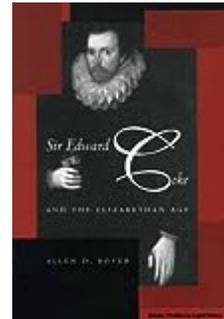


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Chris R. Kyle, Jason Peacey, eds. *Parliament at Work: Parliamentary Committees, Political Power and Public Access in Early Modern England.* Woodbridge and Suffolk: Boydell Press, 2002. xiii + 190 pp. \$85.00 (cloth), ISBN 978-0-85115-874-7.



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New Corn from Old Fields? Law and Parliament Reassessed

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Parliament and the celebrated jurist Edward Coke figure prominently in the ongoing debates about the shape of early modern English political history. Did Edward Coke and the “common law mind” he embodied stand in conscious opposition to the arbitrary designs of the early Stuarts? Did he personify a dominant “ancient constitutionalism” that weathered the onslaughts of would-be “absolutists”? Were parliament and the common law

courts the institutional foundation of the ancient constitution, the nursery for men who collectively laid the basis for parliamentary democracy, or venues for personal and court-based rivalries over place, power, and patronage? Both Allen D. Boyer, in his thoughtful study of Coke’s Elizabethan career, and the contributors to *Parliament at Work* are conscious of such questions, but they are chiefly concerned to move beyond traditional debates. In their reexaminations of law and parliament, how well do they meet Coke’s own Chaucerian motto, “Out of the old fields must come the new corn”?

Allen Boyer, trial counsel for the Enforcement Division of the New York Stock Exchange, has produced a fine study of Edward Coke's legal philosophy and political career during the reign of Elizabeth I. Perhaps because Boyer's background is in law rather than history, he does not weigh down Coke with quite so much of the usual historiographic baggage. Rather, Boyer offers us a study of Coke which places his early career within the intellectual milieu of Elizabethan law and politics. Several entwined topics interest Boyer: the social and educational environment from which Coke sprang, Coke's legal and historical thought, and his engagement with Elizabethan politics and religion. Boyer ultimately offers a more satisfying, three-dimensional treatment of Coke on his own terms than those which subordinate him to debates about legal theory, political ideology, or the tired Whig-Revisionist (constitutionalist-absolutist) paradigm.

The education and intellectual development of Coke are crucial topics. At the Norwich Grammar School, Coke encountered the humanist curriculum, particularly rhetorical training. Thanks to the influence of Archbishop Matthew Parker at Norwich, Coke also studied Greek. At Trinity College Cambridge from 1567 to 1570, Coke continued his rhetorical training under the tutelage of the future archbishop John Whitgift. Pedagogues like Thomas Elyot, Jean Luis Vives, or Roger Ascham supplemented Classical literature (and the Bible) with works of contemporary history, law, and religion. Clifford's Inn and the Inner Temple were the venues in which Coke began devouring history and common law, and he developed into a voracious, life-long collector and reader of legal and historical works (both manuscripts and printed texts). Coke began recording cases in his commonplace book in 1572, the same year that he purchased Plowden's *Commentaries* and Littleton's *Tenures*.

The humanist curriculum—whatever its variations between schools and tutors—anchored a shared culture of authority in early modern England (and Britain generally). It trained would-be magistrates, courtiers, politicians—the whole range of individuals captured by Thomas Elyot's term “governor”—in established norms of rhetoric, history, and moral philosophy. Further, Coke's rhetorical training operated as a common discourse, including “frankness of speech,” among common lawyers. Aphthonius's *Progymnasmata* played an especially important role because of its “reverence for law, overtly slanted against dictatorial or monarchical rule” (p. 15). According to Boyer, Aphthonius counterbalanced despotism with law in the exercise *locus communis*: “students would learn that despotism offended the commonwealth,

