"Written naturally by the finger of God in our hearts" Leveller Politics, the English Revolution and the Natural Law Tradition.

Simon Writer*

Richard Overton expressed the fundamental principle of the Levellers as a state in which:

> "[a]ll Formes of Lawes and Governments may fall and passe away; but *right Reason* (the fountain of all justice and mercy to the creature) shall and *will endure for ever*; it is that by which in all our Actions wee must stand or fall, be justified or condemned; for neither *Morality* and *Divinity* amongst *Men* can or may transgresse the limits of right reason, ..." [1]

This statement stands in stark contrast to the reality of the polity and society of Stuart England, a nation centred about the absolute kingship of the Lord's anointed and a culture pervaded by the reality of Divinity and the centrality of the Bible.[2] The Levellers were concerned with fundamentals other than those of God, King and Church. They were concerned for man's natural freedom to control his own fate in concert with his countrymen within the essential principles which govern man's interaction with his neighbours. Leveller principles appeal to the ancient conceit of the "rights of Englishmen" and the simple genius of their laws, but also to a far more venerable tradition: the natural law of Aristotle, Augustine and Aquinas uncovered by human reason. While one may identify the Levellers with this ancient line of thought, it is one thing to claim that the

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* BA LLB (Hons) Dip Leg Prac (Newc), Solicitor, Allen Allen & Hemsley , Sydney. A note on spelling: the original spelling and form of all quotations taken from seventeenth century sources.

[1] Richard Overton "An Appeale from the degenerate Representative Body the Commons of England assembled at Westminster." London, 1647 in D.M. Wolfe (ed.), *Leveller Manifestoes of the Puritan Revolution, USA:* Thomas Nelson & Sons, 1944; reprinted by Frank Cass & Co. Ltd 1967, 154, at 158.

[2] C. Hill, *The English Bible and the Seventeenth Century Revolution.* London: Penguin Books, 1994, 7-8, 39.

Levellers identified the fundamentals of natural law, but it is quite another to ascribe to them an active acceptance and development of classical naturalist theory.

The failure of the Stuart royal system to tolerate the competing forces of political, religious and social change tore apart the constitution of English government. The turmoil of the English Revolution spawned a mass of ideas and inspired a welter of radical groups to attempt to inspire the reconstitution of the kingdom. Among Ranters, Quakers, Fifth Monarchy Men and Diggers, the Levellers were the radical party that came closest to influencing the reformed English state, and their ideas have had a lasting impact on its politics. Some ascribe to the Levellers a "left-wing" viewpoint, equating their radicalism to leftist tendencies.[3] Such a view is shallow. While the Levellers propounded a philosophy of secular government, representative democracy and personal rights a century before the likes of Jean-Jacques Rousseau, Tom Paine and Thomas Jefferson, to describe them as left-wing, if only in a nascent sense, is a misidentification of modern perspectives with those of the seventeenth century.

The Leveller ideal of the continuing consent of the governed as the basis of government is at variance with the limited contractarian notions of the arch-monarchist Thomas Hobbes and the constitutionalist John Locke. The Levellers took issue with the institutions of the state: the monarch, his advisers in Parliament, the law and the Church, exposing their inadequacies to the brilliant light of "Eternall Reason" and displaying their manifest failures to the ordinary Englishman since the construction of royal government in the eleventh century. Central to Leveller philosophy was the concept of natural law: a basis for all government, law and reason "written naturally by the finger of God in our hearts."[4]

The Levellers were a popular, if radical, political movement. Their inspiration was not, it would seem, derived from high-minded philosophical principles and so seems to fall outside the tradition of natural law jurisprudence. Natural law demands the acceptance of an essential principle: that there is a collection of ultimate truths at the foundation of human existence and interaction. This pure notion of natural law - *"right Reason"* - is one that is essentially philosophical when considered in metaphysical or rational terms. The language of naturalist thought is not the talk of everyday folk.[5] It is this disparity between the language of naturalism and the commonfolk's conception of their rights and the laws that governed them that makes the Levellers so incongruous. They emerged in the mid-1640s as a radical group of protest. They demanded the

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[3] Zagorin, *A History of Political Thought in the English Revolution*,London: Routledge & Kegan Paul, 1954, Chapter 1.

[4] "A copy of a Letter from the Agents of the Aforesaid Five Regiments of Horse, unto His Excellency Sir Thomas Fairfax" in W. Haller & G. Davies (eds.) *The Leveller Tracts, 1647-1653*. Gloucester, 1963, 85.

[5] R. Gleissner, "The Levellers and Natural Law: The Putney Debates of 1647", (1980) 20 *Journal of British Studies* 74.

recasting of English society on secular lines, the reformation of the political system and the recognition of popular sovereignty. They desired the reformation of the law to reflect the essence of human interaction not the protection of human difference. Yet, in the pamphlets and records of the Levellers we find no detailed ontological justification for Leveller principles nor do they enter into abstract discussion of the ethical bases of their actions.

The platform of the Levellers was one of practical change, urging responsible government to replace the patent inadequacy of Charles I and his régime in a period in which the conventions of English government were abused, mishandled and ultimately forced to collapse. Not merely a reaction to monarchic failure, the Levellers presented an alternative to the self-interested and austere authoritarianism of the commonwealthmen. In doing so the Levellers remained men of their time, for even radicalism had its limits. The approach of the Levellers was disinterested in the use of religion in government, at a time when Church and State were the creatures of a divinely inspired king. When Paul says "In Christ there is neither bond nor free, neither male nor female" or Peter states that "Ye are a chosen generation, a royal priesthood, an holy nation, a people set at liberty,"[6] the Levellers do not seize on such statements as definitive justifications for their ideas. Rather, they viewed the Divine's function as being to preside over the system as the source of the eternal and natural law. God did not embrace government as the previous regime had required him to do. Religion was not to be a foundation of the government of the state, but act only as the moral and spiritual guide of the people. Yet, like their contemporaries, the Levellers were imbued with the metaphysical requirement of the divine in the origin and continuance of humanity's existence and interaction. The England of the seventeenth century was a God-soaked place, not in the sense that religion weighed heavily upon society, but in that the world-view of the Englishman was one in which the Divine's essentialness was instinctive and the language of the Bible natural.[7] God was the creator of nature, and the law of nature was the only true law. God was not used by the Levellers to justify law, but to be its source, just as He was the source of all else.

