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The Trial of John Lilburne October 1649.

A new perspective.

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Thesis submitted for the Degree of M.A. by Research

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Abstract

The trial of John Lilburne for treasonable, seditious libel that took place at the Guildhall in London on the 24th, 25th and 26th of October 1649 has held a clear and unambiguous place in the consciousness of the majority of those that have written on the subject. It has been portrayed as a victory for John Lilburne and for the truth and force of his rhetoric. This research sought to re-examine the historical evidence for this interpretation that has emerged as the traditional orthodoxy. Mitigating factors to this was to look at the context of the trial within the year of 1649, the relationship between accused and the State and also the accused and the trial's primary and most prominent chronicler.

The study endeavors to shed new light on the tensions that existed within the newly formed Commonwealth State and how these impacted on the circumstances of the trial. These tensions not only existed between prosecutors and defendant, propaganda and public opinion, but are also evidenced within the highest echelons of the State's power structure.

The research deliberately sought to examine the areas that have been less travelled by previous writers on the trial. These aspects include: the stance that was developed by those that opposed John Lilburne, Clement Walker's interpretation of the event and how this has influenced many future writings on the trial, the under reported first day of the trial and also if the acquittal at the end of the trial was truly the victory that has been maintained. The aim was to give a more balanced and studied interpretation to what occurred. This was attempted by using less documented sources such as those associated with the first day and the evidence supplied by contemporary news books. It also seeks to re-examine the works of John Lilburne to help reevaluate and glean a new understanding of the forces and processes that centered on the Guildhall before, during and after the trial.

Abbreviations

<i>BL</i>	<i>British Library</i>
<i>CJ</i>	<i>Journal of the House of Commons</i>
<i>CSPD</i>	<i>Calendar of State Papers Domestic</i>
<i>EEBO</i>	<i>Early English Books on line</i>
<i>HEQ</i>	<i>History of Education Quarterly</i>
<i>HJ</i>	<i>Historical Journal</i>
<i>HLJ</i>	<i>House of Lords Journal</i>
<i>HR</i>	<i>Historical Research</i>
<i>LHR</i>	<i>Law and History Review</i>
<i>YJLH</i>	<i>Yale Journal of Law and Humanities</i>

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I would also like to thank my family, my wife, my mother-in-law and especially my two daughters, for the support and logic that they brought to this endeavor. I would, finally, like to dedicate this research to my mother, without whose support and inspiration this work would never have been attempted.

Introduction

A large amount of historical writing and research has been undertaken cataloguing the life, writings and legacy of John Lilburne. This has encompassed: his political activities, role as a champion for judicial freedom, struggle for an Englishman's liberties and his speeches. One of the most important and frequently cited set pieces used in these studies was Lilburne's trial for writing seditious and treasonable literature held at the Guildhall, London in October 1649.

One historical approach has been to see this trial as being contained and defined purely as an element in the narrative flow of John Lilburne's life and legacy. This is evidenced particularly by the work of his biographers: M. A. Gibb and Pauline Gregg and their respective works *John Lilburne, The Leveller* (London, Lindsay Drummond, 1647) and *Free Born John* (London, Dent, 1986). Another approach has been to look at the context and utilisation of the speeches that John Lilburne deployed during the trial and how they reflected on the world he inhabited. In contrast, this research will view the trial as not just a sequential episode in Lilburne's biography, but as a defining factor to the shape of his later life. This trial was a point of reference to which he would later keep returning. The shift of focus allows the legacy aspect of the trial to be reassessed.

The dominant trope in many renderings of the trial John Lilburne is the fact that his arguments have commanded centre stage. This was not always so, within days of the trial contemporary sources showed that there were in fact two contrasting John Lilburnes that emerged in differing interpretations of the event. The anti-regime news-book *The Man in the Moon, number 27 Oct 24th – to Wednesday October 31st 1649*, produced a mythic retelling of an heroic, combative John Lilburne standing fast and finally triumphing in the face of a state seeking his death. In this interpretation John Lilburne told truths that the people wanted to hear and he 'baffled and foyle'd' the judges 'at pleasure'.¹ This John Lilburne even had the temerity and the composure at the end of the trial to give the 'Sergeants that wayted 40. Is for a drink'.² There is, however, very little, if any, specific detail of the proceedings of the trial associated with this account.³

There was, however, an alternative to this model of John Lilburne facing down his accusers during the proceedings. The version of the trial contained in another anti-regime news-book the *Mecurius*

¹J, Crouch .*The Man in the Moon 27 Oct 24 to Wednesday October 31, 1649*. (London, 1649) Thomason/88:E.576 [7]. p3. Accessed via www.eebo.com [hereafter all with eebo will denote accessed on line]

²Ibid. p4.

³Ibid.

Pragmaticus, Tuesday Oct 23rd to Tuesday Octob 30 is a far more considered and concise affair. This recounting of events also has evidence that can be cross referenced with other contemporary sources such as the anonymous *First Dayes Proceedings at the Tryal of Lieut. Col. John Lilburne in the Guildhall* and also some elements of Clement Walker's account.⁴ This version of the trial is far more realistic and seems to have a strong reportage element.⁵ In the *Pragmaticus* it is indicated that Lilburne was given very little leeway to try and control events. It is stated that the Judges had been given a 'Special Command not to afford him [Lilburne] the least favour or Mercy, but to proceed with all Rigoursnesse [sic] against him'.⁶ This would be seen to directly correspond with the temper of the official papers associated with the State prior to the trial. It is revealing that in such a short time frame after the trial, two contemporary accounts emerged from sources, both at odds with the Junto, that were so strikingly different when interpreting the same event. One placed John Lilburne at the centre and portrayed him as orchestrating events. The other is a rather more problematic portrayal of a vulnerable figure at the mercy of fate. It was the first interpretation that would prevail, thanks to Clement Walker's text being regarded as the definitive account of the trial.

He broadly adopted the portrayal of John Lilburne for his narrative from the *Man in the Moon*. This allowed for a very Lilburne centric account to emerge from the proceedings of the court. It is also persuasive that this is the root from which the legend of *Free-Born John* would grow. This was in counterpoint to the rather fraught and harried figure who had an unlikely escape, as depicted by the *Pragmaticus*. It can be deduced that Walker believed that the characterisation of Lilburne in the *Man in the Moon* would be the best fit for his narrative of the trial. This was a literary device that would serve as the most advantageous to serve his own and Lilburne's agenda.

It is Clement Walker's interpretation that has overwhelmingly been used when discussing the events that transpired during the trial. This has emerged as the accepted orthodoxy of what occurred. It is this narrative approach that has found its way into both his biographies; *John Lilburne, The Leveller* by M. A. Gibb (London, Lindsay Drummond, 1947) and *Free-Born John* by Pauline Gregg (London, Dent, 1986) it also, perhaps more importantly, found its way into the influential and frequently reproduced *State Trials* series. This was first published as *A Complete Collection of State Trials, 4 Vols* (London, Timothy Goodwin, 1719) ed Thomas Salmon. This collection was then transcribed to what has been described as the 'more accessible' nineteenth century series A

⁴Anon.*First Dayes Proceedings at the Tryal of Lieut. Col. John Lilburne in the Guildhall* (London, 1649).F975-353_24.eebo.

⁵J.Cleveland. *Mercurius Pragmaticus, Tuesday Oct 23 to Tuesday Octob 30*.Thomason 88:E575[40].eebo

⁶Ibid.p6.

Complete Collection of State Trials, 33 Vols (London, R. Bagshaw, 1809-26).⁷ This was edited and published by T. B. Howell and renowned pamphleteer, journalist and political reformer William Cobbett. It is of note that Cobbett's publishing and editing of *State Trials* coincided with his deepening disaffection towards the government of the day and State governance.⁸ It is from the *State Trials* format that Walker's Lilburne has been seen to inhabit most, if not all, versions of the trial. This can be exemplified by Donald Veall who, amongst many others, has cited Walker's work in his interpretation of what occurred during the trial.⁹

An area that is noticeably absent from both John Lilburne's biographies and from the majority of discussions regarding the trial, is an analysis of why John Lilburne repudiated his own set of writings during the trial. This makes up a large, but underplayed, element of Clement Walker's text. This turn of events was fundamental to how John Lilburne would have been perceived by those not only in the Guildhall, but also in the wider population after the trial. This may not have been deemed pivotal in the short term, but in the medium to long term it would be revealed as critically important. This incident is, principally, why the trial of 1649 must be seen as the crucial watershed in the life of John Lilburne.

The accepted position to what transpired at the Guildhall has failed to do justice to the entirety of the trial. This research will therefore seek to challenge the traditional views held by his biographers and many others, of what unfolded before, during and after the event. The orthodoxy of the *State Trials* rendition failed to take note of what the State was trying to achieve with as regards the trial of John Lilburne. The *State Trials* text subsumes the State's justification for the legality of the trial beneath the Lilburne centric narrative. This research has sought to balance this, by engaging with the much underused contemporary source *The First Dayes Proceedings at the Tryal of Lieut. Col. John Lilburne in the Guildhall* (London, 1649).¹⁰ This text had its origins in the under researched first day of the trial. Though this pamphlet was published anonymously and is associated with Lilburne and his position, it does give space to the prosecution's arguments about both the legality and legitimacy of the trial. This was a question that must have perplexed both the Judges and the public in the immediate post-Regicide period. This pamphlet is also of particular note as it indicated the immense

⁷A. Patterson. "For Words Only" From Treason Trial to Liberal Legend in Early Modern England. in *YJLH*, Vol 5, Iss 2, Article 6. p391n.

⁸I. Dyck 'William Cobbett' in the *Oxford Dictionary of National Biography* [hereafter *OxfordDNB*] accessed via www.oxforddnb.com 28/5/13. [hereafter all with *OxfordDNB* will denote accessed on-line]

⁹Donald Veall. *The Popular Movement for Law Reform 1640-1660* (Oxford, Clarendon Press, 1970) pp. 161-166.

¹⁰Anon. *The First Dayes Proceedings at the Tryal of Lieut. Col. John Lilburne in the Guildhall* (London, 1649). F975-353_24.eebo.

interest that the trial provoked. Those who published it did not even wait for a verdict before putting it into the public domain.

The trial not only revealed the views of those opposed to the regime, it also gave an insight into the insecurities felt by those in power. This research seeks to give equal importance to the detail and interpretation of the words spoken by those opposed to Lilburne, as well as his own alleged rhetoric. The counterpoint to John Lilburne's arguments is exemplified by the publication Henry Parker's *A Letter of Due Censure and Redargation* (London, Nede, 1650). This was a battle fought over the conscience of the nation and it was a live and dangerous debate. The events which took place during the trial at the Guildhall, London not only impacted on the citizens of that city, but also upon the country.

There were many influences, some tangible and some less well defined, that converged upon the Guildhall during the course of the proceedings. What occurred during the trial raised questions regarding where legitimate authority resided and how this was used. The trial also assisted in defining where the opposition to the *de facto* authority laid. It shone a spotlight on the emerging power of the printed word and the profound influence this would have on the staging of the trial and its outcome. Interwoven with this was the struggle about what was perceived to be correct legal procedure, either the spectre of Civil Law as represented by the emergence of the High Courts of Justice, or English Common Law and the weight of precedent. Lilburne used and manipulated a latent, but real fear of the processes of the prerogative being reintroduced into the English legal system. His experience before the Star Chamber would have undoubtedly influenced how he would have wished the case to be portrayed. The legal framework under which the trial should be heard would historically become associated, by John Lilburne and others, with a definition of Englishness.

This research will seek to investigate the motivating factors behind the decision to bring John Lilburne to trial. It will discuss the longer term implications of how the charges arose against Lilburne, of his defence and acquittal. These factors help to delineate tensions right at the heart of the newly formed Commonwealth State with regards to the best course of action on how to prosecute John Lilburne, whilst incurring the minimum of collateral damage.

Under examination can the outcome of the trial be correctly regarded as a triumph for Free-born John, as portrayed by both his biographers? Is it true to say that it was a disaster for the newly formed Commonwealth State as they and the contemporaneous *Man in the Moon* supposed?¹¹ Is it also possible to determine how historically accurate the most influential piece of existing evidence, Clement Walker's *The Triall of Lieut. Collnell John Lilburne By an Extraordinary Special Commission of Oyer and Terminer at the Guildhall London, the 24,25,26 of Octb 1649* (London, Hills, 1649), is to how

¹¹M.A. Gibb. *John Lilburne, The Leveller* (London, Lindsay Drummond, 1947). p 294 and P. Gregg. *Free-Born John* (London, Dent, 1986). p302.

these events transpired? This trial, as an event, in contrast to John Lilburne's four other earlier trials and his later trial and banishment, is a cross section into a year in English domestic history which remains without parallel.

Biography

Before looking at the year 1649 and contextualising John Lilburne's trial and acquittal, it is important to look at his wider biography. John Lilburne and his struggles with authority have become associated with the idea of a 'Free-born English man'. Lilburne fought for Parliament during the English Civil War, but soon after came to believe that one type of tyranny had been replaced by another. His politics were rooted in the 'radical Protestantism' of the age. This was inextricably linked with the ideals of the Common Law and the right to challenge those in authority which failed to adhere to it.¹ This stance would be fundamental to how his trial for seditious, treasonous libel unfolded in 1649, both for John Lilburne and to those who opposed him.

John Lilburne was born in either 1614 or 1615 at Greenwich.² He was the son of Richard and Margaret Lilburne (nee Hixon). John's parents lived with his maternal grandparents when he was born.³ Lilburne later commented 'I am the second son of a gentleman in the North parts of England, 200. miles from hence, descended of an ancient and worshipfull Family.' His father's family served in France under Henry VIII 'and [my] Father in his youthful days in his service at the Court wore a gold chain as the badge and [...] very of an illustrious and Noble Earl of this land.

And for my mother she was a Courtier borne, bred and brought up, where she ended her da [ys] whose father wa [s] Household officer to that famous Queen Elizabeth, and after to Roy [al] King James'.⁴

His maternal grandfather, Thomas Hixon, had been in service to the royal family 'for the greatest part of twice 20 years before'.⁵ By the year 1619 John's mother and grandfather had died and this seems to have been the spur that led to his family's rapid departure from service at Court.⁶ The deaths and the departure could have been down to the fear of one of the bouts of plague that periodically afflicted the London area.

¹Diane Parkin-Speer. 'John Lilburne: A Revolutionary Interprets Statutes and Common Law' in *LHR* Vol.1, No2 (Autumn, 1983) pp.276-296. p280. Accessed via www.jstor.org on the 27-2-13.

²John Lilburne. *Innocency and Truth Justified* (London, 1645) p8. L2118-51_E_314.eebo 16/9/12. There was some historical debate regards the location.

³Andrew Sharp. 'John Lilburne' in the *OxfordDNB* p1.

⁴John Lilburne. *The Prisoners Plea for Habeas Corpus, or an epistle writ by L.C. John Lilburne* (London, 1648) ref Thomason/E.434 [19] (27/9/12).eebo.

⁵John Lilburne. *Innocency and Truth Justified*, p8.

⁶Pauline Gregg. *Free-Born John* (London, Dent, 1986). p20.

In 1620 John Lilburne was back in the north east of England, where his paternal roots lay.⁷ He would later declare 'I went young downe to New Castle by sea, and from thence to my fathers owne hereditary habitation', this was the family's manorial holding near Bishop Auckland, at Thickley Punchardon.⁸ John attended a school in Bishop Auckland and then the Royal Grammar School in Newcastle-upon-Tyne.⁹ According to the school's official history it had been founded in the '42nd year of Queen Elizabeth's reign' and its role was to 'strengthen the Protestant religion'.¹⁰ John Lilburne later stated of his education that he had 'besides my knowledge in the Latin tongue, I was a little enred into the Greeke also'.¹¹ He claimed of his schooling that he had '*the best which the Country afforded*'.¹² Though he would later admit, he had been 'nee Scoller'.¹³

John Lilburne had, between 1629 or 1630, been apprenticed to Thomas Hewson of London.¹⁴ Lilburne described Hewson as a 'master that dealt in cloth by whole sail, and divers other rich commodities'.¹⁵ The Young Lilburne was described by a contemporary as being 'a meere country cou[r]tier, very rough hewen, so that he could neither make legge with grace, nor put off his hat seemly'.¹⁶ The system of apprenticeships in which Lilburne now found himself has been described as the 'the oldest form of education'.¹⁷ London has been described during this time as 'the largest educational site that existed before compulsory basic schooling was introduced in the late 19th century'.¹⁸ This apprenticeship system underpinned a web of social and economic interactions that were centred on the institution of the Guilds. In London the Guilds were the Twelve Livery Companies.¹⁹

⁷Sharp. 'John Lilburne'. *Oxford DNB*.

⁸John Lilburne. *Innocency and Truth Justified*. p8.

⁹Sharp. 'John Lilburne' *Oxford DNB*.

¹⁰*Institutions for Education: The Royal Free Grammar School, Historical Account of Newcastle-upon-Tyne: Including the Borough of Gateshead* (1827), pp. 415-443. [www.british-history.ac.uk/report.aspx?compid=43363&strquery=Royal Grammar School, Newcastle](http://www.british-history.ac.uk/report.aspx?compid=43363&strquery=Royal+Grammar+School,+Newcastle) Accessed 12/11/12.

¹¹John Lilburne. *Innocency and Truth Justified*. p8.

¹²John Lilburne. *Innocency and Truth Justified*. p8.

¹³John Lilburne. *A Copy of a Letter Written by John Lilburne Close Prisoner In the Wards of Fleet* (London, 1640) p19. STC-15597-843_15.eebo. Accessed 30/9/12.

¹⁴John Lilburne. *Legall Fundamentall of Liberties of the People of England revived, asserted and vindicated*. (London, Printed in the grand year of hypocritical dissimulation, 1649) p20. Thomason/E.560[14].eebo on the 30/9/12.

¹⁵John Lilburne. *Innocency and Truth Justified*. p7.

¹⁶John Bastwick. *A Just Defence of John Bastwicke, Doctor in Phisicke, against the calumnies of John Lilburne and his false accusations* (London, Leech, 1645) Thomason /E.265[2].p15. eebo on the 29/11/2012.

¹⁷S.R. Smith. 'The Ideal and Reality: Apprentice-Master Relationships in Seventeenth Century London' in *HEQ*. Vol.21, No.4 (winter, 1981) pp449-459. p449. Accessed via www.jstor.com on the 01/10/12.

¹⁸P. Wallis & C. Mimms. *Apprenticeship in Early Modern London; Economic Origins and Destinations of Apprentices in the 16th and 17th centuries* Lecture given on the 26th of January 2012 given at Gresham College. Accessed via www.gresham.ac.uk/lectures-and-events/apprenticeships on the 12/11/12.

¹⁹Barry Coward. *The Stuart Age* (Longman, Harlow, 1987) p53.

John Lilburne served Thomas Hewson for five years, before leaving and seeking his own fortune.²⁰ Lilburne later pointedly observed that 'apprenticeship did not mean servitude'.²¹ Hewson had his premises in Candlewick Street, which was within the confines of the City of London. Candlewick, even at this time, was beginning to be known by the modern name of Cannon Street.²² Pauline Gregg has conjectured that there may have been religious or familial links between the Lilburne family and Hewson.²³ This need not have been the case as the placement of apprentices, in general, is now seen to have been more arbitrary and business like in nature.²⁴

John Lilburne seems to have been a voracious reader and later described his early reading material. This indicated a burgeoning interest in theological matters, specifically of a Protestant, Puritan, Calvinistic nature. He detailed 'the Bible, The Book of Martyrs, Luthers, Calvins, Bezaes, Cartwrights, Perkins, Molins, Burtons and Rodgers Works, with [a] multitude of other such like Books that I brought with my own money'.²⁵

Both John Lilburne and Thomas Hewson were members of Edmund Rosier's independent congregation.²⁶ Such groups practiced a more personalised, less structured form of worship than other Protestant groupings.²⁷ Many of these, prior to the first Civil War, were not allowed to practice their beliefs in peace and were open to persecution both from the established Church and the secular authorities.²⁸

It was through this movement that Lilburne became involved in the printing of banned religious tracts. The authorities were highly sensitive to these publications, because political theory during this period was articulated through the use of a religious vocabulary.²⁹ One of the foremost authors of this type of writing, during the 1620s and 1630s, was Dr John Bastwick. Both Lilburne and Bastwick acknowledged that it was through Edmund Rosier that they had come into contact in 1636.³⁰ Jason Peacey has noted that Bastwick was at the heart of a loose confederation of 'Puritan

²⁰ John Lilburne. *A Christian Mans Triall* (London, 1641) p2 .L2089-257_E_181.eebo.11/11/12.

²¹ John Lilburne. *Innocency and Truth Justified*. p7.

²² Gregg, P. *Free-Born John*. p36.

²³ Ibid.

²⁴ Wallis & Mimms. *Apprenticeship in Early Modern London*.

²⁵ John Lilburne. *Legall Fundamentals of Liberties*. p21.eebo.

²⁶ John Lilburne. *The Legall Fundamentals of Liberties* .pp19-21.eebo.

²⁷ Ann Hughes. 'Religion, 1640-1660' in *A Companion to Stuart Britain*. Ed, Coward, B. p366.

²⁸ Ibid.

²⁹ Christopher Hill. *Society and Puritanism in Pre-Revolutionary England* (Penguin, Harmondsworth, 1986) p197.

³⁰ John Lilburne. *The Legall and Fundamentall Liberties of the People of England Revived*. p21.

activists on the radical Protestant fringe'.³¹Bastwick alluded to this in his work by saying all those he had been associated with were 'Old Puritans of England, Presbyterians'.³²The focus of these men had been the spreading of radical religious ideas through the medium of print, so called 'conspiratorial' publishing.³³These tracts contravened a system of censorship described by Peacey as the 'bedrock' of political involvement in the press during the mid-1600s³⁴John Lilburne attacked this censorship more vehemently as the 'Insufferable, unjust and Tyrannical Monopoly of Printing'.³⁵

The main judicial tool to control the burgeoning printing and publication process was the prerogative Court of the Star Chamber. This body was under the chairmanship of the Archbishop of Canterbury William Laud, or as John Lilburne styled him 'The Pope of Lambeth'.³⁶John Bastwick had been imprisoned in 1633, by the Star Chamber, for publishing radical, theological attacks on the Episcopal establishment in Latin. These tracts were the *Elenchus Papisticae* which was first published in 1624, but had been licensed by the bishop of London's chaplain, Thomas Worrall and the *Flagellum Pontificus*. The *Flagellum* was in effect a re-edition of the *Elenchus* published from Bastwick's imprisonment in the Gatehouse in 1635.³⁷His work the *Letany of John Bastwicke* was published in the following year. This was written in the vernacular, designed to make it more appealing and accessible to the masses.³⁸

John Lilburne witnessed the mutilations suffered by Bastwick, Henry Burton and William Prynne on 30th June 1637; all three had fallen foul of the Star Chamber due to their continued seditious printing and writing activities.³⁹All had their ears cropped, whilst Prynne was sentenced to have 'S.L.' branded on his cheek for seditious libeller. Prynne later boasted that this stood for 'Stigmata Laudis'. Lilburne later described how the three had been 'so cruellie and butcherlie dealt with by the Prelates'.⁴⁰

Though having witnessed the savage punishment, it failed to deter John Lilburne. He requested copies of Bastwick's works, including *The Letany*, to take to Holland to print illegally. Lilburne visited the Netherlands at various times between 1636 and 1637 and engaged in illicit printing. He later

³¹Jason Peacey.*Politicians and Pamphleteers, Propaganda during the English Civil Wars and Interregnum* (Ashgate, Aldershot, 2004) p98.

³²Bastwick.*A Just Defence of John Bastwicke*. p11.

³³Peacey.*Politicians and Pamphleteers*. p98.

³⁴Peacey.*Politicians and Pamphleteers*.p132.

³⁵John Lilburne.*England's Birthright Justified* (London,1645)p10.eebo L2103A-2050 30 on the 30/9/12.

³⁶John Lilburne.*A Copy of a Letter Written by John Lilburne Close Prisoner In the Wards of Fleet*(London,1640)p4.STC-15597-843_15.eebo 30/9/12.

³⁷Frances Condick. 'Bastwick, John (1595?-1654)' *OxfordDNB* 12/1/13.

³⁸Bastwick. *A Just Defence of John Bastwicke*.pp10-15.

³⁹Sharpe. 'John Lilburne'.*OxfordDNB*.

