The Agreements of the People, the Levellers and the Constitutional Crisis of the English Revolution

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Constitutionalism: Ancient, Modern and Early Modern in the Agreements of the People

D. Alan Orr

The tumultuous events that overtook England and its neighbouring kingdoms of Scotland and Ireland during the seventeenth century saw the first significant attempts to produce a written constitution in the English-speaking world.\(^1\) Unsurprisingly, the position of the Agreements of the People in the development of modern constitutionalism is problematic. Their very ‘written-ness’ has suggested them as important precursors to the United States Constitution and the emergence of modern constitutionalism, a development that historians of political thought have traditionally situated at the close of the eighteenth century; however, these curious documents were the product of a different culture in which memory, custom and the spoken word were as important to the process of governance as the printed and written word. In seventeenth-century England, the notion of a uniform and univocal constitutional order, a constitution speaking with a single authoritative voice, defining and delimiting the rights and privileges of individual citizens, as well as the roles and functions of the formal structures of government, was profoundly alien.

Historians of political thought have traditionally equated the events of Britain’s Civil Wars (c. 1638–52) with the emergence of the rationalist, contractualist notions of political society that were crucial to the later development of modern constitutionalism. While the figure of Thomas Hobbes obviously looms large in this narrative, the Levellers, a label loosely applied to the figures of John Lilburne, William Walwyn, John Wildman, Richard Overton and their associates, also played a major role. As the 1640s and 1650s progressed, the Levellers and other ‘radical’ groups of the English Civil War turned progressively away from history and increasingly spoke, as J.G.A. Pocock once remarked, ‘the language of political rationalism’.\(^2\) As a result, Leveller political thinking, as manifested in the Agreements of the People, has often been characterised as anti-historical, representing, in the words of Perez Zagonin, ‘a rejection of history’ in favour of a direct appeal to reason and nature.\(^3\) In other words, like Hobbes, both the Levellers and their failed attempts at creating a written constitution were part of an incipient process of political enlightenment.\(^4\) My contention here, however, is that the Agreements were hardly the harbingers of modern constitutionalism; their historical significance lies instead with their presumptive relationship to the English past and their continuing approbation of existing indigenous traditions of parliamentary self-government in the renewal and re-establishment of a reformed, populist and inclusive constitutional order.

The Agreements did not endevour to construct a new constitutional order from the ground up from abstract first principles, but sought instead to recover the existing constitution’s historically derived essence, in a single authoritative text. They were, essentially, popular charters outlining the nature and extent of sovereign power, the formal structures of governance and the manner of electing representatives and magistrates. Their goal was not the delineation of new right but rather the restoration and confirmation of historic, native birthright. Furthermore, the Agreements, as brief formal outlines, were hardly exhaustive systems of politics; not unlike colonial charters of the period, they were flexible, yet formal, instruments of governance, capable of recognising and incorporating local custom, and adapting to the exigencies of time and place.\(^5\) The underlying assumption of the Agreements was that historically the English had been a freeborn people; the objective of the Agreements was to restore them to that birthright, the condition of liberty, and to erect a lasting institutional bulwark of free and regular parliaments against the re-emergence of tyranny, whether parliamentary, regal or noble.

This chapter places the Agreements of the People in this context, examining their ambiguous character in straddling the parameters of medieval and modern constitutionalism. The first section outlines two views of constitutionalism, modern and pre-modern. The second section elaborates the concept of birthright in English constitutional thought and its central, contested role in the negotiation of the Agreements. The third section addresses the question of constitutional forms, examining the Agreements’ rejection of both noble privilege and the idea of a mixed constitution, the historical assumptions underpinning that rejection and the Agreements’ relevance to subsequent republican proposals for settling the constitution. In order to understand the Agreements, and all subsequent republican proposals for constitutional settlement, it is not enough simply to identify underlying statements of principle.\(^6\) It is also necessary to pursue a revised understanding of constitutional formalism that will examine the relationship of the formal structures of government to existing, indigenous traditions of popular protest and self-government. The final and concluding section relates the Agreements to recent historiographical debate on the origins of the English Civil War, suggesting that the historical assumptions underlying both their popular unicameralism and their concomitant
rejection of noble privilege may have been more correct than their authors could have possibly imagined.

I

In his *Constitutionalism: Ancient and Modern* (1940), Charles Howard McCulloch traced the origins of modern constitutionalism to the contractarian thinkers of the seventeenth century, most notably Thomas Hobbes and John Locke. This conception of constitutionalism, which found its first clear expression during the late eighteenth century in the writings of Thomas Paine, presumed that a constitutional order was the product of a deliberate act of association among free individuals 'constituting' themselves as a political society. By its nature, it emphasised, and continues to emphasise, 'written-ness': a written testament of this act of association systematically laid out the rights and obligations of individual citizens and outlined the roles and obligations of the various officers of state, the formal structures of the state and their composition. As James Tully has written, in this view, 'The constitution founds an independent and self-governing nation state with a set of uniform legal and representative political institutions in which all citizens are treated equally, whether their society is considered to be a society of individuals, a nation, or a community.'

