CHAPTER 1

Hagiography and historiography: the long shadow of Edward the Confessor

INTRODUCTION

When present-day visitors to the Houses of Parliament pass through St. Stephen's Hall, which connects medieval Westminster Hall with the Central Lobby and the House of Commons, they see on its walls a series of large murals centered around the theme “The Building of Britain.” Created in 1927, these paintings portray scenes associated with the history of parliament in general and the House of Commons in particular. Visitors who know their English history will appreciate the inclusion of depictions such as Sir Thomas More’s refusal to grant Henry VIII a subsidy without proper debate in the Commons. And the very knowledgable will associate St. Stephen’s Hall itself with the history of parliament, since St. Stephen’s Chapel served as the meeting place of the Commons from 1547 until the great fire of 1834.1

However, the meaning of the huge mural above the entrance to St. Stephen’s Hall will require clarification even to the most erudite of visitors. A reproduction of a portion of the Painted Chamber associated with Henry III (1216–1272), it depicts three figures: St. Stephen in the center, his namesake King Stephen (1135–1154) to the right, and St. Edward the Confessor (1042–1066), the penultimate Saxon ruler before the Norman conquest and the only English king ever to be canonized, to his left. The presence of the two Stephens makes sense in a room devoted to the history of parliament. And Holy Edward’s representation is understandable given Henry III’s utter devotion to his patron saint. Indeed, Henry sponsored the

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creation of a cult of kingship that revered the Confessor as a national king and a great law-giver, the veritable symbol of a just and virtuous ruler who brought peace to the realm. And he rebuilt Westminster Abbey as the supreme tribute to St. Edward, after whom he named his son and heir.

But what is less well appreciated is that St. Edward deserves a place of highest honor in a room memorializing significant moments in the history of parliament and its sometimes stormy relationship to the crown. In fact, throughout the seventeenth century his was a name frequently associated with opposition to the kingship and forcefully evoked to support the idea of a monarchy limited by parliament and the law. More than this. From the civil wars of the 1640s to the Glorious Revolution of 1689, St. Edward served as the patron saint of dissidents who vigorously promoted the quintessential radical causes of the century, including rebellion, deposition, even regicide. Indeed, when all is said and done, St. Edward figures much more prominently in the broad sweep of English history than the better-known St. George.

In this book I will examine the transformation of the Confessor from a medieval symbol that sacralized the kingship into an early modern weapon that utterly defaced it. My study thus concerns the making of a political ideology that loomed large in the seventeenth century. But this book also deals with early modern historiography, for St. Edward successfully lent himself to such radical usage because he stood at the center of a credible and compelling historical narrative that commanded the deepest respect in the seventeenth century. This was the ancient constitution, within which lurked a version of medieval history redolent with polemical possibilities of the most radical sort.2

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While radical ancient constitutionalists - as I call those stuart dissidents who, beginning in the 1640s, pressed their medieval history into the service of rebellion, deposition, and regicide – exploited this version of the past, they did not themselves create it. They merely hijacked a rendition of their national past that descended to them through the writings of medieval chroniclers and Renaissance historians and antiquaries. Although first fully articulated in Reformation England, an ancient constitution was in place in the middle ages. Indeed, according to three eminent modern scholars – J. C. Holt, R. W. Southern, and Patrick Wormald – it could be found as early as the tenth, eleventh, and twelfth centuries, its foundations laid by monks, monarchs, and magnates who created it to enhance their own powers. Moreover, in the middle ages it sometimes served much the same political purpose as did the early modern version of the ancient constitution during the century of revolution, that is, it was used to justify resistance against the king. Importantly, this traditional ancient

Before Nationalism. Ethnicity and Nationhood in the Atlantic World, 1600–1800 (Cambridge, 1999), chapters 4 and 5.

