Introduction

Jasper Maudit's "Instructions": The Imperial Roots of Early American Political Theory

In June 1762, in the waning months of the Seven Years' War, the Massachusetts General Court sent Jasper Maudit, its new agent in London, a lengthy set of "instructions."[1] Maudit, a London merchant and dissenter, had taken up his appointment at an auspicious time. The colony had been informed by the previous agent, William Bollan, that the Crown was going to require the insertion of a suspending clause in all future laws, ensuring that they would not take effect until approved by the Privy Council.[2] In Bollan's view, this interference with Massachusetts' legislative authority underlined the long-standing need "for a thorough Examination" "of the Original, inherent and just Title of the Colonies in America to the Rights, Liberties and Benefits of the State, whereof they were Members."[3]

[1] On Maudit's agency, see *Jasper Maudit, Agent in London for the Province of Massachusetts-Bay, 1762–1765*, *Massachusetts Historical Society Collections*, Volume 74 (Boston, 1918). (The "Instructions" are reprinted on pages 39–54.) They were a joint effort of the Massachusetts House and the Council.

[2] Bollan, quoted in Maudit's "Instructions," 39. For the provisions of the suspending clause, see James J. Burns, *The Colonial Agents of New England*, (Washington, DC: Catholic University Press of America, 1935) 94, fn. 42. Although they objected to the proposed suspending clause, the Massachusetts House conceded that the Crown could veto their legislation. Like other colonists in the empire, however, they wanted their laws to be in force until vetoed; and they were particularly incensed by any suggestion that their laws would be treated as void *ab initio* after being reviewed in London (see page 51). Bollan had been removed from his job as agent because of the opposition of the Otis faction, which distrusted his Anglicanism (there were fears that he wouldn't support the Congregational Church) and his support for the court party (he was William Shirley's son-in-law and an associate of Thomas Hutchinson). Maudit, his replacement, was thought preferable because he was a dissenter. On the dispute, see Burns, *Colonial Agents*, 4–5; and Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge: Belknap Press, 1974), 59–61.

[3] Maudit's "Instructions," 39.

Taking Bollan's warning seriously, the colony's "instructions" to Maudit laid out a comprehensive account of the rights of the British American settlers in the empire, one that reveals to the modern reader the contours of a lost world of early American political theory, stretching back to before the Glorious Revolution, while anticipating the revolutionary arguments that would convulse the British Atlantic world in the decade to come.

At the heart of the colony's case was a claim that "The natural Rights of the Colonists" were "the same with those of all other British subjects, and indeed of all Mankind." In support of this claim, Maudit's instructions drew on Locke's *Second Treatise*.[4] According to the colony, "The Principal of these Rights" was (quoting Locke) to be "free from any superior power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule." In society, these natural rights entailed certain "political or Civil Rights." Once again, the "instructions" quoted Locke: "The Liberty of all Men in society is to be under no other legislative power but that established by Consent in the Commonwealth." In other words, to be politically free was to be bound only by rules consented to by all, and "not to be subject to the inconstant, uncertain, unknown, arbitrary will of another Man."[5] Moreover, the *instructions* claimed, these rights were universal: "This Liberty is not only the right of Britons, and British Subjects, but the Right of all Men in Society, and is so inherent, that they Can't give it up without becoming Slaves, by which they forfeit even life itself."[6] And given the universality of these rights, Massachusetts argued, there could be no basis for denying them to one part of the empire.

The colony's "instructions" to Maudit also defended the settlers' claim to equal rights by invoking the tie between Crown and subject: Since the "Allegiance of British Subjects" was "perpetual and inseparable from their Persons," the colony argued, there could be "no reason" "why a Man should be abridg'd in his Liberty, by removing from Europe to America, any more than by his removing from London to Dover, or from one side of a street to the other." In other words, these rights were not "local, that is, confined to the Realm," but "extended throughout the Dominions."[7]

In support of this vision of the empire, Maudit's "instructions" cited the colony's charter, which guaranteed that settlers in Massachusetts

[4] The "Instructions" cited Locke without attribution. The quotes are from *The Second Treatise*, chapter 4, paragraph 22 ("Of Slavery").
[5] This passage is also from chapter four, paragraph 22.
[6] Maudit's "Instructions," 40.
[7] Ibid., 40–41.