The Leveller's support was essentially popular and their power base was in the ranks of the New Model Army. They enjoyed no high-minded philosophical position, but they had a political platform. Of the four leading figures in the movement, neither Richard Overton, John Lilburne, William Walwyn, nor John Wildman were men finely educated in the arts of reason as were the *philosophes* of the next century. They were middling sorts, not blessed with the necessary requirements of seventeenth century political success: estates and a pedigree. None of them were profound thinkers closeted in the confines of England's established ecclesiastical or

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[6] Galatians III.28; I Peter II.9

[7] C Hill, - Introduction - *"A Biblical Culture"*, above at n 2, at 3-46.

academic institutions. Despite John Lilburne's insistence to the contrary, they were not gentlemen of status like Oliver Cromwell of Huntingdon, and nor were they versed in Hebrew, Greek and Latin.[8] These were not men who had been brought up to read, as a matter of course, Aristotle's *Politics* in Greek, nor Augustine's *Civitate Dei* in Latin, or for that matter Aquinas' *Summa Theologica*, the work of the principal philosopher of the medieval Roman Church. In this they were typical of that flowering of uncouth intellect unleashed by the English Revolution: writers of the skill and force of John Bunyan, George Fox, Lodowick Muggleton, Clement Writer and Francis Osborn among many others, who overshadow their more conscientiously educated contemporaries for the force and longevity of their ideas. Elegant treatises and commentaries in the mode of intellectual discourse were not their style. Instead, Lilburne and his colleagues issued remonstrances, appeals, cases, defences, mournfull [sic] cries, petitions, proposals and manifestations in plain English to the powerful and to the people. The Levellers demanded freedom from the "Norman Yoke" that was English government, an end to the monopoly practices of the City companies, the lawyers, the clergy, traders and the Government.[9] If anything, Leveller ideas concerning competition are attractively modern in their desire to deregulate. They attacked the rich and powerful as

> "Ye [that] are so rich; fat and swollen with wealth, that ye esteem far less of plain men than you do of your horses and dogs, which ye feed and pamper, whilst by your means such as we are enforced to starve and beg."[10]

The Levellers were not like Gerrard Winstanley's Diggers who demanded economic democracy, or the "Saints," the millenarian Fifth Monarchy Men, the Quakers or the Ranters and other religious radicals, who demanded a reformation and purification of society.[11] Their radicalism was tempered by an accessibility and universality that their more radical and religious contemporaries did not have.

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[8] H. Shaw, *The Levellers*. London: Longmans, 1968, 27-35; see also R. Gleissner, "The Levellers and Natural Law" above at n 5, at 77; and C. Hill, above at n 2, at 199.

[9] See John Lilburne "England's Birth-right Justified Against all Arbitrary Usurpation, whether Regall or Parliamentary, or under what Vizor soever." 1646 in G.E. Aylmer (ed.), The Levellers in the English Revolution.,London: Thames & Hudson, 1975, 56; See also P. Zagorin, above at n 3, at 11.

[10] "England's Troublers Troubled, Or the just Resolutions of the plaine-men of England, Against the Rich and Mightie" 1648 in B. Manning, *The English People and the English Revolution: 1640-1649*. London: Heinemann, 1976, 279.

[11] These names are, like "the Levellers," derogatory. The Diggers are so called from their agricultural communism, the Quakers because they would "quake in the presence of the Lord;" and the Ranters because of their extreme radicalism. The Levellers were so-called from the belief of their opponents that they wished to level society - to introduce complete equality. see A.G.R. Smith, *The Emergence of a Nation State: The Commonwealth of England 1529-1660*. London: Longman, 1984, 348-354; see also C. Hill, *The World Turned Upside Down: Radical Ideas during the English Revolution*. London: Temple Smith, 1972, 93-96.

Unlike most idealists the Levellers were to enjoy the opportunity to make their case to the nation, for in late 1647 there occurred a truly remarkable event, one which expresses the form and the content of Leveller principles and proposals and the direct responses of the powerful to their program. At the end of October, 1647 the General Council of the Army met under Oliver Cromwell's presidency in the church at Putney. The General Council was elected from among the ranks and the commanders of the New Model Army. Here the Levellers, their main source of support being among the common soldiers, challenged their commanders over the future of England. Colonel Thomas Rainsborough presented the Leveller program, whether out of principle or pragmatism we do not know, and furthered his own considerable political ambitions in opposition to those of Cromwell.[12] The leaders of the Army, the "grandees", were represented by Cromwell's son-in-law Commissary-General Henry Ireton.[13] The Council discussed the Leveller proposals for the recasting of English society as expressed in the "The Case of the Armie Truly Stated."[14] The Leveller spokesmen advocated a new system of consensual government by all men and certain fundamental rights ultimately governed by a "law paramount." It is this which is my interest, this natural law by which every man is:

> "given an individuall property by nature, not to be invaded, or usurped by any: for every one as he himself, so he hathe a self propriety, else could he not be himselfe, and on this no second may presume to deprive any of, without manifest violation and affront to the very principles of nature..."[15]

The debate at Putney Church was not a discussion of those abstract philosophical principles which would govern the new England. Instead, the meeting was a political clash between the radical and those who would in time assume authority. The Levellers drafted "An Agreement of the People"as a manifesto of their hopes and political goals.[16] The *Agreement*

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[12] Also called Rainbow and Rainsborow. Rainsborough's commitment to Leveller ideas is tenuous, he is variously described as Cromwell's main rival and a demagogue, see J.R. MacCormack, *Revolutionary Politics in the Long Parliament*, Cambridge, Mass: Harvard University Press, 1973, 235.

[13] See H.N. Brailsford, in C. Hill (ed.) *The Levellers and the English Revolution*, London: The Cresset Press, 1961, 283. Ireton was Commissary-General of the Cavalry in the New Model Army and Oliver Cromwell's son-in-law.