3 As used to describe seventeenth-century politics, the term “radical” is, of course, anachronistic. In this book I employ the label to classify certain political ideas and actions, in particular, those that aimed at destroying or using force against an established form of government. In this understanding, making war against, deposing, and/or killing a ruler, as well as justifications for the same, merit such a description. I also include under the label “radical” arguments to the effect that a ruler who governed as a tyrant instead of a king deposed himself, since in seventeenth-century England these almost always served as a cover for rebellion, deposition, and regicide. On this understanding, supporters of monarchical rule, for example, advocates of both the papal and imperial sides in the late eleventh- and twelfth-century Investiture Controversy, as well as some sixteenth-century Jesuits might well be called “radical.” For further discussion of this issue see Melinda Zook, Radical Whigs and Consensitarian Politics in Late Stuart England (University Park, Pa., 1999), p. xx; Gary De Krey, “Rethinking the Restoration: Dis senting Cases for Conscience, 1660–1672,” Historical Journal 38 (1995), 53–83; J. C. Davis, “Radicalism in Traditional Society: the Evaluation of Radical Thought in the English Commonwealth, 1649–1660,” History of Political Thought 3 (1982), 193–213; and Conal Condren, The Language of Politics in Seventeenth-Century England (New York, 1993), pp. 140–67. I am grateful to James Burns for advice about this matter.

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constitutionalist narrative – as I term the historical construct before its radicalization during the civil wars of the 1640s – enjoyed the imprimatur of the greatest scholars of the Tudor and Stuart eras, including William Lambarde, William Camden, John Selden, Sir Henry Spelman, and Sir Roger Twysden. Their seal of approval sanctioned a reading of the past that provided a firm foundation for the most basic tenet of radical ancient constitutionalist theorizing, namely, the immemorial nature and continuity of English political and legal institutions. In particular, the traditional narrative taught that the governmental arrangements of the Stuart era dated back at least as far as the Saxon period and perhaps even earlier. Moreover, medieval and early modern writers identified the traditional ancient constitution with St. Edward himself, whom they considered the father of common law. Importantly, they suggested that the Confessor declared this body of law in conjunction with a parliament that included at least the House of Lords and perhaps the House of Commons as well. In this traditional reading, an essentially Saxon constitution enjoyed an unbroken continuity that extended from the early middle ages down to the Stuart period. In other words, no deep and abiding fissure such as a Norman conquest interrupted the flow of medieval and early modern English history.

From this conventional narrative, radical ancient constitutionalists created a theory of government based on elective kingship, a contractual relationship between ruler and ruled, and finally, a right to resist, depose, and even kill a king who broke the terms of his agreement with the people. In their version of the ancient constitution, parliament stood at the center of government and political society, its job to ride herd on over-mighty sovereigns. This “whiggish” narrative of the past, both in its traditional and radicalized versions, has been much attacked by many modern scholars who see the Norman conquest as a cataclysmic event in English history. In this view, William I abolished Saxon laws and institutions and introduced others with a decidedly Norman flavor. Moreover, neither common law nor parliament dated from the Saxon period: common law came into existence in the late twelfth and thirteenth centuries, while parliament originated in the late thirteenth and fourteenth centuries and did not regularly include the lower house until the late middle ages. Further, we now understand that both the common law and parliament owed their
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existence to kings who not only created them but generally used them for their own purposes.  

As for St. Edward and his high reputation as a great law-giver, modern scholarship makes clear that he, unlike his predecessors Edgar, Cnut, and Ethelred, neither legislated nor codified; no dooms survive him. Indeed, little from his reign suggests that he was destined for such a fabulous and exalted future. But we must never assume that the people of early modern England knew what we know. They did not. From their point of view, all that mattered was that the traditional ancient constitution, with St. Edward as its cynosure, carried the blessings of generations of chroniclers, scholars, and antiquaries. When radical ancient constitutionalists put their own spin on this familiar narrative, they imbued their political theorizing with an aura of sanctity and a persuasive power that it could have attained in no other way. In so doing, they made the most revolutionary of innovations appear as the innocent restoration of pristine practices.

