

THE POLITICS OF THE ANCIENT CONSTITUTION

The Politics of the Ancient Constitution

An Introduction to English
Political Thought, 1603–1642

GLENN BURGESS

palgrave
macmillan

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First published 1992 by
THE MACMILLAN PRESS LTD
Houndmills, Basingstoke, Hampshire RG21 2XS
and London
Companies and representatives
throughout the world

ISBN 978-0-333-52746-7 ISBN 978-1-349-22263-6 (eBook)
DOI 10.1007/978-1-349-22263-6

A catalogue record for this book is available
from the British Library

Copy-edited and typeset by Grahame & Grahame Editorial, Brighton

For Mandy

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Preface

The idea of the ancient constitution provided the English political nation of the early-seventeenth century with its most important intellectual tools for the conduct of political debate. The common law, from which the ancient constitution derived, had a near-monopoly when it came to the discussion of such issues as taxation, property rights, and the making of law. Many of its central features were described in 1957 by Professor J. G. A. Pocock, in his book *The Ancient Constitution and the Feudal Law*. Since that time there have been many attempts to revise some elements of Pocock's account, as well as his own reflections on these attempts published in a new edition of the book in 1987. The Part I of the present work is an attempt to survey the state of play on this matter, and to contribute new material to the discussion. The heart of it is contained in Chapter 2, where it is argued that Pocock's account of the ancient constitution, though in many respects as valid as it ever was, over-emphasized the typicality of Sir Edward Coke, and (partly in consequence of this) under-played the role of *reason* in the thought of the common lawyers. They certainly thought that the ancient constitution was built on *custom*, but the temptation for us is to conclude from this that – like some later conservative thinkers – they believed the ancient constitution to be good simply because it was old, and (in any case) changing it would be more inconvenient than it was worth. In fact, I argue, custom was always subservient to reason: the ancient constitution was good because it was a rational system. Custom was a tool used to explain its rationality.

It is Part II of this book that justifies its sub-title. The common law was the most important political 'language' of early Stuart England, but it was not the only one. In the second half of the book I examine its relationships with the other 'languages', and thus its place in the overall system of political discourse to be found in the period. The aim of this is to show the basic structures and operation of political debate in the pre-Civil-War period. The account is not in all respects a complete one, and more could certainly be said about divine-right theory than I have said here. Inevitably, my focus is on law. As a result, Part II is effectively a re-examination of what were once considered to be some of the great constitutional high-points on

the road to Civil War. I have attempted to show that they were nothing of the kind: far from showing an articulate and conscious opposition to the theories used by royal spokesmen, the conflicts of the early Stuart period show a pattern of consensus giving way to confusion, fear and doubt before the *actions* (rather than the theories) of Charles I. By 1640 there was evident a *crisis of the common law*, characterized by the growth of doubts about whether it really could fill the role that the doctrine of the ancient constitution gave it. This role was to protect the lives, liberties and estates of Englishmen. There was not so much a theoretical challenge to monarchy as a growing realization of the inadequacy of existing theories to cope with a new situation. Men in fact found it extremely difficult in the 1640s to construct for themselves a language with which to criticize and justify resistance to royal misgovernment.

I have aimed to address in this book both a student audience, and an audience of colleagues. There are always risks in aiming at more than a single audience, and some comment on the use of this book might help. Chapter 2 is undoubtedly more complex and technical than other parts. It is the place in which I develop my own views about the nature of the ancient constitution. Specialists in the subject will find in it justification for remarks made elsewhere. However, those more interested in my views on the general nature of political debate in the early-seventeenth century will find that Part II is to a considerable degree (if not entirely) able to be read on its own. Similarly Chapters 1 and 3 will also give between them a reasonable portrait of ancient constitutionalism, even without Chapter 2. Finally, Part II of the book forms one single argument: its parts do not really stand alone. It is intended to be accessible enough for an undergraduate audience (in part surveying the findings of recent historiography), while presenting a line of interpretation that will be of interest to scholars.

Throughout the book I have concentrated on *public* debate. There may be value in asking what people said in the privacy of their families, or wrote in the privacy of their studies, but these are not questions that I have chosen to address. I wanted to uncover the rules governing the conduct of political debate in the public arena, and – with a few exceptions – the evidence I cite is evidence from the public domain: pamphlets and books, legal trials, parliamentary debates. Whether people thought things that they were unable to express publically is a separate issue (and for what it's worth some recent work has now suggested that censorship did not weigh so

heavily on the expression of opinion in the period than has hitherto been believed). In any case, the structure of public discourse is a subject in its own right.

I have, as a general rule, left quotations as I have found them: punctuation and spelling are unaltered; the same is usually true of capitalization. I have not always followed the italicization and other font styles of the originals, and I have usually modernized the usage of the letters i, j, u, and v. I have, of course, corrected obvious typographical errors on occasion. Throughout, the year is assumed to begin on January 1, though in other respects I have followed normal seventeenth century dating habits. This book does not have a bibliography, but I have tried to indicate the most important further reading in my notes. Such notes have been indexed, so those looking for information on particular subjects should consult the index.

The most pleasant duty that falls to the writer of prefaces is to recall the names of the friends and colleagues who have helped and inspired his or her work. In many cases we do not know the people personally. The names of those in this category will be found in my footnotes. I am particularly indebted to many of the recent scholars of the early Stuart political world whose work has led me to ask the question: if politics was like *this*, then what must political discourse have been like? Part II gives my answer to this question. It focuses on the balance between consensus and conflict, terms central to recent historiographical debate. Prof. Louis Knafla responded generously to my request for help in tracking down some of his own work. Dr Richard Tuck gave of his time and knowledge while I worked on the thesis from which some of this book derives, and Dr Mark Goldie made valuable comments on the completed thesis. During this period I was kept buoyant by the conversations and moral support of friends, notably Dr Jonathan Scott and Mr. Howard Moss. Both have contributed more to my conclusions than they possibly realize. To Dr John Morrill, supervisor of my PhD thesis, and Prof. Colin Davis I have accumulated, and continue to accumulate, debts which I shall never be able to repay. Their friendship and advice at all stages of this project both made it more pleasant and improved the quality of its product.

Ideas alone do not make books. In the process of producing the finished product one gathers a further set of friends and, in a wide sense, creditors. Mrs Dawn Hack and Mrs Judy Robertson converted my MS into typescript. Financial aid was provided, at various points, by Trinity College, Cambridge; the Cambridge

Commonwealth Trust; a Claude McCarthy Fellowship from the N.Z. University Grants Committee; and by research grants from the University of Canterbury and its Department of History. I am grateful also to the staff of the Rare Books Room of the Cambridge University Library, where much of the research for this book was carried out, and to the excellent interloans staff at the University of Canterbury Library. My thanks to all of them, and to my publishers, Vanessa Graham in particular, for patience with my dilatoriness.

I have been lucky: my parents have always done their utmost to enable me to fulfil my wish to become an historian (however bizarre they may have thought such a wish). Without them, it would not have been possible. My final thanks are reserved for my wife, to whom the book is dedicated. She did *not* type the manuscript or compile the index; but without her willingness to value the writing of this book as highly as I did myself, its progress would have been much slower. What more can one ask for?

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