What historians have termed pre-modern, medieval or 'ancient' constitutionalism is more problematic for two reasons. First, it was largely customary in nature: there was no single foundational text or 'agreement', and the written authorities that did exist were fragmentary and incomplete. Second, it eschewed uniformity and tacitly accepted the possibility, even the necessity, of legal pluralism. The customs of particular civic corporations, boroughs, villages and parishes were *lex loci* – the laws of particular places; these local customs resided not solely on the authority of any written text but on the memory of 'ancestors' – the very elderly – in establishing their validity. This species of constitutionalism was highly decentralised, resting on assumed principles of recognition, consent and negotiation. 'Ancient' or pre-modern constitutionalism disclosed, in the words of Ethan Shagan, 'the ungainly patchwork of prerogatives, precedents, charters, customs, and institutions that actually governed life in English communities.' The 'unacknowledged republic' of local office holders in early modern England may have been largely self-governing, but it was hardly Thomas More's *Utopia* with its monastic uniformity.

Late medieval and early modern England, therefore, was a political society in which a plurality of disparate local, indigenous governmental regimes predominated. These were embodied in a complex network of customary use-rights, combined with traditional practices of local self-government, which formed a variegated pattern of law, custom and memory across the realm. Rather than appealing to a foundational text, the criteria by which the 'ancient' constitution in England established the validity of a particular custom was prescription, long usage from 'time out of mind' and 'reasonableness'. Current scholarship remains divided on how early modern jurists conceived of the relationship of reason to custom, and this present-day scholarly disagreement reflects a discernable diversity of opinion among the leading legal authorities of the period, with some authorities emphasising the presumptive rationality of time-tested customary practices, and others stressing simply the immemoriality of customs as necessary for them to have the force of law.\footnote{15}

II

The concept of 'birthright' citizenship was central to the *Agreements of the People*. Birthright, in this context, simply referred to rights conferred on individuals as citizens by virtue of the specific historical conditions of their birth; these included, most notably, their membership of a political nation, civic corporation, borough or parish. During the 1640s, this conception of citizenship was nothing new to the constitution; at the national level, it had underpinned the English judiciary's decision in 1608 to allow Robert Calvin, a Scot born after the personal union of England and Scotland in 1603, to hold suit for real property in an English court. The judges determined that by the law of nature, Calvin, as a *post-nati* born in Scotland after James VI's accession to the English throne, was now under the allegiance of James in both his natural and political capacities as king of England and Scotland. While his allegiance may have been due by the law of nature, the particular historical circumstances of his birth determined the actual content of Calvin's English birthright, most notably the right to wage law for ownership of landed property in England according to the common law of that realm. As a result, Calvin would be able, like any freeborn subject of the English crown, to hold landed estates and wage law in defence of his proprietary rights. He would also enjoy the right to a trial by a jury of twelve of his peers if accused of felony or treason. These rights, common lawyers such as Sir Matthew Hale argued, were of pre-Conquest origin, giving them an authoritative, long-standing historical pedigree.\footnote{16}

The first *Agreement of the People*, and the ensuing debates over its viability, demonstrated the importance of birthright to the substance of the *Agreements*. John Wildman and Maximilian Petty, the civilians with whom the army agents had previously associated themselves, presented the first *Agreement* to the general council of the New Model Army on 28 October 1647. Subsequently, the general council – which compromised the general officers, and two officer and two soldier 'adjudicators' representing each regiment – the agents and their civilian associates debated its provisions at army headquarters at Putney. By early November, the *Agreement* had entered into broad print circulation. Although Barbara Tait has argued for
William Walwyn’s direct involvement in its composition, this now seems improbable, with recent scholarship suggesting strongly that Wildman was, in all likelihood, the principal author.19

Arguably the most republican of these brief manifestos, the first Agreement explicitly equated the practice of self-government with the preservation of liberty, its particulars specifying provisions for the creation of a self-governing commonwealth.20 Clause I called for the reapportionment of parliamentary representation, which was at present ‘very unequally distributed by Counties, Cities, & Burroughs’, and which ‘ought to be more indifferently proportioned, according to the number of the Inhabitants’.21 In short, it called for the abolition of the ‘decayed’ or ‘rotten’ boroughs commonly found in regions such as the west of England and the creation of a more ‘equal’ Representative. Clause II demanded the dissolution of the Long Parliament by 30 September 1648.22 Clause III provided for biennial parliaments to sit no longer than six months from the first Thursday in April until the last day of September. Clause IV outlined the powers exercised by this Representative, which were ‘inferior only to theirs who chuse them’. These comprehended the practical exercise of sovereignty:

the enacting, altering, and repealing of Laws; to the erecting and abolishing of Offices and Courts; to the appointing removing, and calling to account Magistrates, and Officers of all degrees; to the making War and peace, to the treating with foreign States: And generally, to whatsoever is not expressly, or impliedly reserved by the represented to themselves.23

Notably, these powers did not extend to the governance of the established church, because ‘matters of Religion, and the ways of Gods Worship, are not at all intrusted by us to any humane power; however, ‘the publike way of instructing the Nation’ in a non-compulsive way was referred to the discretion of the people’s representatives.24 Other demands appended to the initial four clauses included: an injunction against conscription; indemnity that ‘no person be at any time questioned for anything said or done, in reference to the late publike differences, otherwise then in the execution of the judgments of the present Representatives, or House of Commons; equality before the law without exemption for any Tenure, Estate, Charter, Degree, Birth, or place’; and that the laws be ‘not evidently destructive to the safety and well-being of the people’.25 The abolition of aristocratic privilege in legal matters would become a feature of all subsequent Agreements.26