in which 'laws are established among us, and courts of justice are part of our political structure ... the vote of judges will suffice to destroy the entire power of despotism'” (p. 15). The curriculum equipped Coke to advance as an active public individual after the Ciceronian notion of the *vir civilis*. When this background is joined to the accounts of Coke's involvement in Norfolk county politics, career as a practicing lawyer, and service as speaker in the parliament of 1593, Boyer's Coke ceases to travel the inevitable historiographic path to the chief justiceship, suspension, and parliamentary opposition. Instead, Coke stands with ambitious gentry colleagues—William Cecil, Thomas Egerton, Francis Bacon, Fulke Greville, Julius Caesar—who sought place and profit in Elizabethan society by the timely application of their learning as servants of the crown. This is a welcome reminder of Coke's ordinariness despite his talents.

Coke's “artificial reason,” drawn from the *Commentary upon Littleton*, is a logical extension of his humanist training. When Coke wrote that “the common law is nothing else but reason, which is to be understood of an artificial perfection of reason, gotten by long study, observation, and experience, and not of every man's natural reason,” we come very close to the pedagogue's justification for studying Cicero or Quintillian for their ethical content and the rhetorical training needed to persuade others of one's right reason.[1] Boyer finds the same sort of parallel between Coke's “artificial reason” and the “artificial logic” of Tudor rhetorician Abraham Fraunce (p. 89). For Boyer, the “lawyers of Coke's day, deeply schooled in Ciceronian rhetoric, equated argumentation and adjudication with the government of a commonwealth” (p. 100). Coke in 1581 marshaled a half dozen arguments in Shelley's Case to support the inheritance of property by a deceased first son's heir rather than a younger son. Shelley's Case professionally defined Coke both as a lawyer and as a reporter but it also enshrined his belief that, in Boyer's words, “law represents the understanding of the lawyers” (p. 83): Shelley's Case “invested the terms of legal documents with the meanings used by lawyers [and not] until the 1950's, prodded by Lord Denning, would the English bench once again read documents in terms of the parties' original intent” (p. 120). Other cases (Chudleigh, Slade, Darcy) are analyzed similarly. At the same time, Boyer's examination of Coke's activities as a local assize judge, solicitor-general, and attorney-general have an eye toward Coke as a political figure and crown servant. Thus attorney-general Coke is characterized as a loyal servant of the *regium cecilianum*, a “cunning party boss” who worked the 1597

parliamentary elections to the advantage of his clients, and a vicious, dogged prosecutor of the earl of Essex in 1600. Indeed, the attorney-generalship was “the making of Coke,” not least thanks to legal fees, and, according to Boyer, Coke relished the fees likely to accrue from the coronation pardons of James VI and I in 1603. If Coke was a client of the Cecils he also embodied their approach to serving—and profiting from—the crown and commonweal.

Historical works and aged legal precedents (bogus or otherwise) are central to any analysis of Coke’s legal thought, politics, and public career. Boyer ventures the unoriginal assessment that Coke “consulted the legal past to find support for his political theories,” in particular the *Modus Tenendi Parliamentum* and *The Mirror of Justices*. A pre-Norman parliament, Greek-speaking Druids from whose time the common law had not changed, the shiring of England by Alfred, the “golden age of common-law pleading” in the reign of Edward III, and the British past according to Geoffrey of Monmouth are familiar elements of Coke’s sense of history, but his involvement with humanist scholars and historians is more useful for situating him in the context of his times. History was meant to be used and, in the best humanist tradition, it dominated Coke’s library: Holinshed, Lambarde, Camden, Matthew Parker’s Anglo-Saxon volumes, Savile’s chronicles, Richard Verstegan’s *Restitution of Decayed Intelligence*, Stapleton’s translation of Bede, Henry Llyud, John Selden, Sir John Davies on Irish law, and, of course, numerous manuscripts. Further, Coke and Robert Cotton shared charters; he acquired Matthew Parker’s manuscripts, and he patronized scholars, including William Crashawe, whose “academic specialty was purifying patristic texts, editing out passages in which Roman Catholic theologians had altered the text to justify unsound doctrine or support claims of papal supremacy” (p. 142). Finally, Coke worked closely with members of the Society of Antiquaries, including Joseph Holland, Francis Tate, and Arthur Agarde, who undoubtedly shaped his notions of the British past. While Coke subscribed to fanciful history, wielded dubious precedents, and “creat[ed] documents which he felt history needed,” it remains a fascinating testament to Coke’s mentality that in the midst of parliamentary debates over the Petition of Right he offered 300 pounds for three crucial law books which had been lost during his imprisonment (p. 143). For Coke, history and precedent were alive and his engagement with them shaped his thought and practice in the law and politics.

