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Leveller texts

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I

John Lilburne, 'On the 150th page': an untitled broadsheet of August 1645

In the 150th page of the book called *An exact collection of the parliament's remonstrances, declarations, etc.*¹ (published by special order of the House of Commons, 24 March, 1642)² we find there a question answered fit for all men to take notice of in these times.³

QUESTION. Now in our extreme distractions – when foreign forces threaten, and probably are invited, and a malignant and popish party at home offended – the devil has cast a bone and raised a contestation between the king and parliament touching the militia. His majesty claims the disposing of it to be in him by the right of law; the parliament saith, *rebus sic stantibus*, and *nolenti Rege*: the ordering of it is in them.

ANSWER. Which question may receive its solution by this distinction: that there is in laws an equitable, and a literal, sense. His majesty (let it be granted) is entrusted by law with the militia,⁴ but it's for the good and preservation of the republic against foreign invasions or domestic rebellions. For it cannot be supposed that the parliament would ever by law entrust the king with the militia against themselves, or the commonwealth that entrusts *them*, to provide for their weal,⁵ not for their woe. So that when there is certain appearance or grounded suspicion that the letter of the law shall be improved⁶ against the equity of it (that is, the public good,

¹ The long title of the book, usually catalogued under the name of Edward Husbands, parliament's stationer, begins: *An exact collection of all the remonstrances, declarations, votes, orders, ordinances, proclamations, petitions, messages, answers, and other remarkable passages betweene the kings most excellent majesty, and his high court of parliament beginning at his majesties return from Scotland, being in December 1641, and continued untill March the 21, 1643*. It was much quoted by the Levellers, especially Lilburne.

² 1643 in New Style.

³ The quoted section is the totality of an anonymous broadsheet called *A question answered: how laws are to be understood and obedience yielded?*, which King Charles condemned on 22 April 1642 as containing 'seditious distinctions', and affirming 'that human laws do not bind the conscience'. See *Exact collection*, pp. 150–1. The broadsheet was probably by Henry Parker, parliament's most gifted propagandist.

⁴ As he certainly was.

⁵ weal = good, or wellbeing.

⁶ improved = found condemnable.

John Lilburne

whether of the body real or representative⁷) then the commander going against its equity, gives liberty to the commanded to refuse obedience to the letter. For the law, taken abstract from its original reason and end, is made a shell without a kernel, a shadow without a substance, and a body without a soul. It is the execution of laws according to their equity and reason which (as I may say) is the spirit that gives life to authority. The letter kills.

Nor need this equity be expressed in the law, being so naturally implied and supposed in all laws that are not merely imperial, from that analogy which all bodies politic hold with the natural – whence all government and governors borrow a proportionable respect. And therefore when the militia or an army is committed to the general, it is not with any express condition that he shall not turn the mouths of his cannons against his own soldiers. For that is so naturally and necessarily implied that it's needless to be expressed; insomuch as if he did attempt or command such a thing against the nature of his trust and place, it did *ipso facto* estate⁸ the army in a right of disobedience – except we think that obedience binds men to cut their own throats, or at least their companions'.⁹

And indeed if this distinction be not allowed, then the legal and mixed monarchy¹⁰ is the greatest tyranny. For if laws invest the king in an absolute power and the letter be not controlled by the equity, then, whereas other kings that are absolute monarchs and rule by will and not by law are tyrants *perforce*, those that rule by law and not by will have hereby a tyranny conferred upon them *legally*, and so the very end of laws, which is to give bounds and limits to the exorbitant wills of princes, is by the laws themselves disappointed: for they hereby give corroboration and much more

⁷ The idea here is that the 'real' commonwealth consists of the people who make it up, and the representative commonwealth is constituted by those institutions entrusted by the real commonwealth to act for them.

⁸ estate = instate.

⁹ This image was to reappear in *A declaration from Sir Thomas Fairfax and the Army of 14 June 1647* (mainly by Ireton) justifying the New Model's not disbanding until political and military grievances were satisfied: 'And accordingly the parliament hath declared it no resistance of magistracy to side with the just principles of law, nature, and nations, being that law upon which we have assisted you, and that the soldiery may lawfully hold the hands of the general who will turn his cannon against the army on purpose to destroy them, the seamen the hands of the pilot who wilfully runs his ship upon the rock (as our brethren of Scotland argued).'

¹⁰ England was widely held to have a legal and mixed monarchy as opposed to an arbitrary and absolute one. The monarch's legislative powers, it was held, were mixed (in law) with those of the Commons and the Lords, or alternatively, with those of the 'three estates' of lay lords, bishops and commons.

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[More information](#)

Broadsheet of August 1645

justification to an arbitrary tyranny, by making it legal, not assumed – which laws are ordained to cross, not countenance. And therefore is the letter (where it seems absolute) always to receive qualification from the equity, else the foresaid absurdity must follow.

