, Parliament, courts, local magistrates, and officers of the Crown or Commonwealth. In defending individual freedom against state encroachment, the Levellers are making no statements about an individualistic view of society. Rather, a state that exceeds its legitimate powers is a threat to individuals, families, church, and society. Hence, the Leveller desire to tie down the state in contractarian terms, is precisely about defending civil society.

6.3.2 Re-evaluating the development of Liberalism

The thesis has raised some questions over the Whig view of history and the role of Locke in the development of liberalism; and considerable doubts over the modern liberal view that sees religious toleration and freedom of conscience as fruits of the Enlightenment rejection of religion. Grayling's claim, that "Locke is the point of departure for liberalism in modern times", needs to be treated with some caution.¹⁴ In commenting on the Whig history of toleration, Keith Lindley writes: "The weaknesses of the Whig analysis are well rehearsed and familiar: a teleological, and sometimes anachronistic, account of the emergence from a dark and hostile pre-Protestant past of modern liberal democracy and a corresponding rise of religious toleration."¹⁵ We have seen earlier that it might be simplistic or incorrect to project our present values of toleration and religious liberty back onto Cromwell, Locke, or the 'Glorious Revolution'; to see in these people and events a progression towards where we are now. This research has shown that the doctrine of Christian liberty employed by the Levellers has long religious roots, some stretching back to the thirteenth century, and, at the same time, it became a source of certain liberal ideas that were in many ways opposed to those of Cromwell and Locke and aspects of the settlement of 1689.

Those scholars, like Rawls, Manent and Grayling, who try to place the source of liberalism in the European struggles for religious pluralism and a form of politics free from the church, neglect the pre-Reformation roots of aspects of political liberalism – in canon law, natural law, the debates of the conciliarists, and in English common law. Manent claims that "the principles of the new politics – the rights of man and citizen,

¹⁴ Grayling, *Towards the Light*, 127.

¹⁵ Keith Lindley, Book Review of *Persecution and Toleration in Protestant England 1558-1689* by John Coffey, *Reviews in History* No. 192 (2001), at <http://www.history.ac.uk/reviews/paper/lindleyKeith.html> (accessed 22 April 2009).

freedom of conscience, sovereignty of the people – had been forged during the previous two centuries [before 1789] in a bitter fight against Christianity, and particularly against the Catholic Church.”¹⁶ In contrast, the thesis has demonstrated that such principles were forged, at least in part, by Christians as they worked out the political implications of the doctrine of Christian liberty.

Modern ideas of toleration, freedom, and rights not only derive, in part, from earlier Christian sources, these ideas may indeed still rest on certain assumptions that are now unspoken. We can see, then, that the Levellers and the doctrine of Christian liberty have made a contribution to the development of liberalism, especially in its constitutional form; and that the nature of liberalism itself may need to be understood by reference to certain theological assumptions (such as those underlying the claim that we are all equal, with equal rights).

6.3.3 Rawlsian Liberalism

It has emerged during the thesis that there are quite distinct differences between the classical constitutional liberalism which seems to characterise the Levellers, and the modern Kantian liberalism represented by Rawls, even though both Rawls and the Levellers place contractarianism and liberty of conscience at the heart of their political thought. Discussion of the Levellers raises a number of questions for those types of liberalism that wish to set aside metaphysical claims, especially religious ones. We have treated Rawls in this thesis as representative of a dominant form of liberalism that bases justice and laws not on prior moral doctrines or external truths, and indeed claims to be neutral about differing moralities, but instead allows certain political values, virtues, principles, (especially toleration and liberty of conscience), rights and duties to be created in the political process of our forming just political norms. Truths that derive from comprehensive doctrines are taken off the political agenda;¹⁷ instead, it is the constructed political conception of justice that is to be regarded as true.

We have commented upon the historical claims of Manent and Grayling – the claim that liberalism is founded in the rejection of religion and the church – and have raised significant question marks over their historical narrative, using both the evidence of the Levellers themselves and of the religious sources that the latter use for their

¹⁶ Manent, *An Intellectual History of Liberalism*, xvii.

¹⁷ Rawls, *Political Liberalism*, 151.

political ideas. This still leaves the normative view of Rawls about the relation of political liberalism to religion. Whilst we can be broadly sympathetic with what Rawls wants to defend – liberty and non-coercion – we can still have misgivings about how Rawls defends these, especially the way in which he grounds liberalism in a rejection of metaphysics (particularly religion).

