Introduction

'Certainty is the mother of quietness and repose', Sir Edward Coke wrote in the first volume of his *Institutes*. Over a century later, Lord Mansfield made a similar observation, explaining that 'the great object in every branch of the law … is certainty'.[1] Sharing this preoccupation, the two chief justices worked to reform English law during periods of discontinuity. But the imperatives for reform under Coke were different from those that drove Mansfield: they did not emerge from the decrepitude of the law or its need to adapt to new conditions. Instead, Coke worked within a dynamic and chaotic system. The sixteenth-century fluorescence of English law had driven its transformation, and the confessional differences of the Reformation brought new challenges to the practice of the law.[2] This book evaluates the influence of these contexts of legal and religious change on Coke's understanding of the law from 1578 to 1616. His ambition to reform the law explains why Coke simultaneously confronted abuses in royal administration even as he believed he was acting to defend the authority of the monarchy. This book examines this paradox, and in doing so, suggests how otherwise royalist Englishmen reached conclusions that slowly led them into opposition.

Coke remains an enigmatic figure despite the efforts of biographers.[3] Writers have tended to disparage the personality of 'that arrogant genius',

[1] *Milles* v. *Fletcher* (1779), 1 Douglas 234, 99 ER 152. James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill, NC, 2004), p. 124.

[2] T. G. Barnes, 'Due Process and Slow Process in the Late Elizabethan–Early Stuart Star Chamber', *American Journal of Legal History*, 6 (1962), 221–49; 315–46, at 345.

[3] The biographies of Coke include, Cuthbert Johnson, *The Life of Sir Edward Coke* (London, 1837); C. W. James, *Chief Justice Coke and his Family and Descendants at Holkham* (London, 1929); Hastings Lyon and Herman Block, *Edward Coke, Oracle of the Law* (Boston, 1929); R. G. Usher, 'Sir Edward Coke', *St Louis Law Review*, 15 (1930), 325–52; William Holdsworth, 'Sir Edward Coke', *Cambridge Law Journal*, 5:3 (1935), 332–46; E. A. Hahn, *Edward Coke* (Cleveland, OH, 1950); S. E. Stumpf, 'Sir Edward Coke: Advocate of the Supremacy of Law', *Vanderbilt Studies in the Humanities*, 1 (1951), 34–49; C. S. D. Bowen, *The Lion and the Throne: The Life and Times of Sir Edward Coke, 1552–1634* (Cleveland, OH, 1957); Stephen White, *Sir Edward Coke and 'The Grievances of the*

while interpreting his career as a luminous example of principle succeeding over self-interest as Coke moved to oppose royal policies with increasing vigour.[4] The legal thought of this 'oracle of the common law' or 'Father of the Law' was part of a set-piece battle between constitutionalists and absolutists that defined the political life of the decades leading up to the 1640s.[5] But those who have studied the technical aspects of his litigation and judicial conduct have differed on specifics. For instance, Charles Gray in a thorough study has described Coke's use of the writ of prohibition against other jurisdictions as 'moderate', a word also used by W. J. Jones to describe the chief justice's opposition to injunctions.[6] Paul Halliday, who has scrutinized Coke's granting of habeas corpus, notes that even during the dispute over the chancellor's injunction, 'we can see quite clearly

Commonwealth', 1621–1628 (Chapel Hill, NC, 1979); John Hostettler, *Sir Edward Coke: A Force for Freedom* (Chichester, 1997) and most recently Allen Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford, CA, 2003). A survey of the historiography can be found in White, *Sir Edward Coke*, pp. 14–18.

[4] Barnes, 'Due Process and Slow Process', 318; Boyer, *Sir Edward Coke*, p. 190.

