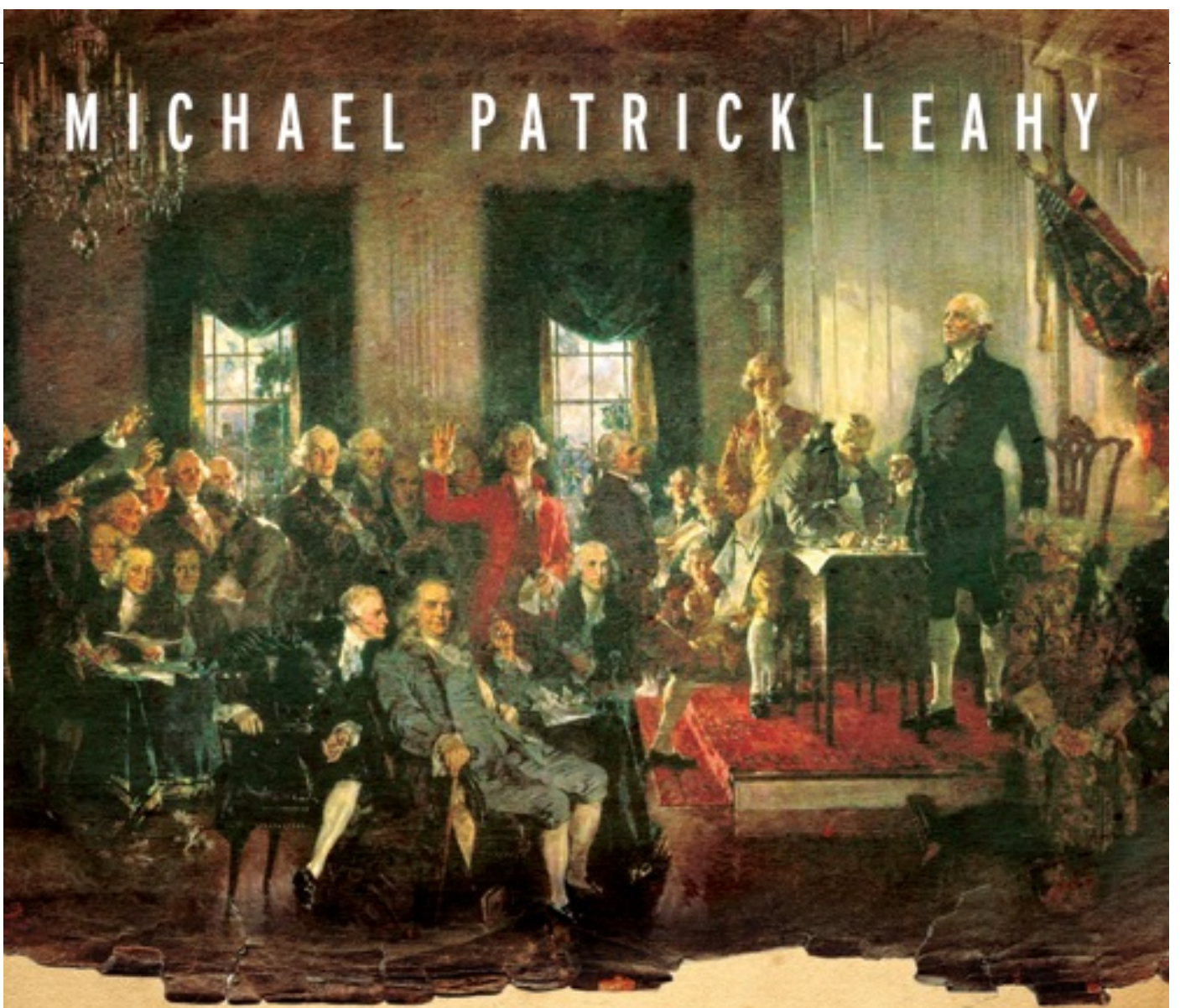


MICHAEL PATRICK LEAHY



COVENANT OF

Liberty

THE IDEOLOGICAL ORIGINS OF THE

Tea Party Movement

COVENANT OF

Liberty

*The Ideological Origins
of the Tea Party Movement*

Michael Patrick Leahy

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DEDICATION

To Courtenay and Honor

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I

Four Broken Promises: Why the Tea Party Arose

The story of civilization can be told in the conflict between the individual's desire for liberty and the state's need to establish social order. Every government, once established, seeks to centralize and consolidate its own power at the expense of individual liberty. This is as true for a democratic republic as it is for a constitutional monarchy, an absolute monarchy, an oligarchy, or a dictatorship.

From the moment the citizens of a country bind themselves in a constitutional covenant that guarantees the rights of the individual and defines and limits the powers of the government, the battle lines are drawn between the faithful defenders of that covenant and those who seek to corrupt it.

The Tea Party movement arose in 2009 because the political class of the United States—in the form of members of the legislative, executive, and judicial branches of our government—broke four promises found within the Constitution, thereby accelerating the natural tendency to centralize and consolidate power at the expense of individual liberty.

The first promise—to abide by the written words of the Constitution—was broken before the ink was dry on the last documents that sealed the uniquely American secular covenant contained in our Constitution and Bill of Rights. The second promise—to refrain from interfering in private economic matters—was broken when the modern party that routinely pays homage to “free markets” first came to power.

The third promise—to honor the customs, traditions, and principles that make up the “fiscal constitution”—was broken by Herbert Hoover and Franklin Delano Roosevelt 143 years after the Constitution was ratified.

Had not the fourth and final promise—that members of the legislative branch would exercise thoughtful deliberation while giving respectful consideration to the views of their constituents—been broken in such a disdainful and audacious manner in January and February 2009, the grassroots activists who came to be known as the Tea Party movement would never have been compelled to action.

But like the proverbial frog that jumps out of a suddenly boiling pot of water when a slow, steady

increase of temperature would have left him unaware, the activists were finally alerted to the danger they were in by the rushed passage of the \$787 billion stimulus bill during the Obama administration's first thirty days in office.

In this book, I explain why the ideas found in the covenantal promises of the Constitution were held in the minds of Americans at the formation of the republic, how they passed down largely intact from generation to generation, how those promises were broken by a corrupted political class, and how average citizens remained faithful to the covenant and the promises contained within it.