[14] "The Case of the Armie Truly stated, together with the mischiefs and dangers that are imminent, and some suitable remedies." 15 October, 1647 in D.M. Wolfe (ed) above at n 1, at 196ff.

[15] Richard Overton "An Arrow Against all Tyrants and Tyranny, shot from the Prison of Newgate into the Prerogative Bowels of the Arbitrary House of Lords, and all other Usurpers and Tyrants whatsoever ." 12 October, 1646 in G.E. Aylmer (ed.),above at n 9, at 69.

[16] "An Agreement of the People for A firme and present Peace, Upon grounds of common-right and freedom; As it was proposed by the Agents of five Regiments of Hors; and since by generall approbation of the Army, offered to the joynt concurrence of all the free Commons of England." in G.E Aylmer (ed), above at n 9, at 88ff.

expressed the sentiment that:

> "We do now hold our selves bound in mutual duty to each other, to take the best care we can for the future, to avoid both the danger of returning into a slavish condition, and the chargeable remedy of another war..."[17]

The manifesto demanded the essential sovereignty of the people be recognised in a general franchise, the equal distribution of parliamentary representation, regular elections and parliamentary sessions, the acknowledgment of the natural rights of every man to freely practice his protestant and presbyterian Christian faith, to be free of conscription, and to enjoy the fair application of the law. It was nothing if not an adventurous document, expressing an opposition to traditional monarchic conceptions of government but also to the limited distribution of sovereignty envisaged by Cromwell and the landed commonwealthmen.[18] The *Agreement* sprang from the resentment and frustration of the ranks of the Army, informed and expressed by the Levellers. The men of the Army were ill-paid and their leadership had begun negotiations with the king, a ruler who had made war on his own people. It seemed that the great cause of reconstitution in England was slipping away.[19] The Putney debates were the one great opportunity the Levellers, as the representatives of the people, had to influence the future of England, for never again were they to enjoy official tolerance.

The Leveller spokesmen continually invoked the concept of natural law as a foundation of their program of reform. In 1646 John Lilburne clearly stated naturalist principle when he said that:

> "...God, creating men for his own praise... made him not lord, or gave him dominion over the individuals of Mankind, no further then by free consent, or agreement, by giving up their power, each to the other, for their better being." [20]

Overton was to state in that year that "[n]ature itself doth bind every man to do according to his power..."[21] When Lilburne described the essence of natural principle as "this golden and everlasting principle, to do to another, as he would have another do to him,"[22] it is an obvious reference to Christ's words in the Gospel of Matthew: "Whatsoever ye would

[17] "An Agreement of the People", in G.E. Aylmer (ed) above at n 9, at 88.

[18] This is not so say that the Levellers would not compromise, as Lilburne proposed in 1647-1648, when with increasing concern about his ideas in the City of London and among the establishment he proposed as a compromise the retention of the king to preside over a Leveller democracy, see J.R MacCormack, above at n 12, at 233.

[19] See H.N. Brailsford, (C. Hill (ed.)) above at n 13, at 254.

[20] See John Lilburne, "A Postscript" in G.E. Aylmer (ed), aboveat n 9, at 71.

[21] Richard Overton "A Defiance against all Arbitrary Usurpations" in J. Frank, *The Levellers, A History on the Writings of Three Seventeenth Century Social Democrats: John Lilburne, Richard Overton, William Walwyn.* New York, 1955, 88.

[22] John Lilburne "A Postscript" in C. Hill,above at n 2, at 200.

that men should do to you, do ye even so to them: for this is the law and the prophets." The equation of natural principle with Christ's "golden rule" reflects nothing more than the elemental role of religion and religious expression in the public discourse of pre-modern England. Lilburne is described as having "the Bible in one hand and the writings of Sir Edward Coke in the other." Statements of elemental principle, cloaked in religious imagery or not, are to be found throughout the Leveller tracts and in the arguments put at Putney. They indicate a presumption of the essential principles, from which laws are derived, which underlie human actions and desires and that adherence to these principles is for man's ultimate benefit.[23] While such statements appear to be within the conception of natural law jurisprudence, the Levellers also stand out as being a political group responding to the strife which had overtaken England. Their conceptions of natural law do not fit well in the continuing philosophical discourse. Leveller ideas are limited to time and to place in their responsiveness to the English crisis, but in spite of this they embrace wider themes and stand as part of the stream of ideas that enjoy the pedigree of Western philosophy.[24]

The historical experience of England in the sixteenth and seventeenth centuries gave rise to the recognition of a new phenomenon in European political thought: the multitude of individuals who constitute the nation. This is not the pejorative mob so feared by those in authority on the continent until well into the nineteenth century, whose unruly corporate potential posed such a threat to established order, but the collective of free men who make up the state. This theoretical recognition of the place of the individual in the English polity marks an important development in the development of English political theory: the notion of the commonwealth of free-born men. In *The Trew Law of Free Monarchies*, James I & VI viewed government as a simple matter of the divinely-sanctioned and absolute ruler and the ruled. The Tudor social critics, Sir Thomas Smith and his pupil Bishop John Ponet, had moved from the classic formulation of the state as the guarantor of the rights, privileges and liberties of its members, to recognise a "society or common doing of a multitude of free men collected together by common accord and covenauntes among themselves, for the conservation of themselves in peace as well as in warre."[25] When the Levellers speak of a "Civill Government" being "more just in the constitution, than that of Parliaments, having its foundation in the free choice of the people; and as at the end of all Government is the safetie and freedome of the governed, ..."[26] we see a practical manifestation of this new conception of the English state and its members, provoked into

[23] See R. Gleissner, above at n 5, at 77.
[24] R. Gleissner, above at n 5, at 75-77.
[25] Sir Thomas Smith *De Republica Anglorum* 1583, 57.
[26] See "The humble Petition of many thousands, earnestly desiring the glory of God, the freedome of the Common-wealth, and the peace of all men." in John Lilburne's "*Rash Oaths*" in D.M.Wolfe, above at n 1, at 135.

being by the excesses of Stuart monarchy.