The two main contentions of this book – that medieval English history lent itself to the most radical of early modern political causes, and that seventeenth-century dissidents merely expanded on and embellished the traditional ancient constitution whose roots stretched back to the middle ages – fly in the face of much recent scholarship. Thus, Quentin Skinner posits that late sixteenth- and early seventeenth-century English historical writing ran in an entirely different direction from what I suggest here. In his opinion these histories emphasized discontinuity rather than continuity. Especially in their characterizations of the Norman conquest, “the old fashioned chroniclers brought down with unconscious violence the twin pillars of whig historiography. They made no denial of the conquest; they allowed no continuity from Saxon institutions.” Unable to draw on these sources, Stuart rebels concocted a “bogus” and “propagandist” historical account that suited their ideological agendas. Other scholars look to the early seventeenth century for the origins of the ancient constitution. Christopher Brooks and Kevin Sharpe discover its roots in the reign of James I, when, in their view, common lawyers created it as a counterweight to a

5 However, Wormald argues convincingly that the development of common law owed much to tenth- and eleventh-century Anglo-Saxon kings. The Making of English Law, vol. 1, 151–78, especially p. 160.
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potential incursion of civil law that they feared with the ascension of a Scottish ruler. The ancient constitution was, then, the result of tactical moves initiated in a particular set of political circumstances. Brooks further notes that the Tudor period shows few signs of belief in an ancient constitution because Renaissance humanism, with its emphasis on Roman law and Aristotelianism, characterized the legal mind.\(^7\) Paul Christianson also sees the early seventeenth century as critical in the formation of the ancient constitution, adding that several different versions of an ancient constitution then competed for ascendancy.\(^8\)

Then again some scholars find its origins in the sixteenth century. Firmly linking the ancient constitution with the common law that stood at its core, J. G. A. Pocock, for one, looks to the reign of Queen Elizabeth, when common lawyers attempted to defend themselves and their law from aggressive conciliar courts. Or, conversely, perhaps common law thought solidified as a result of Tudor policies that enhanced its already great authority.\(^9\) Glenn Burgess and John Guy also focus on the sixteenth century, noting that Henrician and Protestant reformers reached back to the Saxon past to prove the antiquity of English religious institutions against the claims of Rome.\(^10\) I agree with these scholars that the sixteenth century proved vital to the precise articulation of ancient constitutionalist thought. However, in what follows I intend to focus on and illuminate the earliest origins of this particular approach to history and political theory, for it was the medieval sources to which Stuart rebels themselves turned.

Just as many modern scholars tend to slight the early origins of the ancient constitution and its wide acceptance among learned English people of the sixteenth and seventeenth centuries, so do they generally doubt that medieval history easily lent itself to radical

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causes in Stuart England. According to recent literature, a tension exists between two poles of anti-court theorizing. On the one side is argumentation from history and law, and on the other, argumentation from natural law and natural reason. The first many modern scholars characterize as essentially conservative, and the latter as inherently radical. Thus, according to this view, from the Levellers of the 1640s to John Locke and the Green Ribbon Club of the 1680s, extremists turned to natural law as the idiom of choice. Less extremist opponents of the Stuarts, as exemplified by the noted common lawyer William Petty, are portrayed as relying almost entirely on the historical mode of argumentation – so the usual comment runs. Mark Goldie, for one, speaks the conventional wisdom when he writes that, whereas the argument from English law and history “made it difficult to deny the historical fact of the king’s supremacy over parliament,” natural law “liberated the community to refashion itself as it thought fit.” Further, “a right of resistance was ultimately an appeal beyond history to natural or divine right, exercised by the community beyond the framework of the constitution.”

Burgess takes a similar approach, suggesting that, while “appeals to the past as a legitimating force did not disappear from the thought of the 1640s,” from the civil wars onward they had to compete with other modes of discourse. The eclipse of ancient constitutionalism, he suggests, resulted from its inability to justify extremist claims such as the Long Parliament’s right to control the militia.