⁴⁰John Lilburne.*A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*.pg14.

claimed that during this time he was undertaking legitimate business in Holland, but this was, undoubtedly, just a cover.⁴¹ It is known that Bastwick had previous associations with the protestant community in Holland and had printed there and so links were in place.⁴² On returning from one of these trips on 12th December 1637, Lilburne was apprehended by the authorities.⁴³ The arrest entailed the infiltration of Lilburne's distribution and supply network. John Lilburne had employed Edmund Chillington, a button seller, from Candlewick Street.⁴⁴ His role was 'for dispersing the bookes' that had been shipped to England from Holland.⁴⁵ Chillington's, presumably, itinerant nature as a button seller would have ideally addressed the problem of how to disperse the pamphlets effectively. He gave a number of books to John Chiliburne, the servant of an associate of Dr John Bastwick, 'old Mr Wharton'.⁴⁶ Chiliburne, upon discovery of the books, confessed to the bishops and helped set up and assist in the capture of Lilburne.⁴⁷ John would later describe this betrayal as being similar to that undertaken by Judas towards Jesus.⁴⁸ Lilburne's activities in Holland had attracted previous attention from the English authorities and it is possible that Edmund Chillington was a placed man and it would be Chillington's 'affidavits against them' that would underpin the State's case against John Lilburne.⁴⁹

Upon his arrest, John Lilburne was interrogated by the Attorney General, Sir John Banks. This was on 14th January 1637 and he was then sent before the Star Chamber for trial.⁵⁰ During the trial, Lilburne was 'put to that vile oath Ex Officio'. This was a religious oath designed to incriminate the defendant with his own words.⁵¹ Chillington's testimony had accused Lilburne of printing 'ten or twelve thousand books' in the low countries.⁵² It was also alleged that John Lilburne had rented a chamber at a 'Mr John Foots house at Delfe', this was to keep safe the books that had been printed in Rotterdam.⁵³ Lilburne later railed against 'the illegality and abominable wickednesse of such proceedings'.⁵⁴

⁴¹ John Lilburne. *A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*. pg10.

⁴² Condict. 'Bastwick, John (1595?–1654)', *OxfordDNB* 12/1/13.

⁴³ John Lilburne. *A Christian Mans Triall* (London, William Larner, 1641) L2089-257_E_181. p1.

⁴⁴ John Lilburne. *A Worke of the Beast* (London, F.R, 1638). STC_15599-843_7. p10. eebo.

⁴⁵ Bastwick. *A just defence of John Bastwicke*. p31.

⁴⁶ John Lilburne. *A Christian Mans Triall*. p10.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ John Lilburne. *A Christian Mans Triall*. p2.

⁵¹ John Lilburne. *England's-Weeping Spectacle* (London, 1648) BLThomason 71_\E_450_71. p2.

⁵² John Lilburne. *A Christian Mans Triall*. p10.

⁵³ John Lilburne. *A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*. p10.

⁵⁴ John Lilburne. *England's-Weeping Spectacle*. BLThomason 71_\E_450_71. p2.

He was sentenced to be `whipped at a Carts arse, from Fleet Bridge to Westminster Hall', pilloried and then ultimately gagged.⁵⁵ These punishments were carried out on 18th April, 1638. During his ordeal John Lilburne alleged that he had received `500 stripes with knotted cords'.⁵⁶ Lilburne held fast by the neck,⁵⁷ still defiantly produced three copies of Bastwick's book from his coat and hurled them into the crowd.⁵⁸ He challenged those gathered to find anything `against the Law of God, the Law of the Land, the glory of God, the honour of the King or State' in them.⁵⁹ The intensity of the experience produced a deeply religious response in Lilburne and he later stated that this had been his `wedding day' on which he was married to Jesus'.⁶⁰ To add insult to injury he was additionally fined £500 and returned to prison.⁶¹ John was not idle whilst imprisoned. He continued to write and his work was smuggled to Holland to be printed.⁶² Amongst these tracts were *Come out of her my people*, an attack on the `the Antichristian church of England'.⁶³ This was followed by *A Worke of the Beast* a polemic on the injustice that he had suffered.⁶⁴ He also appealed to the Lord Mayor, the Aldermen and the apprentices of London to intercede and mitigate the ill treatment he was suffering whilst in prison.⁶⁵ It was at this point that John Bastwick believed that John Lilburne was first influenced by the `sectaries'.⁶⁶ Another issue that vexed Lilburne at this time was that the authorities had confiscated `almost two thousand Books' he had printed in Holland and had allegedly, sold them, at a profit, legally in Scotland.⁶⁷

Released from the Fleet prison on 13th of November 1640, Lilburne knew who had come to his aid - `Lieutenant Cromwell' whom `under God, was the principall [sic] Instrument to get me my liberty from my long captivity by the Bishops'.⁶⁸ Oliver Cromwell had been able to plead Lilburne's case in the newly called Long Parliament.⁶⁹

⁵⁵ John Lilburne. *A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*. p4.

⁵⁶ John Lilburne. *The Legall and Fundamentall Liberties of the People of England Revived*. p21.

⁵⁷ John Lilburne. *A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*. p24.

⁵⁸ John Lilburne. *A Christian Mans Triall*. p31.

⁵⁹ Ibid.

⁶⁰ John Lilburne. *A Worke of The Beast*. p8.

⁶¹ Ibid. p14.

⁶² John Lilburne. *A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*. pp1-5.

⁶³ John Lilburne. *Come out of her my people* (Amsterdam, Richt Right Press, 1639) STC/584:12.eebo 13/12/12.

⁶⁴ John Lilburne. *A Worke of The Beast*.

⁶⁵ John Lilburne. *A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*. p5.

⁶⁶ Bastwick. *A Just Defence of John Bastwicke*. p15.

⁶⁷ John Lilburne. *A Copy of A Letter Written by John Lilburne Close Prisoner In The Wards of Fleet*. p4.

⁶⁸ John Lilburne. *The Copy of a Letter from Lieutenant John Lilburne to a Friend* (London, 1645) Thomason/49:E296[5]. p6.

⁶⁹ W. Notestein [Ed] *The Journal of Sir Simon D' Ewes* (London, Oxford University Press, 1923) pp18-19.

John Lilburne settled in London and agitated for Parliament against the Court faction.⁷⁰ He recounted how at this time 'the King caused me to be arraigned for my life, before the whole House of Peers about the Earle of Strafford' with the 'King himself sending my accusation against me which was upon the 24th of May, 1641'.⁷¹ The only notation regarding John Lilburne in the official records for the month of May, 1641 is in the House of Lords Journal dated the 4th. In this entry he is brought before the Bar 'to be examined concerning some Words he was charged to speak wherein his majesty was concerned'. Lilburne was discharged because of discrepancies between the witness testimonies, however it was noted that 'the Cause to be retained in this House, and an Account to be given to his majesty'.⁷² In his text *Innocency and Truth* John gives, what appears to be, the correct date for this incident which is the 4th.⁷³ John, in his recounting of what occurred, seems to have over-elaborated the extent of the circumstances regarding this episode. Lilburne also tells of how he was personally involved in the fracas that involved the divisive figure of royalist Colonel Thomas Lunsford, at Westminster Hall on 27th December 1641. Lunsford's installation as the Lieutenant of the Tower of London, by the King, on the 22nd of that month was seen by parliamentarians as the catalyst of an 'impending' royalist coup.⁷⁴ Lilburne recounted how he had engaged Lunsford directly to 'save Parliament throats from being out' [sic].⁷⁵

On May 4th 1641, Parliament declared that the sentence that John Lilburne had received from the Star Chamber was 'Bloody, Wicked, Cruell, Barbarous and Tyrannical'. They also indicated an intention to pay reparations.⁷⁶ Around September, 1641, Lilburne married Elizabeth Dewell, the daughter of a London Merchant, Henry Dewell.⁷⁷ Henry must have been influential, as it was to him that Lilburne later appealed to help end his period of exile in 1653.⁷⁸ Elizabeth seemed to have been more than a radical match for John. She had been involved in the separatist congregations before their marriage and had been arrested for attending a Baptist congregation in Stepney, in the month of their wedding.⁷⁹

At the outbreak of war, John Lilburne joined the Parliamentary army as a captain of foot, under the command of Lord Brooke, the Puritan Peer. Lilburne had previous involvement with Brooke when

⁷⁰ John Lilburne. *The Copy of a Letter from Lieutenant John Lilburne to a Friend*. p 5.

⁷¹ Ibid.

⁷² *H L J*, Volume 4:4 May 1641, 'Journal of the House of Lords: Volume 4:1629-42'(1767-1830).pp.233-234. www.british-history.ac.uk/report. Date accessed: 17 April 2013.

⁷³ John Lilburne. *Innocency and Truth Justified*. p74.

⁷⁴ B.Morgan. 'Thomas Lunsford'. *OxfordDNB* 4/4/13.

⁷⁵ John Lilburne. *The Legall and Fundamentall Liberties of the People of England Revived*. p23.

⁷⁶ Ibid. p13.

⁷⁷ Ann Hughes. 'Elizabeth Lilburne'. *OxfordDNB* 19/11/12.

⁷⁸ John Lilburne. *A Defensive Declaration of Lieut Col John Lilburne* (London, s.n, 1653) L2098-108_E_702_22. p8.

⁷⁹ Hughes. 'Elizabeth Lilburne'. *OxfordDNB* 19/11/12.

the Peer had represented Lilburne against the Lord Mayor of London in 1640.⁸⁰ Lilburne had written two letters from the Fleet prison regarding his ill treatment. One was addressed to the Magistrates of London and the other to the apprentices. The one to the apprentices had been thrown to them 'during their recreations at Moorfields' by John's maid. Due to this the maid was hauled before the Lord Mayor of London, Sir Morris Abbot, and imprisoned without a warrant. Lilburne appealed to the recently convened Long Parliament. Mayor Abbot was called before them to justify his actions. Abbot was represented before Parliament by the Earl of Bristol and the Bishop of Lincoln, whilst Lilburne was represented by Lord Brooke and Lord Roberts. Lilburne's case was found and the Mayor was fined £10 for 'imprisoning 3 daies contrary to the Petition of Right'.⁸¹ As with many things in John Lilburne's life there was a subtext to this case. Though Abbot was among those Aldermen who refused the King a loan in 1639, he did donate the large sum of £400 to the King's cause in 1640 and was seen as a representative of the King's power in London at this time.⁸² The outcome of this incident indicated the good standing that John Lilburne held with the Puritan elite.

During the Civil War John Lilburne saw action at Edgehill on 23rd October 1642, but on the 12th of November he was captured defending Brentford. He was sent to Oxford, the royalist headquarters, where he was to be tried as a traitor. John, later, maintained that he owed his life to Elizabeth and her 'faithfulness' during this ordeal.⁸³ Elizabeth, notwithstanding being pregnant, carried the declaration of *lex talionis* issued by Parliament on 17th December 1642 to the royalist court, which was presided over by Judge Heath.⁸⁴ The threat of this being that whatever sentence was carried out on the parliamentary prisoners, held by the royalists, would be enacted on prisoners held by the parliamentary forces. A little later Lilburne was released.

On his return to London John Lilburne discovered that his brewing business and house had 'run to decay'.⁸⁵ He was forced to sell it in its entirety for £120.⁸⁶ He tried, in vain, to resume his life as a merchant, but found that the war had badly disrupted his trade, which relied on the shipment of coal from Newcastle.⁸⁷ Elizabeth had also been busy and, according to John, had obtained a position for him within the Parliamentary government for £1,000 per annum. He turned this offer down much to her, understandable, 'extra ordinary grief'.⁸⁸

⁸⁰ John Lilburne. *Innocency and Truth Justified*. p74(39).

⁸¹ *Ibid.*

⁸² A. Thrush. 'Abbot, Maurice (1565-1642)'. Accessed via www.historyofparliamentonline 1-5-13.

⁸³ John Lilburne. *England's Weeping Spectacle*. p4.

⁸⁴ John Lilburne. *England's Weeping Spectacle*. p5 It encompasses the concept of an eye for an eye.

⁸⁵ John Lilburne. *Innocency and Truth Justified*. p21.

⁸⁶ *Ibid.* p22.

⁸⁷ *Ibid.*

⁸⁸ John Lilburne. *The Legall Fundamentall Liberties of the People of England Revived*. p 23.

On 7th of October 1643, John Lilburne returned to the Army and gained a commission thanks to his 'darling and bosome-friend' Lieutenant General Cromwell. He became a major in Colonel King's foot regiment.⁸⁹This was in the earl of Manchester's Eastern Association Army.⁹⁰ Lilburne later claimed he was operating under the 'private command' of Cromwell and he had been placed in the regiment to observe the activities of the Presbyterian Colonel King.⁹¹This indicated that he was acting as an agent for Oliver Cromwell and the emerging Independent faction during this period.⁹²This is backed up by the contemporary testimony of Lucy Hutchinson on how Cromwell had started to exert his influence throughout the army at this time.⁹³

It was while stationed in Boston that John Lilburne, allegedly, found evidence of Col.King's embezzling activities and incompetence.⁹⁴Among the things that Lilburne accused King of in his writings was losing an engagement at Newark due to poor judgement.⁹⁵John Lilburne was also particularly incensed that Col.King had left Boston vulnerable with his mismanagement of the town's powder supply. Col.King claimed that he had '100 barrels' in the town's magazine, but upon investigation Lilburne found that there were far fewer. Also that thousands of pounds raised by the Lincoln Committee to pay for King's men had gone astray.⁹⁶John returned to Sleaford and disclosed to Cromwell what he had found.⁹⁷

John Lilburne was then commissioned again by Cromwell on the 19th December 1643, to raise a troop of horse and sent back to the earl of Manchester.⁹⁸This differs from the date given for this promotion in his entry in the *Oxford Dictionary of National Biography* which is May, 1644.⁹⁹On his arrival he found Manchester 'as imperious as a[n] Emperor'.¹⁰⁰A cordial relationship was maintained until the earl's Presbyterian chaplains set them against each other in 'the proper and true worke of the ministry of the most of that Tribe'.¹⁰¹Lilburne noted that they had sought 'to cast a clergy mist, over the Lords eyes'.¹⁰²

⁸⁹Sharp. 'John Lilburne'. *OxfordDNB*.

⁹⁰John Lilburne. *England's Weeping Spectacle*.p5

⁹¹John Lilburne. *The Just Mans Justification* (London,1645)eebo.Thomason/E.340[12].pp5-9

⁹²Ibid.

⁹³Rev.J. Hutchinson(Ed) *Memoirs of the life Colonel Hutchinson.Governor of Nottingham,by his widow Lucy.* (London,Routledge,1906)p171.

⁹⁴John Lilburne. *The Just Mans Justification*.p6.

⁹⁵Ibid.

⁹⁶Ibid.pp 8-11.

⁹⁷Ibid.

⁹⁸John Lilburne. *Innocency and Truth Justified*.p42.

⁹⁹Sharp. 'John Lilburne'. *OxfordDNB*.

¹⁰⁰John Lilburne. *Innocency and Truth Justified*.p42.

¹⁰¹Ibid.

¹⁰²John Lilburne. *The Just Mans Justification*.pp8-9.

John Lilburne fought at Marston Moor on 2nd July 1644 and in the same month negotiated the surrender of Tickhill Castle in Yorkshire.¹⁰³ This was after consultation with Quartermaster-General Ireton whom, Pauline Gregg maintained, assured him 'of his approval for the project', but was contrary to the Earl's wishes.¹⁰⁴ John later commented that the earl called him a 'Rogue, Rascall and basefellow', and asked Lilburne 'whether he or I was the General' and that he deserved to 'be hanged'. The earl's reaction may have seemed excessive, but it could quite possibly have been that Manchester was well aware of where Lilburne's allegiance lay. It was to John Lilburne that Oliver Cromwell would later look to stand as a witness against the Earl at his 'impeachment'.¹⁰⁵ Lilburne later claimed of Cromwell that 'Hee very much pressed me and prevailed with me' to make sure that he testified against the peer.¹⁰⁶ M.A. Gibb maintained that Cromwell's gratitude towards Lilburne for having testified against Manchester was a contributory factor to the Lieutenant-General's 'strange reluctance to proceed against Lilburne on several occasions during the events which followed'.¹⁰⁷

By the early months of 1645, the foundations of the New Model Army were being laid. Pauline Gregg noted that to John Lilburne this indicated that the army was transformed into a Presbyterian, avowedly pro-Scots force. Something he did not agree with and he resigned his commission on 30th of April 1645.¹⁰⁸ John, in his own writings, gave another reason for his departure, declaring that Manchester's 'baseness spoyled a souldier of me'.¹⁰⁹

The Lilburne family then settled in 'Halfemoone' alley, Petty France, close to Westminster.¹¹⁰ John Lilburne tried to enter trade, but found that he 'could not live to follow any employment, except [if] Oathes or Tithes were abolished'.¹¹¹ He also entered the war of words between the Independent and Presbyterian Protestant factions. In late 1644 or early 1645, John Lilburne joined the circle of religious Independent thinkers and agitators who 'being here about in London, had discovered the perverse proceedings of parliament'. He then 'Invited others and joyened with them by Petitions to induce them (Parliament) to a better temper'.¹¹² It was during the first six months of 1645 that three independent tracts emerged that were mutually supportive.¹¹³ It is believed that the three writers, Richard Overton, William Walwyn and John Lilburne had become 'mutually acquainted' from mid-

¹⁰³ John Lilburne. *Innocency and Truth Justified*. p24.

¹⁰⁴ Gregg. *Free-Born John*. p110.

¹⁰⁵ John Lilburne. *England's Weeping Spectacle*. p5.

¹⁰⁶ John Lilburne. *Apologetisch* (Amsterdam, 1652). E_659_30. p5.

¹⁰⁷ Gibb. *John Lilburne, The Leveller*. p101.

¹⁰⁸ Gregg. *Free-Born John*. p111.

¹⁰⁹ John Lilburne. *The Legall Fundamental Liberties of the People of England Revived*. p23

¹¹⁰ John Lilburne. *The Just Mans Justification*. p16.

¹¹¹ John Lilburne. *The additional plea of Lieut Col John Lilburne* (London, s.n. 1647) Thomason/E.412[11] p24.

¹¹² John Lilburne. *England's Weeping Spectacle*. p7.

¹¹³ A. Sharp. (ed) *The English Levellers* (Cambridge University Press, Cambridge, 1998) p.viii.

1645 in the 'sectarian congregations' defence of London against the threat of encroaching Presbyterianism.¹¹⁴

These three writers became the main intellectual stimulus of the Levellers. F.D.Dow argued that these Leveller leaders, Lilburne, Walwyn and Overton, and their followers were thrown together by the crisis of the 'moment' engineered by the social and religious turmoil of the late 1640s.¹¹⁵ David Scott in contrast has argued that the Levellers 'did not emerge as an organised movement with a coherent political programme until the autumn of 1647'.¹¹⁶ There had been a tradition in England of the use of the name 'Leveller' associated with civil disobedience and unrest.¹¹⁷ This loose organisation, headed by Lilburne, Walwyn and Overton, emerged as one of the most high profile groups to push for radical social change in the post-Civil War period. Between 1646 and 1647 the movement called for the abolition of the monarchy and the House of Lords and that the Commons should be declared "the supreme power".¹¹⁸ They undertook a petitioning campaign in 1647 to achieve this, but when their demands were refuted by Parliament, the movement switched its allegiance to the New Model Army as the champion of the people's rights.¹¹⁹ This was an ideological stop gap, as the Levellers sought to reconstitute the whole of English society in *An Agreement of the People* which would have invoked 'a supreme, single, legislative body' as a true "representative of the people".¹²⁰

The preferred medium for the spread of the Leveller message was the use of the printed word. The emergence of mass, cheap printing was critical to the expansion and distribution of the Leveller doctrine, a tool that John Lilburne readily understood.

John Lilburne's choice of reading material had changed by this juncture. He now read works such as Edward Coke's legal treatise *Institutes*, especially part two, which had been published in 1642. The success of this work being that it was published in English, rather than legal French. He also read a version of *The Book of Declarations*, the discourse between King and Parliament published in March 1643. Two other 'legal-historical' works are also highlighted during this period, one being *The Dialogue in English between a Doctor of Divinitie and a Student of the Laws of England* this is cited by Lilburne in 1645. The other is the thirteenth-century work *The Mirror for Justices*, translated from

¹¹⁴ Ibid.

¹¹⁵ F.D. Dow. *Radicalism in the English Revolution* (Blackwell, Oxford, 1985) p31.

¹¹⁶ David Scott. 'The Wars of The Three Kingdoms, 1642-1649' in *A Companion to Stuart Britain*, Ed Coward, B. (Wiley-Blackwell, Chichester, 2009). p326.

¹¹⁷ S. Hindle. 'Crime and Popular Protest' in *A Companion to Stuart Britain*. p130.

¹¹⁸ Sharp. *The English Levellers*. p xiv.

¹¹⁹ Ibid p.xv.

¹²⁰ Ibid.

French into English in 1646.¹²¹ Lilburne understood the power of the written word and this development inferred that he had realised that the Law and historical precedent would now assume defining importance in a society emerging from the chaos of the first Civil War. The reason for this could have been that law and history are, arguably, the two main constants of a State in flux, or alternatively the two main cultural areas from where legitimacy could be drawn.

The Independent faction, of whom John Lilburne was a member, now came under fire from an influential Presbyterian, pro-parliamentary group of writers. These included William Prynne, Thomas Edwards, the author of the pro- Presbyterian work entitled *Gangraena* and Lilburne's erstwhile mentor, Dr John Bastwick. Prynne and Bastwick were particularly opposed to Lilburne during the immediate post first Civil War period. William Prynne had become an establishment figure and was an observer of the Commons committee for examinations. Lilburne was referred to this body for his illegal publishing of *A Copie of A Letter* on 7th January 1645, which had attacked William Prynne.¹²² Lilburne was saved by the intervention of a group of influential Independent figures, which again included Oliver Cromwell.

Prynne again implicated John Lilburne in an accusation of printing illegal religious tracts on the 19th July, 1645, but to no avail. On his acquittal, however, Lilburne became embroiled, again, with Colonel King and John Bastwick. John Lilburne, allegedly, had implicated William Lenthall, the influential Speaker of the House, with sending a large amount of money to the King.¹²³ Lilburne was accused of slander and sent to Newgate prison and committed by the House of Commons for trial by an ordinary Court on 11th August 1645.¹²⁴

Whilst in confinement, Lilburne published his *Copie of a Letter to a Friend* on 25th July and just after his release on 14th of October he published *England's Birthright Justified*. In *England's Birthright* Lilburne launched a tirade against the evils he saw besetting society, which included the Merchant Adventurers, the use of the 'foreign tongue' in Law, the excise tax which had been imposed in 1643 and restrictions on printing and corruption within the City of London governance.¹²⁵

John Lilburne was finally exonerated from his Star Chamber fine in November 1645. This development was undermined when he was called before the Lords on 11th June 1646 for,

¹²¹ Gibb. *John Lilburne, The Leveller*. pp130-133.

¹²² John Lilburne. *Innocency and Truth Justified*. pp8-9 Also indicted with Lilburne were his printers Jane Coe and Henry Robbinson. The warrant for this is dated 5th May 1645.

¹²³ John Lilburne. *England's Weeping Spectacle*. pp6-7.

¹²⁴ John Lilburne. *Innocency and Truth Justified*. p27.

¹²⁵ John Lilburne. *England's Birthright Justified*. L2103A-2050 30. eebo 30/9/12.

allegedly, libelling the earl of Manchester.¹²⁶ Lilburne, at one stage refused to kneel before the Lords and he 'stopt his eares against their Articles' and went about 'utterly renouncing their Authority over him'.¹²⁷ The Lords fined him £2,000, sentenced him to seven years in the Tower and ordered that both the tracts were to be burned by the hangman.¹²⁸ Elizabeth organised petitions to try and influence opinion and exerted pressure to have her husband freed.¹²⁹

John Lilburne now believed that the Lords and Commons had joined; 'in oppressing him'.¹³⁰ The titles of Lilburne's works tell the story of his growing opposition to the post first Civil War settlement: *Liberty Vindicated Against Slavery* from 1646, *Jonah's Cry out of the Whale's Belly* and *The Juglers Discovered* from 1647, *England's Weeping Spectacle* from 1648 and also from that year *A Whip for the Present House of Lords*, whilst from 1649 came *The Prisoners Mournful Cry, An Impeachment of High Treason Against Oliver Cromwell* and *Strength out of Weakness*.¹³¹

While imprisoned, John Lilburne came under the increasing influence of the royalist judge David Jenkins.¹³² According to Jason Peacey, Lilburne and Jenkins were the 'chief fomenters of disillusionment in the City and army'.¹³³ Lilburne believed that the Army shared his sense of betrayal in how Parliament now exercised authority.¹³⁴ He thought that the Army saw that 'tyranny and oppression was come to a height as well in Parliament'.¹³⁵ Though confined to the Tower he was still dangerously 'politically active and influential'.¹³⁶

1647 was the year that the army was radicalised over the issue of arrears of pay and Ireland. John Lilburne sought to take full advantage of this with the spread of the Leveller philosophy.¹³⁷ A mutiny in the army had been narrowly averted, but it had led to the creation of regimental agitators, many with Leveller sympathies. These sat as far up as the Council of the Army.¹³⁸ On the army's arrival in London on 7th of August 1647 to counter the Presbyterian ascendancy, Lilburne thought he would be released. He was disappointed. John believed that the 'the great ones of the Army,

¹²⁶ John Lilburne. *England's Weeping Spectacle*. p8.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Elizabeth Lilburne. *To the chosen and betruisted knights, citizens and burgesses, assembled in the High and Supream Court of Parliament*. (London:s.n.1646) Thomason/669.f.10[86]eebo 4/2/13.