On my desk is a small old framed black-and-white photograph that provides a vivid reminder of my personal connection to the origins of our secular constitutional covenant. The photo, taken around 1927 outside a modest building that once served as a general store in a small upstate New York community, shows four generations of my family. My grandmother, then around ten years old, displays a bright smile, and holds hands with her mother, who stands next to her grandmother and great-grandmother, the latter a wizened gray-haired woman well past eighty for whom the effort of a smile seems too much to ask. As the four look at the camera, they form a visual link between me, my children, and the founding of the republic.

The old woman is Miranda Scott Dickinson, the great-granddaughter of Captain Andries Bevier, a veteran of the Revolutionary War, and the original recipient of the land grant that brought his sons and their children to this small town in upstate New York. The census of 1790, taken before this family migration occurred, shows Captain Bevier, aged fifty, as the owner of a midsize farm in Wawarsing, thirty miles to the west of Poughkeepsie on the other side of the Hudson River.

Captain Bevier had voted in the 1788 election that picked a delegate to represent Ulster County at the ratification convention for the U.S. Constitution, held in nearby Poughkeepsie that summer. It was there that Alexander Hamilton cynically professed his undying commitment to republican values, but it was the tide that turned the tide in favor of ratification in a tight 30–27 vote, and along with the other delegates signed a letter confirming that Congress had no implied powers beyond those specifically enumerated in Article I, Section 8 of the Constitution. Perhaps, given his prominence in the local community, Captain Bevier had ventured the thirty miles east to sit in the galleries and watch as Mr. Hamilton waxed eloquent. If he did, I wonder if he believed Hamilton's speeches were sincere.

Later, Captain Bevier voted in the election in New York's 4th Congressional District that put John Hathorn in the First Congress, which passed the Bill of Rights in September 1789. In 1790 he voted for the members of the state assembly and state senate who voted to ratify the Bill of Rights that year.

Eight generations ago, this ancestor of mine was one of a million or so regular American citizens whose active participation in the ratification debates gave them a share in the title Founding Father.

In what way am I and my fellow citizens bound today by the same secular covenant as my ancestor? The answer lies in the rights guaranteed me in that document. Just as Captain Bevier had the ability to help form that secular covenant, so have I and millions like me exercised that right through direct participation in the political process, and by the knowledge that we can follow the same process

to update and amend that covenant.

Whether I choose direct electoral and social engagement, or participation in amendment campaigns—either through lobbying Congress or by persuading the state legislatures to hold another Constitutional Convention—the opportunity to have “skin in the game” is the social contract by which I remain bound to that original covenant, just as the executive, judicial, and legislative branches are bound, along with the respective state governments.

In the aftermath of what we constitutional conservatives saw as the electoral debacle of 2008, I chose direct engagement. The means of engagement was the formation of an online conservative community called Top Conservatives on Twitter.

The question that intrigued me was this—were there any conservatives on Twitter? If there were, then perhaps we could form an online community and develop a common strategy. On November 2, 2008, I put together a list of twenty-six conservative people I knew who were on Twitter, placed it on a blog, and sent out a tweet inviting other conservatives to join. Almost immediately, I was hit with an avalanche of requests. In the first twenty-four hours, I received more than five hundred requests from conservative Twitter users around the country to be added.

The mere presence of a list, and in particular the fact that it was growing, served to instantly create and grow an online community. And because conservatives now could see a list of like-minded followers, they could “follow,” the collective visibility of all conservatives individually increased as well.

As the list grew, an interesting phenomenon developed. Conservatives would go to the list and follow all of the top one hundred on the list. Then they would engage them in dialogue, either public or private. Without intending to do so, we had created a real-time, online digital version of the New England town meeting.

About this time, many of those on the now-growing Top Conservatives on Twitter list suggested that we needed to adopt a “hashtag,” so that it would be easier for anyone on Twitter to follow the ongoing conservative conversation. One of our members, a seventy-eight-year-old grandmother from Weslaco, Texas, Beulah Garrett, suggested that we use the abbreviation of the list’s name, thus the hashtag #tcot. By the end of the second full week, there were more than one thousand names on the list and #tcot was consistently on the Twitter top-trending topics.

Our small but vibrant and growing online conservative community arrived on the scene just as the Republican Bush administration abandoned constitutional principles. We began to experiment with ways in which we could stop what we saw as this headlong rush toward socialism. Barack Obama was still more than a month away from being inaugurated as president, but the trend for liberty was wrong. And in fact we suspected it was about to get significantly worse.

The secular covenant earned through battle and fine-tuned by years of deliberative debate more than two centuries ago requires constant attention. Its participants must honor its terms through vigilant attention to their duties and obligations as citizens, legislators, and officials. They must also be alert to the periodic need to update it, and to safeguard its integrity by calling to account those who would seek to corrupt it. If we remain faithful to our inheritance, and carry forward the core values

the Tea Party movement with authentic grassroots intensity over the next generation, the future of our country is bright indeed. Based on my personal experiences over the last three years, I have no reason to doubt that we will succeed in this effort, and that our posterity will be able to say of us, They restored the covenant of liberty.

C

The English Roots of American Liberty

The first Tea Party movement was launched from a Tower of London prison cell in January 1647.* It was there that John Lilburne, a former officer in the Parliamentary Army who had been imprisoned for publicly insulting the integrity of a member of the House of Lords, set to paper concepts of the natural rights of the individual, constitutionalism, and the sovereignty of the people that would resonate through the centuries. His handwritten notes were smuggled out to a network of like-minded political and theological pamphleteers, friends, and colleagues based in London's nearby Coleman Street Warps, the clandestine center of England's burgeoning illegal press. Working in secret, Richard Overton, the proprietor of one of England's most prolific illegal print shops, quickly edited Lilburne's notes, set the type, and began producing thousands of copies of *The Cause of Regal Tyranny Discovered*.

Taking up two hundred pages, *The Cause of Regal Tyranny Discovered* was extraordinarily long. Despite its bulk, the pamphlet circulated rapidly through the taverns and meetinghouses of London where gathered supporters of the emerging grassroots movement championing the natural rights of the individual known as "The Levellers."* After several years of writing similar pamphlets, Lilburne had developed a large and sympathetic audience among the small merchants, journeymen, and apprentices of London, in addition to the rank-and-file members of the Parliamentarian Army. Few among the group, whom today we might call the middle class, were able to vote in Parliamentary or local elections. That privilege was limited to the 200,000 or so landholders of property valued at four hundred shillings* or more, not more than 5 percent of England's population of five million.