enjoyed "all the Liberties and Immunities, of free and natural Subjects … as if … every one of them were born within the Realm of England." After all, "the British American Colonies are part of the Common wealth" and thus entitled to "the rights, liberties and benefits thereof." Furthermore, the "instructions" claimed, these charter rights were not mere gifts of the Crown; rather, they were "declaratory of the Common Law, the Law of nature and nations, which all agree in this particular."[8]

Maudit's "instructions" also justified this idea of an empire of equal rights with a claim about the legal status of the territories to which the American settlers had migrated:

> By the Laws of Nature and of Nations, which in this Instance at least, are the voice of universal Reason, and of God, when a Nation takes possession of desert, uncultivated and uninhabited Countries, or which to our purpose is the same thing, of a Country inhabited by Salvages [*sic*], who are without Laws and Government, and Settles a Colony there; such Country tho' separated from the principal Establishment or Mother Country, naturally becomes part of the State, equally with its antient possessions.[9]

In other words, the fact that the American colonists had settled among peoples who were in effect stateless meant that the land was legally vacant, and the settlers were free to supplant the natives and establish their own political authority on an equal footing with the mother country.

According to Maudit's "instructions," the settlers' migration to this uncultivated wilderness had also benefited Great Britain: "There are very good judges, who scruple not to affirm, that it is to the Growth of the plantations Great Britain is indebted for her present Strength, and populousness." After all, "as the wild wastes in America have been turned into pleasant Habitations … so many of the little Villages … in England, have put on a New Face, suddenly started up and become fair Market Towns, and great Cities." However, these "Mutual Advantages" "derived from the spirit of Trade and Commerce," which was in turn dependent on "that beautifull Form of Civil Government under which we live." As such, it was in the "Interest" of "all those intrusted with the Administration of the Government, to see that every part of the British Empire enjoys to the full the advantages derived from the Laws, and that Freedom which is the Result of their being maintained with Impartiality and Vigour."[10]

[8] Ibid., 46.
[9] Ibid., 41.
[10] Ibid., 43–44. The "instructions" refer to the British constitution, but they also claim that colonial prosperity rested on the "reduction" of that constitution to "first principles," which had occurred only in the plantations.

On the basis of these arguments, the Massachusetts General Court told Maudit to resist the King's interference with their legislative authority, for, they insisted, "if these suspensions are Established, it will be in the power of the Crown, in Effect, to take away our Charter without act of Parliament, or the Ordinary process at Common Law." "Surely," the colony pleaded, "the laws of England, will never make such Construction of the King's Charter, as to put it in the power of the donor or his Successors to take it away when he pleases."[11]

Not long after Maudit's instructions crossed the Atlantic, the long, costly, and punishing war against the French ended, and the British empire emerged triumphant, masters of the continent. Yet within a decade, the North American colonies were on the brink of a revolt caused by the kind of infringement on settler rights that the General Court of Massachusetts had complained about in 1762. The fact that the colony was able to offer a coherent account of its inhabitants' rights in the early 1760s indicates that the settlers' response to parliamentary taxation and legislation was informed by a long history of thinking about their autonomy in the empire. Most histories of early American political thought, however, begin where Maudit's instructions leave off, with the looming imperial crisis in the aftermath of the Seven Years' War, as if the ideas that drove opposition to imperial reforms from the mid-1760s on had no antecedents.

This book moves in the opposite direction and explores the imperial roots of the distinctive set of ideas expressed in Maudit's "instructions" – the forceful grounding of settler rights in both common law and natural law; the denial of the sovereignty and property of the indigenous peoples of the New World; and the related claim that the settlers had undertaken a risky migration across the Atlantic to what was in effect a wilderness, and then by their labor had established flourishing polities which had benefited Britons on both sides of the ocean. In order to understand this settler vision of the empire, we need to eschew the current scholarly focus on the origins of the nation and take seriously the imperial world out of which it came. Only then will we have a long-term perspective on the political theory of the founding and be able to see the important continuities between colony and nation, empire and republic.[12]

[11] Ibid., 53.