¹³⁰ John Lilburne. *England's Weeping Spectacle*. p9.

¹³¹ Gregg. *Free-Born John*. pp401-402.

¹³² J.T. Peacey, 'John Lilburne and the Long Parliament' in *HJ*, Vol.43, No 3 (Sep., 2000) pp. 625-645 accessed on the 29/09/12 via www.jstor.org p461.

¹³³ Ibid.

¹³⁴ John Lilburne. *England's Weeping Spectacle*. p 9.

¹³⁵ Ibid.

¹³⁶ Sharp. 'John Lilburne' *OxfordDNB*.

¹³⁷ M. Kishlansky. *A Monarchy Transformed Britain 1603-1714* (London, Penguin, 1997) p194.

¹³⁸ Kishlansky. *A Monarchy Transformed Britain 1603-1714*. p174.

whatever they pretend, are of nearer relation, and more strongly contracted to the Lords and great ones of the Nation'.¹³⁹ The betrayal was complete.

The leadership of the army were concerned that Lilburne might create 'new hurley burleys' within its ranks if he was released.¹⁴⁰ Lilburne met with Cromwell in the Tower in September of 1647 and suggested a compromise that if the Commons would do 'but a veriable proportion of justice' he would agree to leave the kingdom. Cromwell, after seeming to agree with this demand, failed to speak in support of Lilburne when it was debated in Parliament.¹⁴¹ Lilburne was also sent before a commission that consisted of Cromwell, Col Fleetwood, Major Harrison and Fairfax to hear his plea on 6th November, 1647.¹⁴² In between, in October 1647, the Leveller inspired first *Agreement of the People* was presented for debate between agitators, army elite and the Levellers at Putney Church.¹⁴³ This designated popular sovereignty to the people. It seems, even from a distance, Lilburne could create new hurley burleys.

It was left to John Maynard, the Presbyterian leader of the Commons and Elizabeth to finally secure John Lilburne's release on 2nd August 1648.¹⁴⁴ On release, Lilburne threw himself behind the still developing *Agreement of the People* and the September 11th large Leveller petition, which was designed to pressurise for change.¹⁴⁵

John Lilburne stated in his *The Legall Fundamentall Liberties* of 1649, his fear of a too powerful army that would rule as if over a conquered people' without the checks of a mixed parliamentary system.¹⁴⁶ Thomas Pride's purge of Parliament in December 1648 and the execution of the King on 30th January 1649 had brought this about. The mixed parliamentary system was in ruins. John Lilburne saw behind this strategy: '(the King being removed, the House of Lords nulled, their long plotted Council of State erected, and the House awed to their own ends)'.¹⁴⁷

John Lilburne now embarked on his 'last phase of Leveller activity'.¹⁴⁸ He was returned to the Tower in March 1649 by the Junto for the authorship of *England's New Chaines* (26th February 1649) and the suspected authorship of *The Second Part of England's New Chaines* (24th March 1649). In these he called for the people to reject the new regime as illegitimate. This tract also detailed how the

¹³⁹ John Lilburne. *England's Weeping Spectacle*. p9.

¹⁴⁰ John Lilburne. *The Additional Plea of Lieut. Col John Lilburne*. p22.

¹⁴¹ Ibid.

¹⁴² John Lilburne. *The Juglers Discovered* (London, S.N. 1647) Thomason/E409 [22] p2 eebo.

¹⁴³ Kishlansky. *A Monarchy Transformed Britain 1603-1714*. p176.

¹⁴⁴ Sharp. 'John Lilburne'. *OxfordDNB*.

¹⁴⁵ John Lilburne. *The Second Part of England's New Chaines Discovered* (London, s.n, 1649)/L2181A. p1. eebo.

¹⁴⁶ John Lilburne. *The Legall and Fundamentall Liberties*. pp 31-32.

¹⁴⁷ John Lilburne. *The Second Part of England's New Chaines Discovered*. Doc 5.

¹⁴⁸ Sharp. 'John Lilburne' www.oxforddnb.com.

Junto had approached Lilburne, through his brother Col Henry Lilburne, to sit on the committee to try the King. He believed that this was to give a veneer of credibility to the act.¹⁴⁹ He also detailed the extent of the coup, the suppression of resistance and how the City of London's Aldermen and Councillors were co-opted to support the new regime.¹⁵⁰

Lilburne's constant voicing of opposition to those in power made confrontation inevitable. Even though John had been allowed bail in July to attend to his sick family, support for his position was seen to be waning.¹⁵¹

John Lilburne was brought to trial for seditious treason on the 24th, 25th and 26th October 1649 at the Guildhall, London. He was charged with high treason under the Acts of Parliament of 14th of May and 17th July 1649. The prosecution believed that through his writings he had subverted the peace of the nation. This was achieved by declaring that the Government was tyrannical, usurped and unlawful.¹⁵² Following much discourse the jury retired on 26th and after under an hour's deliberation they returned a verdict of not guilty. The Guildhall erupted at this news 'caused that Night abundance of Bonfires to be made all up and down the Streets' in celebration.¹⁵³

On 8th of November 1649 John Lilburne and his fellow prisoners, William Walwyn, Richard Overton and Thomas Prince were finally released from the Tower. The Leveller movement emerged from this as little more than a shadow of its former self, but Lilburne's profile was still high. On 21st December 1649, he was elected to the Common Council of the City. John had agreed to take the oath of engagement to the Commonwealth, which had been instigated on 12th October 1649. All public officials had to adhere to this to take office.¹⁵⁴ Lilburne stated that the Commonwealth was "all the good and legal people of England" and not, significantly "the present Parliament, Council of State, or Council of the Army". Lilburne's election victory was quashed by the 'City Fathers' and John Lilburne's main backers, Edmund Caverly and Philip Chetwin, arrested.¹⁵⁵ Chetwin's biography, particularly, pointed to a previous connection between himself and John Lilburne. Chetwin had been apprenticed to Roger Drake, a cloth worker on 12th of November 1619; he was made a Freeman of London in 1627.

¹⁴⁹ John Lilburne. *The Second Part of England's New Chaines Discovered*. p3.

¹⁵⁰ *ibid* pp1-5

¹⁵¹ Sharp. 'John Lilburne'. *Oxford DNB*

¹⁵² Gregg. *Free-Born John*. p294.

¹⁵³ Clement Walker. *The tryal of Lieutenant John Lilburne. By an extraordinary or special commission, of Oyer and Terminer at the Guild-Hall of London, the 24th, 25th, and 26th Of October, 1649 The second Edition* (London, Hills, 1710) p 131.

¹⁵⁴ S.R. Gardiner. *History of the Commonwealth and Protectorate, 1649-1660*. (London, Longmans, Green, and Co, 1894) p 197.

¹⁵⁵ Gibb. *John Lilburne, The Leveller*. p296.

In 1653 Chetwin married Mary Allot and became involved in her family publishing business.¹⁵⁶ In 1649 it was alleged that Caverly and Chetwin had 'procured' the election as a Common Councillor for John Lilburne. There was a complaint by Aldermen originally to Parliament, but this was referred to the House of Lords and it was noted that

"Die Mercurii, 26 Decembris, 1649

Resolved, That the House doth approve of the commitment of Philip Chetwin and Edmund Caverly, by the Lord Mayor, Sheriffs, Aldermen and Justices of the Peace London".

Chetwin was to be "discharged and disabled from being a Freeman of the City of London; and disenfranchised from receiving or enjoying any Benefit, Profit or Advantage as a Freeman of the said City" and committed to imprisonment in Warwick Castle.¹⁵⁷ It must be noted that there was a strong relationship between Warwick Castle and Lilburne's trial for treason. John Lilburne had been accused of using a soldier, Thomas Daffen, to smuggle his book *An Impeachment of High Treason against Oliver Cromwell and his son-in-law, Henry Ireton* to 'Colonel Aryes' in Warwick Castle.¹⁵⁸ William Eyre had fought for the Parliamentary forces during the English Civil Wars; he had previous associations with John Lilburne's brothers and had become closely involved in the Leveller movement. In May 1649, he had taken part in the Burford Mutiny and in July of that year had been sent to Warwick Castle.¹⁵⁹ Daffern was accompanied, as witnesses for the prosecution, by Richard Lander, Marshal of Warwick Castle and Major Hawksworth, Governor of Warwick Castle, all giving evidence against John Lilburne.¹⁶⁰ Chetwin would have been committed to Warwick whilst Eyres was still imprisoned there and both were not released until 1650. The evidence strongly suggests that Philip Chetwin suffered from the political fall-out from the 1649 trial. Chetwin weathered this and emerged as Master of his Company in 1666-67, post restoration.¹⁶¹

John Lilburne began trading as a soap boiler, whilst continuing to petition Parliament for his promised reparation. This was finally agreed on 16th July 1650, to be paid from the church lands owned by Dean and Chapters.¹⁶² He also sought to gain admittance into the legal profession, but was frustrated by Edmund Prideaux, the Attorney General, who refused his right to apply.¹⁶³

¹⁵⁶ H. Farr. 'Philip Chetwind and the Allot Copyrights' in *The Library* (1934) s4-XV(2) pp129-160. pp 129-133. Accessed via www.library.oxfordjournals.org on the 2/5/3.

¹⁵⁷ Ibid.

¹⁵⁸ Walker. *The tryal of Lieutenant John Lilburne*. p70.

¹⁵⁹ Paul Hardacre. 'William Eyre' (fl 1634-1657) *OxfordDNB* 2/05/13.

¹⁶⁰ Walker. *The tryal of Lieutenant John Lilburne* (1710) p70.

¹⁶¹ Farr. 'Philip Chetwind and the Allot Copyrights'. pp 129-133.

¹⁶² Gibb. *John Lilburne, The Leveller*. pp296-297.

¹⁶³ Anon. *The Second Part of the Trial of Lieut. Col. John Lillburne* (London, 1649-50) E 598 12 p15. ebo Lilburne repeatedly attacked the corruption of the monopoly maintained by lawyers via his works.

During this time, Lilburne was briefly reconciled with Cromwell and rode part of the way to Scotland with him on his campaign in 1650.¹⁶⁴ Cromwell told Lilburne that he had been informed that he was 'managing, and had joyned a destructive designs' against himself 'and the Army with the Kings Party'.¹⁶⁵

It was John Lilburne's on-going involvement with Arthur Hesilrige that finally gave the authorities the opportunity that they had long sought. He had challenged Hesilrige, a noted member of the Rump and close ally of Cromwell, over the ownership and control of sequestered lands, including a profitable colliery Harraton, in north east England, which both parties believed they had rights to.¹⁶⁶ Lilburne attacked the final decision in favour of Hesilrige, by the committee held at Haberdashers Hall; in his *Just Reproof to Haberdashers Hall* on 2nd August 1651.¹⁶⁷ The House saw this as a treasonous attack on one of its members. Parliament, without a trial, fined Lilburne £7,000 and banished him as a traitor. Elizabeth later informed John that Cromwell had been the 'grand and principall man that caused me to be banished'.¹⁶⁸ Lilburne was forced to flee England for Flanders in January 1652.¹⁶⁹

John Lilburne settled into exile in Bruges, whilst Elizabeth again worked ceaselessly for her husband's ends.¹⁷⁰ From a letter sent from John Lilburne to his wife it becomes obvious that tensions were high between them during his exile.¹⁷¹ It was whilst exiled between early 1652 and June 1653 that Lilburne became increasingly embroiled in republican and royalist intrigue.¹⁷² This shadow of suspicion over his royalist affiliation had dogged Lilburne since his association with David Jenkins. Whilst in Holland he liaised and advised royalist sympathisers such as the Duke of Buckingham.¹⁷³

Cromwell's dissolution of the Rump in April 1653 prompted an ill-fated return to England. On John Lilburne's return he was committed straight to Newgate prison. The Council of State, according to Lilburne's own testimony 'hath letters and papers under my own hand, of my ingagement to the present King of Scots'.¹⁷⁴ He was put on trial from 13th July until 20th August 1653 at the Old

¹⁶⁴ John Lilburne. *A Defensive Declaration of Lieut. Col. John Lilburn* (London, s.n., 1653) Thomason/E.702[2]p9.eebo.

¹⁶⁵ Ibid. p10.

¹⁶⁶ Ibid. pp12-13.

¹⁶⁷ John Lilburne. *A Just Reproof to Haberdashers Hall* (London, s.n., 1651) BL Thomason/E.638[12]

¹⁶⁸ John Lilburne. *A Defensive Declaration of Lieut. Col. John Lilburn*. p14

¹⁶⁹ Ibid. p2.

¹⁷⁰ Ibid. pp2-20.

¹⁷¹ John Lilburne. *L. Colonel John Lilburne his Letter to his dearly beloved wife Elizabeth, March 1652* Wing (2nd ed.)/L2136.p1.eebo.

¹⁷² John Lilburne. *A Defensive Declaration*. p 5.

¹⁷³ Ibid. pp10-16.

¹⁷⁴ Ibid. p18.

Bailey. He argued that the Rump had been an 'illegal Parliament' with no authority to banish him.¹⁷⁵ Lilburne again succeeded in the arguing of his own defence.

John Lilburne was not freed, but sent to the Tower and held until March 1654, from where he was transferred to Orgueil Castle, Jersey. In Orgueil, Lilburne proved to be as recalcitrant as ever.¹⁷⁶ Elizabeth's concern for her husband's well-being grew and she continued to try to pressure Oliver Cromwell for his release.¹⁷⁷ Her constant campaigning and her husband's failing health were instrumental in securing Dover Castle as his prison in 1655.

Dover Castle was the scene of John Lilburne's conversion to Quakerism. In a letter to his wife he described this experience.¹⁷⁸ It seems that Elizabeth was more than a little disconcerted about these developments.¹⁷⁹ He stated of Elizabeth that she was 'provided and sent to me a poor despised (yet understanding) Priscilla, to instruct me in, or expound unto me the way of God more fully or perfectly'.¹⁸⁰ Lilburne also admitted to the wiles of his previous life 'I had then lost all manner of ability to consult with one grain of Machivel'.¹⁸¹ He then declared that 'I shall never hereafter be an user of a temporal sword more, nor a joyner with those that do so'.¹⁸²

While imprisoned at Dover, the now acquiescent Lilburne was allowed frequent parole visits to see his family. It was during one of these visits that John Lilburne, aged 43, died in Eltham, Kent on 29th August 1657. He had been keeping Elizabeth company in her 'lying-in' whilst they awaited the birth of the last of their ten children.¹⁸³

¹⁷⁵Sharp. 'John Lilburne'. *OxfordDNB*.

¹⁷⁶Gibb. John Lilburne, *The Leveller*. p328.

¹⁷⁷*Ibid*.

¹⁷⁸John Lilburne. *The Resurrection of John Lilburne* (London, Calvert, 1656) Thomason/E.880[5]. p6.

¹⁷⁹*Ibid*. p2. The evidence pointed to a prolonged argument.

¹⁸⁰*Ibid*. p4.

¹⁸¹*Ibid*. p9.

¹⁸²*Ibid*. p14.

¹⁸³Gregg. *Free-Born John*. p346.

The Path to Trial

1649 was a time of high tension for the young English Commonwealth. At the beginning of the year the Regicide had launched the State into uncharted political and social waters. This was described by a contemporary source as 'being the great discourse of the kingdome'.¹ Historians have described how this event, crucially, weakened opposition to the new Republic.² This is not reflected in the regime's own papers. These tell of an opposition that had become more dispersed, but no less antagonistic.³ By September, those concerns had translated into a genuine fear that the Commonwealth was facing, potentially, a widespread and dangerous domestic alliance. The fear had taken hold that a fifth column was forming, made up of disaffected royalists and Levellers and these were conspiring to overturn the Commonwealth. This anxiety is recounted in the Calendar of State Papers (Domestic),

'Council of State to the Justices of Peace and Committees of Counties: We receive daily intelligence that the old malignants strongly endeavour to carry the interests of Charles Stuart to destroy the present government, and establish monarchy and tyranny; finding by experience that their appearance does not promote their affairs-they being very unacceptable to many whose concurrence is necessary to their designs-they have endeavoured to obtain their end by corrupting some of the Levellers, and by them imposing upon the rest of that sort'.⁴

These fears coincided with the on-going struggle between censorship and free speech. Historians have described how Stuart England had been overtaken by an 'information revolution'.⁵ This force for change did not abruptly end due to the Interregnum. If anything the struggle over who controlled this information became more pronounced due to the hiatus of central governance experienced during the Civil War. By the beginning of 1649 the mechanisms for controlling subversive literature, which had been used by the previous regime, had been allowed to atrophy and decay. The danger of uncontrolled access to seditious literature was recognised by the ruling Junta. This fear of the unregulated printed word and how it was disseminated was the impetus to combat the writings of radical, anti-regime agitators, of which John Lilburne was at the fore-front.

¹R, Collings. [Ed] *The Kingdoms Weekly Intelligencer, Tuesday, January 23 to Tuesday January the 30.* BLThomson/84:E.540[22]

²C.V. Wedgwood. *The Trial of Charles I* (Collins, London, 1979) p212. Wedgwood believed it had 'destroyed the active centre of Royalism'.

³CSPD 1649-50, Vol II, Feb 26, Derby House. pp20-21. Accessed via www.memso.com.

⁴CSPD 1649-50, Vol III. p 314.

⁵I. Atherton. 'The Press and Popular Political Opinion' in *A Companion to Stuart Britain*. Ed Coward, B. p88.

The Lord President of the Council of State, John Bradshaw, was handed the 'power' to track down the writers and printers of seditious material on 20th March 1649.⁶ It was 'Jack Bradshaw' who had represented John Lilburne 'against unjust Star Chamber judges' over another alleged accusation of seditious libel in February 1645.⁷ The clampdown on seditious literature was introduced just before the State had time to digest the criticisms in John Lilburne's text *The Second Part of England's New Chaines Discovered*. This book reinforced the regime's reactionary fear of uncensored printing. The assertions of corruption and the threat of impending tyranny, so discomfited them that John Milton was delegated with refuting these claims.⁸

Dissension in print was not the only issue that the regime had to contend with during 1649. Ireland was still a violent, running sore and the writings of John Lilburne were viewed as having potential to cause disruption in the Junto's strategic planning there. The regime believed that his arguments would not only cause problems in the army, but may 'hinder the relief of Ireland'.⁹

The issue of continuing dearth was a backdrop to these tensions. Food shortages, which had come from a number of poor harvests, afflicted the country. These shortages pushed up the prices of basic food stuffs. The Junto in response had tried to implement legislation which sought to alleviate the suffering and defuse the accompanying rise in unrest.¹⁰ This economic hardship was exploited by those opposed to the regime. An anonymous, contemporary commentator on John Lilburne's trial described how the Junto had mishandled economic conditions and the impact this had on the fragile social fabric of the country,

'And yet by your oppressions and taxations you have destroyed the Trade of the Nation, and yet take no cure to provide for the poor to keep them from begging, which they must either do or sterve, unlesse you think it more Justice and mercy to set your Agents at work to knock out their brains'.¹¹

This is contemporary evidence that this trial for seditious libel had become conflated with other factors that plagued the nation. The trial had assumed a symbolic value for those disaffected from and marginalised by the regime, even before it had finished. This predetermined the trial's position

⁶CSPD 1649-50, March 27, 1649'. Vol I.p 43.

⁷Clement Walker. *The Triall of Lieut. Collnell John Lilburne By an Extraordinary Commission of Oyer and Terminer at the Guildhall London, the 24, 25, 25 of Octob 1649* (London, Hills, 1649) H/M-4-20 04797.p12.

⁸CSPD 1649-50, March 27, 1649' Vol I.pp55-56. This book was charged with being 'destructive to the present Government'.p52.

⁹Ibid.

¹⁰JHC; Volume 6:1648-1651, 19 March 1649'(1802)pp167-169. Accessed via www.british-history.ac.uk 17/2/13.

¹¹Anon. *The First Dayes Proceedings at the Tryal of Lieut. Col John Lilburne in the Guildhall* (London, 1649) Wing-F975-353_24.p8.

in the public sphere and for posterity. It also undoubtedly increased the chances of the trial becoming a vehicle for specific propaganda purposes.

These factors led to a growing sense of instability as 1649 progressed. The regime saw that the common thread connecting all this together was the printed word. As a medium for continued dissent it was perfect. It was also the touch paper that could have ignited the explosive tensions that existed in the new post Regicide state. By October 1649 the supporters of the Rump Parliament saw John Lilburne as the main mechanic behind 'divers and ominous operations' against the Free State.¹² It was agreed by those who supported the regime that the time had come for the Junto to 'vindicate your own Authority'.¹³

The reasoning behind the trial must be viewed as diverse, but two themes that were apparent throughout the episode was control of the printed word and engagement with the public sphere. The attacks instigated by John Lilburne and his radical associates in 1649, through print, were becoming more debilitating to the authority of the regime. In March, just prior to his own imprisonment in the Tower, Lilburne interfered directly in the domestic politics of retribution. He had become embroiled in the trials of the Duke of Hamilton and Lord Capel. On visiting these royalist prisoners he had advised them on how best to proceed in their high profile trial. This placed him in direct opposition to the will of those in power and marked him as a potential royalist sympathiser. In print he openly stated how the regime was 'pretending to take away their lives [Hamilton and Capel] by the rules of Justice and Law'¹⁴ John Lilburne believed that the setting up of the High Court of Justice to try Royalist conspirators, instituted without juries' was the start of the reintroduction of the 'hated prerogative courts'.¹⁵

By May, from his imprisonment in the Tower for the continued publishing of subversive literature, Lilburne upped the ante and called for armed revolt against the Commonwealth and advocated the claim of Prince Charles to the throne,

'Tell your masters from me, that if it were possible for me now to choose, I would, I had[sic] rather choose to live seven years under old King Charles government (notwithstanding their beheading him as a tyrant for it when it was at the worst before this Parliament), than live one year under their present government that now rule; nay let me tell you, if they go on with that tyranny they are in,

¹²Thomas May. *An Anatomy of Lieut.Col.John Lilburn's Spirit and Pamphlets* (London, Maccock, 1649)BL S6290-88_E_575-21.p3.

¹³May.*An Anatomy of Lieut.Col.John Lilburn's Spirit and Pamphlets*.p5.

¹⁴John Lilburne. *The Legall Fundamental Liberties of England Revived* (London,1649)BL Thomason/E-560[14].pp65-67.eebo.

¹⁵Donald Veall. *The Popular Movement for Law Reform,1640-1660*(Oxford, Clarendon Press,1970)pp.161-162.

they will make Prince Charles have friends enow not only to cry him up but also really to fight for him, to bring him to his father's throne'.¹⁶

John Lilburne stated this to Hugh Peter, a known discoverer of plots against the regime. Peter had 'insinuated' himself with Hamilton during his trial to persuade him to make a confession which would have implicated others.¹⁷ From the pressure that was exerted upon Hamilton it becomes apparent that the regime believed that it faced a far reaching conspiracy.¹⁸ John Lilburne wrote up, published and distributed his discussions with Peter.¹⁹ His motives were undoubtedly to try to spread dissent against the regime. Those who supported the Parliamentary position recognised how effective Lilburne had become in conveying this vocabulary of opposition, throughout the country. Henry Parker, writing a little later believed

'Where your books were Printed, yea in every County of the Land where they were publisht, and dispersed amongst the people, there is not a Parish in England, or Wales, but may appear to prosecute you for general disturber of Peace, and mover of sedition, and one that has most desparately [sic] conjured against his whole country, and every part of it'.²⁰

These provocations were seen to be ignored by the regime. John Lilburne ominously predicted he saw the Free State behind 'the establishing of a perfect Tyranny by Law' in *The Legall and Fundamentall Liberties of the People of England*.²¹ It was not until the middle of September that the Council of State Day's proceedings declared 'Single Warrants to be issued for apprehending the persons who have subscribed to the book "Outcry", as also the vindication of the Burford business'.²² The 'Burford business' had been the suppression of Army mutineers at Oxford and Burford by Thomas Fairfax and Oliver Cromwell between 14th and 17th May 1649. There is no doubt who the regime believed was behind this insurrection of the 'Levellers'.²³ Thomas Fairfax noted that the 'mutinous Regiments' had 'frequent advertisement from their friends in London and in the Tower'. They had been instructed by them in 'how to manage [this] businesse [sic], and some

¹⁶John Lilburne. *A Discourse Betwixt Lieutenant John Lilburn and Mr Hugh Peter* (London, 1649) BL.L2100A-2502_10a.p8.eebo.