A traditional historical approach, most notably adopted by Professor CB MacPherson, places the Levellers in the same context as Thomas Hobbes or John Locke and their notions of a "limited" sovereignty.[27] Both Hobbes and Locke concern themselves with elemental government, but each of their conceptions have components that are not so open to the common people. For Hobbes the multitude are relegated and confined to a position whereby they consent to the government of an absolute ruler by giving up their right to resist.[28] In Locke's political construct the people, in a manner similar to the position adopted by Ireton in the Putney Debates, consent to government by their presence and their active participation in human affairs. MacPherson places natural law principles, of themselves, in a position incidental to Leveller thought, rather than as an inspiration for it. Professor MacPherson enunciates the theory of "possessive individualism" as the Levellers' motivation, a theory which is centred on the individual's desire to achieve the best possible personal result and a proprietary nature of man's natural rights, a notion reflected in radically different forms by Locke's conception of the natural right to property,[29] and Hobbes' natural law.

Hobbes expressed the principles of natural law as being "the instrumental and hypothetical rules of reason regarding the best means to self-preservation."[30] The Levellers on the other hand were to accord natural principles a different emphasis, one of self-evident and comprehensive truths which were the basis for all positive law. Social contractarianism, while it may manifest in natural law notions, is not necessarily cogent with the development of classic naturalist theory. For Thomas Hobbes, the social contract was desirable for the creation of authority which would then prevent civil rebellion and war, a "Common Power, to keep them in awe, and to direct their actions to the common benefit."[31] Hobbes' contract was no continuing manifestation of the popular will, but rather a Leviathan that was uncontrolled other than by absolute authority, whether kingly or republican. In contrast to Hobbes, John Locke held the

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[27] See C.B. MacPherson, *The Political Theory of Possessive Individualism*. Oxford: Oxford University Press, 1962,.141-142; see also R. Gleissner, above at n 5, at 76.

[28] See EM Wood & N Wood *A Trumpet of Sedition: Political Theory and the Rise of Capitalism 1509-1688* London: Pluto Press, 1987, 98.

[29] see R. Howell Jr & D.E Brewster, "Reconsidering the Levellers: The Evidence of the Moderate" in C. Webster (ed.) *The Intellectual Revolution of the Seventeenth Century*, London: Routledge & Kegan Paul, 1974, 80. Prof. MacPherson also asserts that the Leveller's democracy is not so comprehensive as one might first apprehend, limited as it was to those either not servants or indigent as specified in the resolution passed at Putney; see *The Theory of Possessive Individualism: Hobbes to Locke*, Oxford:Oxford University Press, 1962, Ch. 3 "The Levellers: Franchise & Freedom."; See also J.C.Davis, "*The Levellers and Democracy*" in Webster, C (ed.) above, this note, at 70ff.

[30] R. Gleissner, above at n 5 at 83, citing P.E Sigmund, *Natural Law in Political Thought*. Cambridge, Mass. 1971.

[31] Thomas Hobbes, *Leviathan*. 1651, 223. Hobbes goes so far as to describe the generation of the "Leviathan , or rather (to speake more reverently) of that *Mortall God* ..."

justification of government to be one where "[i]t is a power that hath no other end but preservation, and therefore can never have a right to destroy, enslave or designedly impoverish the subjects."[32] Rule, as limited by Parliament, is consented to by one's presence in a "civill societie" not participation in that society, which is for those, whose means permit them, who are enabled to do so.

Locke and Hobbes regarded government and therefore law, although consented to, as an essentially authoritarian guide for the people. They do not invoke an inclusive teleology. Like the Platonic conception of government by the *"philosopher-king"* their requirement for good government was leadership, superior wisdom and an essential element of control, whether by an absolute ruler or by Parliament. While this may involve the protection of certain fundamental matters, most notably self-preservation and proprietary rights, the nature of consent to government was ill-defined. Hobbes put forward a notion of the necessity of self-preservation and so the *intention* of submission to society. For Locke the means of doing so was chiefly tacit, by one's mere presence in the jurisdiction of the governor(s), few had the luxury of express consent, and so government was validly constituted.[33] The Levellers required continued express consent for the proper constitution of laws by government. For them sovereignty resided in the people, not a single indissoluble and untouchable monarch nor an exclusivist aristocracy. As the consent of the governed was required for the application of a law, and this was a natural principle, then lawfulness was, even on this basic level, subjected to the test of natural principle, for each man desires "by natural instinct . . . his safety and weale"[34] and so may choose those that make laws to achieve this end. In Hobbes' scheme the singular social contract would guard against anarchy, and for Locke, against bad government.

The authors of *A Trumpet of Sedition* would have the Levellers advance a proto-democratic scheme, which develops with the rise of capitalism, to result in the modern reality of democracy gone awry, influenced and directed by the market and not by the forces of popular will and accountability.[35] However, for the Levellers the result of the continuing social contract was to be "better being" based not so much in a contract by which men conferred government on a sovereign but consensual government where the authority was:

> "instated into . . . soveraign capacity, for the free people of this Nation, for their better being, discipline, government, propriety and safety, have each of them communicated so much unto you (their Chosen ones) [in this case the

[32] John Locke, *Two Treatises of Government.* 1683 Bk.II Cap.II.

[33] See M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence* (6th Ed), London: Sweet & Maxwell, 1994, 102-104.

[34] R. Gleissner, above at n 5, at 87; citing A Leveller called "Buff-Coat" *Clarke Papers,* 243.

[35] EM Wood & N Wood, above at n 28, at 135-137.

House of Lords] of their naturall rights and powers, that you might thereby become ... their lawfull Deputies *but no more.*"[36]

Unlike the sober earthly existence and pre-destined *post-mortem* salvation of the new Presbyterian establishment the Levellers desired the improvement of mortal man's lot to be achieved by the consent and participation of the governed. This consensual view of government is based in natural principles and "our *native rights.*"[37] This notion relates not so much to high minded democratic ideals, but the ancient conceit of the English: their regard for their rights as Englishmen. What the Levellers wanted was accessible government, unfettered by long-term control and limited participation. They challenged property as the basis of political participation, but not the basis of property. The Levellers wished to reduce participation in the polity to a level: humanity; but not to remove private property as an Englishman's birthright, however much of it he might have.