[5] Holdsworth, 'Sir Edward Coke', 333–4; William Holdsworth, 'The Influence of Coke on the Development of English Law', in *Essays in Legal History*, ed. Paul Vinogradoff (London, 1913), pp. 297–311, at pp. 299–300; R. G. Usher, 'Sir Edward Coke', 330–1; Bowen, *Lion and the Throne*, pp. 293–4; Louis Knafla, *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere* (Cambridge, 2008), pp. 146–7; James Hart, *The Rule of Law 1603–1660* (Harlow, 2003); J. P. Sommerville, *Royalists and Patriots: Politics and Ideology in England 1603–1640* (Harlow, 1986), pp. 107–75; Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603–1642* (Basingstoke, 1992); Alan Cromartie, 'The Rule of Law', in *Revolution and Restoration: England in the 1650s*, ed. J. S. Morrill (London, 1992), pp. 55–69; Alan Cromartie, 'The Constitutionalist Revolution: The Transformation of Political Culture in Early Stuart England', *Past and Present*, 163 (1999), 76–120; Paul Raffield, 'Contract, Classicism, and the Common-Weal: Coke's Reports and the Foundations of the Modern English Constitution', *Law and Literature*, 17:1 (2005), 72–9; Alan Cromartie, *The Constitutionalist Revolution: An Essay on the History of England, 1450–1642* (New York, 2006). For the description of Coke as the 'oracle of the common law', see Thomas Fuller, *The Worthies of England* (London, 1662) Wing F2440, p. 251; William Prynne, *Brief Animadversions on, Amendments of, and Additional Explanatory Records to, The Fourth Part of the Institutes of the Lawes of England* (London, 1669), Wing P3905, p. 3; and 'Father', Edward Bulstrode, *The Reports* (London, 1657), Wing 174, 'Epistle Dedicatory'. Similar comparisons are found in James Spedding (ed.), *Letters and Life of Francis Bacon* (London, 1869; repr. 1989), vol. V, p. 121; John Lord Campbell, *The Lives of the Chief Justices of England: From the Norman Conquest to the Death of Lord Mansfield* (London, 1849), vol. I, p. 239.

[6] Charles Gray, *The Writ of Prohibition: Jurisdiction in Early Modern English Law* (Chicago, IL, 1994), vol. I, pp. 67, 80; vol. II, pp. 207, 399; W. J. Jones, *The Elizabethan Court of Chancery* (Oxford, 1967), p. 463.

in his actions … the respect Coke maintained for the chancellor's jurisdiction'.[7] Although Pocock described him 'as nearly insular as a human being could be', evidence from his library suggests that he was interested in and collected continental sources.[8] Coke participated not in a common law culture notable for its shared 'mentality', but rather for its culture of debate and disagreement.[9] Recent work has also emphasized the seriousness of Coke's historical analysis rather than his credulity.[10] Nor were his decisions sometimes meant as modern historians have read them, and arguments have been made against seeing an expansive constitutionalism in *Bonham's Case* (1610).[11] Careful attention to the source and context of dicta attributed to Coke is also in order, as Esther Cope demonstrated in her analysis of proclamations.[12] The posthumous editing and publishing during a time of civil war of the later volumes of the *Reports,* where

[7] Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA, 2010), p. 91. Halliday notes that, of twenty instances of habeas corpus to the Chancery from 1613 to 1616, only one resulted in a discharge, while seventeen were remanded.

[8] Coke, for example, relied on Barthélemy de Chasseneux to support claims about the heir's property in funeral monuments. J. H. Baker, 'Funeral Monuments and the Heir', in *The Common Law Tradition: Lawyers, Books and the Law* (Hambledon, 2000), pp. 349–64, at p. 357. His ownership of continental books is listed in W. O. Hassall, *A Catalogue of the Library of Sir Edward* Coke (New Haven, CT, 1950), pp. 38–41, 44–5, 53–7. Cf. J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the 17th Century* (Cambridge, 1987), p. 56. The 'insularity' of the common law has been debated and rejected. D. R. Kelley, 'History, English Law and the Renaissance', *Past and Present*, 65 (1974), 24–51; Christopher Brooks, Kevin Sharpe and D. R. Kelley, 'Debate: History, English Law and the Renaissance with Rejoinder by D. R. Kelley', *Past and Present*, 72 (1976), 133–46; Sommerville, *Royalists and Patriots*, p. 89; H. S. Pawlisch, 'Sir John Davies, the Ancient Constitution and Civil Law', *Historical Journal*, 23 (1980), 689–702; Linda Levy Peck, 'Kingship, Counsel and Law in Early Stuart England', in J. G. A. Pocock (ed.), *The Varieties of British Political Thought, 1500–1800* (Cambridge, 1993), pp. 91–2.