Recent scholarship has seriously questioned the status of the first Agreement as the first Leveller version of the document.27 Indeed, the very use of the term ‘Leveller’ would be somewhat inappropriate prior to November 1647 because, reputedly, King Charles I only coined the expression as a term of abuse in the aftermath of the Putney Debates.28 Furthermore, as John Morrill and Phillip Baker have argued, at that time ‘neither Wildman or Petty would have been immediately identifiable with John Lilburne or Richard Overton, the two authors who had been most outspoken against the [army] grandees, as neither is known to have had any previous involvement with them.’29 The Leveller credentials of all subsequent versions of the Agreement, save the last, are perhaps also questionable. Foundations of Freedom: Or An Agreement of the People, which was composed in December 1648 in the aftermath of the army’s purge of the Long Parliament, resulted from a series of meetings of a committee of sixteen representing the Levellers, the London Independents, the army and the ‘honest’ party in parliament.30 Like the first Agreement, it was not exclusively a Leveller document, and perhaps the greatest difference between the circumstances of Foundations of Freedom’s composition and that of the first Agreement was the presence of John Lilburne. Lilburne published Foundations of Freedom, his own, slightly amended version of the committee of sixteen’s draft document, on 15 December 1648, at the same time that the committee’s proposals were before the council of officers for consideration.31 Following the council’s deliberations, a proposed constitution, the officers’ Agreement, was presented to the Rump Parliament on 20 January 1649; this document retained many of Foundations of Freedom’s key features, including parliamentary reapportionment, unicameralism and the abolition of noble privilege, while significantly differing on such contentious issues as the provision for state-directed worship and religious instruction.32 Only the May 1649 Agreement, composed in prison by Walwyn, Lilburne, Overton and Thomas Prince, may be considered as an exclusively Leveller document.33

The first Agreement of the People was the briefest of all the Agreements. Although it found a significant following among the rank and file of the New Model Army, it failed to gain similar approbation when it was presented to the army grandees, most notably Oliver Cromwell and Henry Ireton. The document abolished all privilege of peerage and made no mention of the House of Lords or the continued role of the monarchy in the constitution; like all versions of the Agreement, the notion of a mixed constitution was conspicuously absent from the proposed constitutional settlement in preference for a popular unicameralism. Unlike later Agreements, however, the first made no demands for the decentralisation of government and the administration of justice; it was also unspecific about the extent of the franchise, simply stating that the manner of electing ‘Deputies in Parliament’ was ‘to be set down before the end of this present Parliament’.34 This lack of specificity would lead to considerable debate over the extent and requirements for the franchise, with some reading the document as a call for universal manhood suffrage.

Later versions of the Agreement were more explicit about the requirements for the franchise. Foundations of Freedom eschewed the requirement of a forty-shilling freehold and stipulated ‘That the Electors in every Division, shall be Natives or Denizens of England, such as have subscribed this
Agreement; not persons receiving Alms, but such as are assessed ordinarily towards the relief of the poor; not servants to, or receiving wages from any particular person.\textsuperscript{35} Excepting the universities, native-born Englishmen and naturalised residents over twenty-one years of age who were householders ('Housekeepers') paying poor rates, and not in service or receiving wages, would be disfranchised regardless of their possession of freehold tenure. Essentially, this view of the franchise was a combination of what has been referred to as the 'householder' or 'rate-payer' franchise.

Both Foundations of Freedom and the officers' Agreement were, in this sense, more developed and formal blueprints for constitutional reform than the first Agreement. Reflecting a refinement of constitutional thinking, both included not only more precise requirements for the franchise but also detailed plans for the reapportionment of parliamentary representation, with Foundations of Freedom envisioning a Representative body of 300 members and the officers' Agreement one of 400 members.\textsuperscript{36} Possibly due in part to the death in October 1648 of Colonel Thomas Rainborough, the most vocal exponent of universal manhood suffrage at Putney the previous year, the need to restrict the franchise was not a contentious issue in late 1648 and early 1649. Accordingly, Foundations of Freedom and the officers' Agreement contained similar restrictions.\textsuperscript{37} Under both proposed settlements, those who had adhered to the king in the recent wars, and those who opposed the Agreement were deemed to have renounced their birthright and were disfranchised from civic life for set periods of time, or until such time as they subscribed to Agreement.

References to the king and the House of Lords were noticeably absent from all versions of the Agreement, suggesting a unicameral Representative structure, or at least one in which the Commons, as the people's representatives, stood in the supremacy. Thus, while the Agreements are not explicit on the issue, any future role for the king in the constitution would presumably be at the sufferance of the people's representatives assembled in parliament. As the Levellers' petition of 11 September 1648 asserted, 'the king was but at the most the chief public officer of this kingdom and accountable to this House [of Commons], the representative of the people, from whom all just authority is or ought to be derived for the discharge of his office.\textsuperscript{38} Unlike the army's proposed terms of settlement, The Heads of the Proposals of August 1647, the Agreements were to be implemented, not by act of parliament, but through popular subscription, establishing them as the fundamental constitutive law of the land, unalterable by any subsequent act of parliament.\textsuperscript{39}

The Agreements simply and concisely combined constitutional formalism with basic principles of self-government and popular sovereignty. They provided increasingly specific proposals, not only for the constitution of a self-governing Representative but also measures for ensuring frequent rotation of membership and the prevention of what James Harrington would later deify as the 'prolongation of magistracy'.\textsuperscript{40} Under the terms of the first Agreement, parliaments would be called once every two years and not sit longer than six months.\textsuperscript{41} The officers' Agreement made a similar demand for regular biennial parliaments and together with Foundations of Freedom also provided for the creation of a council of state for the managing of public affairs in the interval between Representatives.\textsuperscript{42} The May 1649 Agreement, which Lilburne, Overton, Walwyn and Prince wrote while in prison at the order of the commonwealth's newly-appointed council of state, understandably rejected this provision, while retaining the call for frequent and regular parliaments.\textsuperscript{43}