The comparison of Leveller thinking with that of Rawls in Chapter Five left the worry that the Rawlsian account perhaps, in the end, pays insufficient attention to the dangers of central state power (indeed the state is explicitly given significant powers in his account) and not enough attention to the relation between justice and truth. In that chapter we noted that the lesson from the Levellers to the type of Kantian liberalism exemplified by Rawls, was the importance of restraining the power of the state and of basing laws on an objective understanding of freedom and justice. Indeed, throughout the thesis we have observed that questions of freedom, rights, justice, law, and morality, cannot be divorced from questions of truth: truth about who is human, who is a person;¹⁸ and truths about what is just and unjust.

We saw in the previous chapter that Rawlsian liberalism wishes to set aside substantive moral or religious doctrines in order to enable people with differing doctrines to live together and to avoid the coercive imposition of any one group's comprehensive view of the good. Now, the Levellers raise the possibility that the assumption, that underpinning a polity with notions of the common good will lead to the coercive use of power, is misplaced; and that the opposite may be the case: that a substantive view of liberty may lead to limiting the state's power, in itself, and thus to limiting the coercive use of power. As we noted in the Introduction and in Chapter Five, the Leveller philosophy is ultimately about wanting to limit the political because of metaphysical commitments, whereas the type of modern liberalism represented by Rawls is about limiting metaphysical claims (in order to protect liberty). The apparent paradox is that the Levellers desire to limit the political in ways that resemble constitutional liberalism, and do so for robust theological reasons. The Levellers, therefore, open up the possibility that the liberty of political liberalism would be based on what I am morally free to do, that is, on truth claims about both morality and liberty.

¹⁸ Indeed, Janne Haaland Matlárý asserts that the concept of 'human' is now the central political question today when we debate human rights (Janne Haaland Matlárý, *When Might becomes Right* (Leominster: Gracewing, 2007), viii-ix).

This has implications for the relation of ethics to law, and the possibility for just laws where ethics are set aside.

For Rawls, truth at the political and legal level is constructed rather than discovered – this derives from his Kantian denial of transcendence in favour of autonomy; law based on our own reason, given to ourselves, free from any external reference.¹⁹ The Leveller social contract is clearly based on something objective and external – the natural law, anthropology and Christology. Although they modified the natural law tradition of rights, the Levellers remained committed to the idea of an objective natural law against which human positive law can be judged and voided. This opens up wider issues (although the thesis does not resolve these), as a number of scholars have noted: society’s laws encapsulate ethics in some form,²⁰ and so it seems legitimate to ask whether we should base our laws on something which may be ultimately ‘subjective’, in a sense, or on something which is thought to be objectively true. “If morality lacks grounding in objective reality,” writes Nigel Biggar, “then appeals to justice will carry no more weight than expressions of mere distaste.” If “there is no moral reality to know, moral opinions cannot claim to know it.”²¹ If this is the case, he argues, then there is no hope of rational discussion, and moral conflicts cannot be resolved by appeals to reason, only by the triumph of one will over the other. Nietzsche, notes Song, “recognized that if justice were merely the imposition by will of values on facts, then there is no reason beyond the contingencies of history why the values of liberty or equality or the worth of others should be respected.”²² Song asks, with George Grant, whether, in an age of convenience values, those who are too weak to enforce contracts will be excluded from liberal justice. If “there is no objective moral truth, relativism rules supreme,” claims Vincent Twomey, and “the law has no foundation. And the result is the rule of the strong over the weak.”²³ If human positive law has no basis in external reality, argues Roger Trigg, then law may seem arbitrary and we are left with the question as to why people are equal.²⁴

¹⁹ Insole, ‘Two Conceptions of Liberalism’, 460, 462.

²⁰ “No law can ever be neutral from a moral point of view,” states Trigg; and “the liberal idea that the law does not legislate about morals is an illusion.” (Trigg, *Morality Matters*, 57, 60.)

²¹ Nigel Biggar, *Good Life* (London: SPCK, 1997), 5-6.

²² Song, *Christianity and Liberal Society*, 96.

²³ D. Vincent Twomey, *The End of Irish Catholicism?* (Dublin: Veritas, 2003), 140.

²⁴ Roger Trigg, *Religion in Public Life* (Oxford: OUP, 2007), 6.