It is confessed by all rational men that the parliament has a power to annul a law, and to make a new law, and to declare a law; but known laws in force, and unrepealed by them, are a rule as long as they so remain for all the commons of England whereby to walk; and upon rational grounds are conceived to be binding to the very parliament themselves as well as others. And though by their legislative power they have authority to make new laws, yet no freeman of England is to take notice (or *can* he) of what they intend till they declare it; neither can they – as is conceived – justly punish any man for walking closely to the known and declared law, though it cross some pretended privilege of theirs, remaining only in their own breasts.

For where there is no law declared, there can be no transgression.¹¹ Therefore it is very requisite that the parliament would declare their privileges to the whole commons of England, that so no man may through ignorance (by the parliament's default) run causelessly into the hazard of the loss of their lives, liberties, or estates. For here it is acknowledged by themselves that their power is limited by those that betrust them, and that they are not to do what they list¹² but what they ought, namely, to provide for the people's weal and not for their woe: so that unknown privileges are as dangerous as unlimited prerogatives – being both of them secret snares, especially for the best-affected people.

It is the greatest hazard and danger that can be run unto, to desert the only known and declared rule, the laying aside whereof brings in nothing but will and power, lust and strength, and so the strongest to carry all away. For it is the known, established, declared and unrepealed law that tells all the freemen of England that the knights and burgesses chosen according to law and sent to make up the parliament, are those that all the commons of England (who send and choose them) are to obey.

But take away this declared law, and where will you find the rule of obedience? And if there be no rule of obedience, then it must necessarily follow that if a greater and stronger number come to a parliament sitting, and tell them that they are more and

¹¹ Romans 4: 15: 'for where no law is, there is no transgression'.

¹² what they list = whatever they please.

John Lilburne

stronger than themselves – and therefore they shall not make laws for them, but they will rather make laws for them – must they not needs give place? Undoubtedly they must.

Yea, take away the declared, unrepealed law, and then where is *meum et tuum*¹³ and liberty, and property? 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 known law. It is answered: it cannot be imagined that ever the people would be so sottish¹⁴ as to give such a power to those whom they choose for their servants. For this were to give them a power to provide for their woe but not for their weal, which is contrary to their own foregoing maxim. Therefore doubtless that man is upon the most solid and firm ground that has both the letter and equity of a known, declared and unrepealed law on his side, though his practice do cross some pretended privilege of parliament.

And whereas by an act made this present parliament, Anno 17 *Caroli Regis*¹⁵ (entitled *An act for regulating of the Privy Council, and for taking away the court commonly called the Star Chamber*) it is there declared that ‘the proceedings, censures, and decrees’ of the Star Chamber ‘have by experience been found to be an intolerable burden to the subject and the means to introduce an arbitrary power and government’, and that the Council Table ‘have adventured to determine of the estates, and liberties of the subject, contrary to the law of the land and the rights and privileges of the subject’. Which laws are there recited, as first, *Magna Carta*,¹⁶ and the 5 Ed. III cap. 9 and 25 Ed. III cap. 4 and 28 Ed. III cap. 3¹⁷ – the last of which saith that ‘it is accorded, assented and established, that none shall be taken by petition or suggestion made to the king or his council, unless it be by indictment, or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law, and that none be put out of his franchise or freehold, unless he be duly brought in to answer and forejudged of the same by the course of the law’. And by another statute made in the 42 Ed. III cap. 3, it is there enacted that ‘no man be put to answer

¹³ *meum et tuum* = mine and yours.

¹⁴ sottish = foolish.

¹⁵ The regnal year anno 17 *Caroli Regis*, is the seventeenth year of the reign of Charles I, i.e. 1642, because he reigned from 1625.

¹⁶ 9 H[enry] III. cap. 29.

¹⁷ Acts of parliament were conventionally indicated first by the regnal year of the king (e.g. 5 Ed[ward] III), then by the chapter number given to them in the printed statutes.

Broadsheet of August 1645

without presentment before justices, or matter of record, or by due process and writ original according to the old law of the land’.

Therefore for the subjects’ good and welfare in future time, it is enacted: ‘that from henceforth no court, council, or place of judicature shall be erected, ordained, constituted, or appointed within this realm of England, or dominion of Wales, which shall have, use, or exercise the same, or the like jurisdiction, as is, or has been used, practised, or exercised in the said Court of Star Chamber’.

From the equity and letter of which law, it is desired that our learned lawyers would answer these ensuing queries.

First, whether the letter and equity of this law do not bind the very parliament themselves during the time of their sitting, in the like cases here expressed, to the same rules here laid down?

Which, if it should be denied, then secondly: whether the parliament itself, when it is sitting, be not bound to the observation of the letter and equity of this law, when they have to do with freemen that in all their actions and expressions have declared faithfulness to the commonwealth?