His newest pamphlet was an incendiary attack upon both the monarchy of Charles I and the aristocratic lords who served him. The youngest son of minor gentry, Lilburne had come from the rustic north of England to London as a teenager to serve as an apprentice to a clothmaker. Already steeped in Puritan Christian theology, Lilburne was a voracious reader and writer who began to independently develop the notion that adherence to Christian principles meant everyone was born with natural rights.

Lilburne argued that all English kings and their subordinate lords since the Norman Conquest

1066 had illegally held and exercised power. He not only attacked royalty for its origins in Norman tyranny; he also boldly asserted that the members of the House of Lords who had imprisoned him should be stripped of their powers. It was time, Lilburne argued, for England to return to its republican origins of Anglo-Saxon antiquity. The concept of the “Norman yoke,” imposed upon freedom-loving Englishmen for centuries by tyrannical monarchs, had been written of in earlier pamphlets, but Lilburne’s reputation gave it a vastly wider audience and significant credence.

The lords, Lilburne wrote, had inherited their titles “from their predecessors whom William the Conqueror, alias ‘Thief and Tyrant’ made Dukes, Earls, and Barons for helping him subdue and enslave the free nation of England, and gave them by the law of his own will the estates of the inhabitants.”¹

Since the House of Lords itself was illegitimate, he concluded, his own imprisonment was illegal and he should be released immediately. One hundred miles to the north of Lilburne’s Tower of London cell, in the small English town of Southwell, another prisoner plotted his release. Charles the king whose reign was the complete embodiment of the Norman yoke Lilburne so deeply desired to break, had been held for six months by the Scottish Army. He had led his own army in four years of bloody civil war against an army raised on the authority of Parliament. Having lost the war, he was now reduced to the scheming intrigues of a prisoner with few cards to play.

For the past decade, Charles and Lilburne had been at opposite ends of a great and often violent national battle about the proper relationship between the rights of the individual and the powers of the state. Their fates would be influenced, if not controlled, by the decisions of two powerful men, bitterly opposed to each other as they were divided in their views of the relationship between the rights of the individual and the powers of the state.

Less than a mile from Lilburne’s cell, in the House of Commons at Westminster Palace, Denzil Holles sat as a member of the Long Parliament, now in its seventh year. A protégé of the late jurist Sir Edward Coke, inventor of the concept of “the Ancient Constitution,” Holles too believed that “from time immemorial” England had been governed as a constitutionally limited monarchy where the power of the monarch was constrained by the aristocracy in the House of Lords and the gentry in the House of Commons. Individual rights were guaranteed by the rule of law. The crown had its prerogatives, but individuals at every level of society had their rights as well. Holles had paid the price for his devotion to Coke’s “Ancient Constitution,” having been briefly imprisoned by Charles in 1642. Now, in Parliament, he found himself in opposition to those who wanted to eliminate the monarchy entirely.

The second powerful man, Oliver Cromwell, sat at the head of the victorious New Model Army, 40,000 strong, now encamped in the north of England. The war brought the opportunity for him to rise to national prominence as he molded a highly organized and effective army. Previously, his obscurity was distinguished only by a genuine devout conversion to Independent Puritanism. He viewed his victories over the king’s Royalist forces in battle as evidence that he had been called by God to use the power of the sword to install a virtual Christian military dictatorship over all of England.

The personal battles between Lilburne, King Charles, Holles, and Cromwell reflected the four distinct philosophies, prevalent in England at this time, about the relationship between individual liberty and the power of the state. This divergence of thought would have been unknown in England a century earlier.

Throughout the four and a half centuries that followed the Norman Conquest, all of England had but one view of that relationship. The land had been governed by an unwritten constitutional compact between the monarch, the aristocracy, and the landed gentry, blessed and sanctified through the formal participation of the state-authorized church—Roman Catholic until 1534, Church of England thereafter.

When William conquered England in 1066, he claimed all the land and gave one-third of it to the church. Everyone—king, lord, gentry, commoner, yeoman, and laborer—belonged to the Catholic Church. All but the king paid their tithes and followed the theology proclaimed from the pulpit each Sunday. No individual discernment was allowed, or even possible, since the few Bibles that existed were handwritten in Latin, a language only the clergy could read. Church and state were inseparable.

Kings and parliaments, good and bad alike, had ruled through the ages, but always there had been an “agreement of conventions” whose terms were never comprehensively articulated in a single document. They existed instead in a complex set of relationships formed by years of tradition, common law, and custom. Conflicts between the rights of the individual and the powers of the state had been resolved, more or less, by using these long-established conventions.

It was this “agreement of conventions” around which formed widespread support for the notion of an unwritten constitution, a notion that would be strongly held on both sides of the Atlantic for centuries. Calls for improvements to this unwritten tradition in a constitution with greater specificity—written in a single document visible to and understood by all—arose in England periodically, but never succeeded. It was only in America that such a written constitution—our secular covenant—was finally introduced and accepted. But even in America, the idea of an “agreement of conventions” whose terms were not specified in the written constitution was accepted by all the Founding Fathers when it came to the important matter of fiscal responsibility.

With the rise of the Reformation and Henry VIII’s decision to break from the Catholic Church in Rome, this singular view began to fracture. As English-language Bibles were printed and distributed, every Englishman was now capable of determining for himself his own views on the great covenant relationships: between man and God, between the individual and the state, and between the individual and his local church.

Kings and bishops throughout Europe were wary of the possible effects from widespread distribution of the Bible written in the vernacular. Many believed that Martin Luther’s German language Bible—one of the first vernacular Bibles available—had been one of the causes of the Peasant Wars, populist uprisings in Germany in the 1520s in which an estimated three hundred thousand people were killed. Luther himself was sufficiently concerned with such claims that he publicly separated himself from the actions of the peasants. English translations came decades later.

and were possible only because of the shifting religious loyalties of the English monarchy.

When the Catholic Mary Tudor ascended to the English throne in 1553, leading Protestant theologians, including William Wittingham and the Scottish reformer John Knox, fled to exile in John Calvin's Geneva Republic, which tolerated only Presbyterian Calvinism. There they undertook a new English translation from the Hebrew and Greek originals, one that would be more dynamic and easily understood by the common man than the first English translation, created by the scholar William Tyndale nineteen years earlier.