¹⁷E. Sollom. *State Trials Vol II, A Complete Collection of State Trials and Proceedings upon High Treason and other Crimes and Misdemeanours from the Reign of King Richard II to the End of the Reign of George I* (London, 1730, Walthoe, Sen, Knapton).p7.

¹⁸Ibid. pages 7 & 17.

¹⁹John Lilburne. *A Discourse Betwixt Lieutenant Colonel John Lilburn and Mr Hugh Peter*.

²⁰Henry Parker. *A Letter of Due Censure* (London, Nede, 1650) P405-93_E_603_14.p13. Parker had also been one of the main opponents against John Lilburne's, alleged, erstwhile royalist mentor Judge Jenkins in 1647.

²¹John Lilburne. *The Legall and Fundamentall Liberties of the People of England Revived*.p46.

²²CSPD 1649-1650, Sept 19th. MSX 941(PR24) Vol II.p314.BL.

²³T. Jennings. *A Perfect Summary of Exact Passages of Parliament, Monday 14th May, to Monday 21 of May, 1649* (London, 1649) Thomason/82:E.530[12].pp150-154.

confest had promise of money for carrying on their designe'.²⁴It was ominous that imprisoned in the Tower were the perceived leaders of the Leveller movement and most publically prominent among these was John Lilburne.

The Young Men's and Apprentices' Outcry had been published on 29th August 1649. This pamphlet supported the mutineers at Burford and the Leveller implemented and Lilburne inspired *Agreement of the People* of May 1st 1649.²⁵ Even though the *Outcry* had been signed by various, alleged apprentices, Andrew Sharp has argued that John Lilburne was 'undoubtedly' the author.²⁶ The elite of the Commonwealth State also believed that he had been, at the very least, an instigator of the text. Yet this work is noticeable by its absence from an inventory of Lilburne's other writings set out in *The Innocent Man's Second Proffer*, published just two days before his trial.²⁷ The publication of this list implied one of two things; either John Lilburne was dangerously unconcerned about his trial for seditious libel or, alternatively, he never expected to have to defend himself against his own books. The latter view was seen to be vindicated as the trial progressed.

John Lilburne's biographer, Pauline Gregg agreed that *The Outcry* was written by him and believed that 'Of all his pamphlets it was the most deliberately intended to incite mutiny'.²⁸ The publication of this tract, if written by Lilburne, must be interpreted as a calculated act which sought to take advantage of the highly unstable political climate. It was designed to invigorate and unify a fractured opposition to those that ruled. As Edmund Prideaux, the Attorney General, described this text during the trial 'it hath not only a dangerous Title, but was published at a dangerous Time, yea and for a dangerous End'.²⁹

Lilburne maintained that his 'contest' with the new regime began on March 28th 1649 with his re-imprisonment in the Tower.³⁰ If this was the case then it was the publication of the *Outcry* that must be seen as the last straw that prompted the State to try him, not just to incarcerate him. Prior to the *Outcry* the State was seemingly undecided as to which crime Lilburne and his associates had actually committed. The *Calendar of State Papers* noted in early May 'The Attorney General and Counsel are to confer with the Judges of the upper Beanch [sic], as to whether the crimes to be objected against

²⁴T. Fairfax. *A Full Narative[sic] of the proceedings betweene his Excellency the Lord Fairfax and the Mutineers* (London, 1649) Thomason/E.555[27]. pp3-4.

²⁵John Lilburne (alleged) *The young men's and the apprentices' outcry* (London, 1649) BL Thomason/88:E.572 [13].

²⁶A. Sharp. *The English Levellers* (Cambridge, Cambridge University Press, 1999) p179.

²⁷John Lilburne. *The Innocent Man's Second Proffer* (London, 1649) BL .L2120-CR26_3_135.

²⁸Pauline Gregg. *Free-Born John, a biography of John Lilburne* (London, Dent, 1986) p287.

²⁹Clement Walker. *The Tryal of Lieutenant Colonel John Lilburne' The second edition.* (London, Hills, 1710) p61.

³⁰John Lilburne. *The Innocent Man's Second Proffer.*

them be treasons or misdemeanours'.³¹ This indecision clearly demonstrated that even with the attendant outrage exhibited by the regime against *England's New Chaines*, a charge of treason was not immediately sought. After the publication of the *Outcry* the political will had changed.

A little documented circle of opposition associated with John Lilburne seems to have emerged by the middle of 1649. This included not only those he was imprisoned with, but also Lilburne's erstwhile foe and influential propagandist William Prynne. Prynne was excluded from Parliament by Thomas Pride's purge, as was Clement Walker the chronicler of John Lilburne's trial. Prynne had then attacked the regime in print in collaboration with Walker. It is also of note that there were allegations against Prynne of correspondence with the royalist faction.³² This was an accusation that was also levelled against John Lilburne. These factors point to a convergence of literary opposition that had taken place prior to October 1649, which was more than circumstantial. It implies that there was influential conspiracy to undermine the regime, in print, well underway prior to the trial of John Lilburne. This cabal also seemed to have included members of the influential Robinson family, well known merchants in the City of London and future publishing magnates.³³

Undoubtedly, due to *The Outcry*, the Junto's policy of constraint and containment, in dealing with John Lilburne had hardened to one of confrontation. Henry Parker, the influential parliamentarian propagandist and barrister, a writer who was admittedly antagonistic towards John Lilburne, declared that through his writings Lilburne had sought to prove his 'Burford Brethren' as 'Holy Martyrs'. These were worrying terms in a nation so recently riven by political and religious violence. Parker's choice of words emphasised the fears of a factionalised society to a regime that sought to inhabit the role as the sole instrument of healing and settling.³⁴

By 19th September it was stated in the Day's Proceedings for the Council of State that 'Lieut- Col. Jno Lilburne to be committed to the Tower in order to his Trial, the Attorney General having satisfied the Council that he has sufficient evidence of his treason'.³⁵

There is evidence, however, that even by this date the regime were still in some confusion over who had written the text. It seems that they still had not realised the full extent of John Lilburne's, alleged, involvement in the compiling of the *The Outcry*. It is recorded that on that same day the Council of State had issued a warrant for Edward Dendy 'To apprehend Charles Collins, Anthony

³¹ CSPD 1649-1950, May 2. p121.

³² www.historyofparliament.org/volume/1660-1690 biography *William Prynne* accessed 06-07-13

³³ As shown in the chapter on the trial evidence points that the Junto issued a warrant to search a vessel associated with the Robinson family for illicit copies of the trial text by Clement Walker.

³⁴ Henry Parker. *A Letter of Due Censure* (London, Nede, 1650) p20.

³⁵ CSPD 1649. MSX 941 (PR24) Vol II. p314. BL

Bristlebolt, William Trabret, Stephen Smith, Edward Waldgrave, Thomas Frisby, Edward Stanley, William White, Nicolas Blowd, John Floyd, 'the phantom apprentices; 'for publishing a seditious libel "The Outcry of the Apprentices" and endeavouring to raise insurrection'.³⁶ By October 13th the State had realised the error and the net was closing: 'The Council (of State) gave order to the Attorney General to examine Lieut- Col. Jno. Lilburne and several witnesses concerning him, and the pamphlet intituled [sic], The Outcry of the Apprentices, and other pamphlets written by him.'³⁷

At the commencement of the trial the *Outcry* and the truth regarding its authorship, would be seen to be one of the mainstays of the State's prosecution for treason against John Lilburne. The dawning realisation that the author of this text was, in reality, the Junto's harshest critic must have sharpened the impetus and desire for retribution.

The lead up to the trial was shrouded in fear and conspiracy. The setting of the trial date and venue appeared to be a fraught and troubled exercise for the authorities. In a letter, in answer to the Lord General, the Council of State detailed how it intended to proceed against those whom it believed to hold the most guilt for the mutiny at Burford. In a missive dated 26th September 1649 the regime detailed how it intended to proceed against John Lilburne,

'As there has been a just proceeding against those soldiers who have been seduced, we have taken order that those seducers who are not subject to martial jurisdiction be effectually proceeded against, for which purpose Commissions of *Oyer* and *Terminer* are issued. Mr. Attorney has had order to proceed against some of the principals, and the trial will commence in a few days'.³⁸

However, the trial would not begin until nearly a month later. The Council of State then noted that the trial was due to be held on 18th October.³⁹ This date was reiterated in correspondence to a witness for the prosecution dated October 9th.⁴⁰ By October 13th it was clear that tension was growing regarding the trial and a warning had been issued by the Council of State to the 'Sheriffs and Committees of the militia of London to take care to preserve the Peace at that time'. That it was still, presumably, scheduled for the 18th goes unsaid.⁴¹ On October 15th, however, it was abruptly

³⁶ CSPD/Warrants issued by the Council of State/Entry [16k] (1) Document Ref.:Sp 25/62 f.II page number 526. Accessed via the British Library database.*BL*.

³⁷ CSPD (1649-1650) Council of State Day's Proceedings.p 341. Accessed via www.tannerritchie.com (memso) 28/2/13.

³⁸ *Ibid.* p320.

³⁹ *Ibid.* p331.

⁴⁰ *Ibid.* p334.

⁴¹ *Ibid.* p341.

noted in the Council of State Day's Proceedings that the trial of John Lilburne would begin on the 'second day of next term'.⁴²

John Lilburne later stated that he believed that the hand of his enemy, Sir Arthur Hesilrige, was behind the delay. He thought Sir Arthur's influence so far reaching that 'after the scaffolds were begun to be built in Guildhall, my Tryall was delayed a week for his coming to town'.⁴³ This accusation may have been true; however, the State papers indicated another, more pressing reason for the delay, security. It appears from the State documents that it was not until two days before the trial began that the Guildhall was finally settled upon. It was also only now that the date was finally fixed as 24th October for the start of the trial.⁴⁴ This announcement was accompanied by a warning to the Militias of 'London, Westminster, and the suburbs' who were informed that 'Wednesday next is appointed for the trial of Lieut. Col. Jno. Lilburne'. They were also warned 'least any disturbance might grow by the tumultuating [sic] of those of his faction whom he has misled, let there be a sufficient number of your armed men'.

These men significantly had to be 'true to the interest of the Commonwealth' and the men had to be 'under faithful Commanders, under direction of your militia, whereby any mischief maybe prevented'. This is a clear indication of the sense of paranoia over where the loyalties of the army may have lain prior to trial.⁴⁵ The sense of the proceedings taking place under siege is reinforced when the day before the trial commenced, Major General Skippon, in charge of security, was informed by the Council of State that they had received secret information that the Guildhall was to be stormed 'with swords and pistols' by the supporters of John Lilburne.⁴⁶

A number of plots were believed to be centred on the trial and John Lilburne. One of these was alleged to have been engineered by the State to actually prevent the trial taking place. The *Mecurius Pragmaticus of the 23rd -30th October* stated of Lilburne that those in power were 'resolved by one meanes or other to stop his mouth'.⁴⁷ How best to have achieved this fraught exercise seems to have been of paramount concern to the Junto since, as the *Pragmaticus* pointed out, 'how dangerous it was to exercise violence upon him back't with so strong a Party'.⁴⁸ According to the *Pragmaticus*, those in power first engaged in a strategy designed to 'fright him out of the Kingdom with the noise of what cruelties they intended against him, to this end a Rumour was spread that they intended to

⁴² CSPD 1649-1650 Vol III.p342.

⁴³ John Lilburne. *A Just Reproof to Haberdashers Hall* (London,1951).BL Thomason/E.638 [12]p6.

⁴⁴ CSPD 1649-1650 Vol III.p357.

⁴⁵ Ibid.

⁴⁶ CSPD 1649.MSX 941(PR24)pp340-341 .BL.

⁴⁷ J. Cleveland. *The Mecurius Pragmaticus,23rd -30th October 1649*.Thomason/88:E.575[40]p2.

⁴⁸ Ibid.

proceede to Tryall him without mercy'.⁴⁹ Lilburne was advised by eminent individuals from within the regime to flee for his life and 'by all meanes to secure himself if he could possible'.⁵⁰ He was then granted bail from the Tower, officially to be with his sick family, but this dispensation was, allegedly, to have allowed him to abscond from the country.⁵¹

Even if this allegation was unfounded, it is evident that a section of contemporary public opinion thought it would have been expedient for the Commonwealth to allow Lilburne to disappear rather than a trial to take place. It is clear there was a belief that the decision to try Lilburne could have been just as damaging to the regime as to the defendant. It also indicated that the events in the Guildhall would be under close public scrutiny and so correct judicial procedure would have to be, it would seem, undertaken without bias. The State papers detailed how thoroughly the authorities had prepared for the judicial aspects of the trial, the Council of State Day's Proceedings for October 13th noted,

'Council of State to Lord Chief Justice St. John and Lord Chief Justice Baron Wylde. The Judges having appointed a meeting on Monday at 9 a.m. at Serjeants' Inn, Fleet Street, to consult about the trial of Lieut-Col John Lilburne, and it being a weighty matter, your assistance is there desired, although you are not in the Commission for that trial'.⁵²

The State was aware that it was as much in the spotlight as those opposed to it. There is a strong suggestion that this was the meeting at which the decision was made to prosecute John Lilburne over his books, rather than any other potential charges. It had to be around this juncture that this decision was taken to try Lilburne over the more comparably innocuous activities of his writings. This was in contrast to any potentially far more explosive accusations of direct involvement with the royalist movement. In regard to something as important as the charges, it would have had to have come from high up in the Commonwealth structure. That it does not seem to have been a political decision is exemplified by the reaction to John Lilburne's acquittal by Thomas Scott, Secretary of State and the individual most cited as his chief adversary in Lilburne's own writings during this time. The *Mercurius Pragmaticus*, immediately after the trial, gave his reaction 'That the judges deserved hanging, that prepared his Tryall no better'.⁵³

In the atmosphere of a very public trial, during such dangerous times, it seems the judiciary thought discretion was the better part of valour and sought not to incite the situation with direct references

⁴⁹ Ibid.

⁵⁰ Cleveland. *The Mercurius Pragmaticus*, 23rd -30th October 1649. p3.

⁵¹ Ibid.

⁵² CSPD 1649-1650 Vol III' Oct 13. p341.

⁵³ Cleveland. *Mercurius Pragmaticus*, Tuesday Oct 23rd to Tuesday Octb 30th (London, 1649) p8.

to Prince Charles. Donald Veall has noted that although the post regicide judicial system of the High Court of Justice was 'less susceptible to the prevailing state of public opinion', it also appears that those in the higher echelons of the judiciary were more attuned to this opinion than those in high political offices.⁵⁴ The episode of the plot also clearly demonstrated that, by October 1649, all parties realised the attendant risks associated with the prosecution of the trial.

The question of the charges over his books stemmed from another apparent plot instigated by the State. According to John Lilburne, the Junto had, allegedly, fabricated evidence to be used against him as regard to correspondence with Prince Charles, during the course of the trial. This plot was to have a direct impact upon the trial proceedings and highlighted the growing realisation of the problematic nature of how to proceed against Lilburne. Pauline Gregg, Lilburne's biographer, noted that this conspiracy was a 'half-hearted attempt to implicate him with the Royalists'.⁵⁵ The conspiracy entailed the forging of letters from John Lilburne to Charles Stuart, the King of Scots. Tom Verney jnr was said to have been embedded in the Tower to incite Lilburne to write, but the hand orchestrating the conspiracy was seen by Lilburne to have been Thomas Scott, the Secretary of State.⁵⁶ Scott was a complex character, very little is known about his early background, but it seems he may have been a lawyer. He rose to prominence as an intelligence gatherer, anti-Presbyterian and committed regicide. It is also known that he was particularly adverse to the ideas advocated by John Lilburne. On 1st July 1649, he was appointed by the Council of State to 'manage intelligence both at home and abroad'. He employed spies and agents to this end, crucially in the marginalised and disaffected royalist circles.⁵⁷

John Lilburne saw nothing 'half-hearted' in this attempt to frame him, as he later detailed the plot,

'about the time of my Tryal at Guildhall, there were in the same manner many Rumours dispersed of my correspondencie [sic] with the King, and the mouths of many of my friends stopt, by telling them that they (the authorities) had matters of that nature so notorious against me, evidently shewing [sic] my tampering with the King the which they would produce under my own hand at my Tryal, that when they should see them they would be ashamed to own me: yet when my Tryal came, not the least sillable [sic] of that nature was produced; so that then it appeared all was feigning and falsitie [sic], to byass [sic] the People and my Jury'.⁵⁸

⁵⁴ Veall, *The Popular Movement for Law Reform, 1640-1660*. p161.

⁵⁵ Gregg, P. *Free-Born John*. p294.

⁵⁶ John Lilburne. *A Defensive Declaration* (London, 1653) L2098-108_E_702_22.p10.eebo.

⁵⁷ C.H. Firth/Kelsy, S. 'Scott, Thomas'. *Oxford DNB* 19/12/2012.

⁵⁸ John Lilburne. *Malice Detected* (London, 1653) BL.Thomason/109:705[19]p3.

He saw that this conspiracy was to have made him 'fit for the slaughter'.⁵⁹This alleged conspiracy was to play a pivotal role in proceedings even if it did not, seem, to come to fruition. During the course of Clement Walker's narrative on the trial, John Lilburne declared how important this conspiracy had been and how it had hampered his preparation for the trial; 'But Parliament men told my wife and friends that my chiefest crime was corresponding with the Prince; and to defend my self against that, I fitted my self against that, never dreaming that onely [sic] books should be laid to my charge'.⁶⁰One of these individuals seems to have been Cornelius Holland.⁶¹Holland was a regicide, politician and Leveller associate.⁶²

This compounds the belief that right up to the last minute Lilburne was to be tried for correspondence with the royalist faction. It also reinforces the idea that the decision had been taken close to the start of the trial not to proceed with this course. The implications of this plot indicated two things: the first undermined John Lilburne's assertion⁶³and later Pauline Gregg's belief that he had a plan of action during the trial.⁶⁴This evidence puts another context to his entreating of the jury. It now takes on the reality of a last ditch, desperate appeal on the back of providential intervention, rather than a strategic master stroke. Another aspect is the fact that the Free State, as designated by the Acts and Ordinances of 19th May 1649, decided not to proceed with this alleged plot, as John Lilburne described it 'not the least sillable of that nature has been produced'. This fact has been regarded as a failure in the strategy under which the State sought to pursue Lilburne. The conspiracy's failure has also been used to highlight the strength of character shown by John Lilburne in not complying with coercion.⁶⁵ It perhaps, more importantly, indicated a power struggle had ensued between Scott and the judiciary over how best to prosecute Lilburne. The judge's rejection of Thomas Scott's evidence would account for his indignation at the turn of events. These rumours would also surface as part of the campaign against Lilburne during his trial in 1653. It seems John Lilburne also knew who was behind that: 'so nothing is more evident, than that the same hand still stoness me for the same cause'.⁶⁶

The judge's reasoning for prosecuting over the books could have a number of interpretations. It could be that the evidence was too flimsy to proceed, but this is countered by the belief seemingly held by both John Lilburne and Thomas Scott that the trial was to proceed over correspondence with

⁵⁹Ibid.

⁶⁰Walker.*The Triall* (1649) p47.

⁶¹John Lilburne.*A Defensive Declaration*.pp.10-11.

⁶²J.T. Peacey.`Cornelius Holland`.*OxfordDNB*.

⁶³John Lilburne.*L.Col John Lilburne Revived*.p4.

⁶⁴Gregg.*Free-Born John*.p302.

⁶⁵Ibid.p294.

⁶⁶John Lilburne.*The Just Defence of John Lilburn Against Such As Charge Him of Turbulency of Spirit* (London.s.n.1653)BL Thomason/110:E.711[10]p9.

Charles II. Another reason could have been that this particular course of action would have frustrated Lilburne and his advisors over the preparation for the trial. The decision failed to give them enough time to adjust their defence. Lilburne did try to press for more time to prepare his case during the proceedings and admitted late on the 25th that as the charges had changed so quickly 'therefore I could not, as to that come prepared'.⁶⁷ Walker's text stated that Lilburne, during the course of the trial, was not given any time to consult his papers to try and counter this development. This version is, however, contradicted by both the contemporary *Mercurius Pragmaticus* and *Mercurius Elencticus* which detailed that on the last day of the trial John Lilburne was allocated an hour by the court to do this in preparation for addressing the jury of Life and Death.⁶⁸

The decision not to try Lilburne over correspondence with the monarchists should also be seen as an effective damage limitation exercise. It prevented a potentially destructive, politically sensitive battle over the legitimacy of the Commonwealth being highlighted in the public domain. Lilburne was a feared debater and renowned polemicist and, undoubtedly, would have relished the chance to have attacked the validity and right of those he believed were persecuting him. The Judge's decision to indict Lilburne over his writings rather than his correspondence also prevented the monarch in *absentia* from being the centre of one of the country's most high profile of cases, during the most turbulent of years. When this is taken in conjunction with what the *Pragmaticus* described regarding the dangerous implications of trying Lilburne, this scenario gains credence. There was evidentially a conspiracy, not the one John Lilburne drew attention to regarding fabricated evidence, but a more shadowy one instigated at the highest judicial level. This took into account the potential implications of trying Lilburne for correspondence with the King and the collateral damage for the regime that this may have entailed. This in turn prompted a quick, but expedient decision to embark upon a different agenda by which to prosecute John Lilburne. This new strategy cleverly factored in the betrayal of the Commonwealth as being its most important component rather than adherence to the King.

As regards the truth of the allegations against Lilburne about correspondence with the royalists, it does seem that it may have been a case of no smoke without fire. While there is no surviving evidence of direct communication between Charles and John Lilburne, as early as 1647, John Lilburne was seen to have some degree of contact with the royalist faction. This is made clear in a contemporary letter from Sir Edward Hyde, later the Earl of Clarendon, to Secretary Nicholas which stated,

⁶⁷ Walker. *The Tryal of Lieutenant Colonel John Lilburn* (1710) p42.

⁶⁸ J. Cleveland, *Mecurius Pragmaticus, Tuesday Oct 23rd to Tuesday Octob 30th* p 6. S. Sheppard, *Mecurius Elencticus 22nd-29th October* (London, 1649) Thomason/88:E575[38]. pp208-209.

`Sir,

I thank you for your friend Lilburne and desire you to send me as many of his books as you can. I learn much by them; and in earnest I find great benefit by reading ill[egal] books, for though they want judgement and logick to prove what they promise, yet they bring good materials to prove somewhat else they do not think of'.⁶⁹

The question is also raised, how else was it that John Lilburne, as evidenced in his own writings, was so readily accepted into what must have been a tight knit circle of exiled royalists, upon his own banishment to Holland in 1652?⁷⁰

There was also another additional element that enhanced the growing conspiratorial undertones in the lead up to the trial. Just prior to the trial the writers, printers and publishers of the populist pamphlets and books of the capital had to endure an authoritarian crack-down by the regime. How draconian this was, is detailed in the *Mecurius Elencticus of the 15th-22nd of October, 1649*. This listed the number of publications closed down by `Jack Bradshaw' and also remarked that there was a bounty of `One Hundred pieces' for information regarding the identity of the editor of that particular paper.⁷¹The regime, in its own official papers, had earlier indicated a motivation for this purge in a missive dated 2nd October 1649 from the Council of State to the civic authorities of the City of London, `Lord Mayor, Alderman, and Common Council of London. There has been great mischief by the license and irregularity of the press, and the spreading of foolish, malignant, seditious, and treasonable pamphlets and invectives; great care has been taken to pass an Act that will put an end to that mischief, if care be had in its execution'.⁷²This message could also be interpreted as the Junto reminding its erstwhile allies in the City that it would be in both parties' best interests to control and quieten any support for Lilburne amongst the radical press during the run-up to and course of his trial. The regime went so far as to issue a warrant on the day before the trial that reiterated the need to curtail the freedom of the press, it read:

`from the C.O.S (Council of State) to Ed Dendy to seize the pamphlets entitled "Pragmaticus Elencticus", "The Man in the Moon" or any other treasonable works and apprehend the authors and printers'.⁷³These activities may seem tangential to the body of the trial, but the cumulative weight of

⁶⁹Edward Hyde. *The Clarendon State Papers* Vol II. (Oxford, Clarendon Printing House, 1767) W/H-7-11.p363.