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However, not all modern scholars find historical arguments inimical to radical theorizing. Indeed, Pocock notes with typical acuity “that there can be no greater error than to suppose that the argument from natural rights by its nature tended toward radicalism, the appeal to history towards conservatism.”\(^\text{13}\) In this work I have taken his brief admonition to heart. To it I would add that the marked tendency of modern scholars to underestimate the radicalism in polemical appeals to history has led to a distorted view of late Stuart England in general and the Glorious Revolution in particular. According to many historians, mainstream whigs justified the Revolution in predominantly historical and therefore “conservative” terms, as befitted the political nature of the Revolution settlement itself.\(^\text{14}\) Although revised in the last decade by scholars such as Robert Beddard, Tim Harris, Lois G. Schwoerer, W. A. Speck, Corinne C. Weston, and Melinda S. Zook, this view of the Revolution has never gone out of style.\(^\text{15}\) And with some reason. After all, Englishmen who argued from law and history did not go so far as to insist that James II’s policies had resulted in the dissolution of government, as Locke’s ideological followers, the “true whigs,” believed. Nevertheless, as I contend here, radical ancient constitutionalists argued that the political nation, through its representatives, might resist and depose a despotic ruler and settle the crown on a successor. This is hardly a conservative or even a moderate position.

That Stuart dissidents appreciated the polemical potential of the ancient constitution appears from their persistent use of the three medieval sources on which this version of history solidly rested.


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These were the Modus tenendi Parliamentum, the Mirror of Justices, and, most critical of all, the so-called laws of St. Edward. These treatises, which were thought to date from the Saxon period, described the workings of English law and government before the Norman conquest. Two of the sources, St. Edward’s laws and the Modus, told how the Normans so admired the Saxon laws and legal institutions that William I decided to make them a permanent part of his new regime. Despite the centrality of these sources in Stuart political ideology, their role has been little studied hitherto. Christopher Hill, Pocock, and Weston have noted the parliamentarian and whig dependence on St. Edward’s laws, Weston underlining their importance when she wrote that “it is difficult to see how the claim to English rights and liberties could have made substantial headway without them.” And Weston has also discussed the role of the Modus in legitimizing opposition to the Stuart monarchy.16

Still, no detailed and systematic study of their ideological impact exists, despite the fact that St. Edward’s laws, the Modus, and the Mirror were every bit as influential as the Bible and Magna Carta in shaping political thought in the century of revolution.17 Perhaps even more so. This relative neglect can probably be accounted for by the fact that modern scholars now know that these sources are apocryphal and their stories false. As a matter of fact, the Confessor’s laws, the Modus, and the Mirror dated not from the Saxon period at all but from the early twelfth and fourteenth centuries, when they were manufactured by clergymen and politicians who backdated them in order to produce the illusion of antiquity. Still, early modern lawyers, scholars, and antiquaries generally took them as authentic accounts of the way things used to be. They had little reason not to. Although the Modus and the Mirror fell under attack in the seventeenth century, Locke recommended both as worthy guides to the English past, and throughout the seventeenth century references to them are thick on the ground.18 The Confessor’s laws boasted a


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particularly impressive pedigree. Thus, medieval writers made several attempts to compile and record them. As Bruce O’Brien notes, the *Laga Edwardi* can be found in collections of Old English laws such as the *Textus Roffensis*, in translations such as *Quadripartitus*, and in original treatises, namely, the *Leges Edwardi Confessoris, Leis Willelme, the Deceta* (or *Articuli*), and the *Leges Henrici Primi*. The most important of these was the *Leges Edwardi Confessoris*, first published in 1568 by the eminent common lawyer and antiquary William Lambarde under the title *Archaionomia*. Two later editions followed in 1644, one by the equally esteemed Sir Roger Twysden and the other by the noted Cambridge Saxonist Abraham Wlocke. In 1623 Selden, universally respected for his legal learning then and now, used the *Textus Roffensis* as the basis of his own edition of the Confessor’s laws.

Equally important, avid supporters of the Stuarts accepted the Confessor’s laws as genuine. John Cowell, Regius Professor of Civil Law at Cambridge and reputedly the most learned civilian of his age, used them repeatedly in his law dictionary *The Interpreter*, published in 1607. Sir Edward Hyde, later earl of Clarendon, referred to them in his answer to Hobbes, and his fellow royalists Fabian Philipps, John Northleigh, Robert Sheringham, and Roger Coke accepted them at face value. Even Dr. Robert Brady, the doyen of high Tory historians, accepted their authenticity in some, though not all, of his writings. So did his fellow royalist Sir William Dugdale, perhaps the greatest medievalist of the seventeenth century.

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