6.3.4 Some implications for our understanding of human equality

This thesis aligns itself with the recent work of scholars like Waldron, Fergusson, Song, Michael White, Trigg, and Insole, amongst others, who are opening up the idea that liberal notions of human equality may need grounding in anthropology, metaphysics, and even religion.²⁵ The thesis suggests that the Levellers may provide a resource in this academic discussion, with the Leveller focus on Christology as a basis for political equality. The above writers have highlighted that the liberal idea of equality under the law, equal liberty for each person, may not make sense if it does not rest on certain prior assumptions about humans. Such scholars have challenged the idea of liberalism without religion and have pointed to more possibilities of relating political liberalism to theological notions. This is something that the Levellers seem to point to as well: we saw in Chapters Two and Five how the equality that underpins their political view of equal individual liberty is ultimately based, for them, on some natural law anthropology, Christologically understood. Yet, as Trigg indicates, many modern discussions of human rights just take for granted the conception of a basic natural equality amongst humans, without any justification of that conception.²⁶ Whereas, as Trigg points out, beliefs “in human equality and individual liberty are themselves substantive moral beliefs.”²⁷ Indeed, Fergusson asks: “Does a commitment to the well-being of every citizen make sense except on the basis of substantive convictions about the worth of each individual life?”²⁸ Moreover, we noted in a previous chapter Waldron’s argument that the very idea of human rights itself might not make sense without a prior theological understanding that all humans are equal. “A theoretical defense of human rights,” remarks Porter likewise, “must ultimately rest on theological grounds.”²⁹ The doctrine of rights did not just start historically from within a theological grounding; such recent scholarship argues that it may rest still on an understanding of human nature, which depends for objectivity on a theological truth about humans. “Recourse to human rights,” argues Twomey, is “undermined by the absence of a vision of the human person made in the image of God, redeemed by Christ, and so the subject of

²⁵ See, for example, Waldron, *God, Locke, and Equality*, 2, 8-9, 13-14, 47-49, 81-82, 237; Fergusson, *Church, State and Civil Society*, 48-49, 51, 63, 97; Song, *Christianity and Liberal Society*, 45; Michael White, *Political Philosophy* (Oxford: Oneworld Publications, 2003), 202, 222-226; and Trigg, *Religion in Public Life*, 80-88.

²⁶ Trigg, *Religion in Public Life*, 80, 83.

²⁷ Trigg, *Morality Matters*, 62.

²⁸ Fergusson, *Community, liberalism and Christian Ethics*, 146.

²⁹ Porter, *Nature as Reason*, 371.

rights and obligations, some of which are absolute and so transcend political activity.”³⁰ Indeed those rights that are absolute, are so, says Twomey, because of the relationship between the human person and the Absolute.

White states that if we try and set aside a reference to a normative human nature, then we have the paradox that political philosophy is charged with giving a rich account of the proper role of political organisation without appeal to any conception of what human beings are for. He concludes that it is not possible to “develop a coherent political philosophy apart from a normative anthropology.”³¹ For him, philosophical consideration of political concepts presupposes normative ideas about an objective human good, purpose, or end. Thus political philosophy cannot be done “without reference to such a normative metaphysical, ethical, or religious ideal.”³² Precisely because of the need for a normative anthropology, political philosophy has to be situated within a larger moral and religious context.³³ Likewise, John Courtney Murray asserts:

Our reflection, therefore, on the problem of freedom, human rights, and political order must inevitably carry us to a metaphysical decision in regard to the nature of man. ... it is not enough for us to concoct the written letter [of a Bill of Rights] unless we are likewise able to justify, in terms of ultimates in our own thinking about the nature of man, our assertion that the rights we list are indeed rights and therefore inviolable, and human rights and therefore inalienable.³⁴

For Murray, human rights must derive from a philosophy of right, justice, and law; from laws that derive from the nature of man, the natural law. The task then is to link subjective rights back to an objective understanding of what is right. The challenge for political liberalism is to account for the nature of truth – particularly with respect to human nature, morality (what is right), and the basis of laws. The Leveller insight is that political liberalism is not incompatible with an appeal to natural law. That is, the liberal separation of church and state can coexist with an appeal to an external transcendent natural law. Where the notion of the natural law remains important, is for a) trying to anchor morality and the civil law in something objective and exterior; and b) its insights that all humans are equal because of their shared created humanity. Human

³⁰ Twomey, *The End of Irish Catholicism?*, 122.

³¹ White, *Political Philosophy*, 4.

³² *Ibid.*, 5.

³³ *Ibid.*, 226.

³⁴ John Courtney Murray, *We Hold these Truths* (New York: Sheed and Ward, 1960), 321.

claims to be free and equal are closely linked to human rights and the function of law;³⁵ and the idea of a shared human nature is part of the basis for the rule of law.