⁷⁰John Lilburne. *A Defensive Declaration of Lieut. Col. John Lilburne*. BL L2098-108_E_702_22.p16.

⁷¹S. Sheppard. *Mecurius Elencticus*, 15th-22nd of October, 1649. BL Thomason/88:E_575[27]

⁷²CSPD (1649-1650) Council of State Day's Proceedings.p 328. Accessed via www.tannerritchie.com (memo) 28/2/13.

⁷³CSPD, Warrants.ref 1.62,I,123.Vol,vi,173. Accessed via the British Library internal data base on the 12/10/12.BL

circumstantial evidence indicated a close association with the suppression of the radical press and the prosecution of John Lilburne.

The case against John Lilburne was to be posited as much in the public sphere as it was in the Court. As a contemporary tract attributed to Lilburne later declared, the events of the trial 'pleased the People as well, as if they had acted before them one of Ben Johnsons Playes'.⁷⁴ There is seemingly a paradox to the State's strategy in how it approached the problem of John Lilburne. The regime must have deeply resented the publicity it knew the trial would have generated, but it clearly opted for a public trial in order to demonstrate that the rule of law still held sway. That tension was never clearly resolved and on first sight could be viewed as a critical flaw in the Junto's quest to silence Lilburne. Alternatively, if the goal was not only to silence him, but to also effectively publically discredit him then the trial assumes another dimension.

The man at whom this process of disinformation was to be directed was still regarded as the leader of a movement seen as an imminent threat to the regime. If the tactic of destroying his credibility was also one of the reasons behind the adoption of a high profile state trial, it becomes more comprehensible. This strategy gains greater plausibility when the late decision over the charges is factored in. The tactic engineered them to conform to that of a more localised and controlled format regarding his books. This negated some of the attendant risks associated with the trial playing out in the public arena. These elements were reinforced and complimented by the on-going suppression of the press. With these conditions in place the decision to opt for a public show trial became a rather less risky option.

The Law would also play another significant part in the trial of John Lilburne and the differing interpretations of what it represented. The Commonwealth State, it was believed, championed the supremacy of legislature over historical legal precedent. This is viewed as the core concept of the Civil Law code, which had its underlying basis in the foreign, Roman tradition. It has been argued that because of this the Civil Law 'tradition is fundamentally friendlier to tyrannical regimes than the Common Law'.⁷⁵ To those opposed to the Junto this was exemplified by the creation of the High Court of Justice by the regime to try the King and other high profile royalist prisoners. John Lilburne, in contrast, sought to construct his defence by the use of historical precedents, which is recognised as one of the defining features of English Common Law. As Donald Veall noted Lilburne believed that an 'Act of Parliament was invalid if it overrode the principles of equity, morality, or the common

⁷⁴John Lilburne. *Truths Victory over Tyrants*(London,1649) E-579[12]p4.eebo.

⁷⁵W. Rosen.*Justinian's Flea,Plague,Empire & The Birth of Europe* (Pimlico,London,2008)p 131.

law'.⁷⁶ J. P. Sommerville has stated that the Common Law 'was designed to protect the status quo from the intrusion of government'.⁷⁷ Sommerville also described how 'Common Law thinking was largely based on specifically English customs. Common law lawyers often stressed that the rights which they discussed were those of "Freeborn Englishmen" not of French peasants, nor of Eastern despots' slaves'.⁷⁸ It is of note that under this system the jury is charged with finding the facts of the case and only then does the Judge determine the sentence.⁷⁹ It was to this tradition that Lilburne looked in his problematic defence and for the variability of the jury during his dire moment of need. He sought to tap into the latent fear, within society, of the reintroduction of the worst aspects of the prerogative courts. Whether this fear was genuine or generated by the arch propagandists Lilburne and Walker is a moot point, it is noted that all legal practitioners were based in the tradition of the Common Law, but undoubtedly what is clear is that they sought to exploit this perceived encroachment of Civil Law for their own ends.

⁷⁶ Veall. *The Popular Movement for Law Reform*. p163.

⁷⁷ J.P.Sommerville. 'Custom, Common Law and Constitutionalism' via www.faculty.history.wisc.edu/sommerville. Accessed on the 26/4/13.

⁷⁸ Ibid.

⁷⁹ The Robbins Collection 'The Common Law and Civil Law Traditions' accessed via www.law.berkeley.edu/library/robbins/collection. On the 4/4/13.

The Trial

The trial 'which silencth all other (the newes of the weeke)', as a contemporary pamphleteer described it, began on 24th of October, 1649.¹ There were a number of notable absentees from the first day. One was John Lilburne, who did not have to plead; another was the Lord Mayor, Thomas Andrews, who was ill.² A third was Clement Walker who had been ordered into 'Safe custody' and all his papers seized by the regime on the day the trial started.³ Both radicals, Lilburne and Walker, had by the time of the trial published against the regime. Their works contained very similar damaging assaults upon the Junto. They had attacked the Junto's choice of allies in Ireland and both had also called for an active alignment with the royalist faction. It is also of note that these texts appeared at virtually the same time. This correlation of both theme and timing feeds into a little documented and under explored motivation for the trial.

Clement Walker had supported the Parliamentary position during the Civil War. In 1646 he was elected as the M.P. for Wells in Somerset, on a Presbyterian platform. He had been implicated in the pro-Presbyterian, anti-army London riots that took place on 26th July 1647. In 1647 Walker also began writing about those whom he saw as responsible for the contemporary political troubles. By 1648 he had published the *First Volume of the History of Independency*. This apportioned, almost, equal blame for the troubles that afflicted the nation to Presbyterian and Independent interests. By May 1648, Walker's position had hardened and he had become convinced that it was solely the Independent faction, in Parliament, that sought to usurp power and undermine any form of settlement with the King. In December 1648 Clement Walker was imprisoned after Thomas Pride's purge of Parliament. He was released in January 1649. He had, prior to this exclusion and imprisonment, voiced his support for the King's position with regard to the Treaty of Newport. It was now that he published his book the *Anarchia Anglicana or The Second Part of the History of Independency*. This was scathing in its criticisms of the Independents.⁴ It was due to this work that Clement Walker had been pursued by the regime.

One of the key reasons that the *Anarchia Anglicana* had been proscribed, was that it maintained that a military alliance had existed between Owen Roe O'Neill the royalist Irish Catholic leader,

¹J.Cleveland.*The Mecurius Pragmaticus,23rd -30th October 1649*.BLThomason/88:E.575[40]p1.

²Anon.*The First Dayes Proceedings at the Tryal of Lieut.Col.John Lilburne in the Guild-Hall*.F975-353_24. p1.

³CJ Vol 6,1648-51,*Die Mercurii,24 October 1649*'. www.british-history.ac.uk

⁴David Underdown.'Clement Walker' *OxfordDNB*. 10/1012.

Parliament and the Council of State.⁵ There was a genuine fear, held by the regime, that knowledge of this alliance would have adversely impacted on the soldiers of the New Model Army, as they prepared to leave for Ireland. Walker had written that 'nor doe our Grandees now deny Confederacy with the bloody, Popish massacring Rebels'.⁶ Clement Walker believed that this was critical to disaffection in the army. This had manifested as so called Leveller activity, including the incidents at Oxford and Burford. This was generated, in no small part, because of the collusion between the Council of State and a faction in Ireland that, he maintained, had 'massacred two hundred thousand Protestants' in 1641.⁷ An alliance that was deemed so critically damaging to the good name and credibility of the Government that it was debated in Parliament. General Monck, leader of the Commonwealth forces in Ireland, was recalled to account for his actions before the House on August 10th 1649.⁸ This alliance was also highlighted in the writings of John Lilburne and its refutation must be seen as a primary motivation for the trial.

The accusations of collaboration between O'Neill and the regime surfaced at various points during the course of John Lilburne's trial.⁹ Edmund Prideaux, the Attorney General, illustrated the anxiety that the regime felt over these accusations when, during the course of the trial, either innocently or maliciously, he directly misled the court and the people by stating:

'he [John Lilburne] hath Falsly [sic] and maliciously there said, that the Parliament had joyend with Owen-Roe-Oneale, which I can assure all that hear me this Day, the Parliament always Detested, Abominated, Disavowed, and Declared against, and never had any thoughts that way, my Lord, the false Imputations of his laid upon the Parliament, are almost numberless'.¹⁰

The existence of a link between Clement Walker and John Lilburne's political ideas and associations is hugely important when it came to Walker's interpretation of the trial. Clement Walker's decision to put his pen name *Theodore Varax*, (Latin for *someone who speaks the truth*) on his interpretation of the trial must not be viewed as arbitrary. Walker had been committed to the Tower, on the charge of treasonous libel, just after Lilburne had been released. Historical evidence has indicated that Clement Walker did not attend Lilburne's trial, so it must have been in the Tower that the book was drafted. In his book *Anarchia Anglicana* Walker also dangerously praised and quoted profusely from John Lilburne's works. He included in the *Anarchia Anglicana* a letter written by John Lilburne,

⁵J.I.Casway. 'Owen Roe O'Neill' *OxfordDNB*. 08/07/13.

⁶Clement Walker. *Anarchia Anglicana or The History of Independency* (London, S.N.1649) *BL* Wing 12298:11 /W316.p149 and p195.eebo.23/12/12.

⁷*Ibid*.pp246-249.

⁸*A Tuesdaies Journall of Perfect Passages of Parliament*. *BL* Thomason/83:E.532[17]

⁹Walker. *The Tryal of Lieutenant Colonel John Lilburn* (1710)p53. For example.

¹⁰Walker. *The Tryal of Lieutenant Colonel John Lilburn* (1710) p 89.

dated 27th April 1649. This was in response to the trial and execution of Robert Lockier, for his part in the Bishopgate Mutiny. Lockier, on being found guilty of mutiny, was executed outside St Pauls Cathedral.¹¹ This was an undoubted cause celebre in circles opposed to the regime. These are all factors that reinforce the hypothesis of a previous association and the cross fertilization of anti-Junto ideas between John Lilburne and Clement Walker, critically before the writing up of the trial took place.

In addition Clement Walker was (by early 1649) seen to be collaborating with one of John Lilburne's old radical acquaintances, William Prynne. Walker and Prynne had written *A Declaration and Protestation against the army's recent action* in early 1649. This text voiced damaging discontent with the army and its Independent leadership.¹² Another convergence at this time, in both Walker's and Lilburne's writings, was the highly subversive theme of calling for support for the Monarchy.¹³

It is clear that both writers believed that the controversial alliance between the Junto and O'Neil was the perfect vehicle to inflame contemporary public opinion and had readily sought to exploit it. This accusation has been seen as of less significance than the question of pay as to why the Army faltered in 1649 when instructed to prepare for Ireland. The evidence points, however, to it being potentially almost as damaging, hence the desperate attempts to subvert and suppress this information undertaken by the regime. The perfect forum for such an exercise in disinformation would have been the high profile state trial of one of those who had sought to propagate that information. This lends a new significance to why the Attorney General chose to mislead the court about the truth of this alliance. It gives credence to how dangerous this accusation was in the virulently anti-Irish, anti-Catholic atmosphere of the time. The claims, propagated by John Lilburne and Clement Walker, must have been seen as explosive.

The sensitivity of the regime, over the nature of these charges, is detailed by Irish historian Micheal O'Siochru'. He states that 'In early August, Colonel George Monck unexpectedly arrived back in England, bearing news about the fall of Dundalk to Lord Inchiquin. Cromwell and the Council of State had known for months about Monck's temporary alliance of convenience with the native Irish general, Owen Roe O'Neil, but kept it secret'. O'Siochru' goes on to describe the implications of this collaboration, if it had become public knowledge. He details how, potentially, disastrous for an invasion of Ireland and how disruptive to settlement its disclosure could have been, in the fraught political climate of late summer 1649:

¹¹Walker. *Anarchia Anglicana* .pp. 160-163. Walker also used extracts from *England's New Chains*. p135.

¹²Underdown. 'Clement Walker' *OxfordDNB*.

¹³Walker. *Anarchia Anglicana or The History of Independency*. pp123-127.

‘The loss of Dundalk, along with the desertion of hundreds of Monck’s men to the royalist side, threatened to expose this damaging information to the public. In an attempt to forestall any backlash, particularly among troops assembling for Ireland, the Council decided to take pre-emptive measures, with Monck acting as willing scapegoat for the regime’. Though this damage limitation exercise swung into action the episode had, according to O’Siochru’ ‘cast a shadow over the impending invasion’.¹⁴ That shadow must have seemed a little darker for the regime with radical writers like Walker and Lilburne highlighting the collaboration to the populace in general and to the army in particular. It is of undoubted importance that all this transpired at a time when the regime had to be seen as the only faction that could introduce social and religious stability. It also gives stark witness to the precarious political landscape in late 1649.

S.R. Gardiner acknowledged the existence of an alliance between the regime and O’Neil, but he failed to associate the circulation of rumours of collusion with John Lilburne and Clement Walker and the motivations behind the trial of Lilburne.¹⁵ The continuation of these harmful allegations needed to be stamped out and the source expunged. This, again, is clearly the reason why Prideaux took such great pains to refute the *truth* of these accusations during the course of the trial and compromised his own integrity. He used the trial, and associated intense public spotlight, as the stage from which to deliver the State’s response. The trial sought to signpost that the continuance of these disruptive and dangerous accusations, though true, would be deemed as seditious libel and therefore now a treasonable offence.

The dove-tailing of Walker’s and Lilburne’s ideas, by the middle of 1649, described an influential collaborative network of dangerous and potentially royalist subversion. It also became obvious to those in power that the medium of print was their most effective weapon. It must have been equally obvious that John Lilburne was emerging as the literal and symbolic centre of that opposition. The regime must have sought any means at their disposal to quieten these rumours and bring into disrepute those seen to promote these subversive ideas.

These elements, when pulled together, give more than enough motivation for the regime to pursue and try to silence both radicals and those associated with their circle. This sense of interconnectivity is compounded when it is also considered that it was the Attorney General, Edmund Prideaux, who was charged with moving against both Lilburne and Walker, and the purging of the subversive texts authored by them.

¹⁴Michael O’Siochru’. *God’s Executioner, Oliver Cromwell and the Conquest of Ireland* (London, Faber and Faber, 2008) p78.

¹⁵S.R. Gardiner. ‘*History of the Commonwealth and Protectorate, 1649-1660*’. pp 93-94

It was Prideaux's role as John Lilburne's chief interrogator during the course of the trial. It was Prideaux who had declared that the Burford mutineers were in open rebellion. Edmund Prideaux was also charged with drawing up the proclamation for 'apprehending all such Persons as were in the last Rebellion'.¹⁶ Prideaux was also central in detailing the Free State's response to Walker's work and so drawing up the prosecution against him. He had been 'enjoined to proceed against Clement Walker Esquire' for the writing of his book 'Intituled *Anarchia Anglicana*' on 13th November 1649 by the Commons. Walker was then committed to 'Tryal for High Treason'.¹⁷

It is no coincidence that how the State proceeded against Walker followed the same pattern of procedure first advanced when charging John Lilburne over his books. By his very office, Prideaux would have had to have been pivotal in the development process. These charges were so engineered that they limited any potential collateral damage to the legitimacy and creditability of the regime. Again, it is no coincidence that Prideaux was described, in Walker's version of the trial, as 'one of the creators of all the Judges, and there by Judge of his Judges'.¹⁸ It could also be argued that Edmund Prideaux was one of the few people in the State who really understood the latent power and danger of effective, mass communication as "master of the posts, messengers and couriers".¹⁹

Edmund Prideaux had been a career lawyer, having entered the Inner Temple in 1615. He had been elected to the House of Commons for Lyme Regis in 1640 at the start of the Long Parliament. Prideaux had taken the Parliamentary side during the ensuing Civil War and it has been noted by Sean Kelsey that he had managed 'First the War and then the Independent interests'. He had fled Parliament to side with the army in 1647, putting him in direct opposition to Clement Walker. Edmund Prideaux became solicitor general in 1648, though he did not take part in the King's trial and he succeeded to the post of Attorney General on 9th April 1649.²⁰ There is significance in the relationships between these three key individuals as regards: the trial, the mutiny at Burford, the perpetuation of the rumour of collaboration in Ireland, suspected royalist intrigue and the decision about how to try both Walker and Lilburne. This significance has not been previously detailed nor related to the trial.

To successfully try John Lilburne, it is apparent that the regime sought to separate him from the norms of English society. The Guildhall had already been the venue chosen by the State for a number

¹⁶ *CJ* Volume 6 '21 May 1649' pp212-213. Accessed via www.british-history.ac.uk on 06-05-13.

¹⁷ *Ibid.* '13 November 1649'. pp 321-322.

¹⁸ Walker. *The Trial*. p 25.

¹⁹ Rev. J.A. Hamilton/S. Kelsey. 'Edmund Prideaux'. *Oxford DNB* 10/12/12.

²⁰ *Ibid.*

of high profile treason trials. By the time of Lilburne's trial the venue must have been culturally associated with the dangerous, subversive 'other'.²¹ This association between Guildhall and subversion would carry on beyond the Stuart age.²² There is still a plaque situated in the main hall of the Guildhall that commemorates the famous treason trials held there. Strangely, however, both John Lilburne's trial of 1649 and Tom Paine's trial in absentia in 1792 are conspicuous by their absence.

The deliberate association of John Lilburne with this subversive 'other' had begun prior to the trial, with the writings of supporters of the regime. Amongst these writers was Thomas May, one of the Free State's foremost literary and historical proponents, who launched a series of attacks on Lilburne. In May's writings, the strategy of marginalisation became apparent. The undoubted value of this course of action was to weaken Lilburne's position in the eyes of his compatriots and, more importantly, of those who remained on the side lines.

Thomas May was a well-known writer prior to the Civil War. He had supported the Parliamentary faction during the conflict and wrote extensively as a propagandist. In 1646 he was appointed as a Secretary to Parliament and became the official historian of the conflict.²³ Just prior to the trial, May declared of Lilburne, that he was a leader of 'A people [the Levellers] who have as many Governments as Religions, and as little of the true Religion, as they have Estates and Fortunes in the Nation'.²⁴ John Lilburne, aware of this tactic adopted by the State, refuted these claims. He stated, just days before the start of the trial, that Thomas May;

²¹ Henry Parker also gives an insight to how Lilburne was associated by the regime with the blasphemous, religious 'other' in 'A Letter of Due Censure'. pp31-33. P405-93_E_603_14. Those Catholics tried at the Guildhall included William Mellows in 1570, Rodrigo Lopes in 1594 and on 28th March 1606, Garnet, the leader of the Jesuit movement in England, implicated in the 'Gunpowder Plot'. Previous to these developments one of the most celebrated cases of treason undertaken at the Guildhall was that of Sir Nicholas Throckmorton. Throckmorton was the son of a Papist recusant and it is noted that John Lilburne may have based his late appeal to the jury upon his trial. It also been the site of the trial of Anne Askew as detailed by W.Thornbury in *Guildhall, Old and New London, Vol I (1875)* pp. 383-396 accessed via www.british-history.ac.uk on the 12/10/12.

²² M.Philip. 'Tom Paine'. *OxfordDNB* 28/5/13. The Guildhall was the site of the trial of that other radical fire brand Tom Paine in absentia. It began on 18th December, 1792. The charges that he faced were also very similar in context to John Lilburne's. Those prosecuting Paine 'stressed the subversive character of the second part of the rights of man and the determination with which it was being disseminated throughout the Kingdom'. The fact that Paine was tried in absentia at the Guildhall and that justice would not have been seen to be done illustrated the symbolic value that the venue must have held in trials of this nature.

²³ Norbrook, D. 'May, Thomas' (born in or after 1596, 1650). *OxfordDNB* 3/5/12.

²⁴ May. *An Anatomy of Lieut. Col. John Lilburn's Spirit and Pamphlets*. p4.

renders me in his late false and lying book to be an Atheist, a denier of God and the Scriptures, and given up to all Licesiousnesse [sic] and an absolute Confederate of Prince Charles'.²⁵ These accusations of confederation with the royalist faction would damagingly surface again.

Those beyond the regime had little doubt of the outcome for Lilburne at the Guildhall. The *Mercurius Pragmaticus*, a royalist news book, reported that the regime had 'erected a scaffold and provided otherwise very liberally all things that might hasten his death'.²⁶ As with many things regarding the trial, there may have been other logic at work. The threat of an attack by Lilburne's supporters would have made the authorities wary. The *Pragmaticus* continued that the scaffold had been put in place not only for Lilburne, but to 'fright others of his party from further meddling in defence of his interest'.²⁷ The definition of scaffold was never made clear, was it an arrangement for the accommodation of the crowd? or, as is seemingly implied here, a construction that could strike fear and take life?

The Guildhall and the surrounding area came under a strict military lock down during the course of the trial. A contemporary publication noted of the venue, 'no Court of Justice sought too be guarded with Souldiers, either Horse or Foot, because thereby the Jurors, Witnesses and the Party accused may have affrightments put upon them'.²⁸ Lilburne later declared that the 'many and strong guards both of horse and foote were, to overawe the people, placed in the Towne-Hall, courtyard and lanes about the said place of Trayall'.²⁹ This was a nervous show of strength on the part of the Commonwealth regime.

Eight Judges of Law, as well as the Aldermen of the City, presided over the court 'No less than Fourty in all'.³⁰ All were dressed in the scarlet robes of their station, apart from the Lord Commissioner, Judge Richard Keeble. The Special Commission of *Oyer and Terminer* began on Wednesday 24th October. John Lilburne was charged with the writing of seditious, treasonable literature under the legislation enacted by Parliament on May 14th and July 17th 1649. The legislation of May 14th had transferred to Parliament those safeguards that had existed to prevent treason against the monarchy. This new legislation had also created a treasonable offence of a civilian, fomenting mutiny in the army. The two Acts are detailed in Clement Walker's retelling of the case.³¹

²⁵ John Lilburne. *The Innocent Man's First Proffer* (London, s.n., 1649) Wing -L2119-246_669_F_14_83.

²⁶ John Cleveland. *Mercurius Pragmaticus*. Thomason 88_E_575_40.p 4.eebo

²⁷ Ibid.

²⁸ Anon. *The First Dayes Proceedings at the Tryal of Lieut. Col. John Lilburne* .p21.

²⁹ John Lilburne. *Apologetisch* (Amsterdam, 1652) Thomason/E659_30.p11.

³⁰ Parker. *A Letter of Due Censure*.p7.

³¹ Walker. *The Tryal* (1710) pp. 76-77.

John Lilburne, via the narrative of Walker's book, is described challenging these Acts by claiming 'as there may be Mony [sic] (which we see there is every day) so there may be counterfeit Statutes'.³²

The decision to proceed by *Oyer and Terminer*, deemed to be without 'Validity or Legality' by John Lilburne, was directly linked to how the regime had dealt with the 'Leveller' mutiny at Oxford.³³ The writer of the *Mercurius Pragmaticus* believed that it demonstrated:

'That as Justice had been done lately on some at Oxford, in a military and marshall way, who were subject to that jurisdiction, and should bee in like manner on any other that should offend; So they issued a Special Commission of *Oyer and Terminer*, for the speedy Trayll of the chiefe of those who had laid and carried on such dangerous designes'.³⁴

Pauline Gregg, in her biography of John Lilburne, thought that the decision to opt for a Commission of *Oyer and Terminer* was more one of a damage limitation exercise on the part of the Commonwealth.³⁵ However, clearly, as stated by the *Pragmaticus*, the process of *Oyer and Terminer* was used because it coincided with the system used at Oxford, being speedy, expedient and symbolic. It was also a perfect medium to reinforce, to a war-weary populace, that it was the writings of John Lilburne that had inspired the recent insurrections and mutinies. This Commission of *Oyer and Terminer* was read to the Court in Latin. The anonymous writer of the contemporary *First Dayes Proceedings*, regarded this just as witheringly as John Lilburne. They declared that the use of Latin put the case 'thereby beyond the understanding of divers of those named in it to be Judges'.³⁶

Leading the prosecution for the State was the Attorney General, Edmund Prideaux. The presiding judges included; Philip Jermyn, Justice of the Upper Bench; John Puleston, Justice of the Common Pleas; Francis Thorpe, noted as Baron and Member and Rob Nicholas, Member and Justice of the Upper Bench.³⁷ John Lilburne remarked, during the trial, how Prideaux had come close to falling foul of the leaders of the Commonwealth regime 'it is not long since, you were penned down, in a black Bill to my Knowledge, as unsavoury Salt, with many others to be thrown out of the House of Commons'.³⁸ This was reference to a purge in which Edmund Prideaux became involved when he was nominated to be dismissed from office by Colonel Valentine Walton, Oliver Cromwell's brother-in-law. Walton had been tasked by the regime 'to pen down those men they thought fit to throw out as

³²Ibid.p75.

