THE ANCIENT CONSTITUTION AND THE FEUDAL LAW
THE ANCIENT CONSTITUTION AND THE FEUDAL LAW
A STUDY OF ENGLISH HISTORICAL THOUGHT IN THE SEVENTEENTH CENTURY

A Reissue with a Retrospect

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Preface

This book is now thirty years old. Published in 1957, it was as
the original preface shows completed in Dunedin during 1954
and 1955,¹ and the doctoral dissertation of which it is an
outgrowth was written between 1948 and 1951, and accepted in
1952. A great deal has happened since then to enlarge our
understanding of the history which it contains or implies, but
the book has continued to enjoy readers and a certain standing.
The present reissue has seemed worth while, both as a means of
keeping the original before the public, and as an occasion of
presenting it for inspection in the context of research and
interpretation carried out since it was first published.² In this
preface, therefore, I have attempted to place it in the context of
work being done at the time when it was written, and in the
retrospective essay which follows to consider it in the context of
work published since that time. Some of the latter calls, more or
less pressingly, for modification of the premises and conclusions
which the book originally contained, and I have attempted to
consider some of the questions thus raised and at the same time
to review the present state of the relevant historical knowledge.

The research which led to The Ancient Constitution and the
Feudal Law was in some ways connected with that of the late Sir
Herbert Butterfield, director of my doctoral dissertation; in

¹ My former colleague Gordon Parkeson retired from the University of
Otago at the end of 1984, and I take this opportunity of thanking him for his
moral support at a time in those distant days when I badly needed it.

² From 1967 to 1983, The Ancient Constitution and the Feudal Law was
am indebted to Mr Donald S. Lamm, president of that company, for his
suggestion that the Cambridge University Press might be interested in resuming
publication, and to Mr Frank Smith, of the Press’s New York office, for the
alacrity with which he acted on it.
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particular with his *The Englishman and His History*, published in 1944 by the Cambridge University Press. This little book was a work of the Second World War years, and its neo-Burkean tone may have been produced by the mood of that period. It was Butterfield who suggested that I should modify my intention of studying the anti-Normanism of the Interregnum radicals (the ‘Norman Yoke’\(^3\)) and investigate the monarchist historiography of Robert Brady and his associates; and though their thinking was somewhat far removed from that of Edmund Burke, an interest in connecting the prescriptivism of the ancient constitution with that expressed by Burke a century and a half later\(^4\) may have originated with *The Englishman and His History*. However, I do not recall that Butterfield especially urged me to the study of Burke. He was at that time engaged on the history and historiography of George III’s reign,\(^5\) and though this part of his work contains interesting information on the ancient-constitutionalism of the Yorkshire petitioners in 1780, my own did not intersect with it for a number of years. In retrospect the main link between Butterfield’s work and mine seems to connect this book, through *The Englishman and His History*, with the problem of how one should relate the complacent progressivism which he criticized in *The Whig Interpretation of History* (1931) to the

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\(^3\) The term was popularized by Christopher Hill (see p. 54 below, and comment on anti-Normanism at pp. 126–7). I endeavour in the retrospective essay to make it clear that ‘the ancient constitution’ and ‘the Norman yoke’ are antithetically related.


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equally complacent traditionalism which he rather admired in writing the later book (1944). It has taken many years to show how it was possible for both attitudes to co-exist and be equally ‘Whig’, since Duncan Forbes’s first essay on ‘scientific Whiggism’, which had already appeared when this book was published, did much to point the way.

Research for this book early intersected, and continued to do so as long as he remained active in the history of political thought, with that of Peter Laslett. His edition of the works of Filmer appeared in 1949 and greatly illuminated the discovery, to which I was then being led, that William Petty and William Atwood (and Robert Brady writing against them) were responding fairly directly to the re-publication of The Freeholders Grand Inquest as part of the works of Filmer in 1679. A link between their activities and those of John Locke in reply to Patriarcha is provided by the correspondence and publications of James Tyrrell, Locke’s close friend and author of Patriarcha Non Monarcha (1681) and Bibilotheca Politica (1694). By 1957, Laslett was far advanced on the research which led to the completion in 1960 of his pathbreaking discovery that Locke’s Treatises of