In his "Remonstrance of Many Thousand Citizens" Richard Overton reminded the House of Commons of its obligation to "deliver us from all kind of Bondage, and to preserve the Common-wealth in Peace and Happinesse."Overton added that "[w]ee [the people] are your [the Commons'] Principalls, and you our Agents."[38] In this respect the Levellers have more in common with the theories of Richard Hooker in his *Of the Laws of Ecclesiastical Polity.*[39] More than any other thinker, Hooker laid down the fundamentals of Anglican political theory, the conception of England as a society of belief, a nation and a church in one. Hooker's theory of consensual government accords with Hobbes', as his 'corporation' consent was continuing as "we were then alive in our predecessors, and they in their successors do still live."[40] While Hobbes was an atheist, and Locke a disinterested member of the state church, Hooker informed his political theory with a religious sensibility of higher achievement. Hooker's, and the Levellers', conception of "better being" follows from Aristotle's teleological conception of the potential or "good" of a person or a positive law allowing for the achievement of maximum potentiality within the state.[41] For Hooker the framework of English religion, and one's consequent adherence to the basic principles of the state, promoted the attainment of grace and "Dignity". The Levellers, wanted the attainment of an ideal state through natural principles, and so an ideal human existence and the accordance of individual political 'dignity'. Aristotle's "political animal" is like the persons Richard Overton described as being:

[36] Richard Overton *"An Arrow Against all Tyrants"* in G.E. Aylmer, above at n 9, at 69.

[37] *"An Agreement of the People"* in D.M. Wolfe (ed), above at n 1, at 228.

[38] Richard Overton *"A Remonstrance of Many Thousand Citizens, and other Free-born People of England, To their own House of Commons."* 1646 in D.M. Wolfe (ed), above at n 1, at 112-113.

[39] R. Hooker, *Of the Laws of Ecclesiastical Polity* 1593.

[40] R. Hooker, *Of the Laws of Ecclesiastical Polity* I.x.8.

[41] see R. Gleissner, above at n 5, at 79; see also H. McCoubrey & N. White, *Textbook on Jurisprudence, London:* Blackstone Press Ltd, 1993, 63-64.

"by nature ... sons of Adam, and from him we are derived natural propriety, right and freedom... It is but the just rights and prerogatives of mankind (whereunto the people of England are heirs apparent, as well as other nations) which we desire... that we may be men, and live like men."[42]

Like Hooker, some form of "better being" is the ultimate good desired in the Leveller view of government and law: an inclusive teleology. But they were not immune to the practicalities of government. For the Levellers the government of the state was to be entrusted to some with the proviso that "assent of them who are to be governed seemeth necessary." The Levellers nowhere state that those who do the governing have some innate ability and right to govern, as would James I & VI, Ireton, Hobbes and Locke, or for that matter, Hooker.[43]

Henry Ireton conceded at Putney to the proposition that the consent of the people was required for government but unlike the Levellers, who required this consent to be continuing, Ireton spoke of a single consent, once binding then forever in force: "Covenants freely made, freely entered into, must be kept with one another."[44] Ireton took this crude Lockean view further and required that a man should have a stake in the kingdom to be part of the covenant:

"[n]o person hath a right to an interest or share in the disposing of the affairs of the kingdom, and in determining or choosing those that shall determine what laws we shall be ruled by here - no person hath a right to this that hath not a permanent fixed interest in this kingdom and those persons together are properly the represented of this kingdom and consequently are also to make up the representers of this kingdom, who taken together do comprehend whatsoever is of real or permanent interest in this kingdom."[45]

No other interest but property would suffice to satisfy Ireton's requirement of a stakehold in the kingdom.[46] The Levellers contended that this notion was of itself against nature. They did not argue that the right to participate in government was itself a natural right but rather that the exclusion of some (actually the great majority) on the basis of a qualification allowed the few to make positive laws, unjustly, for the many without their consent.[47] This would constitute the ultimate test of natural principle which positive laws must satisfy. For Ireton and the grandees a shallow acknowledgement of popular sovereignty was a means to achieve the demands of government. The Levellers desired to give this popular

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[42] Richard Overton *"A Copy of a Letter from the Agents of Aforesaid Five Regiments of Horse, unto His Excellency Sir Thomas Fairfax"* in W. Haller & G. Davies (eds.), above at n 4, at 85.

[43] R. Gleissner, above at n 5, at 87; citing Richard Hooker *Of the Laws of Ecclesiastical Polity.* I.x.4, 241-242.

[44] R. Gleissner, above at n 5, at 82; citing Clarke Papers, 262.

[45] H.N Brailsford in C. Hill, (ed.), above at n 13, at 275-276.

[46] Above at n 45; see also R. Gleissner, above at n 5, at 82-83.

[47] See R. Gleissner, above at n 5, at 86.

sovereignty actual meaning, the judgment of the people being ultimate within the framework of the state.

In "England's Birth-right Justified," Lilburne decried the English legal system as obscure and inconsistent, a device for controlling the people rather than providing for better being within the state. He spoke of a situation where:

> "the Parliament hath a power to annull a law, and to make a new Law, and to declare a Law, but known Laws in force & unrepealed by them, are a Rule (so long as they so remain) for all the Commons of England whereby to walk; and upon the rationall grounds is conceived to be binding to the very Parliament themselves as well as others... where there is no Law declared, there can be no transgression; ... But take away this declared Law: and where will you find the rule of Obedience?... Yea, take away the declared, unrepealed Law, and then where is Meum and Tuum [me and you], and Libertie, and Propertie? But you will say, the Law declared, binds the People, but is no rule for a Parliament sitting, who are not to walk by a knowne Law."[48]

Lilburne was pointing to the ultimate requirement of natural principle to govern human affairs. To argue, as Haller and Davies do, that the Levellers were concerned with a more immediate imperative, arising from "common belief and experience" and responding "immediately to common need"[49] is to state little more than a truism. The Levellers were advancing a political program which demanded the reform of a society riven by internecine politics. The Levellers' opponents responded in kind, addressing the proposals as political points. This is reflected in Ireton's view of the Leveller proposals when he asked at Putney Church:

> "[w]hat right hath any man to anything, if you lay not down that principle, that we are to keep covenant? 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."[50]

For Ireton and his colleagues the law of nature meant lawlessness and an attack on the proprietary basis of English law. They regarded the Levellers' ideas as promoting anarchy, their inspiration a response to the breakdown of English society rather than a development of an essential concept of governance. For them the Levellers' ideas were a potent threat, one which challenged the very supremacy of government by the politically interested and aware gentry, from which the leaders of the Parliamentary forces were derived. In the Commonwealth, government and law was to require obedience and submission to the state. This may involve a form of consent, but the notion of consent was not the essence of the conservative response at

[48] "England's Birth-right Justified Against all Arbitrary Usurpation, whether Regall or Parliamentary, or under what Vizor soever.", 1646, in G.E. Aylmer (ed), above at n 9, at 56-57.

[49] W. Haller & G. Davies (eds), above at n 4, at 8, 41-48.

[50] Henry Ireton, in H.N. Brailsford in C. Hill (ed), above at n 13, at 281.

Putney. Rather, Ireton and the Commonwealthmen demanded obedience, an obedience by the governed to the original compact and not some continuing agreement. In the view of the Army commanders only obedience to positive law could protect the continuance of the polity. This crude theory of command, based in the definitive authority of law, goes directly against the principles of the Levellers.[51]

From the basis of the inherent validity of government as guaranteed by the continued obedience of the subject, Ireton argued that positive laws were, of themselves, just. Ireton took the view that "there could be no other foundation of right... but this general justice and this general ground of righteousness, that we should keep covenant with one another."[52] The positive laws which arise out of such a covenant were, for Ireton, valid by virtue of their enactment, not some hazy conception of natural law. The Commissary-General also spoke of a man's duty to obey the properly constituted positive laws of the state. This is indicative of Ireton's conception of consent: a single, binding and strict action. Adherence to a paramount law of nature could only serve to undermine this covenant.[53] The Levellers regarded this form of approach as allowing the government scope for abuse of the laws of the kingdom, just as Charles I had done. At Putney the Leveller spokesmen put forward the view that a man, as a part of the polity, was subordinate to the positive laws of that polity insofar as these laws did not conflict with binding natural principles. The unjust impositions of Charles I or the Commonwealth would not stand up to this ultimate test, so who would determine the justice of laws? The consciences of all men deciding the justice of laws could only lead to confusion and anarchy, something that the Levellers did not want.

Colonel Rainsborough said that all men have an objective morality: "God and his [the individual's] conscience."[54] Earlier, John Lilburne had stated emphatically that laws should be "agreeable to the law Eternall and Naturall, and not contrary to the Word of God." John Lilburne's expression accords with the general principle put forward by Sir Edward Coke in his *Institutes of the Laws of England*: for Coke, "[w]here Reason ceaseth, the law ceaseth" and "[a]ll customs and prescriptions (Acts of Parliament, laws and judgments) that be against reason are void and null in themselves."[55] Lilburne was concerned that this "Reason is demonstrable of it self, and every man (less or more) is endued with it."[56] But Sir Edward Coke and the common

[51] This is rather similar to Austin's notion of the imperative nature of law, whereby the subject obeys by virtue of the status of the law as law without reference to its "goodness or badness". See J. Austin, "The Province of Jurisprudence Determined." p.126. in M.D.A. Freeman, above at n 33, at 255.

[52] R Gleissner, above at n 5, at 82; citing Clarke Papers, 262.

[53] Above at n 5, at 81.

[54] Above at n 5, at 81.

[55] Sir Edward Coke "Institutes of the Laws of England" in H.N. Brailsford (Hill, C (ed.)) above at n 13, at 618.

[56] G. Burgess *The Politics of the Ancient Constitution: An Introduction to English Political Thought 1603-1642*. London: MacMillan, 1992, at 90-91; citing John Lilburne "The Legall Fundamentall Liberties of the People of England" - 1649.

lawyers held the determiner of Reason, and therefore validity, to be the common law itself, its customary nature being the test of its rationality. For Coke the sovereign was the Law, all was subject to it including the monarch, "[f]or when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such Act to be void."[57] In the *Case of Prohibitions*[58] Coke described the nature of law as a concept involving:

> "... causes which concern the life, or inheritance, or goods, or fortunes of [the king's] subjects, are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an act which requires long study and experience, before man can attain to the cognizance of it: that the law is a golden metwand and measure to try the causes of the subjects; and which protected His Majesty is safety and peace. With which the King [James I & VI] was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith *quod Rex non debet esse sub homine, sed sub Deo et lege* (whereas the king is not bound under any man, but is under God and the law)."

Therefore, the judges of the royal courts, steeped in the essence of the ever-evolving common law, were the determiners of right reason[59]. For Lilburne and his Leveller colleagues the situation was different: only simple tests of rationality and natural morality would suffice to determine the nature of law.[60] The judges of true legality need not be trained in the arcane forms of English common law, but need only be good citizens. In this view the Levellers conform with the essence of Thomist theory, by which a positive law, part of the *lex humana*, is only just insofar as it conforms with the law of nature (*lex naturalis*) and the law of God (*lex æterna*).[61] The Levellers made no such distinction between the law of nature, as observed by human beings, and the law of God. The two forms of law were the same. There was only one principle: "the originall Law of nature."[62]

The Levellers held that the justness of a law was determined not by its meaning, but by the essence of man's natural existence. A simple positive

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[57] See WJV Windeyer, *Lectures on Legal History* 2nd Ed. Sydney: Law Book Co, 1949, at 222; citing *Bonham's Case* 8 Co. Rep. 118 *per* Coke CJ in CP.