³³Walker.*The Tryal*(1710)p 19.

³⁴Cleveland.*Mercurius Pragmaticus*..Thomason_E_575_40.p3.

³⁵Gregg. *Free-Born John*. pp.293-94.

³⁶Anon.*The First Dayes Proceedings At the Tryal of Lieut.Col.John Lilburne* .Wing F975-353_24.p1.

³⁷Walker.*The Tryal of Lieutenant Colonel John Lilburne*(London,Hills,1710)p1.

³⁸Ibid.p81

Reprobate Silver'.³⁹ Walton had been designated a member of a three man committee, set up by the Army, to probe who would be loyal to the Junto and Walton had personally written down Edmund Prideaux's name to be purged.⁴⁰ Although this incident does not seem to appear in the formal histories of the period, G.E. Aylmer details the proliferation of these committees during this period. He noted the emergence of an 'unsatisfactory pattern of secret 'revelations' and accusations were being made to peers and M.Ps, often against their own colleagues'.⁴¹ This had been used for 'political advantage' and it had 'been confused by its very nature, two quite different matters: public political warfare and secret intelligence and espionage'.⁴² A convergence readily illustrated by the trial of John Lilburne.

The first day of the trial was taken up by the swearing in of the jury for the Grand Inquest and deciding if there was an indictment to answer. Tai Lui, in his study of the juries of the trial, has suggested that this may have taken place in camera.⁴³ The forty eight jurors of the Grand Inquest were called. These were, 'six picktmen out of every ward, out of eight wards'.⁴⁴ The wards were the autonomous areas within the City's administrative and political structure, of which there were 26. Twenty men were then selected and sworn in with 'an odde man never summoned' this made twenty one members of the jury of the Grand Inquest.⁴⁵

It is suggested that things were not above board in the selection process of this jury. A Captain Sweeting, who was a 'pewterer from Cornhill' was excepted against, the writer of the *First Dayes Proceedings* noted, 'tis not known for what reason, but only conjectured that they might suppose him, too much of Mr Lilburnes principles'. Sweeting was replaced by a man named Smith, 'who was not legally summoned' and this being a 'Private or Special Oyer and Terminer' and not an open session was, legally, highly irregular and against Statute 2.Hen 4.C 9'.⁴⁶ The inclusion of this episode indicated that the intended audience for this pamphlet had an understanding of the process of law. The implication being, then as today, the legal profession may have been particularly interested in this trial.

³⁹Anon.*The First Dayes Proceedings At the Tryal of Lieut. Col. John Lilburne in Guild-Hall, Errates in the Letter N.* p24.

⁴⁰Ibid.

⁴¹G.E.Aylmer.*The State's Servants, The Civil Service of the English Republic, 1649-1660* (London, Routledge & Kegan Paul, 1973) pp17-20. p20.

⁴²Ibid. p20.

⁴³Tai Liu. 'The Trial of John Lilburne ; A Study of the Jurymen ' in *the National Chengchi University Journal of History (Taipei: May, 1987)* pp203-221. p204. Access to this document was facilitated by the great help of Phil Baker at the History of Parliament Trust.

⁴⁴Anon.*The First Dayes Proceedings.* p2.

⁴⁵Ibid

⁴⁶Ibid

This impression of partisanship, inherent within the Grand Inquest jury, seems to be exemplified by the comments made by one of its members. He declared that if he had been on the Jury of Life and Death, that was later called, he would 'have sterved them out, and made them sit two or three dayes and nights together, but they should have found Lieut. Col. Lilburn guilty'.⁴⁷

The 'empanelling' for both Juries, the Grand Inquest and Life and Death, had fallen to Rowland Wilson, one of the two Sheriffs of the City of London.⁴⁸ Wilson was also a Colonel in the London Militia, an Alderman of the City of London and both an M.P. and a member of the Council of State.⁴⁹ Is it any wonder that he is regarded as 'no friend of John Lilburne'?⁵⁰ Both Lilburne and Clement Walker had been highly disapproving of the close, emerging relationship between the City and the regime.⁵¹ Walker had been especially critical of the alliance between City and Junto. He believed that the Junto sought to 'governe it [the City] by Commissioners and a schismatical Common Council of Anabaptists'.⁵² Tai Lu has indicated that with Wilson in charge of empanelling, the members of the jury of the Grand Inquest were picked to be uniformly ill disposed towards John Lilburne.⁵³ This, however, is not fully borne out by the contemporary commentary from the first day which, after the episode with Sweeting, then acknowledged that though 'several were engaged men' others 'were indifferent and unbyassed'.⁵⁴ It seems that a common purpose of malicious intent towards Lilburne cannot be proved. An assessment that would be reinforced as the first day of the trial progressed.

Among those elected to sit on this jury was John Hinde, who, unofficially, transcribed the proceedings of the trial.⁵⁵ Hinde is cited by John Lilburne as being amongst those who had written up an account of his trial in his *Truths Victory over Tyrants*.⁵⁶ It was John Hinde, Lilburne stated, that 'took his Tryall in short writing' and that he was 'being both eye and ear witnesses of their Proceedings against him in that Court'.⁵⁷ This corroborated the argument that Clement Walker's account of the trial emerged from, amongst other sources, the account of John Hinde. Hinde's position in relation to the regime might also highlight the political ambiguities of 1649. In February, a John Hinde had been called as a witness before the Council of State against Mr Cawton, a Minister,

⁴⁷ Ibid.

⁴⁸ Liu, 'The Trial of John Lilburne ;A Study of the Jurymen ' .pp203-221.p204.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ John Lilburne. *The Second Part of England's New Chaines*. p 4.

⁵² Walker. *Anarchia Anglicana or The History of Independency* .p61.

⁵³ Liu, 'The Trial of John Lilburne ;A Study of the Jurymen ' .p204.

⁵⁴ Anon. *The First Dayes Proceedings*. p2.

⁵⁵ Anon. *The First Dayes Proceedings*. p11 It is from Hinde's notes that Varax/Walker's account of the trial emerged.

⁵⁶ John Lilburne. *Truths Victory Over Tyrants*. (London, 1649) p1. L2191 A-89_579_12.p4.

⁵⁷ Ibid.

who had preached sedition from his 'pulpit'.⁵⁸ By October 30th, a warrant had been issued 'To apprehend John Hind, living in a Cook shop next to the sign of the Buff Coat, Fleet Street, for speaking opprobrious Language against Parliament'.⁵⁹ This arrest warrant, if taken in conjunction with the State's prohibition on Walker's interpretation of the trial and Hinde's assistance in the composition of that text, implied this was the same John Hinde.

The Bill of Indictment that was presented against John Lilburne was, 'nearly 2 yards long and some half an ell broad' it was also 'close writ in Court hand in Latine',⁶⁰ in which none of the jury were conversant.⁶¹ This state of affairs undoubtedly impacted on the jury's decision if there were any charges to answer.

A greatly neglected resource is the prosecution's opening address on the first day. This gave the Commonwealth's legal and social justifications for the trial. The importance of this act increases if, as the evidence implies, the decision to try Lilburne over his books was taken by the judicial hierarchy rather than the political elite of the Commonwealth. This opening address was conducted by Lord Keeble. Keeble had been created a serjeant-at-law in October 1648, a reflection of his services to Parliament. He was Chief Justice of North Wales, an area associated with various royalist intrigues against the Commonwealth. He held this role until 8th February 1649, when he was made one of the commissioners of the Commonwealth's great seal. He was also President of the trial of the Presbyterian Christopher Love for treason in 1651.⁶² Love cited the precedent set by Lilburne's case, but this was an ineffectual defence during his own trial.⁶³ Love had also stated that he was present at Lilburne's trial. He was committed for treason for conspiracy in a Presbyterian plot to reintroduce the Monarchy.⁶⁴

Lord Justice Keeble detailed how judicial authority was now derived in this post Regicide era 'The Seat of Justice is Gods own seat, and he doth appear more to men in that Seat than in any visions visible to men, in the pulpit it is Vox Clamantis [one crying out], but here it is Deus Presens' [God's Presence]. Keeble described this judicial authority as 'the Justice of a Kingdom', highlighting that a republican, legal vocabulary had not yet evolved by October 1649. It also denotes that the Judges,

⁵⁸ CSPD Feb 28, 1649-1650. Vol I. p24.

⁵⁹ CSPD, Warrants, Oct 30th. p551.

⁶⁰ Anon. *The First Dayes Proceedings*. p9.

⁶¹ Ibid.

⁶² S.K. Roberts. 'Richard Keeble' *OxfordDNB*. 3/5/13.

⁶³ E. Sollom, E. contributor. *A Complete Collection of State-Trials and Proceedings upon High Treason and other Crimes and Misdemeanours, from The Reign of King Richard II To the End of the Reign of George I* Vol II. pp 84-86. (London, Walthoe, Sen, Knapton. 1730)

⁶⁴ C.E. Vernon. 'Christopher Love' *OxfordDNB* 28/5/13.

despite the rhetoric, were still unclear as to the designation of the State over which their authority now presided.⁶⁵

Justice, as represented by the Court, did not rely on the mediation and transmission of men or Kings, as its provenance was impeccable. It was the pure, uncorrupted Law of the Old Testament: 'The Law of England is the same Law David did seek and desire of God; for the most learned say, the Law of England and the Law of God are all one'.⁶⁶ These God-given Laws of England, under which Lilburne was to be tried, had 'endured more strokes and blows than all the Laws in the world', but those who had 'adhered to the Laws have stood when all the rest were scattered'.⁶⁷

Lord Justice Keeble then used his address to explicitly state what was regarded as being beyond the bounds of normal society and what a jury should take note of;

'If any professe to be an Atheist you must take notice of them; If an idolater to worship more gods than one; If a prophane person, a swearer, if one that possest [sic] with vain spirits of Conjuracion or Witchcraft and for offences committed on the Sabbath day. The next comes to the troubles of men; the first in those concerneth all, and that is called Treason'.⁶⁸

This emphasis laid on those beyond the margins of society and the association with treason, can be interpreted as an extension of the strategy exhibited by Thomas May to undermine Lilburne's position. It branded him as being beyond and unworthy of the protection of the Nation's laws. John Lilburne was being painted as a 'foe' of law, the laws of the Kingdom and so those implemented by God. This rhetoric may have been used to provoke a particular set of cultural responses in the jury.⁶⁹ James Sharp describes a similar set of circumstances with regard to the witch trials of this era. Accusations of witchcraft were coupled with the diminishment of "symbolic credit". This, in turn, was directly associated with the concept of 'reputation'. This was of the greatest importance in what he described as still an overwhelmingly 'face- to-face society'.⁷⁰ These attacks on John Lilburne's reputation would become increasingly more ferocious and important during the course of the trial.

Lord Keeble then detailed the temporal source of the Court's power: 'The Commonwealth, the Parliament considering these things, have taken this Government into the original fountain whence it did first spring. For all original Power and Fountain cometh from the People, they are the fountain

⁶⁵ Ibid.

⁶⁶ Ibid. p4.

⁶⁷ Ibid. p5.

⁶⁸ Ibid.

⁶⁹ James Sharpe. *Witchcraft in Early Modern England* (London, Pearson, 2001) p14.

⁷⁰ Ibid. p45.

of it. What is a particular man, if the people stand not to him with their strength'?⁷¹This again can be read as an implication that Lilburne, through his writings, had moved beyond the margins of society. It also expressed the idea that it is the body of the people that holds the origins of law and stability. This was in contrast to the body of a king, and Lilburne now stood isolated opposed to that 'body'.

Keeble described the legitimacy of the regime to put John Lilburne on trial 'A Commonwealth, if in a divided Body, act by their Representatives the Parliament, whose voice is the voice of the Commonwealth. By a Law enacted, it is made Treason, to Compass or imagine the destruction of them.'⁷²Lord Justice Keeble acknowledged that the rule of Law allowed the Commonwealth State to protect its own position, crucially without the body of the King. The writer of the *First Dayes Proceedings* noted 'How enacted, by whom? whether for the good of the people? Salus Populi being Suprema Lex?'⁷³This was the orientation of the post regicide legal system, not only to the case of John Lilburne, but also to the world.

The jury of the *Grand Inquest* were presented with the Bill of Accusation.⁷⁴They were charged with finding if all or any parts of the Bill were true. They had to present their findings to the Court after the interviewing of witnesses.⁷⁵The jury withdrew to a private area for four hours and conducted their deliberations and heard the testimonies.⁷⁶Any assertions that the Grand Jury were unequivocally opposed to John Lilburne are now further undermined.⁷⁷Evidence from the *First Dayes Proceedings* recounted that the Jury continually rebuffed pressure exerted by the prosecution to influence the proceedings. Twice the Attorney General pressed to gain access to the jury 'to set things in a plain way' and twice they denied him access.⁷⁸The account maintained that the reason for this denial of access was because 'It was not fit for a jury to entertain a Complainant, in his own case, but to hear Witnesses'.⁷⁹This shows a sense of autonomy on behalf of the Grand Jury, at Lilburnes trial, that has been rarely been documented by historians. Again this does not seem to be indicative of a packed jury.

⁷¹Anon.*The First Dayes Proceedings*.p5.

⁷²Ibid.pp6-7.

⁷³Ibid.p7

⁷⁴Ibid.p9.

⁷⁵If the Bill was decided to be of truth it was known as a '*Billa Vera*'.

⁷⁶Anon.*The First Days Proceedings*.p9.

⁷⁷Liu.'The Trial of John Lilburne ;A Study of the Jurymen '.p204.

⁷⁸Anon.*The First Days Proceedings*.p9.

⁷⁹Ibid.

Following Walker's account both M.A. Gibb and Tai Liu maintained, in their respective writings, that the Jury of the Grand Inquest found a true Bill of indictment against John Lilburne.⁸⁰This, again, is in contrast to what the evidence from the *First Dayes* recorded. It noted that after due deliberation, even though only a majority of 12 were needed out of the 21 jurors, the Bill was rejected as an entirely accurate '*Billa Vera*', or true bill.⁸¹This must have represented a major hindrance in the State's quest to convict Lilburne. It denoted a scenario of continuing dissent at the very first hurdle for the regime. How severe this was is demonstrated again in the *First Dayes Proceedings*. It described that how, on being brought into the Court the next morning, John Lilburne was wrongly informed, by Judge Jermyn, that he had been found guilty of treason and that the Grand Jury were his accusers.⁸²The members of that Jury were incensed at this and urged their Foreman to challenge the Judge 'of the wrong he did the Jurors'.⁸³Not wishing to cause 'Tumults in amongst the People' in the now packed Court, they sent the Recorder, Mr Steele, to talk to the Judge.⁸⁴The case was adjourned and Judge Jermyn met the Jurors in the gallery. John Hinde then recounted, from his notes, to the Judge how he had misrepresented them. They requested if they, the jury, could write on the back of the *Billa Vera* to inform the Jury of Life and Death that the truth had not been found, in case they sought to take Liburne's life.⁸⁵Judge Jermyn refused, stating 'No, It could not be granted so to write on the back of the Bill, it was not according to the 'proceed of Law'.⁸⁶This is acknowledged in Clement Walker's version of the proceedings at the stage John Lilburne, seemingly, tried in vain to draw the attention of the Court to the fact that the Grand Jury had been misrepresented:

'L.C.Lilburne; I beseech you Sir, let me hear but the Grand Jury speak, for I understand from some of themselves, they never found me guilty of Treason, but doe conceive themselves wronged by some words yesterday, that passed from some of the Judges; I pray let me hear them speak'.⁸⁷

Walker failed to elaborate on this incident and the trial continued. It is only in the news books, the *Mercurius Pragmaticus* and the *Mercurius Elencticus*, that it is made clear that John Lilburne is given leave to question the Grand Jury directly. They both correspond closely to the version in the *First Dayes*. It is also noted that the foreman of the Grand Jury declared: 'We have only found him guilty of

⁸⁰See; Liu, T. 'The Trial of John Lilburne: A Study of The Jurymen'. pp203-204. And also Gibb, M.A. *John Lilburne, The Leveller, A Christian Democrat* (London, Lindsay Drummond, 1948) p278.

⁸¹Anon. *The First Dayes Proceedings*. pp9-10.

⁸²Ibid.

⁸³Ibid. pp10-11-12.

⁸⁴Ibid.

⁸⁵Ibid.

⁸⁶Ibid. p12.

⁸⁷Walker. *The Tryall of Lieut. Col. John Lilburne* (1649) p53.

writing some part of those books hee is charged within the indictment, but not of high treason'.⁸⁸ Both the news-books are very similar in their reporting of what happened during the trial. The difference being that the *Pragmaticus* gave a whole edition to the trial, whereas the *Elencticus* devoted around a page and a half. It is of particular importance that Walker failed to include the development of John Lilburne being allowed to question the Grand Jury within his narrative. This occurrence could have been highly influential on the decision of the jury of Life and Death to acquit. This, however, would have undermined the depiction in Walker's book of Lilburne's salvation being solely to his rhetoric. It is evidence that a selective editorial process was undertaken in the most influential retelling of the trial. The issue of discrepancies between Walker's account of what occurred and these other contemporary sources, is a persistent thread that runs throughout any close examination of the trial.

It is very possible that this was the point at which John Hinde moved from someone who, seemingly, sided with the State, to an individual who would have an arrest warrant against his name. This could have been the reason that John Hinde donated his writings to Walker and Lilburne in order to right a perceived wrong against the Grand Jury and himself.

It was on Thursday 25th October that John Lilburne was finally brought into the Court at the Guildhall.⁸⁹ It is also the point that Clement Walker's influential narrative of the trial commences. Many writings in the fields of history, law and political thought have based their respective work on these last two days of the trial and on the interpretation provided by Clement Walker. His version of the trial is also pre-eminent in the public perception of what John Lilburne came to represent. Walker's position as the main source for the events that took place on 25th and 26th October at the Guildhall is due, in reality, to his book surviving in greater detail and being more accessible than many of the other contemporary and relevant accounts.

In 1964 Haller and Davis proposed that Walker had compiled his work from a 'stenographic report of the trial evidence', but crucially this was 'under Lilburne's direction' and the drawing up of the text also entailed 'documents' provided by John Lilburne.⁹⁰ This view is reinforced by the evidence of Walker and Lilburne's mutually supporting association during 1649. That official notation was taken

⁸⁸S. Sheppard. *Mercurius Elencticus, 22nd - 29th October* (London, 1649) Thomason/88:E575[38] pp. 208-209. Cleveland, J. *Mercurius Pragmaticus, Tuesday 23rd to Tuesday Octb 30th* (London, 1649) p 6. Thomason/88:E.575[40].

⁸⁹Walker. *The Tryall of Lieut. Col. John Lilburne* (1649) .p2.

⁹⁰G. Davies & W. Haller (eds) *The Leveller Tracts: 1647-1653* (Gloucester, Mass: P. Smith, 1964) .p31. Accessed via www.googlebooks.com. 12/2/13

during the course of the trial is clear from other contemporary sources.⁹¹ That much of this has not survived seems to be in no small part due to the fact that the State, in a fit of post event trauma, seemed to have seized and destroyed many of the other contemporary accounts of the trial.⁹²

This being the case, is Clement Walker's interpretation beyond historical reproach? Annabel Patterson believes that the 'certificate' of endorsement at the beginning of Walker's text, by John Lilburne, declaring that it had been compiled in an "indifferent hand", is a good barometer to it being a balanced portrayal of events. She maintains that it 'indicates a level of fairness' and more importantly 'historiographical accuracy' in the writing.⁹³ Her analysis saw Walker's narrative fulfilling a contractual model by which writers opposed to the government of this period abided. Her belief is that the *Triall* encompassed the idea of a "social contract", which defined 'the forms and limits of opposition'.⁹⁴ This idea that Walker's narrative framework is inherently balanced has remained the orthodoxy when examining the last two days of the trial.

Yet the truth behind Walker's work could be far more pragmatic. It is recognised that the book was compiled *post de facto*.⁹⁵ This makes any collaboration between Clement Walker and John Lilburne vitally important in the construction of the narrative. The historical evidence has pointed to both writers realising that they were engaged in an all-out propaganda war with the State, not in a consensual set of claim and counter claim. This was the bite and claw of a post-civil war state, which was, seemingly, teetering on the brink of yet another conflict. Jason Peacey has acknowledged that during this time a 'sophisticated campaign of literary warfare was waged' against John Lilburne.⁹⁶ The publication of *The Triall of Lieut. Collnel John Lilburne* by Theodore Varax could and should be viewed as the vanguard of a response. By necessity the ideal of historical fact could not have entered the equation too much when literary expediency out-weighed the need for undiluted truth. John Lilburne has been acknowledged as being skilled in the dark arts of self-promotion and propaganda. Andrew Sharp described the biography Lilburne included in the *Legall Fundamentall Liberties* as being a 'self-justifying account of his life'.⁹⁷ John Lilburne and Clement Walker both had the ability

⁹¹It is noted in the *Errates, Letter H* p 20 which is associated and catalogued with *The Last Dayes Proceedings*.

⁹²CSPD, Warrants.ref 1.62,I,123.Vol,vi,362.Accessed via the British Library internal data base on the 12/10/12.BL

⁹³A. Patterson.(1993)'For words only; from Treason Trial to Liberal Legend in Early Modern England'.p399 In the *YJLH*.Vol.5:Iss,2.Article 6.

⁹⁴R. Robertson.*Censorship and Conflict in Seventeenth-Century England* (University Park, Pennsylvania State Press, 2009)p13.

⁹⁵M.Mendle. 'Mid-Century News and Pamphlet Culture' in *The Politics of Information in Early Modern Europe*.Eds Dooley & Baron,A.S.(London,Routledge,2001)p 77.f.n. 57.

⁹⁶J. Peacey. 'John Lilburne and the Long Parliament'.p 626 in *HJ*,Vol.43,No 3 (Sep;2000) pp. 625-645.Accessed 29/09/2012 via www.jstor.org.

⁹⁷Sharp. 'Lilburne, John' *OxfordDNB*.

and the will to manipulate events so that they fitted their particular agendas. Patterson believes that Walker's account of Lilburne's trial is 'closer to truth than fiction', but it is just as possible that both Walker and Lilburne collaborated to produce a synthesised work, tailored to fulfil their own ends. That this agenda seemed to have been the deliberate public humiliation of the State, through the medium of print, does not seem to fulfil the notion of a 'social contract'. The historical evidence also indicated that the Junto believed that the narrative of the trial had overstepped the boundary of any forms and limits of acceptable opposition. This was illustrated by the warrant issued by the Council of State on December 6th 1649, 'To search for and seize all books purporting to be a narrative of Lieut-Col. Jno Lilburns trial.'⁹⁸This all points to Walker's text emerging as a composite work of pragmatic, convenient elaboration, coupled with comparative truth.

There are, however, certain episodes during the narrative flow of Walker's interpretation of the trial that indicated they may have been more directly derived from the court transcripts and other original source material. These stand in counterpoint to the areas that were developed as rhetorical devices for the propagation of Lilburne's arguments. The great bouts of rhetoric, attributed to Lilburne by Walker, received little or no corroboration from other still extant contemporary sources, such as the news books. The evidence points to these being, in large part, interpolations by either Walker or Lilburne or both to champion their cause.⁹⁹In the sections free from the rhetoric of John Lilburne, the difference between propaganda and reportage becomes more explicit.

There are a number of these episodes throughout the course of Walker's text. Examples are: the incident that involved what seemed to be a blind jury, the accusation that Judge Jermyn overrode the requests of the *Grand Jury* and Lilburne's call for this to be noted, Lilburne's request to pass water and also certain aspects of John Lilburne's appeal to his jury. The two most prominent features of this reportage, however, are firstly the interactions between the witnesses called and their interrogators. These interactions have a more mundane, realistic impetus and a less staged dynamic. The other prominent element of this reportage style is the increasingly aggressive questioning that Edmund Prideaux subjected Lilburne to as the trial progressed. Both aspects became decidedly more pronounced as the last two days unfolded.

⁹⁸CSPD, Warrants.ref 1.62,I,123.Vol,vi,362.BL internal data base on the 12/10/12.

⁹⁹Though there is a contemporaneous account of John Lilburne conducting a bout of oration, though abridged, in his 1653 trial. The trouble with this account is that it seems very similar in context and structure to that developed by Clement Walker in 1649 and was undoubtedly foreshadowed by Lilburne's address to the jury in the Guildhall. This could be viewed as the first appearance of the myth of John Lilburne beyond the 1649 model. Anon, *The Tryall of L. Col. John Lilburn at the Sessions House in the Old-Baily on Fryday, Saturday being on the 19th and 20th of August* (London, printed for D.B.1653) Thomason/110:E.711 [9]pp.4-6.