Given these criteria, the Agreements would seem to conform to the standard of a 'modern' constitution: a written contract between non-dependent, sovereign individuals constituting themselves as a political society. Indeed, as Johann Sommerville clearly demonstrated over two decades ago, notions of contract and consent were well developed in English political thought in the four decades before the Civil War.\textsuperscript{44} However, as Janelle Greenberg has noted, the idea of an original contract between king and people was perfectly consistent with the historical modes of argument commonly associated with the idea of an ancient constitution.\textsuperscript{45} Furthermore, in order for freeborn English subjects to continue in their enjoyment of both their natural and native rights, it was necessary to afford a degree of what Richard Tuck has described as 'interpretive charity'. While it may have been theoretically possible to renounce in large part both natural and native rights, it was necessary to presume instead that 'our predecessors were rational, and hence that they could not have intended to leave us totally bereft of our rights'.\textsuperscript{46} As Rachel Foxley has recently remarked, 'The Agreements of the People...were not attempts to construct a polity from scratch' but were, at best, 'part of the ongoing process, for the Levellers, of the constituting and reconstituting of political power out of the natural powers of the people – which seems to have happened every time a new House of Commons was elected'.\textsuperscript{47} For ancient liberties to be deemed recoverable, it was necessary to posit their continued existence in nature, even in a substantially attenuated form. Historical argument, therefore, provided evidence for a continuing contract between ruler and ruled, king and people, and for the ongoing need to renew the liberty of the subject through free elections.

The Agreements, therefore, reveal a complex set of assumptions about the nature of self-government, liberty, English history and birthright. As previously observed, the first Agreement was, in all likelihood, at least partially the work of John Wildman, arguably the most republican of the Leveller writers, and the pamphlet's preamble is suggestive of certain 'neo-Roman' ideas in identifying the condition of liberty with the provision for self-government.\textsuperscript{48} Political freedom, in this scheme, was only possible in a 'free state' composed of self-governing citizens, all of whom took an equal role in the making of laws for the common good. This view of liberty identified 'unfreedom' – the condition of slavery – not simply with the actual constraint in our ability
to act according to our desires, but also with the very threat of interference with our persons and property. To live in the condition of bondage or slavery was to be subject to the arbitrary will of a tyrant. Regard less of their origins, these ideas were certainly current at the time; for example, the Levellers' petition of 23 November 1647, and probably also the work of Wildman, clearly stated the integral relationship between the provision for self-government and the maintenance of liberty, asserting 'that there can be no liberty in any Nation where the Law giving power is not solely in the people or their Representatives'.

In referring to the period of Charles I's personal rule (1629–40) and the subsequent first English Civil War (1642–46), the intent of the first Agreement, as stated in the preamble, was 'to avoid both the danger of returning into a slavish condition, and the chargeable remedy of another war'. This language, which equated the abrogation of self-government with a condition of slavery, would be repeated in all subsequent Agreements. Foundations of Freedom explicitly blamed the recent troubles on the 'want of frequent National meetings in Council, ... the undue or unequal constitution thereof, or ... the rending those meetings ineffectual'. The personal rule, a period of history in which parliament did not sit, was a time when the nation lived in a condition of bondage. The Civil Wars arose from a series of noble and regal usurpations since the Norman Conquest, which had abrogated the birthright of all freeborn Englishmen to be self-governing.

The question of what was included within the rubric of birthright was increasingly contentious during the 1640s. In Calvin's Case, the notion of birthright had been largely limited to the right to wage law - the right to hold suit for landed property in the king's courts. However, many of the participants in the debates over the Agreements of the People between 1647 and 1649 frequently envisioned a far more expansive conception of birthright. For example, in Englands Birth-Right Justified (1645), John Lilburne had argued,

ought not the Free-men of England, who have laboured in these destroying times, both to preserve the Parliament, and their owne native Freedoms and Birth-rights, not only to chuse new Members, where they are wanting once every yeere, but also to renue and inquire once a yeere, after the behaviour and carriage of those they have chosen.

Lilburne thus clearly included the right of participation in parliamentary elections within the rubric of historic birthright. During the debates on the first Agreement at Putney on 29 October 1647, however, substantive divisions emerged over the issue of birthright, its prescriptive content and its relationship to the franchise. Henry Ireton, adhering to a position more in keeping with Calvin's Case, argued that by their birthright, all free Englishmen and lawful denizens enjoyed the right to 'the air, the free passage of highways, [and] the protection of laws'; but he refused to extend these rights to the franchise on the grounds that birthright did not confer a 'real or permanent interest in the kingdom'. The franchise should, accordingly, be limited to those possessing the traditional forty-shilling freehold requirement and those who were free of civic corporations. Colonel Thomas Rainborough, Ireton's sparring partner at Putney, envisioned a more expansive conception of birthright, arguing that 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'.

While Rainborough's language at Putney appealed to both divine and natural law, the conclusion to the provisions for securing self-government in the first Agreement reveals that this brief constitutional manifesto also sought the re-establishment of these rights in terms of the reaffirmation of historic birthright. Having specified the measures to be taken against the possibility of recurring tyranny, the first Agreement concluded with the following declaration:

These things we declare to be our native Rights, and therefore are agreed and resolved to maintain them with our utmost possibilities, against all opposition whatsoever, being compelled thereunto, not only by the examples of our Ancestors, whose blood was often spent in vain for the recovery of their Freedoms, suffering themselves, through fraudulent accommodations, to be still deluded of the fruit of their Victories, but also by our own wofull experience, who having long expected, and dearly earned the establishment of these certain rules of Government are yet made to depend for the settlement of our Peace and Freedom, upon him [i.e. Charles I] that intended our bondage, and brought a cruel Warre upon us.