We should not lose sight of the fact that the Levellers understood the natural law Christologically: that is, we each have an equality in Christ which is the ground of our natural rights and freedoms. One of the noteworthy aspects of the Leveller contribution to modern debates on political philosophy is the insight that Christology can ground liberal political ideas. We saw in Chapter Two that, unlike Locke, the natural law thinking of the Levellers places less emphasis on teleology and more on Christology. That there can be a defence of political liberalism based on Christology is, to say the least, interesting.

6.3.5 Some implications for our understanding of church and state

An exterior moral order that transcends human positive law, and is its measure,³⁶ is a way of relativising that human law and may thus be compatible with the classical liberal scepticism and restraint with respect to human institutions (provided that this external moral order is accessible in some way to all, i.e. is not private ‘knowledge’ given only to the few). That is, the claim that there is an objective exterior truth, knowable without revelation, against which positive law can be judged, is not opposed to political liberalism, but may actually support the classical liberal concern about the use of legal power and how to restrain it. The notion that the natural law is knowable without revelation impacts on how ‘theological’ it needs to be, thus potentially satisfying the liberal concerns about comprehensive doctrines, private knowledge, public justification, and reasonableness. Rather than the appeal to external truth leading to utopianism or Puritanism (the idea that I know what is good for everyone else and will impose it), the appeal may precisely provide a way of judging human laws to be invalid and thus saving us from trusting the human institutions of the state too much and from a blind obedience to whatever is currently the law. The Petrine statement that “we must obey God rather than men”³⁷ relativises human authority. “The admission that there is a greater power than the State, and that the State has to be judged by external standards, is momentous. It limits the power of secular authority,” writes Trigg.³⁸

³⁵ Trigg, *Morality Matters*, 10.

³⁶ Twomey, *The End of Irish Catholicism?*, 120.

³⁷ Acts 5:29.

³⁸ Trigg, *Religion in Public Life*, 113.

The separation of church and state allows the church to give witness of the transcendent law of God to the state;³⁹ and this limits the pretensions of the state and the claims of the state over us. What the separation of church and state comes to mean in Leveller thinking is that the state should have no role over the church. As Lindley puts it: “It is to the Levellers that we are indebted for the notion of constructing a constitution that gave the state no religious role.”⁴⁰ Or, to put this in Insole’s language: public power should not be used to save souls; the state has no mandate to attempt to save us.⁴¹ The paradox that the Levellers point to, is that the separation of church and state is for profound theological reasons; and, conversely, this is not about limiting the church but about limiting the state: the state is to be kept out of the church and individuals’ lives, for religious reasons. What are now taken as liberal ideals – individual religious liberty and freedom of conscience – are grounded, in Leveller thinking, on theological premises.

We noted early on in the thesis that there is a line of liberal thought (represented by Manent and Grayling) that sees the separation of church and state as being about limiting the powers of the church, whereby the liberal polity saves us from the power of the church and religious persecution and strife. In distinction, the Leveller focus is on limiting the power of the state in religious matters. Indeed, John Courtney Murray has pointed out that the ‘separation of church and state’ can be misconstrued along secularist anti-religious lines, with the effect of allowing the state to increase its power with no constraints on its political and legal activities, and thus to assume a social ‘monism’.⁴² A state that rejects the law of Christ as a limiting norm of political rule and legal enactment,⁴³ or reduces religion to a purely private matter on the grounds that it is divisive, leaves government totalist in its scope. Indeed, Murray believes that this monistic tendency is inherent in the state;⁴⁴ and that ethical relativism destroys the only ground on which a stand can be made against the power of the state.⁴⁵

The writings of the Levellers remind the liberal tradition of the importance of maintaining a prime focus on limiting the powers of the state. The Levellers realised

³⁹ Twomey, *The End of Irish Catholicism?*, 120.

⁴⁰ Lindley, Book Review of *Persecution and Toleration in Protestant England 1558-1689* by John Coffey, no page.

⁴¹ Insole, *The Politics of Human Frailty*, 41, 82.

⁴² John Courtney Murray, *Religious Liberty* (Louisville: Westminster / John Knox Press, 1993), 69; Murray, *We Hold these Truths*, 21, 207, 210, 325.

⁴³ That is, rejects the external law ontologically, as well as epistemologically.

⁴⁴ Murray, *We Hold these Truths*, 207-210.