Boyer maps out the circles of individuals in which

Coke moved or with whom he came into contact, like the Society of Antiquaries. We learn something of Coke’s connections to Elizabethan religious politics in the same way. Coke’s arrival at Trinity College coincided with the mastership of John Whitgift, the preaching of Thomas Cartwright, and the Vestiarian Controversy over clerical dress, including the surplice. Coke perhaps was not untouched by these events: “Anne Coke, his younger sister, married his Trinity classmate Francis Stubbes [whose sister] Alice Stubbes married Cartwright” (p. 21). Near the end of Coke’s studies (1570), Cartwright attacked the root and branch of episcopacy by extolling the “primitive church” in his sermons, prompting Whitgift’s counter attack which deprived Cartwright of his fellowship and drove him to Geneva. Coke himself had many Puritan friends; a fact which apparently led Whitgift to send attorney-general Coke a New Testament with the message “he had now studied common law enough, let him hereafter study the law of God” (p. 24). Coke’s contacts with the godly included his “favorite” sister Anne Stubbes, presbyterian enclaves in Suffolk, and the sermons of Walter Travers at the Inner Temple. Coke also provided church livings for reformers—his brother-in-law George Leedes, who refused to wear the surplice—and patronized “a rising generation of the godly” at the end of his life, including the future founder of Rhode Island, Roger Williams (pp. 179-186). Coke’s most notable encounter with religious politics was in his opposition to the notorious ex officio oath, by which the Court of High Commission could effectively force defendants to incriminate themselves. When Francis Wyndham and Coke instructed a Norfolk grand jury in 1590-91, the jurors promptly indicted the commissary of the archdeacon of Norwich for bringing an ex officio proceeding against common law. The language of the grand jury charge seemed to question the very ability of the queen to empower the High Commission by her *imperium* (royal supremacy).[2] In *Specot’s Case* and *Cullier v. Cullier*, Coke “won prohibitions barring the use of the ex officio oath” and continued his opposition to the oath as attorney-general (pp. 177-183). Boyer’s reading on all this seems to be that Coke was not a Puritan, but his “bias against prelates shaded into a preference for Puritans” and he “sided with the state” any time “a controversy pitted politicians against churchmen” (p. 182).

As a reexamination of Cokes’s mental world and Elizabethan career, there is obviously much of interest here, but Boyer’s study is not without problems. Assumptions and terminology concerning religious positions, court politics, and parliament are a bit long in the tooth; J.

E. Neale's "Puritan choir" still sings a pretty parliamentary tune and recent scholarship has hardly dented the *regnum cecilianum*.^[3] Most obviously, the questions of Coke's religion and his views of religious politics are not clarified by Boyer's analysis while the church versus state dichotomy seems altogether anachronistic. Another problem is that Boyer blends chronological narrative and thematic analysis in a fashion which ultimately does justice to neither. The burden lies too heavily on the reader to follow the threads of Coke's life or sustain the thematic analysis of his legal thinking, political ideas, or involvement with religious controversy through multiple unconnected chapters; individual chapters are subdivided to the point of fragmentation. Inevitably points are left open and interesting propositions are neither followed up nor subjected to the scrutiny they warrant: given his involvement with the ex officio oath and patronage of William Crashawe, just what was Coke's view of the royal supremacy? Was there any connection between these events and the anti-monarchical tenor of Fraunce? What precisely were the "revolutionary implications of Sir Edward's jurisprudence" in the context of his connections to zealous Protestants? What was Coke's involvement as attorney-general in exploiting the profits of law in the form of monopolies and other projects—a club Coke would wield against James I's attorney-general (and others) during the famous monopolies debates in the parliament of 1621?^[4] All of this contributes to a certain superficiality and lack of thematic focus. Better editorial guidance should have produced a study more coherently structured and strongly argued. Finally, the dust-jacket promises a follow-up volume covering Coke's career under James and Charles I. If Boyer intends to complete his reassessment of Coke—as he seems to suggest—by approaching him outside established historiographic debates over the common law and ancient constitution, an "introductory" volume meant to locate Coke in the context of his times may have been a miscalculation. Will the seemingly critical influence of Coke's engagement with the humanist curriculum, Protestant zealots, or place and profit loom quite so large in an early Stuart volume? Here the traditional 1603 Tudor-Stuart divide appears to be especially inappropriate, if not deleterious.