David Wootton has characterised the first Agreement as 'the first proposal in history for a written constitution based on inalienable natural rights'; however, the language of this passage, printed with the body of the Agreement in early November 1647, strongly suggests a very different significance. Although Leveller writings often appealed to both native and natural rights, the appeal here is very clearly to the former. The goal of the Agreement was not so much the establishment of new freedoms but the recovery of that historic birthright that had been diminished or lost over the course of English history. As Edward Sexby remarked during the Putney Debates: 'We have engaged in this kingdom and ventured our lives, and it was all for this to recover our birthrights and privileges as Englishmen. Englishmen enjoyed their birthright, in the words of Ireton, 'by their very being born in England'. The Agreements envisioned the historic right to self-government as fundamental to the preservation of liberty; without it, neither England nor any other commonwealth, for that matter, could achieve or maintain the condition of liberty.
Although in many points, these historic rights corresponded to the law of nature — and Leveller pamphlets made frequent appeals to natural law — they were also birthrights, conferred on individuals by the specific historical conditions of their birth. They included the right to judgement by one's peers according to Magna Carta chapter 29; the right to the protection of the common law; and, for Lilburne, Rainborough and the common soldier Sexby at least, the right to the franchise. These common rights and liberties were established both by the prescription of time as well as locality and nation of birth; furthermore, although tyrannical kings, nobles and, more recently, tyrannical parliaments had frequently sought to undermine them, these rights were of pre-Conquest origin and had never been fully abrogated over the course of English history. Under the terms of the Agreements, all freeborn Englishmen were to enjoy these birthrights without any distinction for rank or nobility, a feature that would have important ramifications for the proposed shape and form of any constitutional settlement. It is to this question of constitutional forms, their historical origins and relevance, that we now turn.

III

The question of historic birthright bore directly on the question of constitutional forms, because a common, salient feature of all the Agreements was their unicameralism and their rejection of noble privilege. Indeed, the notion of the peacre as a separate legal caste, enjoying privileges at law above those enjoyed by the main body of the citizenry, including a right to attend parliament without election, was antithetical to both Leveller and some army constitutional thinking. The members of the House of Lords were chosen not by the free citizens of the commonwealth but by the king; they sat in parliament by virtue of their patents of nobility and not by any popular election. Moreover, in the eyes of the Levellers and many in the army's ranks, they had, in the recent Civil War, provided the king with the most significant and influential members of his party, first aiding and then defending his arbitrary government. Their continued existence as a separate body from the Commons constituted as much an abrogation of popular self-government as the king's negative voice. The exclusion of the Lords from the constitutional settlement was both unsurprising and consistent with much Leveller historical thinking.

Regall Tynannie Discovered, an anonymous tract of January 1647 usually attributed to John Lilburne, provided perhaps the most comprehensive historiographical statement of this position. Drawing on a variety of sources, including Sir Edward Coke, Samuel Daniel, Raphael Holinshed, William Hakewill and John Speed, the tract presented a picture of English history in which the Norman Conquest saw a number of procedural innovations, such as the introduction of law French and the replacement of the Anglo-Saxon 'Germote or Conventions held monthly in every Hundred' with quarterly sessions. Parliament, however, had continued, being restored by Henry I in 1116, and his successor, Stephen I, had been lawfully elected by his 'barons' in 1135. Furthermore, in spite of the procedural innovations in the law introduced at the Conquest, and the depredations of tyrannical and rapacious kings such as Richard I, John I, Henry III and Edward II, the constitution had endured owing to the actions of such law-abiding kings as Edward I and Edward III. Although at times diminished and even temporarily abrogated, the usurpations of tyrants had not completely extinguished pre-Conquest liberties.

Prior to the Norman Conquest, the House of Commons had been the sole House of Parliament, a time when it alone made 'a full parliament; which authority was never hitherto abridged'. While the authorship of Regall Tynannie remains in question, in late February 1647, Lilburne and Overton would reaffirm this historiographical position in a signed publication, The Out-Cryes of Oppressed Commons. This made explicit reference to Regall Tynannie and asserted that 'before William the Conqueror and Invader subdued the rights and priviledges of Parliaments that King and Commons held and kept Parliaments, without Temporal Lords, Bishops or Abbots'. In The Commonsers Complaint, published in February 1647, Overton also reaffirmed the position of Regall Tynannie, referring to the Lords as 'that Norman house'. Leveller historical thinking portrayed the power of the Lords as being of relatively recent origin, arguing that their emergence as a separate house and the inflation of their powers were a product of post-Conquest innovations. The Agreements, in order to be effective vehicles for 're-forming' the constitution, would put an end to these usurpations, and, with a return to the practice of pre-Conquest parliaments, the powers of the Lords would presumably be re-absorbed into those of the Commons. The unicameralism of the Agreements, therefore, reflected a discernable set of historical assumptions that envisioned an idealised, pre-Conquest Anglo-Saxon commonwealth, in which the power of the Lords was not yet formally recognised as distinct from, or superior to, that of the Commons, and the administration of justice was highly decentralised.