[9] J. W. Tubbs, *The Common Law Mind: Medieval and Early Modern Conceptions* (Baltimore, MD, 2000), pp. 194–5.

[10] George Garnett, '"The ould fields": Law and History in the Prefaces to Sir Edward Coke's Reports', *The Journal of Legal History*, 34:3 (2013), 245–84, esp. 264.

[11] Ian Williams, 'Dr Bonham's Case and "Void" Statutes', *Journal of Legal History*, 27:2 (2006), 111–28. A similar analysis has also been applied to other 'constitutional' cases of the period; Jacob Corré, 'The Argument, Decision, and Reports of *Darcy* v. *Allen*', *Emory Law Journal*, 45 (1996), 1,261–327.

[12] Esther Cope, 'Sir Edward Coke and Proclamations, 1610', *American Journal of Legal History*, 15:3 (1971), 215–21, at 216; S. E. Thorne, 'Introduction', in *A discourse upon the exposicion and understandinge of statutes* (San Marino, 1942), pp. 85–92, and 'Dr. Bonham's Case', in *Essays in English Legal History* (London, 1985), pp. 269–78; Corré, 'The Argument, Decision, and Reports of *Darcy* v. *Allen*'.

some of his most 'constitutionalist' statements are made, also suggest caution. David Jenkins, the royalist judge who may well have known Coke, later said the following about these texts:

> After his death, in times turbulent and calamitous to Britain, some of his books were published, in which there are a few passages which ought to be expunged, by which he seems to bridle the sovereign, and give the reins to the people: which few passages (if they are his) that great man … did not insert with an ill design; and doubtless were he to rise from the dead, he would take care to expunge them.[13]

Charles Gray observed that Coke sought to maintain both the prerogative and the liberty of the subject, and Janelle Greenberg has also noticed this 'tension'.[14] Contemporaries also urged that Coke desired to establish a balance between the prerogative and the rights of the subject. Timothy Tourneur, an admirer of the chief justice, suggested that Coke sought equilibrium: 'because the Chancellor cried up the prerogative and beat down the lawe and Coke's labor was to keep the balance of both even'.[15] Whatever ideological differences he may have held, only a few months after his dismissal in 1616 Coke was with the king at Newmarket and 'was so well and graciously used that he is as jocund and joviall as ever he was'.[16] Stephen White, in his study of the primary sources for Coke's later parliamentary career, conceded that he did not move into 'opposition' until the 1620s and that he was more concerned with 'remedying certain legal abuses than on effecting significant constitutional changes'.[17] The endorsement by the judges (usually attributed to self-interest) of Ship Money and the imprisonment of the 'five knights' hint that the common law relationship to the prerogative was more complex and perhaps conservative than the historiography has allowed.[18]

[13] David Jenkins, *Eight Centuries of Reports*, trans. Theodore Barlow (London, 1885), p. xvii.

[14] Charles Gray, 'Reason, Authority, and Imagination: The Jurisprudence of Sir Edward Coke', in Perez Zagorin (ed.), *Culture and Politics from Puritanism to the Enlightenment* (Berkeley, CA, 1980), pp. 25–66, at p. 45; Janelle Greenberg, *The Radical Face of the Ancient Constitution: St Edward's 'Laws' in Early Modern Political Thought* (Cambridge, 2001), p. 141.

[15] BL Additional MS 35957, f. 63r.

[16] John Chamberlain, *The Letters of John Chamberlain*, ed. Norman McClure (Philadelphia, PA, 1939), vol. II, p. 45, though compare Coke's claim about the uncertainty of the king's favour at p. 64.

[17] White, *Sir Edward Coke*, pp. 22–3, 45, 76.

[18] The possibility was noticed by Cromartie, *Constitutionalist Revolution*, p. 212.