Their translation was deeply influenced by the works of Calvin. In his magnum opus, *The Institutes of the Christian Religion*, Calvin described his system of Protestant theology, including the covenant relationship between man and God, but also the relationship between the church and civil government. The *Institutes* provided a biblical justification for Christian resistance to the rule of tyrannical monarchs. It also laid the framework for the establishment of a biblically based civil government, practiced in Geneva, then a city of 20,000. Its republican form of government tolerated but a single theological perspective: Calvinism. Under the five theological points of Calvinism—the total depravity of man, unconditional election of the saints, limited atonement given only to the predestined saints, God's irresistible grace and total sovereignty, and the perseverance of the saints—only the predestined "elect" who were members of the established Presbyterian church enjoyed full civil rights.

Calvin's predestination theology was at odds with later Christian theologies that emphasized "free will" and made no distinction between the "saved" and "doomed," such as those of Arminius, Grotius, and Roger Williams. All men had the potential to be saved, they argued, and it was this potential that formed their original natural rights.

When the Geneva Bible was finally published in 1560, it had the same effect in England as the French-language Olivétan Bible, published in 1535, had had in France and Switzerland. The new Protestant queen, Elizabeth I, allowed its printing and distribution, even though a careful reading of the text and the extensive margin notes encouraged challenges to her royal authority. Englishmen who had previously thought little about the relationship between the individual and the state now had reason to contemplate what God had to say on that matter. Following Calvin's thinking, the Geneva Bible made the concept of a covenant—a solemn agreement between God, who promised eternal salvation, and man, who promised obedience—now seem relevant and applicable to other relationships, such as the individual and the state, and the individual and his local church.

With their divine task in Geneva completed, the expatriate English theologians returned to their homelands. In England, some returned easily to their prior roles in the Church of England, while others began to see the need to "purify" that institution along the Calvinistic lines they had observed in Geneva.

In Scotland, John Knox returned with copies of the Geneva Bible and a determination to install a Calvinist version of the Geneva Republic. Inspired by Knox, the Scottish Parliament rejected Catholicism. They established a General Assembly of Presbyters, modeled on Calvin's consistory court.

church leaders, who set the policies that the elected civil magistrates were to follow to manage the governance of the Church of Scotland,* rejecting the episcopacy of the Church of England.

Mary, Queen of Scots returned briefly to Scotland from France to assume her crown after the death of her first husband, Francis II, but by 1567 her troubled reign ended with her exile. Her one-year-old son, James, was named king. Until he reached his majority, the country was ruled by a series of regents. James's education was supervised by the severe and demanding George Buchanan, a renowned Presbyterian scholar and a follower of Knox, who supported the concept of limited constitutional monarchy. In 1579 his *Dialogue Concerning the Rights of the Crown in Scotland* was published. Its purpose was to instruct his now thirteen-year-old charge that the source of political power was the people. Monarchs, Buchanan argued, must honor the terms by which they are given authority. Where Calvin had merely argued that tyrannical monarchs could be lawfully resisted, Buchanan went further. Tyrannical monarchs, he wrote, could be lawfully overthrown.

James feared and hated Buchanan. Even when he was an adult the mere mention of his childhood taskmaster's name would send him into a dark and combative mood. Two decades later, in 1598, he publicly rejected his former tutor's philosophy. In *The True Law of Free Monarchies*, James set out the doctrine of the divine right of kings. James argued that his authority as a monarch derived directly from God, in an apostolic succession that extended back to Jesus himself. Monarchs owed none of their authority to the aristocracy, the gentry, or the people. The monarch was accountable not to the people, but to God, and he alone was the arbiter of God's will. The people were accountable to him.

In England, challenges to the royal prerogative were also raised, but the politically astute Elizabeth I dealt with them so adeptly that none rose to the level of constitutional crisis.

When Elizabeth I died in 1603, the change that took place in England as James VI of Scotland became James I of England was dramatically illustrated by a troubling event that occurred as the new king traveled with his entourage south from Scotland for his coronation. A thief had followed the caravan as it proceeded toward London. At Newark-on-Trent, the thief was caught, and confessed to the crime of stealing purses. James had him hanged on the spot. The unfortunate criminal had neither trial nor hearing, the rule of law that would have certainly been applied had the incident occurred during Elizabeth's reign. The new king's subjects took note. This was a very different ruler from Elizabeth.²

Now thirty-seven years old, James finally had the opportunity to use the church and throne in England to consolidate his absolute powers. For James, the hierarchical structure of the Church of England was far better suited to this doctrine of governance than the Presbyterianism of his native Scotland. In England, God directed the king, who in turn directed the archbishop of Canterbury. As a practical matter, however, James spent little time trying to discern God's will, and assumed that because something was his will, it was also God's.

Early in his reign, he joined several Puritan preachers and bishops of the Church of England at the Hampton Court Conference in 1604 to discuss ecclesiastic matters. A major purpose of the conference was to secure the cooperation of biblical scholars from all factions to undertake and complete a mo-

“royal-friendly” English translation of the Bible. There he confirmed that Presbyterianism was not consistent with the type of absolutist monarchy he intended to practice:

“I know what would become of my supremacy [if there were no bishops]. . . . No bishop, no King. When I mean to live under a presbytery I will go into Scotland again.”³

One worthy at the conference reported James gave this caveat:

that no marginall notes should be added, having found in them which are annexed to the Geneva translation . . . some notes very partial, untrue, seditious, and savouring too much of dangerous and trayterous conceites. As for example, Exodus 1:19, where the marginal note alloweth disobedience to Kings, and 2 Chronicles 15:16, the note taxeth Asa for deposing his mother, only, and not killing her.⁴

This conference resulted in the publication of the authorized version of the King James Bible in 1611, but the popularity of the Geneva Bible and its antimonarchical margin notes kept it in wide circulation for several decades.

Soon after the Hampton Court Conference got under way, Sir Edward Coke came to the king's attention, after his successful prosecution of Guy Fawkes and several other Catholics who conspired to blow up Parliament. At fifty-two, Coke was already one of the most respected and wealthy common law lawyers in the country. After the convicted traitors were hanged, drawn, and quartered, no man in England not of royal blood was held in higher regard than Coke.