This line of historical thinking, of course, was contrary, not only to that adopted in the anti-Leveller polemics of William Prynne, but also to that later articulated in the republican writings of James Harrington. Harrington, in his Commonwealth of Oceana (1656), argued that the House of Lords already existed as a distinct body from the Commons prior to the Norman Conquest under the monarchy of the 'Teutons' or Saxons. During the 220 years prior to the Norman Conquest, the constitution stood in an ideal state of balance; however, the redistribution of lands subsequent to the Conquest, and the inflation of honours under the Norman and Plantagenet monarchs, overbalanced the constitution in favour of the aristocracy, resulting in the dynastic conflicts of the fifteenth century. In Harrington's analysis, the causes of the
more recent Civil Wars lay not in the emergence of 'over-mighty subjects' but in the very opposite: a lack of balance between Commons and Lords, leading to the former overwhelming the aristocratic element in the constitution. This inequality of 'dominion' resulted from Henry VII's and Henry VIII's deliberate policies of abating the might of the aristocracy and the redistribution of church lands in the wake of the Reformation; these developments critically weakened the nobility and ultimately forced the king to seek the remedy of a standing army in order to maintain his state against the growing powers of the Commons.71

The absence of a mixed constitution did not necessarily preclude the possibility of republican influences on the Agreements. As Jonathan Scott has observed, the notion of a mixed constitution was not integral to the emergence of republican consciousness in seventeenth-century England.72 Harrington, in his Art of Law Giving (1659), would vehemently criticise John Wildman's recent proposal for a revived Agreement on the basis of its lack of a sufficient aristocratic counterweight to the powers of the Commons. A convinced republican, Wildman had incorporated some of Harrington's proposals from Oceana, arguing for a citizen militia and an upper chamber, or senate, empowered to debate and propose legislation as necessary for the preservation of liberty.73 Nevertheless, for Harrington, the Agreements still simply lacked the balance of 'dominion' in landed property necessary for 'equal' government; as a result, they tended inevitably towards oligarchy and, even worse, anarchy.74 Other later strands of republican thinking were much more in keeping with the original Agreements on this issue. For example, John Milton's rejection of the mixed constitution in The Readie and Easie Way to Establish a Free Commonwealth (1660) in preference for a perpetual senate was, despite its highly limited requirements for rotation, in many ways, closer to earlier proposals and the realities of the Rump and Barebones Parliaments.75 The basic republican principle that rational self-governance was necessary for the preservation of liberty may have admitted a range of constitutional structures; however, at key periods, such as 1647–49, 1654–56 and 1659–60, proposals for the settlement of the constitution of necessity became more concrete and formal.

Recent years have seen the displacement of Harrington's writings from the centre of accounts of the emergence of republicanism in the English-speaking world. One unfortunate effect of this de-centring of Harrington has been the growing use of the sometimes vacuous catch-all of Protestant 'anti-formalism' as an explanatory category. Anti-formalist attitudes towards forms of worship led to anti-formalist attitudes towards constitutional forms. In this view, statements of moral principle were what really mattered.76 As William Walwyn remarked in England's Lamentable Slaverie (1645), because

the Government of the Church is a thing disputable, and uncertain, and...burthenome to the people...there is no reason why any man should be bound expressly to any one forme, further then his judgement and conscience doe agree thereunto, even so ought the whole Nation to be free therein, even to alter and change the publique forme, as may best stand with the safety and freedome of the people.77

As a result, since the 1970s, Felix Raab's characterisation of English republicanism as 'constitutionalist' and emerging from existing traditions of parliamentary government, or an indigenous 'commonwealth' tradition, has become progressively unfashionable.78 A succession of scholars have sought, instead, to understand the emergence of republicanism in the English-speaking world as a 'mode of civic consciousness'; a coherent cluster of republican themes and values; a species of civic identity residing within the formal structures of a monarchical state; an ethical position affirming the necessity of rational self-government for the preservation of republican liberty; and, as Andrew Hadfield has recently urged, 'a literary phenomenon', consisting of 'a series of stories'.79

The relative brevity of the Agreements – especially when compared with Harrington's highly sophisticated and systematic understanding of history, political economy and the efficacy of constitutional forms – would seem to suggest that they should fall under this rubric of 'radical' Protestant anti-formalism. All of this is well and good; however, when compared with Harrington's highly detailed historical analysis of the formal structures of government and their relationship to the changing agrarian economy of the British Isles, most (and arguably all) of his contemporaries could be credibly cast as anti-formalist. Furthermore, it is clear that Walwyn's pronounced constitutional anti-formalism was not representative of all the other major figures associated with the Levellers. There is now much evidence to support Christopher Hill's contention that Lilburne and Wildman led a moderate constitutional wing of the Levellers, who were more inclined to present their arguments in terms of the existing law.80 These 'constitutional' Levellers, having been directly involved in the negotiation and composition of the Agreements, were also more concerned with the historical development and efficacy of constitutional forms in sustaining a self-governing commonwealth.81