And, if this be denied, then thirdly: whether ever God made any man lawless? Or whether ever the commonwealth when they choose the parliament, gives them a lawless unlimited power, and at their pleasure to walk contrary to their own laws and ordinances before they have repealed them?

Fourthly, whether it be according to law, justice or equity, for the parliament to imprison or punish a man for doing what they command him, and by oath enjoin him?

Fifthly, whether it be legal, just or equal, that when free men do endeavour according to their duty, oath and Protestation¹⁸ to give in information to the parliament of treason acted and done by Sir John Lenthall against the state and kingdom¹⁹ – and long since communi-

¹⁸ Lilburne is referring to *The protestation* of 3 May 1641. Lilburne’s reference is to the part of an oath in which the oathtaker swears to ‘oppose, and by all good ways and means endeavour to bring to condign punishment all such as shall by force, practice, counsels, plots, conspiracies or otherwise do anything contrary to the present *Protestation*’.

¹⁹ On 19 July 1645, Lilburne had met some City friends and Walwyn (probably for the first time). It emerged that they had gone to Westminster Hall to give evidence against Lenthall, the Keeper of the Marshalsea Prison (and brother of Sir William Lenthall, Speaker of the House of Commons) for correspondence with royalists and for sending

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[More information](#)

John Lilburne

cated to several members of the House of Commons, but by them concealed and smothered, and now by God's providence brought upon the stage again – and during the time that inquisition is made of it before the Committee of Examinations, before any legal charge be fixed upon Sir John Lenthall, or he required to make any answer or defence, that he shall be present to out-face, discourage and abuse the informers and witnesses in the face of the committee, without any check or control from them? And sometimes, while they are sitting about the examination of his treason, that he shall sit down beside them with his hat on, as if he were one of them, and that he shall enjoy from the committee ten times more favour and respect than the just, honest, and legal informers against him, who by some of the committee themselves while they are sitting, are threatened, jeered, nicknamed and otherways most shamefully abused?

Yea, and the friends of the informers for the state are kept without doors and the friends of the accused admitted to come in always without control; and during the examination of the information, that the committee shall refuse to remove the informers out of Sir John Lenthall's custody of King's Bench²⁰ to another prison, although they have been truly informed that he has set instruments on work to murder them, and also importuned to remove them?

Sixthly, whether it be not most agreeable to law, justice and equity, that seeing Sir John Lenthall having so many friends in the house concerned in the business, that he should not rather be tried by the same Council of War in London where Sir John Hotham and his son were,²¹ than at the parliament – his principal crime being against the law martial, as theirs was.

London, 30 August 1645²²

money to the king. Lilburne joined the City men's cause, was imprisoned for it and wrote this broadsheet from prison.

²⁰ Marshalsea was the prison of the Court of King's Bench.

²¹ Sir John Hotham had been parliamentary governor of Hull from January 1642. In April he refused to let the king enter the town – a great blow to the royalist cause. But he and his son John defected to the royalists at the lowest ebb of parliament's military fortunes, in March 1643. They were captured in June by parliament, court-martialled, and condemned to death. They were finally executed in January 1645.

²² The date is in the hand of George Thomason, the collector of civil war writings.

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[More information](#)

2

Toleration justified and persecution condemned

In an answer or examination of the London ministers' letter, whereof many of them are of the Synod and yet framed this letter at Sion Colledge to be sent, among others, to themselves at the Assembly: in behalf of reformation and church government

2 Corinthians 11: 14–15: 'And no marvel, for Sathan himself is transformed into an Angell of Light. Therefore it is no great thing, though his Ministers transform themselves, as though they were the ministers of righteousness; whose end shall be according to their works.'¹

London. Printed in the Year, 1646

2

The letter of the London ministers to the Assembly of Divines at Westminster against toleration,³ mildly examined, and the mistakes thereof friendly discovered, as well for the sakes of the Independent and Separation,⁴ as for the good of the commonwealth.

When I call to mind the general oppression before the parliament exercised upon good people conscientious in the practice of their religion, and that the presbyters did not only suffer as much as any therein but exclaimed and laboured as much as any thereagainst, it is a wonder to me – now that yoke is removed and a blessed opportunity offered by Almighty God to the people and their parliament to make every honest heart glad by allowing a just and contentful freedom to serve God without hypocrisy and according to the persuasion of conscience – that

¹ These verses come from the Geneva Bible of 1560, the language and spelling of which would have seemed archaic in 1645. At almost all other times the Levellers used the Bible of 1611, authorised by King James I.

² End of title page.

³ *A letter of the ministers of the City of London, presented the first of Jan. 1645* (1 January 1646).