Impressed with Coke's legal skill and tenacity, James appointed him chief justice of the Court of Common Pleas in 1606, but he underestimated the extent of Coke's devotion to English legal traditions and the rule of law. He had expected Coke to bend to his own exercise of divine royal authority, but Coke was unyielding in defense of his judicial independence. James claimed the right—the royal prerogative—to adjudicate any cases he wished in any courts he desired. Coke responded forcefully, as J. C. Tanner reports in *The Constitutional Documents of the Reign of James I*, that such royal prerogative was nowhere to be found in English common law:

[T]he King in his own person cannot adjudge any case, either criminal . . . or betwixt party and party . . . but this ought to be determined and adjudged in some Court of Justice, according to the Law and Custom of England.

It was the first of many conflicts between, on the one side, Coke and others in the landed gentry like him who knew that centuries of English common law tradition had imposed limitations on the conduct of kings, and, on the other, the Stuart kings, who saw the authority of God in all they did and wanted to do. Soon a divide arose throughout England between Court—the aristocracy and gentry who sought advancement and wealth by royal favor and sided with the Stuart kings—and Country—the landed gentry who sided with Coke. As the leader of the gentry, Coke found himself in constant

conflict with the king, even serving some time in the Tower of London.

When James I died in 1625, England did not weep. His son and successor, twenty-four-year-old Charles I, brought with him his father's devotion to the supremacy of arbitrary royal prerogative and disdain for Parliament. Further conflict with Coke was inevitable.

In need of money, Charles hit upon a tactic that previous monarchs had used with some success—program of forced loans. Aristocrats and landed gentry whom the king could not tax without Parliamentary agreement were instead forced to “loan” the crown funds, knowing such loans would never be repaid.

The scale and scope of Charles's forced loan program were unprecedented. Never before had so many gentlemen been forced to pay, and never had so many refusers been thrown in jail,⁵ including five knights, a decision that did not sit well with the populace. The king finally released the jailed knights when, in need of even more money, he was forced to call Parliamentary elections, and knew that they would not turn out favorably until the knights were free.

Coke now used the concept of the “Ancient Constitution” as a rhetorical spear for Parliament's attack upon the king's arbitrary rule.⁶

The traditions of the “Ancient Constitution” had been practiced from “time immemorial,” Coke argued, when the ancestors of the English people—the Angles, Jutes, and Saxons—lived in the forests of Germany. These ancient Germanic tribes were ruled by an elected king whose powers were limited by an elected parliament and a second institution of powerful chiefs. Citizens were guaranteed a string of liberties, which included trial by jury. When the Angles, Saxons, and Jutes invaded England, they imposed this form of governance on the native Britons, and it thrived until 1066, when the conqueror William I imposed feudalism through force and Norman law.

In Coke's view, William tempered the Norman law with the acceptance of many of the elements of his Anglo-Saxon predecessor, Edward the Confessor.* Lilburne's “Norman yoke” concept was one that Coke would have completely rejected. According to Coke, this Ancient Constitution was periodically improved, starting with the Magna Carta in 1215. Over the next four centuries the natural balance found in the Ancient Constitution was continually improved in fits and starts until the rule of James I.

The king, Coke argued, was subject to the rule of law as much as any of his subjects were. Coke would find many precedents to support that argument, and in doing so, he gave his fellow members of Parliament the courage to publicly stand with him in opposition to the king.

As Coke and his allies gathered in the spring of 1628, they decided to make a stand for the rights of Englishmen against Charles I's arbitrary rule. The bill they set forward, the Petition of Right, included the prohibition of taxation without Parliament's consent, as well as prohibition of forced loans and arbitrary arrest, the right of habeas corpus, the prohibition of forced billeting of troops, prohibition against the imposition of martial law, and rights of due process.⁷ Significantly, the very name of the bill—a petition to the king—acknowledged that it was the sovereign who held the ultimate authority and that Parliament could only ask for his favor.

When Charles finally gave his assent, he did so disingenuously. Though the Petition of Right was now law, he almost immediately breached its provisions. In the spring of 1629 he closed down Parliament and began the eleven years of arbitrary exercise of power known as the era of personal rule.

Coke soon retired, and in the quiet of his private life, he wrote the four volumes of the *Institutes of the Lawes of England*. When Coke died in 1634, Charles confiscated the books but, notably, did not burn them. They would be published posthumously in 1642, and Lilburne would put them to good use in his writings.

The eleven years of personal rule from 1629 to 1640, when Parliament did not meet, were the culmination of Stuart absolutism. Reactions among Puritans were strong. One group, led by John Winthrop, determined to leave England and establish a Christian Bible-state that could be a “city upon a hill” and an example to all Christians of the proper godly way to organize and manage a country. From 1629 to 1640, an estimated forty thousand Puritans made the trek to Massachusetts, where Winthrop and other elders established the first Christian theocracy in the new world—the Massachusetts Bay Colony.

Others, either through lack of resources, lack of boldness, or devotion to the mother country, chose to stay in England and press for their rights there. Among this group was the young John Lilburne.

The tall and charismatic Lilburne entered the public eye in 1638, at the height of Charles I’s era of personal rule. Only twenty-four at the time, Lilburne was arrested and tried for smuggling “unlicensed” Christian books from Holland to England. His courageous conduct at his trial and subsequent public punishment established his reputation.

He was not tried in a common law court by a jury of twelve peers, where he would have been granted the right to his own legal counsel. Instead his case was brought before the Star Chamber. Previously, this special court had been used for expedited hearings on matters involving important figures who might have influenced the outcome of common trials. Charles transformed the Star Chamber into his personal vehicle for eliminating enemies and forcing compliance with established regulations limiting dissent. By the time Lilburne was brought in chains before it, the Star Chamber had become the symbol of the abuse of power that characterized Charles’s rule.

Addressing Lilburne in the customary “Law French” of the Star Chamber,^{*} the judges demanded he hear his plea. Lilburne refused to plead until he heard the charges in English. Angered by his defiance, the court ordered him to be stripped of his shirt and tied to an oxcart, behind which he walked for two miles. Crowds gathered to watch as he was lashed more than two hundred times with a three-tailed whip. When he arrived at his destination—the front yard of Westminster—he was untied from the cart and placed into a pillory.