What the Agreements reveal is that constitutional forms – the roles and functions of parliament, the council and the law courts, and their historical origins and relationship to the English past – mattered to these so-called radicals. They mattered because what Philip Pettit has referred to as 'traditional, non-dominating institutions', the traditions of the common law and, in this particular instance, indigenous traditions of parliamentary self-government, constituted a very great part of the raw materials with which the Levellers, the army and later republicans had to work.82 What is needed to make sense of the Agreements is an improved understanding of constitutional formalism and, in particular, the relationship of the formal structures of government to existing traditions of popular protest and self-government.
Richard Vann once remarked that 'there is no evidence that any of the Levellers conceived the Anglo-Saxon constitution as a blue-print which, if duplicated, could serve as the foundations for a free England. The work of reconstructing such a constitution was beyond their powers of detailed application, as it was alien to their piercing and at times prophetic vision. The contention here has been to the contrary; what was Foundations of Freedom, if not an obvious attempt to articulate just such a blue-print? History was important to all those concerned with settling the constitution in the crucial years 1647-49, whether the rank and file or the grandees of the New Model Army, those 'well-affected' individuals in the Long Parliament or those commonly referred to as Levellers. The assumptions under which these groups negotiated and composed the Agreements were closely tied to their understanding of the English past, existing indigenous traditions of parliamentary self-government and their perceptions of the historical moment in which they saw themselves acting. The usurpations of king and Lords had, since the time of the Norman Conquest, diminished and in part abrogated, but not entirely destroyed, the native liberties of the freeborn people of England to be self-governing. The Agreements sought to restore that important, historic birthright. The Agreements, therefore, existed in time. Their objective was not so much that of an original contract but the renewal and reaffirmation of an existing pact.

IV

The Agreements were very much the product of a consciousness of the English past and an understanding of existing traditions of parliamentary self-government. This is not to deny the existence of significant republican influences in Leveller thinking – Wildman especially springs to mind here – nor to suggest that the languages of natural law and natural right were not important to them. They certainly were; however, we must remember that all, except perhaps the May 1649 Agreement, were not exclusively Leveller documents and that historical argument played a crucial role in their formation.

While Harrington would later decry the weakness of the aristocracy and the unequal distribution of landed property as the leading causes of England's recent troubles, the authors of the Agreements offered a very different perspective on those events. In their view, noble privilege and power bore much responsibility for the Civil Wars because members of the peerage had both aided and defended the king's arbitrary government. Accordingly, the Agreements clearly subordinated the powers of the aristocracy to those of the Commons, or even eliminated them entirely from the constitution. Indeed, if we accept the views of John Adamson, it may be that they came much closer to the truth than their authors realised in ascribing blame for the recent conflict to the peerage. Consistent with Leveller historiography, the inflated powers of the Lords, their emergence as a separate body and their accumulation of unprecedented powers were the result of post-Conquest innovations. The Agreements' abolition of noble privilege would see the peerage re-absorbed into the body of the commonalty. Parliaments would presumably resume their populist, pre-Conquest form, and ancient liberty would be restored.

The Agreements of the People reflected a discernable set of historical assumptions about what had gone before and a consciousness of what had gone badly wrong with existing constitutional arrangements. They were, in this sense, outcomes of what Alan Cromptie has termed the 'constitutionalist revolution' in which the ordinary law, which had both defined and extended the powers of the king in the fifteenth and sixteenth centuries, had, by the mid-seventeenth century and the calling of the Long Parliament, come to stand against those powers. The Agreements, therefore, did not aim to establish new rights, but rather sought instead the recovery and re-establishment of historic, native rights, diminished, yet not irrevocably lost, through the negligence of previous generations, and to erect a lasting bulwark against the possibility of a return to a condition of bondage. These rights – the right to self-government, the right to trial by jury, the right to petition, the right against arbitrary imprisonment – had been eroded through the tyranny of kings and the usurpations of the nobility. The Agreements were not proposals for new, original pacts but rather practical programmes for constitutional reformation, restoring historic, native birthright.

Notes

1. I would like to thank Daniel Woolf, Charles Prior, David Smith, Elliot Vernon, Phil Baker and Jason White for their comments on previous drafts of this chapter. I would also like to thank the participants at the ‘Foundations of Freedom’ symposium at the Institute of Historical Research, London, on 20 July 2007, where I presented an earlier version of this chapter.

2. Pocock later conceded that this characterisation was 'a good deal too simple', and acknowledged the Levellers' propensity to advance their claims under the existing law: J.G.A. Pocock, The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect (1957; revised edn., Cambridge, 1987), pp. 126, 319-20, quotation at p. 126.

that this conception of "birthright" citizenship, as found in Sir Edward Coke's report of Calvin's Case, today serves as the foundation of much American immigration law, having been gradually abandoned in the United Kingdom during the twentieth century.


18. For example, Hale, in Connor Maguire's trial in 1645, asserted the pre-Conquest origins of judicature; Orr, *Treason and the State*, pp. 163-4.

19. For the case for Walwyn's involvement, see Barbara Taft, *Journey to Putney: The Quiet Leveller*, in Gordon J. Schochet, P.E. Tatspugh and Carol Brobeck (eds.), *Religion, Resistance and Civil War: Papers Presented at the Folger Institute Seminar 'Political Thought in Early Modern England, 1600-60'* (Washington, D.C., 1990), pp. 71-2. The case for Wildman's authorship, however, is much more convincing; see Elliot Vernon and Philip Baker, "What was the First Agreement of the People?", *HF*, 33 (2010), pp. 39-59. I would like to thank the authors for allowing me to consult this article prior to publication.


22. Ibid., pp. 226-7.

23. Ibid., p. 227. This understanding of sovereign power as a cluster of positive or 'state' powers was something of a commonplace in English political thought by 1647. Its sources were diverse and included the French jurist Jean Bodin's widely-read writings on the subject, which were translated into English in 1606 as *Six Books of a Commonwealth* and were familiar to both the Levellers and William Prynne, and writings from English civil and common lawyers who arrived at their own thumbnail understandings of 'sovereignty'. Jean Bodin, *Six Books of a Commonwealth*, trans. Richard Knolles, ed. Kenneth R. McTee (1606; reprinted Cambridge MA, 1962), chapter 10; Brian P. Lewack, *The Civil Lawyers in England, 1603-41: A Political Study* (Oxford, 1973), pp. 99-100; Orr, *Treason and the State*, pp. 35-45.