This book provides an alternative model to the predominant analysis of English political history as an ongoing friction between liberty and royal power, between the claims of the subjects for their rights and the demands of monarchs to enlarge their prerogatives.[19] Parliamentarians self-consciously adopted this classical model to justify their grievances.[20] The drawing of its tension in the historiography has assumed almost as many forms as explanations for the mid-century civil wars and the Glorious Revolution.[21] While the monarch, especially Charles I, has typically served as the antagonist, the common lawyers as a professional group are considered important agents of the move to secure rights and freedoms.[22] Drawing on the intellectual resources of the common law, it is claimed, they helped to develop a language of constitutional rights to contest royal policies such as arbitrary detention and taxation without parliamentary consent. Their commitment to 'ancient constitutionalism', and the claim that their law emerged from customary roots in time immemorial, established the common law's independence from the king. The eventual

[19] For a review of the historiographical approaches in Stuart studies, see R. C. Richardson, *The Debate on the English Revolution* (Manchester, 1998); T. K. Rabb, 'Revisionism Revised: Two Perspectives on Early Stuart Parliamentary History', *Past and Present*, 92 (1981), 55–78; Richard Cust and Ann Hughes, 'Introduction: After Revisionism', in Richard Cust and Ann Hughes (eds.), *Conflict in Early Stuart England* (New York, 1989), pp. 1–46; Peter Lake, Thomas Cogswell and Richard Cust, 'Revisionism and its Legacies', in *Politics, Religion and Popularity in Early Stuart Britain: Essays in Honour of Conrad Russell* (Cambridge, 2002), pp. 1–17.

[20] *PP 1610*, vol. II, pp. 98, 191 drawing on Tacitus, *Agricola*, 3.2; John Rushworth, *Historical Collections* (London, 1721), vol. VIII, p. 662; Edward Hyde, *The History of the Rebellion and Civil Wars in England Begun in the Year 1641*, ed. W. Dunn Macray (Oxford, 1992), vol. I, p. 96; Charles McIlwain, *The High Court of Parliament and Its Supremacy* (New Haven, CT, 1934), pp. 76–7, 82–6, 140; David Hume, *History of England* (Boston, MA, 1892), vol. IV, p. 469; Henry Hallam, *The Constitutional History of England* (New York, 1978), vol. I, pp. 1–2, 46. S. R. Gardiner, *The History of England* (New York, 1901), vol. III, p. 36.

[21] David L. Smith, 'Politics in Early Stuart Britain, 1603–1640', in Barry Coward (ed.), *A Companion to Stuart Britain* (Oxford, 2003), pp. 233–52, at pp. 233–4; R. C. Richardson, *The Debate on the English Revolution Revisited* (London, 1988), p. 50; Howard Tomlinson, 'The Causes of War: a Historiographical Survey', in Howard Tomlinson (ed.), *Before the English Civil War: Essay on Early Stuart Politics and Government* (London, 1983), p. 16; J. S. Morrill, 'The Religious Context of the English Civil War', *Transactions of the Royal Historical Society*, 5th series, 34 (1984), 155–78, at 157. Recent writers have insisted on the integration of the religious and political explanations. D. Alan Orr, 'Sovereignty, Supremacy, and the Origins of the English Civil War', *History*, 87 (2002), 474–90, at 484, and Ethan Shagan, 'The English Inquisition: Constitutional Conflict and Ecclesiastical Law in the 1590s', *Historical Journal*, 47:3 (2004), 541–65, at 542.

[22] Though see Mark Kishlansky's recent attempt at rehabilitation, 'Charles I: A Case of Mistaken Identity', *Past and Present*, 189 (2005), 41–80.

result, placing the king firmly under the law, was confirmed by the trial and conviction of Charles Stuart for treason.

While acknowledging that Coke and other judges insisted on the importance of the liberties of the subject and the security of property, the book's major argument is otherwise contrarian. In 1614 when he addressed the new serjeants, Coke described the 'three adversaries' of the common law: 'wresters and perverters of the lawe', 'Romanists' and 'flatterers'. These enemies undermined the law itself: Wolsey, for example, had sought to establish the primacy of the civil law.[23] Coke's jurisprudence evolved as a means of reform to remedy or repulse these threats to the common law. The danger came less from the monarch above than from among Coke's fellow subjects below, who might plot the overthrow of the government or pervert the law and its process.[24] His complaint was timely. Coke echoed the concerns of many of his contemporaries about the litigiousness of their society, and the work of Christopher Brooks has revealed the outlines of the boom in litigation through which they lived. This growth followed a period of 'regeneration' of the common law and an expansion in the legal system generally.[25] These transformations left lawyers such as Coke to ponder the implications of the preceding decades of substantive and jurisdictional change.