8 For one year, during Butterfield’s absence from Cambridge, my doctoral research was supervised by Dr J. H. Plumb (as he then was).
11 A full-length study of Tyrrell’s life and writings remains highly desirable. At present we have only the last work (I believe) of J. W. Gough, ‘James Tyrrell, Whig Historian and Friend of John Locke’, Historical Journal, vol. xix, no. 3 (1956), pp. 581–610.
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Government are work of the early 1680s, situated in contexts formed by the re-publication of Filmer and the Exclusionist predicament of 1679–83. The Ancient Constitution and the Feudal Law may be said to have played some part in making this discovery and in bringing out the complexity and diversity of the Filmerian controversy, of which what is termed the 'Brady controversy' was part. It has also helped to make clear that the relatively conservative justification of the Revolution of 1688–9 as an act carried out within the undissolved framework of the ancient constitution, which came to prevail among ruling Whigs and Revolution Tories, was one which Locke did not endorse and may have opposed. Like Laslett's redating of the Treatises, my work tends to reinforce the modern interpretation of Locke as a political thinker more Exclusionist radical than Revolution Whig. At the same time, it emphasizes and makes central the strength of a conservative language in which he took no part; and both here and elsewhere, I have been concerned in isolating and exploring modes of argument which were of great importance to Locke's contemporaries and friends, but apparently did not interest him at all. In consequence, I have put forward the claim that the character, rather than the degree, of his importance needs to be re-defined: a claim displeasing to those scholars who wish to present a Locke both radical and universal, a figure at once in advance of his age and furnishing essential clues to the thought of the eighteenth century. There must be reassessment of that thought, as well as of Locke's, if we are to understand his place in it, and in the retrospect which closes this volume I return to the attempt to provide such a reassessment.

There is another respect in which this book may be said to have intersected with work begun and carried on by Peter Laslett (ed.), John Locke: Two Treatises on Government (Cambridge University Press, 1966). A deliberately challenging statement of this position may be found in 'The Myth of John Locke and the Obsession with Liberalism', printed as part of J. G. A. Pocock and Richard Ashcraft, John Locke: Papers Read at a Clark Library Seminar (Los Angeles: William Andrews Clark Memorial Library, 1980). It has less to do with Locke's indifference to ancient-constitutionalism than with his indifference to neo-Harringtonian classical republicanism.


13 A deliberately challenging statement of this position may be found in 'The Myth of John Locke and the Obsession with Liberalism', printed as part of J. G. A. Pocock and Richard Ashcraft, John Locke: Papers Read at a Clark Library Seminar (Los Angeles: William Andrews Clark Memorial Library, 1980). It has less to do with Locke's indifference to ancient-constitutionalism than with his indifference to neo-Harringtonian classical republicanism.
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Laslett. In 1956, the year before its publication, he was editor of the first volume of Philosophy, Politics and Society, and there is a real, if indirect, connection between the linguistic analysis of political utterances which the contributors to that volume propounded, and the historical resolution of political discourse into the idioms and ‘languages’ in which it has been conducted that has transformed the historiography of political thought over the last thirty years. I believe it can be claimed on behalf of The Ancient Constitution and the Feudal Law that—indebted as it was to The Englishman and His History and other works—it established the existence and extent of a ‘language’ of precedent, common law and ancient custom, in which a significant part of English political argument was, for long periods and with important consequences, carried on. Both in 1957 and when writing a foreword to the Norton edition in 1966, it seemed to me that this language or idiom carried significant information among, and subsequently from, the inhabitants of seventeenth-century England, regarding the supposed mode and manner of their society’s existence in time and history. Since 1957, however, several other such languages—anti-Norman and apocalyptic, humanist and republican, civilian and commercial—have been brought to light in the history of English political discourse and shown to have exerted comparable effects; and the historical field has been enlarged to include both Scottish and American political thought in the eighteenth century. The Ancient Constitution and the Feudal Law must be considered as one of a number of books published in recent decades which have

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contributed to building up a history of past political thought in its discursive complexity, and in the retrospective chapters which follow at the end of this book an attempt will be made to present it in the context furnished by this literature.