Defying his captors, Lilburne removed the banned religious books he had hidden in his pockets and threw them into the crowd, and loudly proclaimed that his punishment was a violation of his rights as an Englishman. His captors quickly gagged him, but he had won the hearts of his countrymen and become a symbol of resistance to the arbitrary power of the king. The price for this demonstration

courage was high. He remained in prison under severe conditions for more than two years, released only when Charles I was compelled to call Parliament into session to finance his “Bishops’ Wars” against Scotland. He emerged severely malnourished. He no longer could use two of his fingers as a result of casualties of two years of wrist chains.

Had he faded from the scene in 1640, his place in history would have been secure. More than three centuries later, U.S. Supreme Court justice Hugo Black cited Lilburne’s refusal to enter a plea to unspecified unknown charges in the Star Chamber proceedings as the basis for the Fifth Amendment—the protection against self-incrimination.⁸ Lilburne’s Star Chamber trial was also cited as a significant historical precedent in the Supreme Court’s majority opinion in the landmark case *Miranda v. Arizona*.

But Lilburne spent the rest of his life embroiled in controversies, displaying a knack for getting himself thrown into prison. England was less than a decade into an era of explosive growth of printing that featured widespread distribution of one-page broadsheets, slightly longer pamphlets, and books. The prolific and compelling writer, Lilburne quickly became one of the brightest stars in this “new media” explosion.

When the English Civil War broke out in 1642, he fought at Edgehill, and quickly rose to the rank of lieutenant colonel. He was captured by the Royalists, imprisoned for several months, and scheduled for execution. His brave, resourceful, and very pregnant young wife, Elizabeth (known to history as “Bonnie Bess”), rode through the night to persuade Parliament to put to death a number of its royalist prisoners if her husband was executed. She completed the return trip just in time to begin negotiations for a prisoner exchange, which were successful.

Over the next five years, Lilburne continued to write at a prolific pace, gathering around him other like-minded Englishmen who believed in the cause of individual liberty. For him these views were a natural extension of his Puritan Christian faith. As his personal popularity grew he rankled the royalist Parliamentary powers just as much as he had Charles I.

As the cold winter of 1647 turned to spring, three competing philosophies—Stuart absolutism, Coke’s constitutionally limited monarchy, and Lilburne’s constitutional republicanism—had now been firmly established. The fourth—the authoritarian Bible-state of Cromwell—was about to be fully revealed. Cromwell would soon assert his control over the New Model Army, which in turn would use its power of the sword to assert its control over Parliament.

The army was now the most important player in the developing drama to reestablish a working English government. England had no tradition of standing armies, but the Civil War had spawned one. Parliament had raised it five years earlier, and Cromwell had turned it into the highly efficient war machine that had defeated the king. Now Lilburne watched from his prison cell window as 20,000 soldiers of the New Model Army marched into the city of London in a line that stretched for a mile and a half. Later, Cromwell visited him in his cell, promising to work through Parliament to gain his release,⁹ but in October 1647, he still languished in the Tower as preparations for the critical Putney

Debates began.

These debates were designed to hash out differences between the Grandees and the Agitators on the formation of a new government and the treatment of the imprisoned king. Parliament, though in session, was an increasingly weak and ineffective counter to the New Model Army, whose senior officers, the “Grandees,” came from the same landed gentry who populated Parliament. Cromwell, the most prominent Grandee, had served in Parliament, as had many of his fellow Grandees. They sought to establish a government where the privileges of the aristocracy and landed gentry of “purified” Christian beliefs were preeminent.

The “Agitators,” elected representatives of the rank and file, were supporters of Lilburne’s much more republican view, in which the people were sovereign, the right to vote was extended to almost all adult males, and individual rights—especially with regard to religious worship—were respected.

The role played by the imprisoned king—if any—in a new government was an issue on which the two sides were uncertain. Neither the Grandees nor the Agitators trusted the king, but the Agitators, driven as they were by the desire to expand individual rights for all but “wage-earners and beggars,” seemed willing to accept either a republic or a constitutionally limited monarchy, provided the individual rights were acknowledged.

Cromwell wanted to hold the debates while Lilburne was still in prison so that he would be unable to participate. The Grandees’ plan—one that failed to advance the people’s sovereignty—was more likely to prevail if the most effective champion of those liberties, “Free-borne” John Lilburne, was unable to make the argument in person.

Drawing upon Lilburne’s writings, John Wildman, a young Leveller attorney whose origins were more modest than even Lilburne’s, penned a 900-word constitution called “The Agreement of the People.” The document called for the establishment of a biennially elected unicameral Parliament of four hundred representatives, elected by every adult male in the country (excepting servants and “wage-earners”),* limitations on Parliament’s power to compel religious worship, and the abolition of the state-authorized episcopacy and the dreaded tithe that supported the Church of England.

As a sign of the government’s accountability to the people (rather than the other way around), its adoption as the new basis of England’s constitutional governance required acceptance by the people—civilians as well as soldiers—in a national referendum. In essence, the Agreement of the People called for a congregational covenant, freely entered into by all, that would provide the authentic basis for the government of the entire nation.¹⁰

More than three centuries later, in his dissenting opinion in *Goldberg v. Kelly*, Supreme Court Justice Black paid tribute to this document as one of the early precursors of our own Constitution:

The goal of a written constitution with fixed limits on governmental power had long been desired. Prior to our colonial constitutions, the closest man had come to realizing this goal was the political movement of the Levellers in England in the 1640’s. . . . In 1647, the Levellers proposed the adoption of An Agreement of the People which set forth written limitations on the

English Government. This proposal contained many of the ideas which later were incorporated in the constitutions of this Nation.¹¹

The Putney Debates came to an end, without resolution, in part because Charles I escaped from his house arrest in Hampton Court. But the most compelling reason for the termination is that Cromwell feared Lilburne's possible arrival, which held out the potential of turning the tide in favor of the Agreement of the People among the army.

By the time Lilburne was finally released on November 7, 1647, it was clear that the debates would never reconvene. While Charles I languished in his royal imprisonment, Lilburne used his time in freedom wisely, working to organize the Leveller movement. He held regular meetings in taverns and inns around London, established an organizing committee, helped organize a weekly publication of Leveller thought and tactics called *The Moderate*, and improved the printing and distribution of pamphlets and broadsheets. The number of Levellers grew dramatically, making it truly the first significant grassroots political movement in Anglo-American history. Representatives were selected to spread the message throughout the country, which they did with great vigor, inspired by Lilburne's enthusiasm.