Coke articulated the problems created by the expansion of English law using the language of uncertainty and corruption. The proliferation of legal resources, such as statutes, courts and law officers, often seemed to lack coordination and led to jurisdictional confusion, vexatious litigation, corruption among officers, uncertain law and the misuse of legal power by design or ignorance. Bayless Manning has referred to this problem in the

[23] IT Petyt MS 538/51, f. 136r.

[24] The importance of reform as a key dynamic in early Stuart history has drawn renewed attention; see Jonathan Scott, *England's Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge, 2000), pp. 114–35. An earlier generation explicitly rejected Coke's contribution to reform, White, *Sir Edward Coke*, p. 46n.1, though Donald Veall suggested that many of the mid-century reformers were influenced by Coke, in *The Popular Movement for Law Reform, 1640–1660* (Oxford, 1970), p. 99.

[25] J. H. Baker, *The Reports of Sir John Spelman* (London, 1978), vol. II, p. 23 *et passim*; also Baker, *OHLE*, vol. VI, pp. 3–52. See also Samuel Thorne, 'Tudor Social Transformation and Legal Change', in *Essays in English Legal History* (London, 1985) pp. 197–210, S. F. C. Milsom, *Historical Foundations of the Common Law*, 2nd edn (London, 1981), pp. 60–81. The rise in litigation is variously estimated to have been at least a sixfold increase in litigation in all the central courts. Christopher Brooks, *Pettyfoggers and Vipers of the Commonwealth* (Cambridge, 1986), pp. 48–74, and the revision of Robert Palmer, 'Litigiousness in Early Modern England and Wales', http://aalt.law.uh.edu/Litigiousness/Litigiousness.html (2014); Richard Helmholz, *OHLE*, vol. I, pp. 283–6.

present-day USA as 'hyperlexis'.[26] In Coke's time these behaviours reflected poorly on the common law, which was criticized as partial, uncertain or open to manipulation. Stephen White has described Coke's parliamentary efforts in the 1620s to remedy some of these grievances, especially his concern that monopolists and patentees used their legal authority to pursue predatory schemes. This book extends White's survey backwards and argues that though much has been written about Tudor despots and absolutist Stuarts, Coke was similarly preoccupied with the abuse of legal power by private individuals. Their misconduct and its everyday consequences affected confidence in the law as an impartial, public benefit.[27] This confidence involved more than a trust reposed in the integrity of the judge and the work of the law officer.[28] As Stephen White has written, people acquired confidence through the knowledge of the actual working of the law, the behaviour of legal officers, and through the enforcement and finality of judicial decisions.[29] Crucially, such confidence was constantly tested by outcomes and the perception of their fairness.

From the vantage of Coke and others at the apex of the legal system at the end of the sixteenth century, this confidence was under threat. Problems of loyalty and allegiance raised by the Elizabethan Reformation undermined obedience to the law. The confessional context shaped Coke's jurisprudence in crucial ways, most notably by placing into relief his commitment to monarchy, as the Tudor–Stuart state faced existential challenges from war, Catholic conspirators and even Protestant nonconformists. In these years Coke helped to continue the religious reform of the Tudor state, writing to uphold the legality of its break from Rome, while developing a draconian treason law to defend the government. Along with other common lawyers, Coke's actions were informed by their interpretations of the history of the Reformation, in which the common

[26] Bayless Manning, 'Hyperlexis, Our National Disease', *Northwestern University Law Review*, 71:6 (1977), 767–82. The term has also been used by Steve Hindle in *The State and Social Change in Early Modern England, c. 1550–1640* (Houndmills, 2000), p. 89. See also Cromartie, *Constitutionalist Revolution*, p. 180. Previous accounts have tended to treat the misuse of legal power as an anomaly either reflecting local rivalries or addressed by parliamentary action. Michael Braddick, *State Formation in Early Modern England* (Cambridge, 2000), pp. 88–9.