⁴⁵ *Ibid.*, 326.

that political power corrupts – and this included Parliament, magistrates, and judges. Although on the Parliamentary side in the Civil War, they came to see that Parliament could not be trusted to protect our liberties, that Parliament itself can be tyrannical, and therefore that Parliament needed to be placed under a higher binding framework. So, for the Levellers, the key task of any constitution is to limit the state, including what we would call the legislature, the executive, and the judiciary. This was not to be by a system of checks and balances between the three, but by an overarching constitution above all three and which handed power back to individuals. That is, the ultimate check for the Levellers was that the constitution limited central powers in favour of the individual and gave individuals the final power of veto via a regular ballot (over Parliament, judges, and the officers of the state).

One of the Levellers' contributions to the development of the liberal tradition is the notion of a written constitution made by the people, encapsulating a bill of rights, and providing sovereign power in the people. The constitution was not to be upheld by a constitutional court or supreme court; all elements of the state were to be limited by the people maintaining the right to eject office-holders at election time, and by the ability of the people in the meantime to treat any laws and actions that violated people's rights as invalid. The legacy of the Levellers, then, is both their contribution to the development of religious liberty and to the role of a written constitution, and their acting as a reminder that a prime focus of constitutional liberalism should be the desire to limit the state. Questions of church and state, when guided by Leveller thought, will focus on the freedom of the former while curtailing the power of the latter.

6.3.6 Some implications for pluralism and the neutrality of the liberal state

As we have seen in the discussion of Rawls in Chapter Five, modern Kantian-type liberalism appears to have a number of shortcomings and, in particular, we saw that neutrality and pluralism in the state can be myths, and in certain circumstances undesirable and unworkable. The evidence of the Levellers opens up the possibility of a defence of the constitutionally liberal state which is both a liberal defence, and one that questions the desirability of neutrality about the basis of the state's laws. Indeed, as Song discusses, perhaps the legal framework of the state should *not* be neutral.⁴⁶ "Compromise is of the essence of politics. ... But democracy," states Twomey, "is in a

⁴⁶ Song, *Christianity and Liberal Society*, 130.

sense based on a *refusal* to compromise on *moral* principles. Moral principles provide the framework within which practical compromises are worked out on a day-to-day basis.” Moral principles, he continues, should “be non-negotiable.”⁴⁷ Likewise, White argues that some beliefs cannot be compromised and that political philosophy will indeed be partisan; he endorses MacIntyre’s view that some controversies are not capable of being settled and cannot be a matter of consensus.⁴⁸ In Twomey’s account, moral relativism, the advocating of a pluralism of moral values, and the desire not to impose any particular moral value system, are actually a threat to democracy and the political community. That is, the denial of a common moral imperative written into our being as humans, and which is the measure of our free actions, “must in the final analysis undermine liberal democracy itself.”⁴⁹

Likewise, Trigg suggests that we cannot allow objective principles to be replaced by subjective choice-driven ‘values’, for “some issues cannot be left to chance, nor to individual choice, if any society is to continue functioning at all, let alone as a cohesive whole.”⁵⁰ Moreover, “no society can be stable once its members are taught that there is no objective standard of morality.”⁵¹ Critiquing certain liberal understandings of pluralism and neutrality, Trigg argues that the claim for a state’s neutrality will tend to sink into incoherence as it assumes some particular things as true, namely the importance of neutrality, free choice and tolerance.⁵² Indeed, he states, the “ideal of total moral neutrality must always be an illusion, since it itself embodies a view of what a good society should value most.”⁵³ For Trigg, pluralism does not require neutrality, because it is not possible for everyone’s different beliefs to be true.⁵⁴ The state should be neutral (i.e. impartial) about the way it enforces its rules, but it cannot be neutral about which rules are to be enforced.⁵⁵ “Freedom can only matter,” he asserts, if “those who repudiate freedom are wrong.”⁵⁶ Truth is not a threat to freedom, but its precondition:

⁴⁷ Twomey, *The End of Irish Catholicism?*, 116.

⁴⁸ White, *Political Philosophy*, 225-226.

⁴⁹ Twomey, *The End of Irish Catholicism?*, 118.

⁵⁰ Trigg, *Religion in Public Life*, 122.

⁵¹ Trigg, *Morality Matters*, 94.

⁵² Trigg, *Religion in Public Life*, 148, 231-232.

⁵³ Trigg, *Morality Matters*, 4.

⁵⁴ Trigg, *Religion in Public Life*, 235.

⁵⁵ Trigg, *Morality Matters*, 94.

⁵⁶ Trigg, *Religion in Public Life*, 3.