Fearing the popularity of Lilburne's message, Cromwell contrived in January 1648 to have Lilburne arrested and imprisoned in the Tower of London again. This time he was joined by other Leveller leaders, including young John Wildman. Though deprived of freedom, Lilburne was comforted in the knowledge that his organizational efforts had succeeded. The thousands of Leveller sympathizers who had gathered throughout London at the time of his first release had grown in two short months to tens of thousands around the country. Their ranks continued to swell during his second imprisonment.

In early 1648 King Charles undertook actions that would soon unravel his chances of returning to the throne. He cut a deal with the Scots to introduce Presbyterianism as the ecclesiastic policy of England for a period of three years. That summer the Scots invaded England, fighting against the former Parliamentary allies, and were defeated at the Battle of Preston in August 1648.

The majority Presbyterian faction in Parliament wanted to negotiate a settlement. For several months, Parliamentary representatives negotiated the Treaty of Newport with Charles, which would have restored him to the throne under conditions that limited his authority. The Grandees of the New Model Army and the Puritan Independents in Parliament didn't trust the king.

But Cromwell refused to let Charles retain any power. Instead Cromwell swung his mighty sword in the name of the Lord, and the only military coup d'état in English history was launched. On a December morning in 1648, New Model Army colonel Thomas Pride surrounded the Houses of Parliament with a regiment of one thousand soldiers. As those members of Parliament aligned with the Presbyterian faction attempted to enter the building, he checked their names off a list. Those who supported reconciliation with the king were refused entry and arrested. Soon, more than seven hundred members of Parliament were in prison, and another two hundred chose not to attempt entry to the

building. Denzil Holles, already targeted by Cromwell and his allies in Parliament, got wind of the coup. Knowing he would be arrested, he fled to France.

The remaining members—barely 200 out of the 500 elected in November 1640—were all inclined to support the Grandees. This “Rump Parliament” continued to conduct business as if they maintained the same constitutional authority as before.

On January 6, 1649, the Rump Parliament appointed 135 members to a “High Court of Justice” which tried King Charles I for treason, convicted him in a three-day trial, and had him beheaded on January 30, 1649. The next week, the Rump abolished both the monarchy and the House of Lords, and set up a forty-one-member Council of State. Cromwell was named chairman.

To the constitutionally minded Lilburne, every action taken by the Rump Parliament was illegal. This new “Commonwealth” was a greater violator of individual liberties than Charles I had ever been, even at his most tyrannical. Its authority was maintained not by law, but by the might and force of the standing army.

When the king’s sentence was confirmed, Lilburne had proclaimed, “Why stop at one execution? Why not hundreds or even thousands?” The point was echoed by the conduct of the army. One Colonel Hewson is said to have proclaimed, “[W]e can hang twenty before they can hang one.”¹² To which Lilburne rejoined, “And thus, after these fair blossoms of hopeful liberty, breaks forth this bitter fruit of the vilest and basest bondage that ever English men groan’d under.”¹³

Lilburne, free once again, set forward his indictment of Cromwell’s tyrannies in a new pamphlet aptly titled *England’s New Chains*. It spread through the Leveller distribution system at a rapid rate. The Rump Parliament was not pleased, calling the document “false, scandalous, and reproachful” as well as “highly seditious.” Cromwell knew that he had a pending revolt on his hands, and moved quickly to crush it. At four in the morning on March 28, 1649, one hundred horsemen surrounded Lilburne’s lodgings, and dragged him off to the Tower once more.

But public sentiment stood behind him. For much of the decade, he had been the most popular man in England, and his supporters did not desert him. In April his wife led more than a thousand women all wearing sea-green ribbons,* in a march that ended at the doors of Westminster, where they delivered a petition, signed by 10,000 people, demanding Lilburne’s freedom. The Rump Parliament refused to accept it.

Hugh Perry, an emissary from Cromwell, visited Lilburne in the Tower that month, attempting to secure a public statement of support for the new government in return for his freedom. The two engaged in a sharp exchange. Sovereignty, Lilburne argued, derived from the people. Pshaw, laughed Perry. The only legitimate authority derived from the might of the sword. Cromwell soon exercised that sword once more in a vicious and brutal way to finally suppress the well-intentioned but poorly organized and ill-financed Levellers.

Unhappiness with the new government continued to grow among Leveller supporters in the army. In April, a mutiny erupted among soldiers concerned about a planned invasion of Ireland, their lack of pay, and the failure to secure new Parliamentary elections. The uprising was quelled, its ringleader

executed at St. Paul's Cathedral. His funeral was attended by thousands of Levellers wearing their se green colors.

The next month, Leveller William Thompson led a mutiny at Banbury, calling for the release of Lilburne and the acceptance of the Agreement of the People. Cromwell led a disciplined charge of loyal cavalry that surrounded and captured several hundred mutineers, who were imprisoned for several days at Burford Church. Thompson was killed in the skirmish. After their capture, three other ringleaders were executed and buried on the grounds of the church. The militarily hapless Leveller had been crushed.

In October 1649, the Rump Parliament convened an "extraordinary" court of forty-one specially selected judges to try Lilburne on charges of violating the Treason Act, a law passed a few months earlier for the specific purpose of creating a crime for which they could convict Lilburne. After a three-day trial, he was found not guilty and released. Bonfires of celebration lit the skies from London to the English countryside. The victorious Lilburne was lionized as a hero throughout the land.

But when the Levellers' military efforts ended, so too did their political ones.¹⁴ The Rump Parliament reinstated censorship of the press, and the repressions of the Commonwealth regime continued. Lilburne, though free, was unable to organize among the former Levellers, many of whom rightly feared for their lives. The grassroots movement for a democratic republic of constitutional limited government in England was over.

Lilburne never regained his position of prominence. He continued his opposition to Cromwell and was in and out of English prisons for the rest of his short life. Near the end, he became a Quaker.¹⁵ On a short parole from Dover Prison in the spring of 1657, Lilburne died of "gaol fever" in the arms of his long-suffering wife, Elizabeth. Of his passing, and her life with him, Elizabeth said it had brought her only "seventeen years' sorrows."¹⁶

Though a failure in its own time, the Leveller movement was a spectacular success when viewed through the prism of posterity. More than three centuries later, seventeen of the twenty key proposals in the Agreement of the People would be incorporated in English statutes and the English Constitution, and the eighteenth—the call for a written constitution—would be adopted in the new United States.