[12] I have chosen to refer to the subjects of my study as "settlers" rather than employ the more traditional "colonist." The term "settler" better captures their ambiguous status in the empire, for while they were subjected to metropolitan control, they were also agents of empire in their own right, appropriating native land and establishing local

Scholarship on the early modern world is increasingly taking the history of empire as seriously as it used to take that of states.[13] In the guise of Atlantic history, the impact on early American historiography has been profound, with the American colonies now seen as integral parts of a broader British world of commerce, religion, culture, law, and politics.[14] This Atlantic turn in the study of early America is itself part of a broader trend toward transnational and comparative histories of the United States.[15]

Yet scholarship on early American political thought has not taken this imperial turn. Dominated in the last generation by the "classical republican" challenge to an older "liberal" interpretation of the founding, it has reached an impasse, with the republican contention that a classical politics of virtue dominated early American political theory proving unsustainable in the face of the strong counter-evidence that liberal ideas of rights, property, and consent, often associated with John Locke, were an important part of the ideology of the Revolution.[16] While

authority in a quasi-autonomous manner. By using this term, I also hope to encourage early Americanists to engage with the burgeoning literature on settler colonialism. On which, see Anna Johnston and Alan Lawson, "Settler Colonies," in Henry Schwartz and Sangeeta Ray, eds., *A Companion to Postcolonial Studies* (Malden: Blackwell, 2000), 360–376.

[13] For a recent discussion of the centrality of empire in an era we usually see as heralding the rise of the nation-state, see Jeremy Adelman, "The Age of Imperial Revolutions," *American Historical Review* 113 (2008), 319–340; and Trevor Burnard, "Empire Matters? The Historiography of Imperialism in Early America, 1492–1830," *History of European Ideas* 33, 1 (2007), 87–107.

[14] On the British Atlantic, see the essays collected in David Armitage and Michael Braddick, eds., *The British Atlantic World, 1500–1800* (New York: Palgrave Macmillan, 2002). On early American history in an Atlantic context, see Bernard Bailyn, *Atlantic History: Concept and Contours* (Cambridge: Harvard University Press, 2005). According to Jack Rakove, the revival of interest in empire in Anglo-American historiography is a corollary of the rise of Atlantic history, both of which allow for the examination of colonial American politics in a more expansive framework. Rakove, "An Agenda for Early American History," in Donald A. Yerxa, ed., *Recent Themes in Early American History: Historians in Conversation* (Columbia: University of South Carolina Press, 2008), 38.

[15] Thomas Bender, *A Nation among Nations: America's Place in World History* (New York: Hill and Wang, 2006).

[16] The literature on this debate is extensive. For an up-to-date and judicious account, see Alan Gibson's *Understanding the Founding: The Crucial Questions* (Lawrence: University Press of Kansas, 2007). For the state of the debate as it was waxing, see Daniel Rodgers, "Republicanism: The Career of a Concept," *Journal of American History* 79 (1992), 11–38. For an example of the Lockean liberal consensus that prevailed before the rise of classical republicanism, see Carl Becker's *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Alfred. A. Knopf, 1942). Three books are usually cited as inaugurating the classical republican challenge to a liberal

this debate has enriched our understanding of the intellectual context of the American Revolution, scholars on both sides failed to explore the ways that the political ideas of the English settlers who eventually created a republican revolution were shaped by the experience of living in an Atlantic world of jurisdictional plurality and contested sovereignty. Instead, despite their differences, all of the major contributors to the debate sought to explain the ideas of the founding by tracing the impact of one strand of European or English political thought – be it Renaissance civic humanism, or English radical whiggism, or the Scottish Enlightenment, or Lockean natural law theory – on the political thinking of British Americans in the two decades before the Revolution. In doing so, however, they ignored the intellectual world of the settlers in British America in the crucial century between the Glorious Revolution and the American Revolution entirely.[17] As a consequence, we have an