Freedom needs a strong belief that it must be respected by everyone everywhere. That demand needs rational support, since it depends on insights into what is true about humanity and our place in the world. Without truth, there can be no rationality, and no way of distinguishing one body of belief from another. That is not the epitome of tolerance. It is a prescription for allowing the enemies of freedom to advance without any rational discussion about what they are doing.⁵⁷

Developing the Augustinian insight that we noted at the end of Chapter Four, that the best societies depend on a mutual bond of faith and concord, free societies may well depend on an underlying moral consensus; but where that moral consensus is eroded by appeals to individual choice and state neutrality, there is at least an argument that it may become harder for that society to remain free. Conversely, greater political freedom may require a greater self-restraint by citizens, i.e. a greater acceptance and exercise of self-controlling morality, based on a broad moral agreement between citizens. The Levellers remind us that we cannot rely on the state to make us free: that is, the state's role is essentially negative (to intervene when we abuse others' freedom), and true freedom comes from outside ourselves and outside the state. Contrary to Rawls' account of the liberal state saving us from religious strife, we could perhaps reflect on whether the liberal state might in some sense 'need' the church to help provide towards the moral consensus that underpins a free society. "It was religious commitment, not religious neutrality on the part of nations," writes Trigg, "which produced a framework in which all can be free."⁵⁸

Put another way, liberalism, as a political philosophy, admits that the state cannot, and should not attempt to, make citizens morally good. Yet liberal society seemingly depends on citizens being good, respecting the liberty of others and not harming others, and this implies a degree of agreement on what constitutes legitimate exercises of liberty and what constitutes harm. This paradox raises the questions as to what then, beyond the state, is to make citizens 'good', whether the state really should be neutral about what is good, and what are the limits of disagreement. Furthermore, if the state through its own growth in power undermines the institutions that encourage citizens to be good, or if the state denigrates the traditional understanding of what constitutes harm, then the liberal state is undermining its own foundations. The possibility is that the liberal state may thus evolve in an illiberal direction.

⁵⁷ Ibid., 49.

⁵⁸ Trigg, *Religion in Public Life*, 149.

If the Christian faith is indeed the historical basis for much of our modern understanding of individual freedom, rights, and human equality, as the research in this thesis suggests that it is, then it may well be unwise to cut these adrift from their religious basis in the name of autonomy, pluralism and neutrality. As Trigg notes, the traditions that have given rise to beliefs about liberty “may be more than an interesting historical accident. The traditions may actually help to sustain the belief, and be necessary for the principles to survive and be transmitted to future generations.”⁵⁹ Moreover, once “a State repudiates any religious foundation for itself, it recognizes no check on its powers beyond those it is prepared to recognize.”⁶⁰ Although we could question how nuanced Trigg’s account of neutrality is, it does at least raise questions over the desirability of state neutrality, what we mean by it, and whether it can even work effectively.

The key seems to be understanding what we mean by state neutrality – exactly how a state should be ‘neutral’ with respect to the various beliefs and activities of its citizens is a complex matter. If two citizens hold differing views on the Trinity and express those views, we do not expect the state to take sides in that debate,⁶¹ but if two citizens hold opposing views on the morality of slavery, and act on those views, then we do not expect the state to remain neutral with respect to those moral views and actions.⁶² The Levellers allow us to develop a more nuanced understanding of state neutrality. For the Levellers, for whom full religious liberty is key, it would be axiomatic that the state should be strictly ‘neutral’ with respect to religious beliefs. However, at the same time they held that there were natural law truths which, although rooted in Christology, were knowable without faith, revelation or the church – available to all through reason: with respect to these truths, in so far as they impact the public order, the state would not be ‘neutral’. That is, there could be no neutrality about what constituted justice in the public arena. This is quite different from the Rawlsian assumptions and notions of autonomy, choice, and privacy.

The Leveller contribution to our understanding of the nature of constitutional liberalism, is to show that it is possible to hold to the ideas of the minimal state and individual religious liberty whilst holding to an objective (natural law) understanding of

⁵⁹ Ibid., 219.

⁶⁰ Ibid., 125.

⁶¹ Cf. Murray, *Religious Liberty*, 71, 153, 206, 210.

⁶² Cf. *ibid.*, 93, 153, 241.

freedom. That is, what we are legally free to do should rest on what we are truly morally free to do with respect to others, and the truth of this rests on something outside ourselves. Not only should the state base its laws on these truths, in Leveller thinking, but recognition of these truths is the *sine qua non* of a free society. The Levellers point to liberal constitutionalism rooted in a doctrine of Christian liberty: in political truths about persons rooted in an understanding of fundamental liberty and human equality, in turn rooted in Christology. Although the state may be neutral about Christological claims *qua* theology, in its substantive conception of notions such as freedom, harm, justice and equality, it witnesses to deep Christian truths; about such notions it would not be neutral.