[58] 12 Co. Rep. 65

[59] WJV Windeyer, above at n 57, at 96, 222-223. Bracton went on to say that « . . . *quia lex facit legem. Attributat igitur rex legi quod lex attribuit ei, videlicet dominationem et potestam; non est enim rex ubi dominatur voluntas et non lex.*» (. . . for the law makes the king. Thus should the king attribute to the law what the law attributes to him, dominion and power, for the king does not rule where will rules instead of law.) Bracton *De Legibus et Conseutudinibus Angliae* c.1250

[60] G. Burgess, above at n 56, at 93.

[61] H. McCoubrey & N. White, above at n 41, at 69-70.

[62] D.M. Wolfe, above at n 1, at 21. For the Levellers the notion of the law of God and the law of nature were interchangeable: eg Lilburne's use of the "Golden rule" and Rainsborough's invocation of the eighth Commandment (Exodus xx, 15) in response to Ireton's claim that natural law would undermine a man's right to property: "God hath set down this law of his . . . *Thou shalt not steal.*" *Clarke Papers* cited by R. Gleissner, above at n 5, at 85.

statement could not suffice to give a law reason, but only the normative rules of nature are what provides justification.[63] This a notion with a considerable naturalist pedigree: Thomas Aquinas states in *Summa Theologica* that "... the validity of a law depends upon its justice,"and that "[a] tyrannical law made contrary to reason is not straightforwardly a law but rather a perversion of law."[64] Augustine of Hippo's *De Libero Arbitro* was similarly emphatic: "[t]here is no law unless it be just."[65] Cicero in *De Re Publica* tells us that:

> "[t]rue law is right reason in agreement with nature ... [there is] but one eternal and unchangeable law [that] will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator and its enforcing judge."[66]

For the Levellers, as with the mainstream of naturalist theory, such justification might manifest itself in the express consent of the people and conformity with essential natural principles. But does this constitute legality? Is there a Leveller legal system? With all of the people determining the justice of law according to "right reason", all that one achieves is institutionalised, and moralised, anarchy. What then imposes the law? A parliament was the answer. But what authority could such a parliament have to determine and enforce laws imbued with "right reason" when the authority to validate laws resided in the hearts of the people?

The Levellers found that the way around the problem of determining the validity of laws and the abuse of the positive law-making power was the enfranchisement of the people. This position requires some examination of who, in fact, the people were. At the foundation of Leveller principle, enfranchisement would ensure the continuing consent of the people to the positive acts of the government. For all of their inclusive talk, the Levellers adopted contradictory positions, in Article I of "An Agreement of the People," they demanded a form of universal suffrage in obtuse terms:

> "That the people of England being at this day very unequally distributed by Counties, Cities & Borroughs, for the election of their Deputies in Parliament, ought to be more indifferently proportioned, according to the number of Inhabitants: the circumstances whereof, for number, place, and manner, are to be set down before the end of this present Parliament."[67]

Colonel Rainsborough, the main Leveller spokesman at Putney, put the Levellers' position as being:

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[63] R. Gleissner, above at n 5, at 80-81.
[64] Thomas Aquinas *Summa Theologica* Question 95 Art.2; Question 92 Art 114
[65] Augustine of Hippo *De Libero Arbitro* Bk 1 Cap 5
[66] Marcus Tullius Cicero *De Re Publica* III, 22
[67] Marcus Tullius Cicero, above at n 66, at 226. See also R. Gleissner, above at n 5, at 76.

> "the poorest he that is in England hath a life to live as the greatest he; and therefore, truly, Sir, I think it's clear that every man that is to live under a government ought first by this own consent to put himself under that government; and I do not think that the poorest man in England is not at all bound by in a strict sense to that government that he hath had a voice to put himself under; ... insomuch that I should doubt whether he was an Englishman... that I should doubt of these things."[68]

The Council passed a resolution which called for a limited franchise of those men not servants or indigent. This represents a defeat for the Levellers if we see them as democrats in the truest sense of that term. But it is unclear that the Levellers did in fact want a universal franchise.[69] For while the Levellers manifest a radical political approach they were still people limited by their own time. Seventeenth century England would no more admit that a woman had civil capabilities than it would those who were bonded to others in service. A man's place remained the deciding factor in this society, not his (or her) humanity. John Lilburne repeatedly insisted that he be regarded and treated as a gentleman at those courts in which he appeared due to his opposition to the government.[70]

Modern notions of freedom and the recognition of the individual are concepts of the Age of Reason and however progressive the Levellers were it must be remembered that they were products of their own era, the essence of their philosophy was a *collective* achievement and benefit arranged along the lines of nation and station. In *"The Case of the Armie Truly stated"* the Levellers proposed the enfranchisement of all men who were not servants and who were over the age of twenty-one.[71] Of course, this included only the *male* people, this was the seventeenth century and even radicalism had its limits.The Levellers sought to remove the property qualification for participation in the state, but not the need to be politically competent. Women and servants, whose well-being was dependent on the status of those to whom they were linked, could not as a consequence be politically competent and participate in the government of the state. In this exclusion, the Levellers exhibited nothing so much as a seventeenth century sensibility, one they shared with the likes of the later theorists Algernon Sidney, James Tyrrell and John Locke.[72]

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[68] R. Gleissner, above at n 5, 82; H.N. Brailsford (Hill, C (ed.)) above at n 13, at 274. Col. Rainsborough also stated that "I do not find in the law of God that a lord shall choose twenty burgesses and a gentleman but two, or a poor man shall choose none; I find no such thing in the law of nature, nor in the law of nations".

[69] C.B. MacPherson, above at n 27, at Ch 3: "The Levellers: Franchise & Freedom."; See also J.C. Davis, "The Levellers and Democracy" in C. Webster (ed.) *The Intellectual Revolution of the Seventeenth Century London:* Routledge & Kegan Paul, 1974, at 70-71, 77-78; See also C. Hill, above at n 2, at 175: Prof. Hill describes the tendency of seventeenth century theorists to speak of the rights of 'every man' but exclude the economically dependent and those outside the established church from the franchise.

[70] C. Hill, above at n 2, at 177.

[71] D.M. Wolfe, above at n 1, at 212.

[72] A. Sidney, *Discourses Concerning Government* 1698, at 79; J. Tyrrell, *Patriarcha non monarcha* 1681, at 73-74, 83-84, 118; J. Locke, *Works* 1823 Bk V, at 21.