In both the 1649 edition and the 1710 edition of *The Tryall of Lieut.Col.John Lilburne*, Walker stated that they 'brought up the Prisoner out of the Irish Chamber'. Until the Irish Chamber was moved across the Court yard from the Guildhall in the nineteenth century, it was positioned above the main entrance porch way. One would have presumed that Walker would have noted that John Lilburne had been brought down from the Irish Chamber.¹⁰⁰This again, though circumstantial, is evidence that Walker did not attend the trial.

John Lilburne had been aware of how precarious his position was as he entered the Guildhall on the second day. Just days before the trial, he had drawn comparisons between his own situation and that of the King: 'Yea, and is I continue[sic], to deale with me as dealt with the late King [sic].Unto which I at present I answer, First the Kings case and mine are different, for hee refused to answer to his Charges'.¹⁰¹Lilburne then described how the King had refused to recognise the jurisdiction of the court. John, in contrast, stated his position: 'Now for my part, I do not in the least refuse to be tried [sic] out of that consideration, for I acknowledge myself but a bare Englishman, subject to the Lawes thereof'.¹⁰²John had clearly learned a lesson from the trial of the King and was not going to make the same mistake.

Lilburne had also sought a compromise with the regime. He declared that he was willing to forego his position in England for money and exile.¹⁰³This proposal had been delivered by his brother, Robert, to the Council of State on the 22nd of October 1649 and John had immediately published it.¹⁰⁴

Clement Walker indicated that most of the raucous crowd at the packed Guildhall had come to give their support to John Lilburne. This is corroborated by Henry Parker who, later, noted of Lilburne that 'you place some hundreds of your Mymirdons behind in ambuscade, who are ready to break forth with mighty hums, and acclamations' [sic].¹⁰⁵This must have been an intimidating prospect for the prosecution, when taken in context with the threats of disruption and violence.

At the start of proceedings John Lilburne, whilst standing at the Bar, was asked to raise his hand and declare who he was. According to Walker's narrative, Lilburne embarked upon a speech that encompassed history, martyrdom and the fear of the erosion of an Englishman's rights and privilege. He declared 'Which Privilege I know to be my Right by the Law of England, I shall, as it becomes an

¹⁰⁰ www.nationalarchives.gov.uk-corporationofLondonRecordsOffice-IrishSociety-CLA/049.

¹⁰¹ John Lilburne. *Innocent Man's First Proffer*. L2119-246_669(London,s.n.,1649)and his *Innocent Man's Second Proffer*. L2120-C26_3_135(London,s.n.,1649)

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ *CSPD, Vol III, Oct 22'*. p357.

¹⁰⁵ Parker. *A Letter of Due Censure*. p37.

understanding Englishman, (who in his actions hates deeds of darknesse, hole or corners) go on to a tryal. But if I be denied this undoubted Privilege, I shall rather die here than proceed any further'.¹⁰⁶ This alluded to the position that a "Free born Englishman" held within the Common Law as described by J.P.Sommerville.¹⁰⁷ These speeches were to become the leitmotif of John Lilburne's time at the Bar and the historical cornerstone of Walker's writing.

It was vital to both Walker and Lilburne's agenda that the Common Law of precedent should have been perceived as Lilburne's shield during the course of the trial. This was to stand in contrast to the alien concept of legislature being paramount, which the Junto were accused of trying to implement via the High Courts of Justice, introduced to try the King, and a juryless courtroom. In one of his bouts of rhetoric, whilst addressing the jury, Lilburne is shown to tie up the historical and legal rights that the Common Law bequeathed to Englishmen:

'The Jury by Law are not only Judges of Fact but law also, and you that call your selves Judges of the Law, are no more but [sic] Norman Intruders, and indeed and in Truth, if the Jury please, are no more Cyphers, to pronounce the verdict.'¹⁰⁸

This adherence to Common Law gave the program of Lilburne and Walker a focus, drive and a sense of historical authenticity. It also fed into and from the symbolic capital of the Norman Yoke. This sought to associate both the Junto and their developing legal structure with foreign tyranny, the antithesis of what Englishness should be. It must also be regarded as a direct attempt to undermine the nascent Commonwealth's legal process and by association the legitimacy of those that ruled. Whether the mandating of the jury was contemporaneous or a later interpolation is open to debate. Here was the cultural and legal field on which Lilburne and Walker chose to fight the trial.¹⁰⁹

As the trial progressed, sections of John Lilburne's books were read to the jury of Life and Death in order to implicate him. The Clerk of the Court was commanded by Prideaux to read an extract from *An Impeachment of High Treason against Oliver Cromwell*, in this Lilburne laid bare his association between the regime and the Normans: 'Trade is decayed and fled, Misery, Poverty, Calamity, Confusion, yea Beggary, grown so sore and so extream [sic] upon the People, as like never was in *England*, under the most Tyrannical of all our Kings, that there were before these in present Power, since the days of the Conquerour [sic] himself'.¹¹⁰ Economic hardship was associated with the Norman identity as much as misrule, both of which were being used in comparison to the regime.

¹⁰⁶ Walker. *The Tryal* (1710).p5.

¹⁰⁷ J.P. Sommerville. 'Custom, Common Law and Constitutionalism' via www.faculty.history.wisc.edu/sommerville. Accessed on the 26/4/13

¹⁰⁸ Walker. *The Tryal*(1710)p 107.

¹⁰⁹ J.G.A.Pocock. *The Ancient Constitution and Feudal Law. A Study of English Historical Thought in the Seventeenth Century. A reissue with a retrospective.* (Cambridge,C.U.P.1987)pp. 40-44.

¹¹⁰ *Ibid*.p82.

Henry Parker regarded these speeches as examples of John Lilburne's 'vain lequacity'.¹¹¹ It is likely that Parker based his observations of the trial upon Clement Walker's narrative, as there is no evidence of his attendance at the event. Henry Parker, via his text, is clearly undertaking counter propaganda activities. Parker was writing a little later and his work, when dealing with the actual trial, follows a pattern of deliberately refuting Walker's text and not necessarily reporting the event. The evidence for this is the fact that he failed, as many have done, to engage entirely with the first day.

Via the narrative of Walker's account, John Lilburne is allowed to orchestrate proceedings. He challenges the legality of his indictment, the jurisdiction of his arrest, the validity of the Commission of *Oyer and Terminer* and even the legibility and legality of law codes written in French and Latin. These arguments not only fitted Lilburne's agenda, but emerged as also the perfect vehicle for Clement Walker's cause.

A contemporary source and later texts regarding the trial have drawn a comparison between Lilburne's situation and the trial faced by Sir Nicholas Throckmorton at the Guildhall on 17th April 1554.¹¹² Throckmorton was thought to have been involved in Wyatt's rebellion against Mary Tudor and brought to trial for treason. He appealed directly to his jury at his trial and was acquitted. This comparison, between both trials, does hold validity; John Lilburne did, in the same way as Throckmorton, appeal directly to the jury for his life. Lilburne, undoubtedly, sought to make capital from this, referring directly to the earlier case in the text of Walker's book. He described in detail the course of the Throckmorton trial.¹¹³ However, the complexity of the argument, which had begun with the citing and detailing of the Throckmorton case and how it progresses, gives the suspicion of this being a literary device, developed post-trial. It may have been possible to give such an eloquent, detailed, composed and reasoned response in the alleged quiet of the first day, but it must have been next to impossible in the documented sound and fury of the last two days. An environment where John Lilburne had to ask the Judges to repeat themselves and the jury could not even hear the witnesses.¹¹⁴ The correlation could have been used and exploited by both Walker and Lilburne to draw a direct association between what occurred in October 1649 and the narrative of that earlier and much celebrated trial.

There was, however, another closer precedent to which John Lilburne may have turned for inspiration for his defence. The frame work of Lilburne's challenge to the authority of the Court is

¹¹¹Parker. *A Letter of Due Censure*. p3.

¹¹²Anon. *First Dayes Earrates* in the Letter R. p 27.

¹¹³Walker. *The Tryal* (1710) pp. 18-19.

¹¹⁴Ibid 44 & pp.71-72.

very similar in substance to that formulated by his alleged royalist mentor Mr Justice Jenkins. Jenkins had been a career lawyer and had adhered to the royalists during the Civil War. He was accused of encouraging atrocities that were committed by Irish troops in the name of the King in Wales. In 1645 he was taken prisoner at Hereford and committed to the Tower.¹¹⁵ Jenkins stood before the Committee of Examinations in April 1647 to answer allegations of treason, his defence being 'If I should submit to examination derived from your power (which by the negative oath stands in opposition to the Kings power) I shall confess the power to be in you, and condemn my Self to be a Traytor, which I neither ought nor will do'. Jenkins maintained that all laws within the Kingdom came from the King 'These Laws must be derived to us, and enlived by the Supreme Governor, the fountain of justice and life of the law the King. The Parliaments are called by his writs, the Judges sit by his Patents, so all other officers and cities and corporate towns they govern by [the] Kings Charters. Therefore since by those I cannot be examined by you (without power from his majesty) I neither can nor will: neither ought you to examine me upon my question'.¹¹⁶ The narrative of the defence within the *Triall* could be seen to echo the basis of Jenkins's argument. Judge Jenkins, from imprisonment in the Tower with Lilburne in 1647, published how he believed treason trials should be conducted by an 'Act of Parliament of the 1 and 2 of Philip and Mary chap 10 all tryals for Treason hereafter be had shall be according to the course of Common Law'. Jenkins also believed that a charge of treason against Parliament was not applicable 'for there is no Parliament without the King'.¹¹⁷ It is clear that, through the vehicle of the law, first Jenkins and then Lilburne and Walker, highlighted the lack of Kingship and so the illegality to try. The structure of this defence was decidedly more pertinent after the act of regicide and also explains Lilburne's willingness to draw a direct comparison between his trial and that of the King. Not that he was to follow the King's course of action of refusing to acknowledge the authority of the court, but he adhered to the fundamental principle that there could be no state of treason in the King's absence. This was not only an attack on the whole *corpus* of post- regicide law, but also on the validity of the whole Commonwealth experiment. It rendered it meaningless and worthless without the weight of Kingship to give it substance. It is little wonder that the judiciary sought to change the line of engagement prior to trial and to limit John Lilburne's ability to exploit and publicise this perceived hollowness at the heart of the regime.

Diane Parkin-Speer also details the parallels between Lilburne and Jenkins. She believes that Lilburne was directly 'influenced' by David Jenkins's work *A Discourse Touching The Inconveniencies*

¹¹⁵C.W.Brooks. 'Judge David Jenkins' *OxfordDNB*.27/4/13

¹¹⁶Edward Hyde. *The Clarendon State Papers*. Vol II. W/H-7-11pp364-365.

¹¹⁷David Jenkins. *A Declaration of Mr David Jenkins* (London,1647)J588-962_20.eebo. 21/1/13

of a Long Continued Parliament.¹¹⁸ She also argues that Lilburne's challenge to the legality of the Commonwealth stemmed from his background in 'radical Protestantism', which saw justice deriving from Common Law. This gave the right to the individual to challenge a government that had 'jettisoned' the Common Law and also, it appears, kingship.¹¹⁹ When these associations are taken into account, the text of Walker's work becomes more subversive and dangerous. It becomes even more so when it is noted that Lilburne's trial seemed to be party to direct providential intervention, in the guise of the collapse of the scaffold, as Clement Walker's text recorded.¹²⁰

As the trial continued, John Lilburne continually refused to plead; he finally declared his innocence near to the end of the second day. After an exhaustive session of argument, he pleaded 'I am an innocent Man, yea as innocent as any of those that call me Traytor, till such time as I be legally convicted of the Fact or Crime laid unto my Charge'. John Lilburne also demanded the right to counsel. He noted to the court the legal parallels that had existed in the high profile trials of the King, the Duke of Hamilton, Lord Capel and the earlier case of the Earl of Strafford. He exploited these historical precedents at the expense of the court and its legality.¹²¹ He challenged the court to acknowledge the legal framework that treason cases should be tried under. According to Walker's text, Lilburne declared that:

'no man ought to be convicted of Treason, but by two sufficient witnesses upon plaine and clear evidence, as Sir Edward Cook saies in third part of his Institutes, ought to be as clear as Sun at noon day, and not as upon one single witness'.¹²² This again was reinforced the importance of historical precedent over the process of a politically inspired legislature.

The Judges and the Attorney General were left to justify and reassert the basis of their legal authority, in the face of the arguments articulated by John Lilburne from Walker's text.¹²³ Henry Parker noted: 'yet the whole tenor of it from one end to the other declares amply, and pregenantly, that your Judges were by as the most abject captives in the World, and, as it were, dragd up and down before the vulgar only to grace your chariot wheels.'¹²⁴ The intensity of the atmosphere within the crowded Guildhall must have been palpable and one often recounted exchange illustrated this:

¹¹⁸D.P.Speer. 'John Lilburne: A Revolutionary Interprets Statutes and Common Law Due Process' in *LHR* Vol.1, No2 (Autumn, 1983) pp. 276-296. p 282. Accessed via www.jstor.org 27/02/13

¹¹⁹*Ibid.* p 280.

¹²⁰Walker. *The Tryal* (1710). pp. 105-106.

¹²¹Walker. *The Trial* (1649). pp 27-35

¹²²*Ibid.* p 51.

¹²³*Ibid.* pp 16-17.

¹²⁴Parker. *A Letter of Due Censure*. p5.

‘John Lilburne; I desire nothing but Councell and a little time to consult with them, and to produce my witness, and a copy of my Indictment; If not I am willing to die as the object of your indignation and your malice, do your will and pleasure’.

Lord Keeble; ‘we are willing to die too’.¹²⁵

Those prosecuting were aware of the excessive amount of time it had used to try Lilburne over an issue that it presumed must have been cut and dried. The Court, according to Walker’s narrative, was also aware that these exchanges were unfolding before the public gaze Lord Keeble stated:

‘in the matter of Treason, where of you are indicted, you ought to have been tried presently, im[m]ediately; but because all the world shall know the candour and justice the Court do proceed against you, you have till to-morrow morning, which is the Courts extraordinary favour, and the doors are wide open, that all the world may know it’.¹²⁶ The Court was then adjourned.

The final day’s proceedings began at 7 am.¹²⁷ John Lilburne stood at the Bar, accompanied by his brother Robert and his solicitor Mr Sprat. Lilburne requested that Major Edmund Rolfe be called as his witness, ‘as an unquestionable President for my purpose’, but to no avail.¹²⁸ Edmund Rolfe had been previously indicted for high treason in a plot to assassinate the late King in 1648, but had received counsel. That counsel had been Judge Nicholas who was now a presiding judge in the Lilburne trial.¹²⁹ Edmund Rolfe had been found, expediently for the regime, innocent at his trial.¹³⁰ Rolfe had emerged as an outspoken agitator in the regiment of Robert Hammond. After his acquittal, however, he became a minor favourite of the regime. After the King was transferred from the Isle of Wight in 1648, Rolfe took over command of the garrison for six months after the Governor had stood down. Parliaments were also petitioned for arrears of £818 on his retirement in or around 1654. When he retired the State also allowed him to purchase crown lands worth £3,600.¹³¹ Not the sort of treatment that was to be expected to be given to someone who had, prospectively, been willing to stand witness against the State. In the additional contemporary material that surrounded Lilburne’s trial, in both the *Mercurius Pragmaticus* and the *Mercurius Elencticus* there is no mention of Rolfe being called as a witness for the defence and that request being denied. This must be viewed as bizarre, as it would have been something that these anti-regime news books could have

¹²⁵Walker. *The Triall* (1649)p44.

¹²⁶Walker. *The Triall* (1649)p49.

¹²⁷Walker. *The Tryal* (1710)p44.

¹²⁸Walker. *The Triall* (1649)p50.

¹²⁹Ibid.

¹³⁰K. Roberts. ‘Edmund Rolfe’ *OxfordDNB*.18/02/2013

¹³¹Ibid.

made huge capital from.¹³² John Lilburne does, however, in his later works mention Rolfe's case being cited during the trial, but strangely not Rolfe being called as a witness.

It is only now that the jury of Life and Death were presented.¹³³ In the course of his text, Walker recounted a strange incident in the presentation of the jury. In this episode Lilburne cried, 'sir, I beseech you let me but see these gentlemen's faces'.¹³⁴ Could this indicate that initially the Court tried to institute a blind jury? It could be evidential, as earlier discussed, of a piece of transcript from the court case being introduced to the narrative flow and not being integrated properly. John Lilburne was allowed to select his jury, with his brother's and solicitor's advice.¹³⁵ Lilburne illustrated the privileges that were due to him, as a defendant, when he declared 'I do not know the faces of two of the men that were read unto me, I hope you will give me time to consider them'.¹³⁶ This was the opportunity for him to expel any prospective juror he felt may have been biased against him.

The twelve jurymen were finally decided upon. Walker stated that, 'six lives about Smithfield, one in Gosling-Street, two in Cheap Side, two in Bread Street, and one in Friday-Street'.¹³⁷ Tai Liu noted that they came from a lower social order than those empanelled for the Grand Jury.¹³⁸ This is vindicated by Henry Parker, who disparagingly noted of the members of this Jury that they came from, 'Chicklane, Picket-hatch, and other suburbs of Smithfield'.¹³⁹ It is also inferred that this may have been a large contributory factor towards John Lilburne's eventual acquittal. This, however, has to be balanced with another perspective. As a contemporary pamphleteer noted, in answer to Henry Parker's criticism of the partisanship of the Jury of Life and Death, that if the 'Judges had any cause to suspect, refuse, or change them, they [could have] had done by them all, or ten at least as they did by one of them, [or] take others for them'.¹⁴⁰ It is without a doubt, with the pressure so intense, just as Lilburne was able to except against jury members, that the judges could and would have done so, if they had believed that the issue of social standing would have stopped them obtaining the verdict they sought.

John Lilburne was declared a 'a false Traytor not having the fear of God before thine Eyes, but being moved and stirred up by the Instigation of the Devil' by the prosecution. Yet another example

¹³² Cleveland, *Mercurius Pragmaticus Tuesday 23rd to Tuesday Octob 30th* and Sheppard, *Mercurius Elencticus 22nd -29th October* (London, 1649)

¹³³ Walker. *The Triall of Lieut. Collonell John Lilburne* (1649). p53.

¹³⁴ Ibid.

¹³⁵ Ibid. p64

¹³⁶ Ibid.

¹³⁷ Walker. *The Tryal* (1710) p49.

¹³⁸ Tai Liu. 'The Trial of John Lilburne: A Study of The Jurymen'. p206.

¹³⁹ Parker. *A Letter of Due Censure*. p37.

¹⁴⁰ J. Jones. *Jurors, Judges of Law and Fact* (London, 1650) J970-182-E_1414_2. p57.

of how the State used religious tropes to cast John Lilburne as the other. He was accused of subverting the new Government via the 'writing and imprinting, and openly declaring, that is to say, by certain Scandalous, Poisonous, and Trayterous Writing in Paper' namely the books 'A *Salva Libertate, An Impeachment of High Treason against Oliver Cromwell, and his son-in-law Henry Ireton, An Out-cry of Young-men and Apprentices of London*' and finally 'The legal and Fundamental Liberties of the People of England, revised, affected and vindicated'. These offences allegedly took place on or before and after the first day of October, 1649, 'in the Parish of Mary the Arches, in the Ward of Cheap London'.¹⁴¹ This was the great church of St Mary-le-Bow. Bow parish had a history as a hot bed of radical subversion.¹⁴² It is also in very close proximity to St Paul's Cathedral, where George Thomason's, the collector of ephemera, business stood. St Paul's churchyard, Paternoster Square and the adjacent vicinity seemed to have been the focus of a counter culture of dissent. These were areas that John Lilburne would have known well and would have frequented. The cultivation of this dissent seems to have been directly fostered by the presence of *Old Pauls Cross*. This was a spot at which it was traditionally acceptable for the local fire brands to come and rail against injustices, both real and perceived. It had been in use since at least 1191. Bishop Kemp had given the spot added architectural grandeur in 1449, but it was destroyed by the Long Parliament in 1643. It does seem more than circumstantial that the heart of printed subversion would emerge so close to this ancient site of free speech.¹⁴³

In the passages read from his books, it was alleged that John Lilburne had called the government 'Tyrannical, Usurped, and Unlawful'.¹⁴⁴ The jury were told that Lilburne 'didst Plot, contrive and endeavour to stir up, and to raise Force against the aforesaid Government'.¹⁴⁵ The prosecution maintained that John Lilburne had committed three treasons: subverting the newly formed Commonwealth, inciting armed insurrection and fomenting mutiny in the Army.¹⁴⁶ These charges contravened the legislation, as earlier described and enacted on 14th May and 17th July, 1649. Clement Walker detailed how both Acts, the key to the prosecution case, were both read out to the court by the Clerk.¹⁴⁷ This stands in counterpoint to Donald Veall's assertion that when the Act

¹⁴¹ Walker. *The Tryal* (1710).p50.

¹⁴² W. Thornbury. 'Cheapside, The Central Area' in *Old and New London* Volume 1 (1878) pp.332-346. Accessed via www.british-history.ac.uk

¹⁴³ The St Paul's website have done an excellent virtual reconstruction of the old cross site, as it was in 1622 when John Donne gave his Gunpowder day sermon. www.vpcp.chass.ncsu.edu/churchyard/view.

¹⁴⁴ Walker. *The Tryal* (1710)p50.

¹⁴⁵ Ibid. p51.

¹⁴⁶ Walker. *The Trial* (1649) pp68-69.

¹⁴⁷ Walker. *The Tryal*(1710).pp.76-77.

of banishment was read at John Lilburne's trial of 1653 it was 'absolutely unprecedented' in being the first Act to be read in open court.¹⁴⁸

As the court listened to detailed readings of Lilburne's works, it was debated what had been written, who in fact had written it and who had published the books.¹⁴⁹ In one section, read by the Clerk, John Lilburne had combined the two themes most sensitive to the regime at the time, that of the rumour of an alliance with O'Neil and the championing of the royalist cause:

'I am sure, a thousand times more justly, than[sic] the present Ruling Men (upon a large and serious, debate) joynd with Owen-Roe-Oneale, the grand bloody Rebel in Ireland, who, if we must have a King. (I meaning he the aforesaid John Lilburn) for my part I had rather have the Prince'.¹⁵⁰ These assertions were paralleled closely in Clement Walker book *The Second Volume of the History of Independency*.

As the trial progressed, the strategy implemented by the judiciary, which had based the trial charges around Lilburne's books, took shape. Clement Walker's text described how this important scenario emerged, though the set of circumstances has largely gone unacknowledged. Edmund Prideaux aggressively and persistently undermined John Lilburne, via the ownership of his books. All highly damaging to the defendant. It is these interactions between Prideaux and Lilburne that contradict the belief, held by his biographers, that the trial was a failure for the regime. The catalyst for this turn of events was the calling of the witnesses for the prosecution. Amongst those called was Thomas Newcombe, a printer accused of facilitating the printing of the *Outcry of the Young Apprentices*. Newcombe was imprisoned in September 1649, for his part in printing the *Outcry*. He was released after giving evidence against Lilburne and made to enter into a recognizance of £300 to stop him printing any seditious or unlicensed books.¹⁵¹ Thomas Newcombe was not alone with regard recognizance for good behaviour. A total of £14,000 was held by the Junto, as bond from the various printers and publishers in London, to stop the dissemination of subversive material. This was collected between September 22nd and November 5th 1649. These dates correspond to the run up to trial and the aftermath.¹⁵² This is undoubted evidence that the regime were determined to control the flow of information to the public regarding the trial.

¹⁴⁸Veall. *The Popular Movement for Law Reform 1640-1660*. p 165. This is strange as Veall gets his information on Lilburne's 1649 trial via an edition of *State Trials*, iv and the reading of the Act is included in *Cobbett's Complete Collection of Sate Trials* Vol 4 (London, R. Bagshaw, 1809) pp1347-1350.

¹⁴⁹*Ibid.* p53.

¹⁵⁰*Ibid.* pp52-53.