Nevertheless, this study of Coke is welcome. What Boyer has managed to produce is a fresh, critical study of Coke's Elizabethan "public" career, broadly defined. Boyer makes us familiar with an Edward Coke who possessed prodigious energy, an inflated sense of his own meritorious rise which inclined to reverse snobbery, notable vanity, a penchant for tearful scenes, and a combat-

ive inability not to go on too long. Boyer's Coke engaged with the humanist curriculum as the intellectual training and philosophical underpinning for an active public life in the law. He was not simply a Jacobean wrecker in waiting, an overweening chief justice ready to do battle with Egerton and James. The Elizabethan Coke was someone who had not yet become a slave to his own ambitions and prejudices—or others' interpretative agendas.

One facet of Coke's Elizabethan career which deserves further scrutiny is his relationship to parliament. "Certain qualities which Coke showed in the Parliaments of the 1620s," Boyer writes, "first showed themselves in the spring of 1593 [including] a willingness to find middle ground, a lawyerly inclination to juggle procedure and substance, and a zeal for historical precedents" (p. 240). Compromise, procedure, precedent are topics at the heart of long-standing historiographic debates over parliament taken up by the authors of *Parliament at Work*. For an older generation of Whig historians, the growth and exploitation of institutional procedures, the emotive power of precedent, and control of the purse strings armed parliamentarians to seize the political initiative from the English crown. Whig triumphalism collapsed under the weight of so-called revisionist history, which, among other things, redefined parliament as an event dominated by parochial concerns and the spill-over of factional battles at court. Post-revisionists have offered a healthy corrective by reinserting genuine ideological and confessional disputes into these "events."

With the powder spent on all sides—as Dudley Carleton wrote of the 1610 impositions debates—questions about the future of parliamentary history naturally arise.^[5] While not consciously setting out to address this issue, the editors of *Parliament at Work* suggest that the collection offers what they have termed "new directions" for parliamentary history. In this vein, the authors take up the operation and institutional development of parliament, its place in the governance of England, and its ties to a wider world including public perceptions of it. They collectively explore "how the institution functioned and adapted to the demand placed upon it ... in a period which encompassed its growth from a medieval institution to one with omni-competent authority over all facets of society" (p. vii). The essays in *Parliament at Work* can be considered under three broad rubrics, those which adopt an institutional approach, those which reconsider the nature of parliamentary politics, and those which most consciously attempt to break new ground. There is overlap, but the central theme seems to be the rejection of parliament as an "event" and a corresponding

rehabilitation of the institutional development of parliament (without the crass determinism of Whig historians).