Glossary of key names

This glossary provides, by way of background, brief biographical details of some of the less well-known, but nevertheless key historical, names that are directly relevant to the Leveller story.¹

ALMAIN Jacques

Almain (circa 1480-1515) was a pupil of John Mair at Paris and, with Mair, is regarded as one of the leading voices in the ‘silver age’ of conciliarism.

BUCHANAN George

Buchanan (1506-1582) was taught by John Mair at Paris and in his later years became a leading voice of Calvinism in Scotland. He wrote a number of influential political works, including ones that addressed the question of resistance to tyranny.

COKE Edward

Sir Edward Coke (1552-1634) was an exponent of the common law who is best known for his *Institutes*. He served as Solicitor-General, Speaker of the House of Commons, and Attorney-General under Elizabeth I. Under James I he was Chief Justice of the Court of Common Pleas and then of the Court of the King’s Bench until dismissed. In 1620 he returned to Parliament and, during the reign of Charles I, he moved for the Petition of Right (1628). Coke was a patron of the young Roger Williams.

DELL William

William Dell (circa 1607-1669) was a free grace preacher and Army chaplain in the Parliamentary Army. He believed in one spiritual church, above human distinctions such as ‘Presbyterian’ and ‘Independent’; the church existing in the spirit, free from doctrine, form and ministry.

¹ Much of the source material in this section is taken from Meic Pearse’s book, *The Great Reformation*, and from *The Cambridge History of Political Thought 1450-1700*, edited by J.H. Burns.

DENCK Hans

Hans Denck (circa 1500-1527) was born in Bavaria, studied under Johann Eck, was banished from Nuremberg in 1526, and was (re)baptised as an adult by Hubmaier in 1526. Bucer had him expelled from Strasbourg in 1526 and he died of plague in 1527.

DENNE Henry

Henry Denne (died circa 1661) was a General Baptist evangelist and pastor, Army chaplain, cavalry officer and Leveller. He was involved in the Army mutiny at Burford in 1649.

GREBEL Conrad

Grebel (circa 1498-1526) is an important figure in the history of Anabaptism, being regarded as at the origin of the movement. A former disciple of Zwingli in Zurich, he rejected infant baptism and on 21 January 1525 started practising believers' baptism (or rebaptism, according to his opponents). Grebel died of the plague in 1526.

HELWYS Thomas

Thomas Helwys (died circa 1616), along with John Smyth, is regarded as the founder of the General Baptists. After his split with Smyth in Amsterdam, Helwys led a small group back to England in 1612 and founded the first Baptist church in England, in London. He died after just a few years back in his country.

HOFFMAN Melchior

Hoffman (1495-1543) was born in Swabia, and as an adult travelled a lot as an itinerant Lutheran preacher. In 1530 he accepted adult (re)baptism and went on a preaching mission to the Netherlands. This was historically important in two separate ways: a) he converted Dirk Philips and others, and laid the ground for the successful Dutch Anabaptists that became the Mennonites; and b) he converted Jan Matthijs who was to be one of the leaders of the revolution at Münster.

HUBMAIER Balthasar

Balthasar Hubmaier, or Hübmaier, (circa 1480-1528) was an early Anabaptist leader. He was a Bavarian, studied under Johann Eck, and became a Catholic priest, before accepting (re)baptism as an adult in 1525. He disputed with Zwingli in Zurich, worked

as an Anabaptist pastor in Nikolsburg in Moravia, and was condemned for heresy in 1528 in Vienna and executed.

IRETON Henry

Henry Ireton (1611-1651) was the son-in-law of Oliver Cromwell and Commissary General in the Parliamentary Army during the Civil War. He played a major role in the Putney Debates and in the Whitehall Debates, representing the political Independents.

LAMBE Thomas

Thomas Lambe, or Lamb, (died 1672/1673), known as a soap-boiler, led a General Baptist congregation in London in the 1640s and was closely associated with the Levellers. For a period he was a chaplain in the Parliamentary Army.

LILBURNE John

Lilburne (1615-1657) was part of the Leveller leadership. After serving as an officer in the Parliamentary Army until 1645, he spent large periods of the following years in prison for his Leveller tracts, of which he was a prolific author.

MAIR John

Mair (circa 1468-1550) was a Scots man who taught at Paris, and is regarded as one of the leading voices in the 'silver age' of conciliarism. He also taught George Buchanan.