[27] White, *Sir Edward Coke*, pp. 22, 48n.12, 56–8.

[28] For a recent restatement of the importance of trust to the relationship between king and subject, see Howard Nenner, 'Loyalty and the Law: The Meaning of Trust and the Right of Resistance in Seventeenth-Century England', *Journal of British Studies*, 48 (2009), 859–70.

[29] White, *Sir Edward Coke*, p. 22.

law had protected the monarch from usurpations by the clergy and others long before the break with Rome. The context of confessional difference and treason prosecutions produced some of Coke's most strident claims for the authority of the monarch.

This commitment to royal power produced its own logic that increasingly compelled Coke to pursue his convictions and oppose the Crown's policies, if only to his own mind, to protect the monarch. Coke's strong claims for royal authority rested on an assumption of the queen's moral obligation to preserve and give justice to her subjects. As W. H. Greenleaf and James Daly have described the paradigm, her power was derived from God, distributed to the judicial and administrative apparatus, and then delegated to others.[30] The common law, Coke insisted, performed the justice-giving duty of the prince, and safeguarded the monarch and their moral obligations from those who misused the royal authority delegated to them. Coke justified his superintendence of other courts and the restraint of those who made use of royal authority not by asserting their independence from royal authority. Instead, Coke insisted that the King's Bench was the 'king's court', in which the monarch was presumed to be present, and the common law the most reliable defender of the king and his obligations. Paul Halliday has recently described this strategy as 'prerogative capture'.[31] This book examines Coke's arguments, demonstrating that he accepted that some prerogatives were beyond control and that the common law strengthened royal authority through its supervision of the ordinary prerogative. These ideas allowed common lawyers to proceed to limit the exercise of legal power by the monarch's subjects, while maintaining a genuine commitment to royal power.

These claims for the supremacy of the monarch were unstable in a chaotic system that demanded the moral exercise of power.[32] Judges, officials,

[30] Greenleaf did not believe that Coke adhered to these ideas and numbered him instead among the constitutionalists. W. H. Greenleaf, *Order, Empiricism and Politics: Two Traditions of English Political Thought 1500–1700* (Oxford, 1964), pp. 184–5; James Daly, 'Cosmic Harmony and Political Thinking in Early Stuart England', *Transactions of the American Philosophical Society*, 69:7 (1979), 1–41, at 22–31. Broader considerations of the political thought of the period include the following: Glenn Burgess, 'The Divine Right of Kings Reconsidered', *English Historical Review*, 107 (1992), pp. 837–61; Johann P. Sommerville, 'James I and the Divine Right of Kings: English Politics and Continental Theory', in Linda Levy Peck (ed.), *The Mental World of the Jacobean Court* (Cambridge, 1991), pp. 55–70; Sommerville, *Royalists and Patriots*, pp. 9–54.

[31] Halliday, *Habeas Corpus*, pp. 11–28, 64–95. R. W. K. Hinton suggested that the common law enhanced the king's authority, in 'English Constitutional Doctrines from the Fifteenth Century to the Seventeenth', *English Historical Review*, 75:296 (1960), 422–3.

[32] Daly, 'Cosmic Harmony', 10–11, 23–5.

commissioners and others were deputized to fulfil the sovereign's justice-giving role. But an assertion of the moral character of this legal power could combine in incompatible ways with the messy and idiosyncratic exercise of that power by those who administered and used the law. Perceptions of the corrupt or improper use of legal authority eroded confidence in the legal system and cast discredit onto the prince in whose name the actions were authorized and who, by the immunizing logic of the system, 'could do no wrong'.[33] This logic dictated that authority, coloured with the morality of the prince's duty to preserve and protect his subjects, must not be used oppressively.[34] The combination of private individuals delegated with royal power – what A. B. White termed 'self-government at the king's command' – created numerous junctions where self-interest and the public good competed, or were imagined to compete, and incentivized corruption.[35] Misuse of the law not only undermined faith in the legal regime, but also disrupted the coherency and integrity of a legal system that represented the moral exercise of the monarch's power.[36]