¹⁵¹I. Gadd. 'Thomas Newcombe'. *OxfordDNB* 25/9/12

¹⁵²CSPD 1649 *Recognizance*. pp. 522, 523, 524. Accessed via www.tannerritchie.com/memso 14/2/13

Another important set of witnesses for the prosecution were those sent from Warwick Castle. These included: trooper Thomas Daffern, Richard Lander the Marshal and Major Hawksworth the Governor. Warwick Castle seems to have loomed large in the suppression of those associated with the Levellers in general and Lilburne in particular.¹⁵³ The accusation was that John Lilburne had sent a copy of *An Impeachment of High Treason against Oliver Cromwell* to an associate imprisoned there. Amongst this group was also Colonel Purfrey (Purefoy). John Lilburne was particularly incensed about his appearance. On Purefoy's calling to give evidence, Lilburne exclaimed 'I have an Exception. First Colonel Purfrey is one of those that call themselves the Keepers of the Liberties of ENGLAND, and for committing crimes against them I am indicted, and he is one of them, and therefore a Party, and in that Respect, in Law he can be no Witness against me'.¹⁵⁴ Lilburne had a right to be agitated; Purefoy was one of the most powerful politicians in the country at this time. As a regicide and a member of the Council of State his appearance at the trial reflected how seriously the regime took this trial.¹⁵⁵

Each differing set of witnesses brought renewed attacks from Prideaux over who had authored the books at the centre of the trial. John Lilburne, in turn, had begun to repeatedly deny ownership of these works. As noted previously, John Lilburne had admitted ownership of most of these books at the foot of his text an *Innocent Man's Second Proffer* just days before his trial.¹⁵⁶ It is peculiar that evidence from this list does not seem to have been produced during the course of the trial. Is this down to negligence on the part of a clearly astute prosecution, or is it perhaps a deliberate omission from the narrative on the part of Walker. It does appear strange that something as obvious and publically accessible was not used as an integral part of the prosecution's case.

Edmund Prideaux embarked upon a calculated and systematic assault on the character and integrity of John Lilburne. As other witnesses were called, Lilburne's strategy of denial and prevarication proved to be the perfect platform for Prideaux to launch increasingly personalised attacks upon him. The undoubted context to this was that there must have been little doubt held by the regime that they were dealing with a prospective leader of an organised and potent opposition. They also recognised, just as much as John Lilburne did, that whatever was said in court would be echoed throughout the nation.

Prideaux discredited John Lilburne's character by declaring 'My Lord, you may see the valientnesse [sic] of this champion for the peoples liberties, that will not own his own hand although I must desire

¹⁵³ William Eyres was already imprisoned there and Philip Chetwin, another Lilburne supporter, was soon to be.

¹⁵⁴ Walker. *The Tryal* (1710) pp. 69-70.

¹⁵⁵ Ann Hughes. 'William Purefoy' *OxfordDNB* 25/09/12

¹⁵⁶ John Lilburne. *The Innocent Mans Second Proffer* (London, s.n., 1649) BL. L2120-CR26_3_135

you Gentlemen of the Jury to observe, that Mister Lilburne implicitly confesseth it'.¹⁵⁷ Prideaux pursued this character assassination over the authorship of the books 'My Lord, the next thing to prove the charge against him is a very high one, it is stiled [sic] Master Lilburnes, and his name is to it: It is intituled, An Impeachment of High Treason against Oliver Cromwell, and his Sonne in Law, Henry Ireton, Esquires, late members of the late forcibly dissolved House of Commons, presented to publique [sic] view by Lieut. Coll. John Lilburn, close prisoner in The Tower of London: My Lord, I doubt he will not owne it, but yet my Lord he may be asked the question'. Lilburne's response, though often interpreted as strategic, points more to desperation, 'I shall deny nothing I doe: And yet I have read the Petition of Right, Sir, that teacheth [sic] me to answer to no questions against or concerning my selfe, and I have read the same to have been practised by Christ and his Apostles' and also it appears by Judge David Jenkins. Prideaux continued to press the advantage during the course of this exchange, 'You will not own it, the booke you have read?' Lilburne's response now takes on a fatalistic hue which contrasted to how his character was portrayed in earlier sections of the text 'You may make your advantage of it'.¹⁵⁸

This must have been highly damaging to the public persona of John Lilburne. Even more so, however, was his refusal to defend his most celebrated texts. In regard to *The Legall Fundamentall Liberties of the People of England vindicated and asserted*, Edmund Prideaux was excoriating in his attack on John Lilburne for his failure to admit to the authorship of this book 'My Lords, for this Booke it ownes [sic] Mister Lilburn, if he will own it, it hath his name to it; but I have my lesson from him: My Lord he will own nothing, hee [sic] will publish enough, but my Lord he will not owne it when questioned for it; that is not the true principle of a true Christian, nor an Englishman, nor a Gentleman'.¹⁵⁹ Clement Walker's narrative described Lilburne resorting more and more to semantics to distance himself from his works. On questioning over the authorship of his seminal *The Agreement of the People*, Lilburne correctly stated that it cannot be treason, because was it not 'licensed or no according to the Law of the Nation', without directly admitting authorship.¹⁶⁰ This missed what Prideaux was trying to achieve: 'We do not Question him for that but when he comes to bring in those Books in August last, then he does new publish that *Agreement of the People*, he incites them to set it up, as their Centre, Standard and Banner'. John Lilburne took the bait 'Let me not thus be abused, that Book was never fixt upon me, I was never taxt to be the Author of it, or so much as the disperser of one of them'.¹⁶¹ The Court became Edmund Prideaux's stage as he

¹⁵⁷ Walker. *The Triall* (1649) p 78.

¹⁵⁸ Ibid. pp78-79.

¹⁵⁹ Ibid. p82.

¹⁶⁰ Walker. *The Tryal* (1710) p 89.

¹⁶¹ Ibid. p 124.

undertook the systematic undermining of 'that pretty Bauble' in the full glare of the public.¹⁶² Prideaux derided John Lilburne and those associated with him and what they were trying to achieve:

'My Lord, we shall go on further to shew [sic] what Mr. Lilburn drives at, which is not much differing from us, for he would have a Free State, but, my Lord, this that is now in being, it doth not go in Mr. Lilburn's way, and therefore it must be overthrown by Force and Arms, that so way may be made for his new Commonwealth'.¹⁶³ This must have been a sobering concept for a people that had just endured nearly a decade of bloody, internecine warfare.

It is understandable why John Lilburne had fought a furious rear guard action of denial and semantics, but the prosecution undoubtedly exploited this stance. As Prideaux frequently pointed out, this was not a tactic that a champion of English rights would or, more importantly for propaganda value, should have taken 'My Lord, I had thought the Great Champion of England for the peoples Liberties, would never have been so unworthy as not to have owned his owne hand'.¹⁶⁴ It was, however, the only course of action left open to John Lilburne to preserve his own life and he knew it. As he stated in his defence with regard to his books 'I do not own a Jot, a Line, a Word, a Syllable, of any of them'.¹⁶⁵

This line of defence was forced upon John Lilburne by necessity due to the approach taken by the prosecution. This was not a failure of planning on the part of the State, but rather how thorough that planning had been. As John Lilburne alleged, the Judges and the Attorney General had been meeting for six months to conspire against him.¹⁶⁶ If at any time Lilburne had admitted ownership of his books, he would have been a party to treason. This fact allowed the prosecution to slight his character and the motivations for his writings to the public. This must have had a wider, longer term impact on the public perception of free-born John. It undoubtedly tainted him, it appeared that not only did he not have the courage of his convictions, but it posed the question of his reliability as a potential leader around which opposition could focus. This was a situation that, perhaps, Walker's narrative could not adequately disguise.

That John Lilburne felt forced into taking this stance of constant denial might have saved his life. However, his reputation as a potential leader of a unified opposition was in tatters. In the more

¹⁶² Ibid. p89.

¹⁶³ Ibid. p93.

¹⁶⁴ Walker. *The Triall* (1649) p 84.

¹⁶⁵ Walker. *The Tryal* (1710) p 116.

¹⁶⁶ Walker. *The Triall* (1649) p42.

intimate medium of a letter to his wife Elizabeth dated March 1652, John indicated that he acknowledged how successful this strategy had been against him:

‘...recorded at the latter end of the Printed booke of my late trial at Guild-hall & there shalt find how great a mercy it would have bin [sic] esteemed by thee, that then they would have spared my life & have exposed me to that condition now I am in, which then thou wouldst have taken for a singular merce [sic] & favour. But though hadst then, full experience by their dealeing [sic] with thee, of the truth of that saying, [sic] The tender mercies of the wicked are cruelie !’¹⁶⁷

As the trial moved towards its conclusion, Lilburne became so exasperated with the course of the proceedings, he exclaimed ‘I appeale (which he uttered in a mighty voice) to the righteous God of heaven [sic] against you’.¹⁶⁸ It was at this moment that the scaffold, that may have held such portent, providentially collapsed to the consternation of the Judges and the crowd.¹⁶⁹ Clement Walker’s inference, in contrast to the *Pragmaticus*, is that the scaffold was designed for the accommodation of the crowd: ‘the scaffold fell down, which was on the left hand, which occasioned a great noise and some confusion by reason of peoples tumbling’.¹⁷⁰ For a while, confusion reigned in the Court. It was at this point, after complaining of exhaustion and making water at the Bar, that John Lilburne resolved, perhaps motivated by providential intervention or alternatively a last roll of the dice, to ‘knock the Nayle upon the head’.¹⁷¹ John Lilburne faced the jury and declared of them that ‘The Jury by Law are not onely Judges of Fact, but Law also’.¹⁷² Henry Parker ridiculed Lilburne for mandating the jury in this respect ‘that they were the only supreme dispensers of Justice in England and that the Judges that sit aloft in scarlet robes, are but Clerks to say Amen to their verdict’.¹⁷³ In Clement Walker’s narrative Lilburne was seen to inhabit the role of the champion of the English Common Law, the birth-right of the nation. Lilburne sought to discredit the judicial process, but there is a question, as previously noted, whether the eloquence of the speech mandating the jury was contemporary or a later interpolation. This turn of events allowed the Judges to fulfil their, perhaps, allotted roles as they described this as a ‘damnable blasphemous Heresie’.¹⁷⁴ Walker then described how the Foreman of the Jury ‘desires the Act of Treason’, whilst another requested a ‘quart of sack ‘to be given to the jury for refreshment’.¹⁷⁵ This request for sack led to a split amongst the Judges with one unnamed Judge agreeing with the juror, whilst Judge Jermyn

¹⁶⁷ John Lilburne. *His letter to his dearely beloved wife Mrs Elizabeth Lilburne, March 1652*. L2136-2852_02.eebo 20/1/13

¹⁶⁸ Walker. *The Triall* (1649) p120.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid. p121.

¹⁷² Ibid. p122.

¹⁷³ Parker. *A Letter of Due Censure*. p37

¹⁷⁴ Walker. *The Tryal* (1710) p107. This comment was made by Judge Jermyn.

¹⁷⁵ Ibid. p130.

The trial of John Lilburne had encapsulated the forces that had played out across the nation during the course of 1649. There had been fear, propaganda, conspiracy and the threat of latent violence, all conducted against a backdrop of ever present public opinion. There was an enigma that becomes apparent in relation to the events that took place in the Guildhall in October 1649. That puzzle is the inability to clearly define who or what were the forces of action and reaction, or where the term radical or conservative should have been correctly applied in regard to what had transpired. This aspect could be seen to reflect the instability and fluidity that was inherent within contemporary society.

Conclusion

The fall-out from the trial was seen to have impacted immediately. The *Mercurius Pragmaticus* described the frustrations of the regimes and how they were debating:

‘as whether they might not under some colour of Law bring him to Tryall again for the same things; and fine the Jury for finding him not Guilty’.¹

The post-verdict evidence described the fact that the Free State failed to realise what a successful job the prosecution had performed on the credibility and persona of John Lilburne. The *Pragmaticus* seemed to have grasped far quicker what had occurred in relation to John Lilburne and the trial. The *Pragmaticus* noted the jury of Life and Death ‘well knew [John Lilburne] to bee Guilty of all’ and the news-book pointed out ‘and much more than the State had Charged him with’.² This accusation reveals that even those opposed to the regime knew that Lilburne had, more by luck than judgement, escaped the noose. It is also evident that those beyond the regime knew full well of his guilt and, although it celebrated his escape, it crucially failed to acknowledge the way in which he achieved it. There is a deafening silence in the primary source material when it comes to Lilburne repudiating authorship and ownership of his own writings, even though an inventory of his books was produced in the issue of the *Mercurius Pragmaticus* that covered the trial.³ This is echoed by his later biographers, M.A. Gibb and Pauline Gregg, who both fail to acknowledge that this set of circumstances even took place, let alone engage with its impact on the public perception of John Lilburne. It becomes apparent that John Lilburne was, perhaps, not quite so willing to be a party to martyrdom as is usually described. It also becomes apparent that Lilburne was not *the* John Lilburne that the opposition and his biographers craved.

The paranoia by the State with regard writings about the trial is evidenced by a warrant issued on December 6th by the Council of State that declared that its officers were ‘To search for and seize all books purporting to be a narrative of Lieut-Col Lilburnes trial’. It continued that they had ‘To search the warehouse at Porter’s Quay, and the vessels of Robert Robinson and Joseph Pearson, bound for Hull’.⁴ Any historical information regarding these two men is scant. Robert Brenner, in his work on the contemporary turmoil in the City of London, noted that a Henry Robinson was one of the ‘future political Independents’ and signed a number of petitions during 1641-42, including the one against

¹J.Cleveland.*Mecurius Pragmaticus Tuesday 30th October to Tuesday Novm.6 1649*. Thomason 370-89_E_578_4.pp.1-2.

²Ibid.

³J.Cleveland.*Mecurius Pragmaticus Tuesday Oct 23RD to October 30th 1649*.

⁴CSPD 1649 Warrants .p 558. Accessed via www.tannerritchie/memso.

Thomas Lunsford in which Lilburne was involved.⁵ Brenner also describes Henry Robinson as one of the period's leading theorists and writers.⁶ Robinson was from a rich merchant family and although he held positions of authority in the Commonwealth, during this time Robinson and Edmund Prideaux, whom Brenner describes as a regime favourite, were in open conflict. Henry Robinson also had four other brothers who were engaged in the family merchant business. It is also of interest that Robinson's circle of friends consisted of not only men like Henry Parker, but also William Walwyn.⁷ This suggests that there may have been a familial connection between Henry Robinson and the more obscure Robert Robinson. Perhaps it is no coincidence that just over a century later the Robinson family became the 'greatest trading booksellers and publishers in England' from a base around Paternoster Square.⁸ John Lilburne adds credence to an association between himself and the Robinsons when he stated that a 'Henry Robbinson'[sic] was indicted with him for printing *A Copie of A Letter*, his attack on William Prynne, on May 5th, 1645.⁹ The reason that the regime might have been so concerned about the writings getting to Hull is the fact that this was one of the main arteries to Holland and its free presses during this time.¹⁰

The irony of the State's response is that from the moment the prosecution decided to try John Lilburne for treason for his writings, something he admitted he was not expecting, rather than correspondence with the royalists, they had him wrong footed. John Lilburne was in a no-win situation, in the most public of arenas. If he had stood upon his principles and admitted authorship of his books, he would have signed his own death warrant. It is undoubted that John Lilburne's decision to mandate the Jury was a brave move. It was a formula that was enshrined in the Common Law and Lilburne exploited that and its cultural connotations. However, as was noted in the *Pragmaticus*, it was only through the vagaries of the Jury's' decision, which could have had as much to do with them being disgruntled with the Judges over the lack of 'sack', or the treatment of the Grand jury, as to the arguments put forward by John Lilburne, that he survived. The evidence gives strength to the supposition that there was no strategic planning behind this and it was an opportunistic act of self-preservation.

The cumulative weight of evidence indicates that this successful strategy adopted by the State gave the prosecution a perfect vehicle to defame Lilburne's reputation and more importantly to

⁵R. Brenner. *Merchants and Revolution, Commercial Change, Political Conflict, and London's Overseas Traders, 1550-1653* (London, Verso, 2003) p398n.

⁶Ibid. p 572.

⁷R. Zeller. 'Henry Robinson' *OxfordDNB*. 10/4/13

⁸G.E. Bently. 'Robinson Family' *OxfordDNB*. 10/4/13

⁹John Lilburne. *Innocency and Truth Justfied* (London, S.N.1646) Thomason /E.314 [21]. pp. 8-9.eebo

¹⁰C.D. Van Strien. *British Travellers in Holland During the Stuart Period, Edward Browne and John Locke as Tourists in the United Provinces* (Vrije University, Amsterdam, 1989). p68.

undermine his potential. This was done to such a damaging extent that it destroyed any perception of him emerging as a potent leader of the opposition. Those witnessing the drama unfolding must have realised that Lilburne and his associates could not now be seen as a viable alternative to those in power. It is no coincidence that after his acquittal as celebrations took place, which included 'bonfires' being lit and medals being struck, a shadow emerges. As Andrew Sharp notes that these festivities took place even 'though the Leveller movement was effectively ended'.¹¹ This is echoed by the words of Pauline Gregg who believed that 'After 1649, although Lilburne himself could still arouse enthusiasm, the Leveller movement declined'.¹² Jason Peacey has noted the sophistication of approach with regards the use of propaganda against the Leveller movement.¹³ There is every reason to suggest that the State judiciary adopted this approach against John Lilburne, via the trial, to effectively destroy his future credibility. History has shown how successful this was. This was a Pyrrhic victory for John Lilburne and not the glorious scattering of the forces of the State that has been frequently suggested. Even 4 years later, John Lilburne was still not willing to admit responsibility for the authorship of his famous *The Legall and Fundamentall Liberties*, as he declared 'for the pretended making of which, I was also arraigned for a Traitor at Guildhall, the foresaid October 1649'.¹⁴ This trepidation is not usually associated with John Lilburne, but it clearly reflected Edmund Prideaux's success in undermining the innate sense of destiny that Lilburne had held prior to the trial.

The little documented first day of the trial shone a light on how the judicial hierarchy viewed their position in the post regicide world. They realised that when they brought John Lilburne to trial they needed to be just as sure of their authority as when they tried the King. They also knew they could not allow the absent monarchy to be placed central to the case. They realised that both juries would be caught fast in the unremitting glare of the public. So being able to document their opening address gives an opportunity to glimpse their justifications. It also reflected the important aspect of how the jury of the Grand Inquest were treated, perhaps a grave error of judgement on the part of the Judges. It also recounted a sense of autonomy held by both sets of jurors, a component of the trial that has not been given the due recognition it deserves.

The evidence also indicated that the interpretation of the trial by Clement Walker is just that, an *interpretation*. It is indicative that, like many interpretations of historical events, Walker's work must be treated with caution and cannot be exempt from challenge. It is not over simplistic to draw

¹¹Sharp. 'John Lilburne'. Oxford DNB

¹²Gregg. *Free-Born John*. p 302.

¹³J. Peacey. 'The Hunting of The Leveller: Sophistication of Parliamentary Propaganda, 1647-53' in *HR* Volume 78, Issue 199. pp 15-42 (Feb 2005). Accessed via www.wiley online 26/10/12

¹⁴John Lilburne. *Lieutenant Colonel John Lilburne Revived* (1653) L2128-106_E_689_32.p2.eebo

attention to the fact that the book was written for publication and by this very reason biased. The agendas of both John Lilburne and Clement Walker were too closely entwined by the time of the writing of their version of events for it not to be prejudiced, to a high degree, against the regime. How involved Lilburne and Walker had become prior the trial is inadvertently disclosed in Lilburne's later writing *Lieut.Colonel John Lilburne Revived*. In this John Lilburne revealed that Walker cited his arguments over twenty three pages during the course of his book *Anarchia Anglicana the Second Part* which was published in 1649. This range of pages extended from page 32 to 263. This was in contrast to a range of just 6 pages included in Walker's earlier publication.¹⁵ This is clear evidence that by early 1649 the cross fertilization of John Lilburne's and Clement Walker's ideas had greatly increased.

Clement Walker's text has provided, since its first publication, an invaluable insight into what occurred in the Guildhall. Its inclusion within the *State Trials for High Treason* format gave it a perfect vehicle for popularity, longevity and seeming historical honesty. This was perpetuated and compounded with each re-edition. The *Triall of Lieut. Collnell John Lilburne* is the major source for the last two days of the trial.

There are other sources for the trial such as the news-books, the *Mecurius Pragmaticus Tuesday 23rd to October 30th number 27*, and the *Mercurius Elencticus 22nd -29th October, 1649*, and *The First Dayes Proceedings at the Tryal of Lieut.Col.John Lilburne in the Guild-Hall*. These sources are few, but they do allow a comparison to be made with Walker's text. It has been demonstrated that episodes took place that were reported in two or all three of these other commentaries, but were omitted from what emerged as the foundation text of the trial. These gaps in Walker's narrative are irrefutable evidence that editorial manipulation had taken place.

This enforces a caveat with regards to Walker's narrative of the trial. Its adoption and continued proliferation can be seen as an example of the maxim that when enough people agree to use a source, historical validity is bestowed. *The Triall* is one particular interpretation of John Lilburne's trial, which has attained, through longevity and accessibility, an air of historical certitude. Anyone who chooses to write about the trial of John Lilburne that took place in October 1649 must be aware that the main historical source for the event is open to review, by the very fact of how and why it was written. This rule must be extended to all interpretations that are based upon Clement Walker's version of the event, including this research. The words used by S.R. Gardiner, describing Lilburne's address to the jury just before his acquittal, still holds true. He noted that this section was

¹⁵John Lilburne. *Lieut.Colonel John Lilburne Revived*. p7.

'Rhetorically exaggerated'.¹⁶This eloquent and articulate phrase must be expanded to encompass many of the speeches ascribed to John Lilburne in the writing of the trial by Clement Walker.

The trial was the point at which the trajectory of John Lilburne's life abruptly changed. The focus of historical investigation has been on the fact that John Lilburne survived the trial. The glow of his victory, however, masked another important fact. The movement of which he was the physical and spiritual focus, the Levellers, so feared by the regime, dissipated after the trial. Where John Lilburne had been able to set the political weather prior to his trial, after it he was at its mercy. The motivations for Walker to have included in his narrative the detailed and continued repudiation by John Lilburne of his own writings can only be inferred. It could be that, like the political State, Clement Walker was caught up in the immediate passion after the trial. Also like the political State he failed to recognise the true long term significance of John Lilburne denying his works in such a public way. As the *Pragmaticus* astutely observed of the judiciaries strategy 'They thought [the judiciary] to smite the hearts & affections of the Silly People with a love of and Admiration at their Proceedings and if possible to winne the opinion of the simplest of those called Levellers'.¹⁷ The irony of this situation is that it seems certain that the political State failed to recognise how influential the prosecution had been in this respect and in the aftermath sought to engage in a damage limitation exercise. The judiciary of the Commonwealth State, in contrast, seemed to have recognised how successful it had been in the application of the charges and in its ability to discredit a defendant. This is borne out by the decision to prosecute Clement Walker in a similar fashion. Tom Paine's trial in absentia of 1792, in its process also bears more than a passing resemblance to the structure of charges that were devised to prosecute John Lilburne. The issue of correspondence with the monarchists did again surface during Lilburne's 1653 trial. Although, it must be noted, this accusation was just supplementary to other charges.¹⁸This later trial seemed to have been a more politically formulated and designed affair, without the subtlety of direct judicial intervention in the planning of the charges, as evidenced in that of 1649. As Lilburne indicated, he was well aware who was orchestrating the accusations in 1653, his old adversary Thomas Scott.¹⁹The reasoning for this more direct course of action during the later trial could have been down to confidence instilled from a more secure domestic position. This would come after the Free State's providential victories at

¹⁶S.R. Gardiner. *History of the Commonwealth and Protectorate, 1648-1660*. p 188.

¹⁷J. Cleveland. *Mecurius Pragmaticus Tuesday Oct 23RD to October 30th 1649*. Thomason E_575_[40]p3.

¹⁸John Lilburne. *Malice Detected* (London, 1653) BL Thomason/109:705[19]

¹⁹John Lilburne. *The Just Defence*. p 9.

Dunbar in 1650 and Worcester in 1651. Or it could be down to the reality that, by 1653, the State feared John Lilburne's influence a lot less.

The final irony, in a trial littered with irony and paradox, is that maybe John Lilburne, seemingly Walker's co-conspirator in his version of the trial, may have been one of the first to sense what had transpired. Clement Walker recounted how, whilst the wild celebrations enveloped the court on the delivery of the verdict, 'the Prisoner stood silent at the Bar, rather more sad in his countenance than he was before'.²⁰

The composite nature and reason for compilation of the main source for John Lilburne's trial is also of importance. It reflects how information can be constructed and used to achieve a desired effect. This, coupled with the themes of censorship and control, which were a constant undercurrent during the trial, are just as pertinent today, as they were during the seventeenth century. In light of how restrictions are proposed for the internet and the way media manipulation is used to direct public opinion, coupled with emerging revelations on how states control and restrict free access to information, the back drop to the trial still resonates. It would not be too anachronistic to say that the trial that unfolded at the Guildhall over 24th 25th and 26th October, was based on a set of principles and concerns that would be undoubtedly recognised in the modern era.

²⁰Walker. *The Tryal* (London, Hills, 1710) p131.

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