Yet the book deals with only one of the languages constituting English political discourse, and to consider this as co-existing and interacting with others is to raise questions about its genesis, use and development. There have been criticisms which suggest that the two chapters on 'The Common-law Mind' present it in over-simplified terms, and as isolated from the operations of other languages to a greater degree than the evidence justifies; it seems possible that some of these criticisms are justified. There has been a great deal of research and discovery regarding the political debates of the Civil War and Interregnum periods; and above all, we now possess studies of English, Scottish and American political thought after 1685—when this book effectively concludes—which show the theme of the ancient constitution persisting, among others, far into the eighteenth and nineteenth centuries, yet undergoing challenges and transformations that leave parts of the concluding chapter published in 1957 altogether inadequate. These have been allowed to stand, but in reviewing research and interpretation since that year an attempt will be made to inspect the premises and conclusions on which I proceeded when writing of 'The Common-law Mind', and to inquire whether these need modification or replacement; and a further attempt will be made to enlarge the field in directions which it has become possible to explore only since the book was published. Such will be the programme of 'The Ancient Constitution Revisited', a postface or retrospect which has been left to the end of this edition so that the reader may consult it after perusing the original text.

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**Preface to the First Edition**

I have tried in this book to present a theory of the fundamental nature and problems of constitutional historiography in the seventeenth century. I have not attempted to analyse exhaustively the character of English thought about the past, or to study the way in which constitutional history and theory were used as a source of arguments in contemporary political debate. It has seemed more illuminating instead to oppose to one another what appear to have been the two most important schools of thought: the common lawyers with their belief that the constitution was immemorial, and the few dissentients who sought to upset this theory by pointing out that it had once been informed with the principles of feudal tenure; to show how these interpretations arose; and to consider how they were related to some of the essential ideas in contemporary political theory and how these connexions encouraged or hampered their development. From the whole, it is hoped that there will emerge a picture of one of the most typical and necessary, but by historians one of the most neglected, strands in the thought of the seventeenth-century English: the attempt to understand themselves by understanding their past and their relation to it. This may partly excuse my failure to deal with Elsyng, Selden, Twysden, Somner, and many other good historians of that age, as fully as they deserve.

In trying to carry out this purpose, I have been led to put forward a certain generalization about the history of historiography. This is, in brief, that during the sixteenth and seventeenth centuries one of the most important modes of studying the past was the study of the law; that many European nations obtained knowledge of their history by reflecting, largely under the stimulus of contemporary political developments and theories, upon the character of their law; that the
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historical outlook which arose in each nation was in part the product of its law, and therefore, in turn, of its history; and that the importance of this aspect of the subject has been too little observed by historians of historiography. I have endeavoured to show, by contrasting English historical thought at one point with French and at another with Scottish thought, that the former’s fundamental limitations in this age arose from its having been compelled to contemplate the national past through one system of law alone. The full working-out of the theory would necessitate a history of English historiography far more exhaustive than anything attempted here, and probably also a comparative study designed to show how its character diverged from that of historiography in other western nations, in obedience to the determining forces suggested above. (I may be allowed to express my sense of indebtedness to Sig. Rosario Romeo’s study of the development of Sicilian historical thought in his Il Risorgimento in Sicilia, from which I have received far more illumination than appears on the surface.) The history of historiography is a branch of study still in process of establishing itself, and it has been said that in England its main problems are not yet even defined; as a contribution to the studies of the future, this work may be allowed some place.

It grows out of a thesis submitted in 1952 for the Ph.D. degree, entitled ‘The Controversy over the Origin of the Commons, 1675–88’, which was in essence a study of Robert Brady and of the polemic in which he took part. I must express my gratitude to Professor H. Butterfield and Dr J. H. Plumb for their help and encouragement, and it would be improper not to mention two studies of seventeenth-century historiography without which this study would certainly never have been written: Professor Butterfield’s The Englishman and His History and Professor D. C. Douglas’s English Scholars. The work has been completed under the auspices of the University of Otago, and it is a pleasure to mention those sources in New Zealand from which I have received help in procuring the books necessary to this investigation: first, the University of New Zealand for two research grants used in making purchases;
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second, the librarian, head of accessions and staff of the Otago University Library; and the Alexander Turnbull Library and General Assembly Library, Wellington, and the Supreme Court Law Library, Dunedin. And both in Cambridge and New Zealand, the friends whose aid and criticism I have enjoyed are too numerous to mention.

J. G. A. Pocock
Dunedin, 1955

Note: In quotations from printed books I have followed as far as possible the punctuation, capitalization and italicization of the original; but where contemporary manuscripts are quoted I have expanded the contractions and taken little account of practices differing from modern usage. In translating Latin and French passages quoted I have not attempted to give complete and exact versions; the translations are intended as guides to the sense rather than exact renderings of the often recherché Latin of the scholars of a past time.

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