Instead, a commitment to the prince's central place in the legal system required an implicit assumption that the monarch would remedy problems arising from the misuse of the law. Where systemic legal wrongs were perceived to pass without reform the ruler's moral obligations resulted in weakness, rather than strength, as responsibility crept up the chain of power to associate with him or her. Coke urged that the common law, as the king's principal justice-giving forum, would ultimately oversee the appropriateness of the exercise of legal power and protect the sovereign from its misuse. Only the monarch, assisted in their judicial capacity in the House of Lords, would review its work.[37] Coke had seen at first hand, as an attorney-general and as a lawyer at the bar, the corrupt, mistaken or

[33] Sommerville, *Royalists and Patriots*, pp. 43–6; Janelle Greenberg, 'Our Grand Maxim of State, "The King Can Do No Wrong" ', *History of Political Thought*, 12:2 (1991), 209–28, at 211–12.

[34] For example, John Pym couched his accusation against Strafford in this language; John Rushworth, *Historical Collections*, vol. VIII, p. 104.

[35] Braddick, *State Formation*, pp. 35, 39.

[36] Linda Levy Peck makes this connection in a different context in 'Corruption in the Court of James I: The Undermining of Legitimacy', in B. C. Malament (ed.), *After the Reformation: Essays in Honor of J.H. Hexter* (Manchester, 1980), pp. 75–93; cf. Joel Hurstfield, 'Political Corruption in Modern England: The Historian's Problem', *History*, 52 (1967), 16–34.

[37] *Prohibitions Del Roy*, 12 Co. *Rep.* 63, 77 ER 1342. James Hart, *Justice Upon Petition: The House of Lords and the Reformation of Justice 1621–1675* (London, 1991); Allen Horstman, 'A New *Curia Regis*: The Judicature of the House of Lords in the 1620s', *Historical Journal*, 25:2 (1982), 411–22.

vexatious use of that power. But Coke's imagining of the law required that the king share a similar vision of the operation of legal power, a perspective lacking in James I. The king not only failed to grasp Coke's explanation of the role of the common law, but he held, alongside many of his subjects, concerns about its proceedings. Coke's aggressive personality exacerbated James's lack of confidence that the common law could remedy the abuses prevalent in the legal system, and led to the chief justice's undoing. This episode among many revealed that perspective was one of the most important brakes on reform. To Coke common law interference was a means to remedy abuse and uncertainty in the legal system, while to others the common law was itself a cause of insecurity.

These arguments contrast both with the general interpretation of Coke's thought and with the history of the common law developed since J. G. A. Pocock's study of English feudalism. His focus on ancient constitutionalism has prompted vigorous debate, but few have questioned the idea's linkage with opposition to the royal prerogative among common lawyers. Of key importance to this claim is the assumption that Coke and others insisted on the common law's immemoriality as a means to assert the law's autonomy and to bridle the king under the rule of law.[38] This assumption, Pocock claimed, was a hallmark of the common law 'mind', a mentality or a shared set of assumptions among common lawyers that was cultivated by their training in the Inns of Court and their professional practice.[39]

This narrative continues to inform studies on the emergence of the early modern English law-state. Recent writers have built on Pocock's analysis through contrasting characterizations of early Stuart political culture.[40] The polarity created by absolutists and constitutionalists is still the preferred explanation for political conflict under the Stuarts, reflected in the turbulence of an adversarial political culture and fears of an expansion of royal power. Following Pocock these accounts identify the common law as one of the principal restraints on the monarch's freedom of action. Lawyers such as Coke drew on the law's intellectual resources,

[38] Pocock, *Ancient Constitution*, pp. 46, 51. Now forcefully stated by John Phillip Reid, *The Ancient Constitution and the Origins of Anglo-American Liberty* (Dekalb, 2005), pp. 41–3.

[39] Examined in Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* (Cambridge, 2004).

[40] Burgess, *Ancient Constitution*, pp. 213–15; Sommerville, *Royalists and Patriots*, pp. 224–65; Cromartie, *Constitutionalist Revolution*, p. 237. Though neither paradigm may be sufficient; see Peck, 'Kingship, Counsel and Law', p. 83.