MOLINA Luis de

Luis de Molina (1535-1600) was a Jesuit theologian who, although best known for his writings on grace, also wrote on legal, economic and political matters, including slavery, taxation, price controls, and tyranny and resistance.

MURTON John

Murton (circa 1583-1626) was in Amsterdam with Smyth and Helwys. After the split with Smyth, he returned to London with Helwys, and was the successor to Helwys as leader of the Baptist church in London. In 1626 Murton's church, together with four associated churches, sent messengers to the Waterlander church to resume negotiations towards reconciliation.

OVERTON Richard

Overton (died circa 1664) was part of the Leveller leadership. In his early life he spent some time in Amsterdam and had applied for membership of the Mennonites. The author of many tracts, he is known for his satirical writings.

PHILIPS Dirk

Dirk Philips (1504 – 1568) lived in Frisia where he was converted to Anabaptism by Hoffman. He worked closely with Menno Simons and is regarded in Mennonite circles as an important teacher of Anabaptist doctrine.

PRINCE Thomas

Prince (dates not known) was part of the Leveller leadership. He was, along with Samuel Chidley, a co-Treasurer of the Leveller Party.

RAINSBOROUGH Thomas

Colonel Rainsborough (1610-1648) was one of the most senior officers in the Parliamentary Army to support the Levellers. He played a key role at the Putney Debates.

SALTMARSH John

Saltmarsh (died 1647) was an Army chaplain on the Parliamentary side during the Civil War. He was a free grace preacher and the author of a number of tracts. In his own day, he was accused of being a Familist, because of his antinomian views; he is sometimes today identified as a Seeker.

SATTLER Michael

Sattler (1490-1527) was an early Anabaptist leader. He was a former Benedictine monk in Bavaria who became an Anabaptist in 1525. He was a leading figure in calling together the Schleithem Conference of Anabaptist leaders on 24 February 1527. He was executed in May 1527.

SCHWENKFELD Caspar

Caspar Schwenkfeld (1489 – 1561) was a leading figure in what are described as the Spiritualists. Born in Silesia, he became a Lutheran, and then – as a result of a mystical experience in 1526 – moved to a form of Spiritualism that placed heavy emphasis upon the life of the Spirit as witnessed in the Johannine Gospel and Epistles. This led to a spiritualised ecclesiology that emphasised the faith of the individual over outward ecclesial belonging.

SIMONS Menno

Menno Simons (1496 – 1561) was a Catholic priest in Frisia, who converted to Anabaptism in 1536. He was ordained as a leader in 1537 by Dirk Philips' brother Obbe. Simons worked in the Netherlands and northern Germany and emerged as the leader of what were to become known as 'Mennonites'. Simons and Dirk Philips had many struggles with the use of the 'ban' (excommunication), and one of the groups of Mennonites that broke away was the 'Waterlanders' of North Holland who would be influential in the story of Smyth and Helwys and the development of English Baptism.

SMYTH John

John Smyth (circa 1570-1612) went into exile in Amsterdam in 1607/1608 where he was joined by Thomas Helwys and others from England. There they formed the group that were to become the General Baptists: in early 1609 Smyth baptised himself and then (re)baptised Helwys and the others. Smyth and a majority of the congregation ultimately split from Helwys and his group; after which Smyth's group sought union with the Mennonites.

WALWYN William

Walwyn (1600-1680) was part of the Leveller leadership. He was an early proponent of religious toleration, even for Catholics. He is the author of a large number of tracts.

WILDMAN John

Wildman (1623-1693) was part of the Leveller leadership. He studied law and, although he did not write as many tracts as the other Leveller leaders, he played a key role at the Putney Debates.

WILLIAMS Roger

Roger Williams (1603-1683) is often regarded as the founder of the Baptist Church in North America. He emigrated from England to Massachusetts, from where he was expelled, and thus came to found Providence, Rhode Island. He returned to England in 1643 and published *The Bloudy Tenent* the following year, before returning to Providence.

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- STC Short Title Catalogue, British Library, London
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¹ The authorship of this tract is disputed.

² I have brought together here the Agreements and a number of Petitions under the authorship of 'various', for a number of reasons: a) for the sake of clarity and to aid the reader; and because b) the published multiple author names do not always correspond with the exact authorship amongst the listed authors; c) the multiple authors named in a work are sometimes pseudonyms; and d) the British Library sometimes lists the author as the first of several people to sign a document rather than the actual author(s) of the document.

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