account of the founding: Bernard Bailyn's *The Ideological Origins of the American Revolution* (Cambridge, MA: Belknap Press, 1967); Gordon Wood's *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969); and J.G.A. Pocock's *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975). But while Bailyn did downplay Locke's influence, preferring, like Wood and Pocock, to stress the influence of English radical Whig thought on the revolutionaries, unlike them he never understood this strand of thought as centrally concerned with civic virtue. Rather, Bailyn stressed the individualism of the radical Whigs, arguing that their central concern was with protecting the individual from the depredations of power. For the liberal response to the republican thesis, see Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge: Harvard University Press, 1992); Thomas Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988); Paul Rahe, *Republics Ancient and Modern: Classical Republicanism and the American Revolution* (Chapel Hill: University of North Carolina Press, 1992); and Steven Dworetz, *The Unvarnished Doctrine: Locke, Liberalism and the American Revolution* (Durham, NC: Duke University Press, 1990). The downplaying of Locke's influence in revolutionary America was also due to John Dunn's influential article "The Politics of John Locke in England and America in the Eighteenth Century," in John Yolton, ed., *John Locke: Problems and Perspectives* (Cambridge: Cambridge University Press, 1969), 77. For a convincing riposte, see Yuhtaro Ohmori, *"The Artillery of Mr. Locke": The Use of Locke's "Second Treatise" in Pre-Revolutionary America, 1764–1776* (Ph.D. Dissertation, Johns Hopkins University, 1988).

For an insightful attempt to combine the two perspectives, see Michael Zuckert's "amalgam" thesis in which the republican concern with virtue is seen as the means to the liberal end of rights. Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994), 164–166.

[17] This focus on the late eighteenth century is ubiquitous in the secondary literature on early American political theory, although some older studies – for example, Lawrence Leder's *Liberty and Authority* (Chicago: Quadrangle Books, 1968) and Clinton Rossiter's *Seedtime of the Republic* (New York: Harcourt, Brace, 1953) – dealt with

account of early American political ideas focused largely on the late eighteenth century, the traditional founding, and disconnected from the larger Atlantic and imperial world out of which the Revolution came.

Two bodies of scholarship, both largely ignored by historians of early American political theory, allow us to explore the ways in which the early modern Atlantic world – and in particular the contested constitutional structure of the empire – shaped colonial political thought. The first is the efflorescence of writing on the constitutional history of the empire which began with Barbara Black's pioneering bicentennial argument that the settlers had a compelling constitutional case against metropolitan authority in the revolutionary crisis.[18] In a series of dense and learned volumes, the legal historian John Philip Reid has also argued that in the 1760s and 1770s the colonists articulated a sophisticated vision of their rights in the empire, one which was as legally sound as that propounded by

political ideas in British America, as did Bernard Bailyn's seminal *Origins of American Politics* (New York: Vintage Books, 1967), though Bailyn's focus on the prerogative powers of the royal governors made it difficult to fit the private colonies into his explanation for the salience of radical Whig thought in eighteenth-century America. For a recent example, see Lee Ward's *Politics of Liberty in England and Revolutionary America* (New York: Cambridge University Press, 2004). Ward offers a superb account of the complexity of seventeenth-century English political thought, placing the radical Whig ideas that influenced the American revolutionaries alongside a range of other discourses. Yet by failing to deal with the transmission of these ideas across the Atlantic in the crucial decades following the Glorious Revolution, he is unable to explain why the settlers were so receptive to this strand of Whig ideology when English people at home were not. An exception to this narrow focus on the founding appears in a series of superb studies of political culture in individual colonies – for example, Richard Bushman, *King and People in Provincial Massachusetts* (Chapel Hill: University of North Carolina Press, 1985); and Alan Tully, *Forming American Politics: Ideas, Interests and Institutions in Colonial New York and Pennsylvania* (Baltimore: Johns Hopkins University Press, 1994). Richard Beeman's *Varieties of Political Experience in Eighteenth-Century America* (Philadelphia: University of Pennsylvania Press, 2004) is the most recent account of politics in the mainland colonies.

[18] Barbara Black, "The Constitution of Empire: The Case for the Colonists," *University of Pennsylvania Law Review* 124 (1976), 1177. Black took the side of Charles McIlwain in his debate with Robert Schuyler about the authority of the English Parliament in the American colonies. See McIlwain *The American Revolution: A Constitutional Interpretation* (New York: Macmillan, 1923); and Schuyler, *Parliament and the British Empire: Some Constitutional Controversies Concerning Imperial Legislative Jurisdiction* (New York: Columbia University Press, 1929). For contemporaries of McIlwain's whose arguments about the empire as a federation or commonwealth of separate states are also back in vogue, see R.G. Adams, *The Political Ideas of the American Revolution: Brittanic-American Contributions to the Problem of Imperial Organization, 1765–1775* (1922; New York: Barnes and Noble, 1958); and Andrew C. McLaughlin, *The Foundations of American Constitutionalism* (New York: New York University Press, 1932).