⁴ 'Independent' and 'Separation' were the names given to the membership of the Independent and Separating churches. The distinction between the two was unclear in conception and in practice; but, roughly, Independent churches (and Independents) claimed the right to meet separately from the parochial congregations of the established church (at first episcopal, then Presbyterian) while remaining willing that their members should attend them. Separatists (sometimes also called Sectaries) resisted any dealings at all with the established church.

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 Excerpt
[More information](#)

William Walwyn

one sect amongst us, that is the presbyters that have been yoke-fellows with us, should not rest satisfied with being free as their brethren but become restless in their contrivances and endeavours till they become lords over us. The wonder is the same as it would have been had the Israelites after the Egyptian bondage⁵ become task-masters in the Land of Canaan one to another; but it is more in them who have been instructed by our Saviour in that blessed rule of doing unto others what they would have others do unto themselves.⁶

To discover the several policies the presbyters have used to get into the chair they have jostled the bishops out of, whose example they have followed in many particulars, as especially in the politic and gradual obtaining the Ordinance for Licensing⁷ upon a pretence of stopping the king's writings, but intentionally obtained and violently made use of against the Independents, Separation, and commonwealthsmen, who either see more than, or something contrary to the designs of the licenser. To signify to the people how the presbyters have laboured to twist their interest with the parliament's, as the bishops did theirs with the king, how daily and burdensomely importunate they are with the parliament to establish their government (which they are pleased to call Christ's)⁸ and back it with authority and a compulsive power (which by that very particular appears not to be His). To lay open their private juntos and counsels, their framing petitions for the easy and ignorant people, their urging them upon the Common Council, and obtruding them upon the choosers of common councilmen at the wardmote elections, even after the parliament had signified their dislike thereof.⁹ To sum up their bitter invectives in pulpits and strange liberty they take

⁵ On the Egyptian bondage see Genesis 45 to Exodus 25.

⁶ This 'golden rule' was much favoured by Walwyn, Overton and Lilburne. Its classic formulation by Christ is at Matthew 7: 12: 'Therefore all things whatsoever ye would that men should do unto you, do ye even so unto them: for this is the law and the prophets.'

⁷ By ordinances of June and July 1643 licences for printing were established and the licensed texts were ordered to be entered on the register of the Stationers' Company. Unlicensed printing presses, or presses printing unlicensed texts, were to be destroyed; those implicated in producing unlicensed books were to be arrested and taken to parliament's Committee of Examinations for appropriate punishment.

⁸ They claimed that their form of church government was *jure divino*, by right according to God's law indicated in the practice of church government followed by the apostles.

⁹ The Presbyterian clergy of London were strongly opposed to the parliament's policy of accommodating 'tender consciences' (n. 43 below). They were behind citizen's petitions for Presbyterianism and non-toleration addressed to parliament from September 1645 onwards.

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[More information](#)

Toleration justified

as well there as in their writings to make the Separation and Independents odious by scandals and untrue reports of them, in confidence of having the press in their own hands, by which means no man without hazard shall answer them. To lay open the manner and depth of these proceedings is not the intention of this work.

I only thought good to mention these particulars that the presbyters may see they walk in a net¹⁰ – know 'tis no cloud that covers them – and that they may fear that in time they may be discerned as well by the whole people as they are already by a very great part thereof.

The London ministers' letter, contrived in the conclave of Sion College is one of the numerous projects of the clergy not made for the information of the Synod¹¹ but the misinformation of the people, to prevent which is my business at this time. I will only take so much of it as is to the point in hand, to wit, toleration.

Letter: 'It is true, by reason of different lights and different sights among brethren, there may be dissenting in opinion; yet why should there be any separating from church communion?'

Why? Because the difference in opinion is in matters that *concern* church communion. You may as well put the question why men play not the hypocrites – as they must needs do if they should communicate in that church society their mind cannot approve of. The question had been well put if you had said: 'by reason of different lights and different sights, there may be dissenting in opinion, yet why should our hearts be divided one from another? Why should our love from hence, and our affections grow cold and dead one towards another? Why should we not peaceably bear one with another till our sights grow better, and our light increase?' *These* would have been questions, I think, that would have puzzled a truly conscientious man to have found an answer for.

That which next follows, to wit, 'the church's coat may be of divers colours,¹² yet why should there be any rent in it?' is but an old jingle¹³

¹⁰ Psalm 9: 15: 'The heathen are sunk down in the pit that they made: in the net which they hid is their own foot taken.'

¹¹ Synod = (here) the Westminster Assembly of Divines, which, authorised by parliament, met in the Jerusalem Chapel of Westminster Abbey from 1643–8 to settle the form and discipline of a new church government to replace episcopacy. Sion House was the Cripplegate Street meeting place – virtually the club – of the London Presbyterian divines who, allied with Scots ministers seconded to the Assembly, agitated for a strict Presbyterian settlement.

¹² Genesis 37: 3, 23, 32.

¹³ 'jing' in the original.