Michael A. R. Graves, Chris Kyle, and Robert Armstrong adopt robust institutional perspectives. One difficulty for these authors is spotty source material, particularly for the sixteenth century. As Michael Graves writes, “in comparison with the Jacobean cornucopia of parliamentary diaries, committee attendance lists, records and reports of committee business and the tracts of Henry Elysynge, William Petyt, Henry Scobell and the fuller, later Observations, Rules, and Orders, [the Tudor archive] amounted to a meagre harvest” (p. 29). Nevertheless, Graves is able to describe the development of Tudor parliamentary committees into the premier bodies for the “scrutiny, revision and drafting, merging, or splitting of bills”; referral to committee was the benchmark for the viability of a bill (pp. 33-34). Lest we imagine the process of development was a smooth one, Graves points out that committees grew larger and more burdensome to members while they were neither necessarily efficient nor quiescent, particularly in conferences between Lords and Commons. Chris Kyle’s companion essay follows committees into the early Stuart period, though fuller archival material allows him to advance the discussion. Kyle questions the traditional assumptions about committee membership, particularly in the work of R. C. Munden. Edward Coke was, in Kyle’s turn of phrase “A Man for all Meetings” in the parliament-heavy 1620s, yet his plethora of committee assignments frequently conflicted with one another and it would be wrong to assume Coke prioritized obvious ones; he chose the committee examining leases in the Duchy of Cornwall over one debating Magna Carta. Kyle concludes that the fixity and certainty of twentieth-century committee practice clouds Stuart reality: poor attendance, frequent failure to obtain a quorum, lack of attendance by individuals who superficially should have been interested, dominance “by small groups of MPs,” and general confusion. Robert Armstrong’s account of how a “core of committed MPs, some, but not all with pre-existing Irish interests, ensured a continuity across the diversity of bodies erected to supervise the war in Ireland” offers a telling example of how far parliamentary committees moved in the direction of executive authority and administration in the unique circumstances of the 1640s (p. 98).

Jason Peacey, John Adamson, Sean Kelsey, and Paul Seaward tease out the political character of parliamentary committees. In a densely argued essay, Peacey examines the politics and factionalism at work in the Committee of Accounts; the committee, empowered to audit

accounts, was guided by William Prynne and “became the only major committee at Westminster dominated by Presbyterians” (p. 59). The committee mirrored and furthered the factional struggles in parliament among Essexians, Independents, and Presbyterians. It finally became “a national political issue” itself as Prynne used the threat, power, and stigma of financial investigation (along with his literary output) to advance the Presbyterian cause. John Adamson is likewise interested to tease out the political battles within the committees managing the war effort, in particular the Committee of Both Kingdoms. Adamson takes aim at Whigs by establishing the committee’s medieval credentials—it mirrored councils formed in the reigns of Edward III and Richard II—and emphasizing the “bicameral” opposition to Essex centered on the earl of Northumberland, Viscount Saye and Sele, Henry Vane Jr., and Oliver St. John. This interest also led the way with military reforms which produced the “‘new modelling’ of the army” (p. 117). Nonetheless, it remains interesting that the success of these Independents depended on “coloniz[ing] key parliamentary committees,” at least some of whose “principal practical sanction” in managing the war effort and balancing competing interests was the power of the purse (p. 127). For example, opponents of the earl of Essex in the Commons used an altogether “Whig” tactic to force the earl’s supporters to back the Committee for Both Kingdoms; the bill for payment of Essex’s army was stalled pending agreement on the Committee.

Paul Seaward follows the power of the purse and audits into the early Restoration period. Seaward presents an interesting “long view” of parliamentary attempts to supervise crown expenditure. The surface politics of “accountability” may be different from the 1620s and 1640s, but underlying issues of mistrust in crown fiscal policy, factional control of the purse, disputes over wartime expenditure and strategy, and fundamental questions about the royal prerogative are nevertheless familiar.[6] Finally—in a somewhat unpersuasive contribution—Sean Kelsey considers the 1649 Council of State an “instance of conservatism at its most revolutionary” because it simultaneously became the practical instrument of Commons dominance and the embodiment of the powers of the crown “in commission” (pp. 130-131). Further, the strong presence of nobles on the Council paved the way for the abolition of the House of Lords by “creating a new place in the political sun” for the likes of Fairfax, Denbigh, Salisbury, and Pembroke (pp. 132-133). Ultimately, for Kelsey, the creation of the Council of State “confirmed the supremacy of a self-styled sovereign House of Com-

mons and facilitated the abolition of the monarchy and the House of Lords”; it replaced “the missing pieces of the ancient constitution” (p. 146).