ministers in Parliament.[19] Black and Reid have been joined in this reconstruction of colonial constitutional arguments by, among others, Jack P. Greene.[20] According to these historians, the colonists based their case against Parliament on the arguments of seventeenth-century common lawyers like Edward Coke, who held that English subjects lived under an "ancient" and unwritten customary constitution that guaranteed them certain liberties, including the right to be secure in their person and property, to consent to taxation, to be represented in parliaments, and to participate in lawmaking through juries. The fact that these rights of English subjects were seen as "immemorial," that is, in the parlance of common lawyers, they had existed "time out of mind," was also the basis for their legitimacy, for they had been tested by long experience and consented to by the community as a whole. This idea of an ancient constitution also served to limit the scope of the royal prerogative as the king was bound to obey these fundamental liberties as well.[21]

[19] John Phillip Reid, *Constitutional History of the American Revolution*, 4 volumes (Madison; University of Wisconsin Press, 1986–1993).

[20] For an overview of this literature, see Jack P. Greene, "From the Perspective of Law: Context and Legitimacy in the Origins of the American Revolution," in Greene, ed., *Interpreting Early America: Historiographical Essays* (Charlottesville: University Press of Virginia, 1996), 467–492; as well as Greene, "John Phillip Reid and Reinterpretation of the American Revolution," in Hendrick Hartog and William E. Nelson, eds., *Law as Culture and Culture as Law: Essays in Honor of John Phillip Reid* (Madison: Madison House, 2000), 48–57. For Greene's own contribution, see *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (Athens: University of Georgia Press, 1986). In addition to the work of Black, Reid, and Greene, see the important article by Thomas C. Grey, "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought," *Stanford Law Review* 30 (1978), 843–893.

[21] The classic account of common law thought is J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (1957; expanded edition, Cambridge: Cambridge University Press, 1987). According to Glenn Burgess, English jurists didn't think that the common law was literally unchanging but rather that customary practices were subject to constant change over time as they evolved to suit the needs of the polity. See Burgess, *The Politics of the Ancient Constitution: An Introduction to English Legal and Political Thought, 1603–1642* (University Park: Pennsylvania State University Press, 1992), 37, 57–58. For an argument that the origin of this idea of English legal rights as inherent in the individual (and hence akin to the modern idea of subjective rights) lay in the parliamentary struggle against James I, see James H. Hutson, "The Emergence of the Modern Concept of a Right in America: The Contribution of Michael Villey," *American Journal of Jurisprudence* 39 (1994), 185–224. According to Hutson, the modern idea of subjective individual rights was more influential in the American colonies in the eighteenth century than in the seventeenth when the older medieval idea of liberties as (unequally distributed) grants from the king was still dominant.

These legal historians contrast this seventeenth-century constitution of customary rights with the gradual emergence following the Glorious Revolution of the idea that Parliament was supreme not only over the Crown but over the law and the constitution as well.[22] By pointing out the newness of the doctrine of parliamentary sovereignty within the realm, they are able to legitimate the colonial arguments against parliamentary taxes and legislation in the 1760s and 1770s. For, they argue, if parliamentary sovereignty was a recent phenomenon in England, then students of the Revolution should not assume that it applied across the Atlantic in the American colonies.[23] Rather, these historians redirect scholarly attention to the existence of a customary imperial constitution based on the settlers' long experience of governing themselves through local assemblies, subject only to the oversight of the king-in-council, but not – apart from a small number of ineffectual mercantile regulations – to the authority of the king-in-Parliament.[24] The rights the settlers enjoyed under this imperial constitution were bolstered by what Reid calls "the colonial original contract," according to which the king had promised them that in return for undertaking the risks of migrating to America they would be as secure in their rights as if they had never left home.[25] For these legal historians, then, the empire was a federation, a union of quasi-autonomous states, much like the composite monarchies of early modern Europe, in which authority was consensual, the settlers offering allegiance to a monarch who in turn was bound to respect their constitutional rights.[26]

[22] According to Jack P. Greene, this "great constitutional change" meant that "increasingly during the eighteenth century, the constitution came to be seen – in Britain – as virtually identical with Parliament itself: the constitution became precisely what Parliament said it was." Greene, *Peripheries and Center*, 57–58.