Freedom did not encompass fundamental liberty, but a freedom from servile status, Sir Thomas Smith, who first acknowledged the English "multitude", couched freedom in terms of a privilege, to be enjoyed by those who had attained a stakehold in the state, namely "day labourers, poor husbandmen, yea merchants or retailers which have no free land, copyholders and all artificers."[73] Modern notions of freedom and the recognition of the individual are concepts of the Age of Reason and however progressive the Levellers were it must be remembered that they were products of their own era, the essence of their philosophy was a *collective* achievement and benefit arranged along the lines of nation and station.

In any case, for the Levellers positive laws would only exist through the consent of the people, whoever they may be. It is in this definition that the Levellers show themselves flawed to our modern perception of a democratic polity. To reconcile "legal, fundamental liberty" with the requirement that one must be politically competent, be it through the ownership of land or the attainment of some economic qualification, is to be inconsistent. While the Levellers were of their time, they did not go as far as some of their contemporaries. Gerrard Winstanley, the Digger, took up liberty as his requirement, and abandoned any pretence of adhering to the recognition of property as the basis of all law and legal and political competence. The Levellers failed to meet Henry Ireton's challenge: "no person hath a right to this [to vote] that hath not a permanent fixed interest in this kingdom."[74] Colonel Rainsborough's assertion that:

> "I do not find in the law of God that a lord shall choose twenty burgesses and a gentleman but two, or a poor man shall choose none; I find no such thing in the law of nature, nor in the law of nations"

cannot address this, given the equivocation of the Levellers on this issue. Without reconciling the two, the Levellers failed to make the leap out of the seventeenth century imagination, and rendered their conception of natural principle given voice flawed, at least to our way of thinking. The principle that all laws would be valid of themselves by the actual and continual consent of all of the governed through a democratic process is a worthy one, but it is undermined by the Levellers failure to admit all into that construct. As natural principles require that, for a positive law to be validly constituted, the law have the consent of those to which it applies then, *ergo*, the law is valid, or could it? If not all people were included then the Levellers' own principles are less than convincing. The question becomes one of which man's "better being" could be more properly achieved.

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[73] Thomas Smith *The Commonwealth of England* Bk I Cap 24; see C. Hill, above at n 2, at 176-178.

[74] E.M. Wood & N. Wood, above at n 28, at 89-91.

The Levellers were not a philosophical movement like Aristotle's *Peripatetics* or the Scholastic followers of Aquinas. They did not obviously base their proposals in the philosophical theories of the great names of the natural law tradition up until that time: Aristotle, Cicero, Augustine, Thomas Aquinas; or couch their ideas in the words of these thinkers. Nor did the Levellers constitute a coherent and evident basis or inspiration for later thinkers within the natural law tradition. They are an interesting, yet politically influential, by-way in the development of naturalist political principles. They are an essentially English phenomenon, who expanded the rights of Englishmen to their broadest conception. Leveller ideas reflect the radicalism of their times and the extension of their religion to its most inclusive point. Yet to say this is not to deny the Levellers a small place in the general scheme of natural law philosophy. The Levellers present a practical manifestation of the essential principles which make up naturalist theory. Their unrealised potential in the late 1640's is testament to the essential appeal of fundamental principles of man's "better being" in spite of the demands of ascendant political power. While the likes of John Lilburne, Richard Overton, William Walwyn and John Wildman may not have been professional philosophers, their statements indicate an understanding and expression of the principles of natural law and represent part of a remarkable explosion of radical political and religious thought among all levels of society in a turbulent and changeable time.

Leveller ideas display conformity to the essential principle of natural law: that all things are governed by ultimate principles uncoverable by any person. This concentration on the natural rights of the subject, so alien to the notions of monarchy and corporate society of the seventeenth and eighteenth centuries, is part of the unique English political tradition of the liberty of the subject which made such advances in the aftermath of the English Revolution and culminated in America. We see the inheritance of the English political tradition, invigorated by the European Enlightenment, given effective and elegant expression by the founders of the American Republic where the United States' Declaration of Independence states that:

> "[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness "[75]

[75] The United States *Declaration of Independence*, 1776. The sentiments of the American Revolution, which while owing much to the example of the European Enlightenment, express principles which are cogent with the general scheme of Leveller thought and

It is this which is the chief legacy of the Levellers. In the Levellers' philosophy positive statements, while seemingly absolute, must conform to essential notions of principle, and are adopted and accepted not by the decisions of government, but by reference to the essence of the universe and mankind. Principles are "written naturally by the finger of God in our hearts." As with natural law, the radical platform of the Levellers enjoyed optimism, an optimism which pointed not to the continuance of the state or the preservation of obedience, but the achievement of a state where it could be said that truly:

> God hath given no man talent to be wrapped up in a napkin & not improved; but the meanest vassal in the eye of the Lord is equally obliged and accounted to God with the greatest prince or commander under the sun, in and for the use of that talent betrusted to him.[76]

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arise out of the English political tradition. NB. the words of George Mason "If anyone shall claim a power to lay and levy taxes on the people by his own authority and without such consent of the people, he thereby invades the fundamental law of property [a concept owing much to Locke] and subverts the end of government." (in R.B. Nye & J.E. Mopurgo, *A History of the United States Vol. I: The Birth of the United States*, 2nd Ed. London: Penguin Books Ltd, 1964, at 161) Where the United States' Constitution (1789) states that "We the People of the United States, in order to form a more perfect Union, establish Justice, ensure Domestic Tranquillity , provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty..." one finds a polished expression of English political principles fused with the language of Reason and akin to those of the Levellers as expressed throughout their tracts but most notably in "*An Agreement of the People*" (1647): "we do now hold our selves bound in mutual duty to each other, to take the best care we can for the future, to avoid both the danger of returning to a slavish condition, and the chargeable remedy of another war...".

[76] R. Gleissner, above at n 5, at 80; citing "*A copy of a Letter from the Agents of the Aforesaid Five Regiments of Horse, unto His Excellency Sir Thomas Fairfax.*"