These contributions serve the useful function of rehabilitating institutional changes in parliament, something unfashionable if one considers parliament simply an event or occasion. Yet, while they tell us much about the workings of parliaments, it remains unclear what fresh or compelling new directions they offer to parliamentary history outside the very detailed treatment of these specific topics. For example, they seem to reinforce the revisionist emphasis on factional politics largely unmoved by ideology. There is certainly grist for the revisionist mill in the factional battles surrounding the Committee of Accounts, the Committee of Both Kingdoms, and the Commission of Accounts in 1667. Yet, principled, ideological, even constitutional debate is obviously afoot. The real problems are, first, that the existence of principled conflict in the 1640s is hardly an issue likely to divide anyone studying the period while, and second, these cases can be read in ways which simultaneously suit the preconceptions of revisionists and those of their opponents. Whatever the individual merits of these specialized essays, this new crop tastes like the same old corn from the same old fields.

The jointly authored essay by Chris Kyle and Jason Peacey, and the final essay by David Dean, are the ones which offer glimpses of a richer parliamentary history. Influenced by contemporary attention to lobbying—is there a danger of anachronism here?—the authors analyze public access to and influence upon parliament. Kyle and Peacey describe the physical setting in which parliament met, the practical mechanics of access, and accounts of individuals finding their way into parliamentary meetings, committees, and conferences. Accessibility was a live issue for members during Tudor and early Stuart parliaments and we witness familiar debates over restricting access and promoting privacy (or secrecy) in proceedings. What Kyle, Peacey, and Dean suggest convincingly, even in these relatively short essays, is “the very great extent to which those outside Westminster were knowledgeable about, interested in, and prepared to try and influence events and decisions, whether through exploitation of the political process or otherwise” (p. 23). In this light, Dean is left wanting to know

more about whether MPs were public or private persons, about notions of representation and accountability, even about committees. Beyond even that, how individuals or groups sought to shape parliamentary business and politics speaks to the “public perception of the institution,” a potentially rich topic highlighted by the editors in their preface but with which too few of the essays really grapple. Inquiry which takes us beyond the institution and institutional politics (whether driven by members’ parochialism or ideologies) will help us understand parliament not simply on its terms. We will begin to see parliament from the outside, from the perspectives of subjects and on their terms. That would be a refreshing change in emphasis if not direction.

Notes

[1]. For an effective introduction to the humanist curriculum, Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996), pp. 1-211.

[2]. See John Guy, “The Elizabethan Establishment and the Ecclesiastical Polity” in *The Reign of Elizabeth I: Court and Culture in the Last Decade*, ed. John Guy (Cambridge: Cambridge University Press, 1995), pp. 126-49.

[3]. Natalie Mears, “Regnum Cecilianum? A Cecilian Perspective of the Court,” in *The Reign of Elizabeth*, pp. 46-64; Paul E. J. Hammer, “Patronage at Court, Faction and the Earl of Essex,” in *idem*, pp. 65-86.

[4]. John Cramsie, *Kingship and Crown Finance in the Reign of James VI and I, 1603-1625* (Woodbridge, Suffolk: Royal Historical Society, 2002), pp. 164-179.

[5]. The classic “modern” manifestos of these positions are Wallace Notestein, *The Winning of the Initiative by the House of Commons* (London: Oxford University Press, 1924); Conrad Russell, *Parliaments and English Politics, 1621-1629* (Oxford: Oxford University Press, 1979); Richard Cust and Ann Hughes, eds., *Conflict in Early Stuart England: Studies in Religion and Politics, 1603-1642* (London: Longman, 1989).

[6]. For early Stuart perspectives, see Cramsie, *Kingship and Crown Finance*; Richard Cust, *The Forced Loan and English Politics, 1626-1628* (Oxford: Oxford University Press, 1987).

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