[23] According to John Phillip Reid, "the eighteenth century can be called the epoch of two constitutions in both Great Britain and the American colonies." Reid, "The Jurisprudence of Liberty: The Ancient Constitution in the Legal Historiography of the Seventeenth and Eighteenth Centuries," in Ellis Sandoz, ed., *The Roots of Liberty: Magna Carta, the Ancient Constitution, and the Anglo-American Tradition of the Rule of Law* (Columbia: University of Missouri Press, 1993), 194.

[24] Greene is most responsible for the idea that there was an imperial constitution as distinct from the English (later British) constitution and the constitutions of the individual colonies. See *Peripheries and Center*, xi, and passim.

[25] John Phillip Reid, *The Constitutional History of the American Revolution: The Authority of Rights* (Madison: University of Wisconsin Press, 1986), 114–145. Once granted, these rights were held by the settlers to be irrevocable.

[26] See John Elliott, "A Europe of Composite Monarchies," *Past and Present* 137 (1992), 48–71; and H.G. Koenigsberger, "Composite States, Representative Institutions and the American Revolution," *Historical Research* 62 (1989), 135–154. On the first British empire as characterized by consensual authority, see Greene, *Negotiated Authorities: Essays in*

The work of these scholars is indispensable to any full account of the Revolution. Nevertheless, their focus on the conservative, prescriptive nature of the colonial case, and in particular their denial that the idea of natural rights had any influence on settler thought, ignores the fact that even in its seventeenth-century heyday, the common law was not a solely customary legal system.[27] Rather, common lawyers often proclaimed that custom needed to be based on reason. And, as the historian J.P. Sommerville argues, "in emphasizing the rational nature of English liberties, the lawyers came close to asserting that these liberties did, in fact, belong to everyone by nature."[28] Moreover, despite the insistence of revisionist historians[29] on the hegemony of the ancient constitution in seventeenth-century England, the descent into Civil War in the 1640s led to a proliferation of new legal and political ideas, from parliamentary sovereignty, to natural rights, to republicanism, to the resurgence of absolutism following the Restoration, all of which shaped political debate in the British Atlantic world.[30] As well, recent work on legal pluralism in early modern England has shown that common lawyers were

Colonial Political and Constitutional History (Charlottesville: University of Virginia Press, 1994). On consensual authority as a feature of early modern empires in general, see Christine Daniels and Michael V. Kennedy, eds., *Negotiated Empires: Centers and Peripheries in the Americas, 1500–1820* (New York and London: Routledge, 2002). On the culture of constitutionalism in the empire, see Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge: Harvard University Press, 2004); and Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830* (Chapel Hill: University of North Carolina Press, 2005).

[27] For John Phillip Reid's intransigent rejection of natural rights, see his *Constitutional History of the American Revolution*: *The Authority of Rights*, 90–95; and "The Irrelevance of the Declaration," in Hendrik Hartog, ed., *Law in the American Revolution and the American Revolution in the Law: A Collection of Essays on American Legal History* (New York: New York University Press, 1981), 46–89. For a milder version of this argument, see Jack P. Greene, "Law and the Origins of the American Revolution," in Michael Grossberg and Christopher Tomlins, eds., *The Cambridge History of Law in America: Volume 1, Early America (1580–1815)* (New York: Cambridge University Press, 2008), 481.

[28] J.P. Sommerville, *Royalists and Patriots: Politics and Ideology in England, 1603–1640* (New York: Longman, 1999), 102. According to Sommerville, by reason the common lawyers usually meant an "artificial reason" which "could be acquired only by those who had spent long years studying the law." See *Royalists and Patriots*, 84, and the discussion at 89.

[29] On revisionism, see J.P. Kenyon, "Revisionism and Post Revisionism in Early Stuart History," *Journal of Modern History* 64 (1992), 686–699. Despite the revisionist support for their contention that a customary ancient constitution dominated Anglo-American legal thought, Reid and the other legal historians discussed above do not cite this literature.

[30] According to Glenn Burgess, there was "a new structure of political discourse in the 1640s" as "thinkers began to explore modes of political thinking not related to common