24. Wolfe, *Leveller Manifestoes*, p. 227. This would later become a major point of contention during the negotiations and debates of December 1648: see Rachel Foxley's contribution to this volume, chapter 5.


27. Vernon and Baker, *Agreement of the People*.

31. Ibid., pp. 159–60.
33. John Jubb's 'Several Proposals for Peace and Freedom, by an Agreement of the People, published in December 1648, was the product of an entirely different process than that which produced the other versions of the Agreement and on those grounds is excluded from my discussion. As has been argued, Jubb's document constituted an attempt on the part of himself and his confederates to save the king's life: Gentles, 'Agreements of the People', pp. 158–9.
34. Wolfe, Leveller Manifestoes, p. 226.
35. Ibid., p. 297.
37. Ibid., pp. 297, 342–3. Gentles has noted that in the case of the officers' Agreement, these provisions were approved 'apparently without discussion': Gentles, 'Agreements of the People', p. 161.
38. Sharp, English Levellers, p. 131.
45. Greenberg, Radical Face, pp. 21–9.
49. For the 'neo-Roman' theory of 'free states', see Skinner, Liberty Before Liberalism; idem., 'Classical Liberty'; and idem., 'Third Concept'. For a recent critique, see Johann P. Sommerville, 'English and Republican Liberty in the Monarchal

51. Ibid., p. 226.
52. Ibid., pp. 295, 337, 402.
53. Ibid., p. 295.
54. One is vividly reminded of the Jesuit Fr. Urban Grandier's speech to the citizens of Loudon concerning their right to retain their city walls in exception to a royal order calling for them to be pulled down, in Ken Russell's film The Devils.
56. Sharp, English Levellers, pp. 103–5, 107–8; quotations at pp. 105 and 104.
58. Wolfe, Leveller Manifestoes, p. 228.
61. Ibid., p. 104.
62. [John Lilburne?], Regall Tyranniie Discovred (1647) (E.370/12). David Wootton has suggested Overton as the likely author, but joint authorship with Lilburne is also a distinct possibility: Wootton, 'Leveller Democracy', p. 426.
63. [Lilburne?], Regall Tyrannie, p. 15. The demand for a return to hundred courts and the decentralisation of the administration of justice was later appended, at Lilburne's instigation, to Foundations of Freedom: Wolfe, Leveller Manifestoes, p. 303; Gentles, 'Agreements of the People', p. 164.
64. [Lilburne?], Regall Tyrannie, pp. 15, 18, 20–1, 27; Lilburne here followed the more populist, Leveller understanding of the term 'barons' as simply meaning 'all free men' within a particular jurisdiction: John Lilburne, Londons Liberty in Chaines Discovered (n.p., 1645), pp. 2–3 (E.359/17). In an earlier tract, Lilburne, following Coke, had argued that legal learning had survived the Conquest and flourished after the making of Magna Carta: John Lilburne, The Just Mains Justification (n.p., 1646), pp. 13–14 (E.340/12).
65. [Lilburne?], Regall Tyranniie, pp. 18 and 97; the key source (for the author(s) of Regall Tyranniie would appear to be Samuel Daniel, who was hesitant to deny the pre-Conquest origins of parliament: Daniel R. Woolf, The Idea of History in Early Stuart England (Toronto, 1990), p. 59.
66. Richard Overton and John Lilburne, The Out-Cryes of Oppressed Commons (n. p., 1647), p. 2 (E.378/13); the London bookseller George Thomason dates this pamphlet 1 March, while Overton and Lilburne date it 28 February.
69. Ibid., p. 268.
4

The Levellers, Decentralisation and the Agreements of the People

Philip Baker

Historians have long recognised that Leveller writing, and the Agreements of the People in particular, advocated a massive redistribution of power from the central government to the local communities of the English state. Almost a century ago, for example, T.C. Pease highlighted 'the Levellers' desire for the restoration of local autonomy', and in the 1960s, H.N. Brailsford suggested that decentralisation, arguably, was the most important and original item in the whole Leveller programme. Brian Manning's 1976 book, The English People and the English Revolution, contains, to date, the most detailed and influential discussion of this subject, in which the Agreements are described as 'a blueprint for a society of self-governing local communities, with a large degree of voluntarism'. The last decade has seen a renewed interest in this particular aspect of the Leveller programme as a consequence of the development of scholars' understanding of the nature of the early modern English state. J.C. Davis, for instance, has argued that the perception of a dispersed, discretionary and participatory state, of an 'unacknowledged republic' with a tradition of self-determination through local institutions, provides a vital context for understanding the Levellers' views of government and society. In a brief, but stimulating, re-reading of the Levellers, Davis suggested that one of the primary objectives of the Agreements of the People was to reinvigorate and provide a constitutional guarantee for practices of local self-government that had come under increasing pressure during the Personal Rule of Charles I and, to an even greater extent, from the 'parliamentary tyranny' of the 1640s. As such, the Levellers are now held to be among the contemporary champions of the unacknowledged republic of the dispersed state.

This chapter sets out to consider and develop a number of the important themes raised by this interpretation. Perhaps most obviously, the implication that the Levellers' proposals for decentralisation were informed by a consciousness of the structures and workings of English local government prompts questions about their own experiences of the unacknowledged republic. This has been found to be a vital context in relation to other