Having crushed the only significant popular opposition to the Commonwealth, Cromwell went about consolidating his power. His methods, however, became increasingly unpopular. The Calvinist authoritarian Bible-state he headed delivered brutal justice and limited personal liberties in ways that were even more objectionable than those used by Stuart tyrants.

Lilburne's protégé, young John Wildman, was able to read the tea leaves of political and military power more clearly than his mentor. Recognizing the futility of the Levellers' cause in the face of the overwhelming financial and military resources of Cromwell, he quietly removed himself from the scene. He would wait for another day when the political winds might be aligned more in his favor.

When the monarchy and the Ancient Constitution were restored in 1660 and Charles II took the throne, so great was the unhappiness with Cromwell's rule that his body, which had been entombed

Westminster Abbey after he died in September 1658, was exhumed, hung in public chains, and decapitated. The headless body was disposed of in a pit, and his severed head “was displayed on a pole outside Westminster Hall”¹⁷ for the next twenty-four years.

The Stuart genetic predisposition toward absolutism, however, remained. Chastened by the fate of his father, Charles II proceeded with more political caution toward the complete realization of his grandfather’s divine right of kings. Fortunately for Charles and the kingdom, he was so preoccupied by the pursuit of his own dissolute pleasures (he is said to have fathered more than a dozen illegitimate children, by nearly as many mistresses), he never focused his full energy and attentions in that direction.

Opponents of Stuart absolutism rallied around the aging Denzil Holles, returned from his Cromwellian exile, and former Leveller John Wildman, who with other like-minded leaders formed what would become the first opposition political party. They were called “Whigs,” a term derived from the stubborn Scottish covenanters—“Whiggamores”—who only reluctantly accepted the Restoration.

Like most political coalitions united around a common opponent, these Whigs spanned a wide spectrum of political thought. The radical minority tended toward more republican views of government, while the majority merely sought to restore the kind of balance Coke described in the Ancient Constitution.

Whig writers dusted off the Leveller tool of political pamphleteering but found themselves in need of a compelling new argument. The failure of the unpopular Cromwellian regime left philosophies of civil governance based upon Protestant covenant theology in poor repute. And while the Ancient Constitution had its place, Lilburne’s Norman yoke had become so intertwined with it that absolutist apologists for the king (“Tories”) could dismiss it as a factor contributing to the antimonarchic excesses of Cromwell.

Casting about for new rhetorical weapons, the more radical Whig pamphleteers such as Algernon Sidney and James Tyrrell, a close friend and supporter of John Locke, eagerly embraced a new school of secular natural rights, articulated most successfully in the writings of the Dutch theologian Grotius and German philosopher/statesman Baron von Pufendorf.

With help from Locke and Wildman, Sidney and Tyrrell soon carried the natural law argument to the forefront. Though their arguments were secular, they acknowledged that natural law was given to man by God, and that it could be maintained only if agreements were honored. The most aggressive aspect of this natural rights argument was that it gave citizens the moral authority to resist the exercise of force that compels compliance with acts contrary to natural law.¹⁸

Algernon Sidney’s *Discourses Concerning Government* was a response to the divine right of kings apologist Sir Robert Filmer’s *Patriarcha*. Sidney “believed that the Sovereign’s subjects had the right and duty to share in the government of the Realm by giving advice and counsel.” Patriarchal government was not the exertion of God’s will, as Filmer and others contended, because the “[c]ivil powers are purely human ordinances.”¹⁹

Though Sidney's arguments were presented in the immediate aftermath of the Glorious Revolution and played an indirect role in the Whig pamphleteering that led up to it, John Locke's ideas of natural law were the most powerful of the day.

Among the most significant natural rights that all men possessed, Locke would argue, was the right to obtain and keep property. With property came a stake in society. For Locke, unlike his more radical Whig allies, the right to vote should be limited to those who possessed at least a modicum of property.

The Catholic James II was crowned king in April 1685 on the death of his brother Charles II of natural causes (though some of the radical Whigs unsuccessfully conspired to kill him in 1683). James II wasted little time in giving the enemies of Stuart absolutism reason to complain. Calling another Parliament into session, he deployed heavy-handed techniques to ensure the election would result in a majority of members that would support his program. He continued his brother's practices of removing opponents from eligibility to stand for election, and, as the contemporary historian Gilbert Burnet documented, did not shy from the use of force to make sure his men won. Reports "came from all parts of England complaining about the violence used in the elections of 1685. . . . The methods were so successful that James II said that there were only 40 members of parliament that he was unhappy with."²⁰

Even this most supportive Parliament, however, soon gained the disfavor of the newest Stuart king. In November James II decided to eliminate the Test Acts, a law that prevented Roman Catholics from holding public office or serving as officers in the army. Parliament recoiled at this, and when the members voiced their opposition, he dismissed them all. As historian George Henry Wakeling noted, "and thus the most loyal Parliament a Stuart ever had was prorogued."²¹

James II quickly piled on his offenses. He assembled a standing army of more than 34,000 soldiers without securing Parliamentary approval, and he insisted on his right to dispense with any law that he did not like made by past or present Parliaments.

The last straw came when he published his Declaration of Indulgence, which in effect gave preference to Catholics over members of the Church of England. He then compelled all the bishops of the Church of England to read the document as part of regular church services. Seven refused, and when he imprisoned them in 1688, their subsequent trial and acquittal sparked Whig pamphleteers to continue their literary assaults on the latest Stuart tyrant. Many limited their arguments to the restoration of Coke's Ancient Constitution, but the Radicals went further. Not only did they see freedom of conscience and religious tolerance, but they resurrected the Levellers' argument for the broad expansion of suffrage. Popular sentiment across the country rallied to the arguments of both Moderate and Radical Whigs.

Soon Whig leaders sent a letter of invitation to Prince William of Orange, the Protestant leader from Holland, to rescue England from the tyrannies of James. William's wife, Mary, was James II's Protestant daughter, and she, in her own right, had a legitimate claim to the English throne.

In November of that year, William responded positively to the invitation, sending back his own

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