

## SIR EDWARD COKE AND THE ELIZABETHAN AGE

ALLEN D BOYER, STANFORD UNIVERSITY PRESS, 2003

Sir Edward Coke is a giant in Anglo-American constitutional history; he has thus far defeated all those who might have attempted a comprehensive biographical study. Born in Norfolk in 1552, Coke progressed from Trinity College, Cambridge, to the Inner Temple in 1578, and from there established a reputation as perhaps the foremost legal mind of his generation. Appointed solicitor-general and then attorney-general to Elizabeth I, he was appointed chief justice of the Common Pleas in 1606 and chief justice of King's Bench in 1613. Thereafter, his outspoken advocacy of English law fuelled a reputation as a 'great legal oracle' that was only strengthened by Crown efforts to 'rip up his former life', in the words of one contemporary, with his sacking from the Bench in 1616. Coke's participation in parliamentary debate in the 1620s, in which the Forced Loan and other unpopular fiscal measures were contested with reference to 'fundamental liberties' enshrined in *Magna Carta* and elsewhere in English constitutional culture, heightened his reputation, along with popular interest in 'monuments of the subject's liberties' garnered from his eleven *Reports*, published between 1600 and 1616, and from his four *Institutes* – the last three of which were only published during the Civil War with the breakdown of Crown censorship.

It is the latter part of this long and controversial career that has drawn most attention from historians. In Catherine Drinker Bowen's now badly-dated *The Lion and the Throne* (1957), which focused mostly upon court politics and Coke's professional rivalries, Coke's legal viewpoint is portrayed as fully formed. What was idiosyncratic about and what was typical about Coke as a leading lawyer of his generation has engaged generations of historians concerned with the coherence and currency of what John Pocock called the 'common law mind'. Here Allen D Boyer offers a genuinely fresh perspective on Coke's life and learning, by focusing his attention upon Coke's 'former life' in the years before 1603, relating his formative influences and experiences to the intellectual and personal characteristics which prevailed in later life.

Boyer's study of Coke's life and legacy with respect to the reign of Elizabeth I, the years in which Coke, in the author's words, 'acquired his learning' and 'set his course', involves some major scholarly challenges. First, the author has to make accessible Coke's legal formation, which was itself the source of Coke's massive

erudition and was declared comprehensible, by Coke himself, only by those trained in the English law. Second, Boyer has to find a place for Coke among two carefully argued and competing historical traditions. In the first, 'Whig' or 'neo-Whig' historiography he is a champion of constitutional liberties absorbed into British and American ideas of good governance. In the other, 'revisionist' tradition Coke's utterances and ambitions are more narrowly seated within the faction-ridden politics of the courts of Elizabeth and James I. Boyer's stated ambitions for *Sir Edward Coke and the Elizabethan Age* are to place him as a 'figure in a specific cultural landscape', militating against the typical emphasis upon 'conflict and controversy' in Coke's parliamentary and legal career with an eye to 'his ability to compromise and collaborate'. In this, Boyer attempts to remove Coke, who has carried singular weight in teleological views of early Stuart constitutional breakdown, from the exaggerations *pro* and *contra* which have beset previous interpretations of his life.

Boyer traces Coke's early life, putting flesh on the bones of 'young Ned Coke' as a Norfolk man of ambition, with some family connections and a desire to follow his deceased father into a legal career. Coke's career progressed in relation to a complex pastiche of clients and causes in which Norfolk's 'country-bred phalanx' of patronage was essential to his success, along with his qualities of 'bookishness, tightfistedness, the determination to rise, the readiness to see others fall'. While he obviously had little choice but to engage in the cut and thrust of local politics if he were to rise in society, Boyer shows that the law was always the vehicle through which Coke made his presence felt.

The chapters devoted to Coke's legal method and learning are in many ways unsurprising, quoting judiciously from voluminous and careful scholarship on this subject. Boyer places most emphasis upon the symbiotic relationships at work between a judge, received legal wisdom, and courtroom process in Coke's 'half-hearted' theory of English law – half-hearted, for Boyer, because Coke's abiding interest in legal practice dominated his intellectual framework. Boyer sees Coke as less mesmerised by the selective material from which he constructed his history of English legal supremacy, and more calculating about their political and propagandistic purposes as 'ideas were pressed into the service of a political agenda'. He concludes that Coke willingly adopted 'radical, unsupportable arguments' (arguments which intimidated and infuriated his detractors in later years) armed with the 'energetic pragmatism of Tudor law, with its steely desire to measure judicial decisions by state policy'.

Breaking fertile and interesting ground, Boyer places new emphasis upon religious issues in Coke's formative years at the bar. Noting his defence of Puritan preacher William Flemming against open attack from the 1583 Norfolk assize judges, he pursues Coke's characteristic willingness to pursue legal arguments into potentially-damaging controversy. Aligning Coke's legal writings with Elizabeth's first Archbishop of Canterbury, Mathew Parker, who argued that a 'primitive' English church had resisted Papal intrusion, Boyer finds Coke's arguments for the untarnished descent of 'primitive' English law full of wishful thinking. Drawing

from the ideas of Parker, Coke becomes a prominent spokesman of what Boyer rightly terms the 'pathology' of 'immemorial custom'. Elsewhere Boyer emphasizes Coke's associations, extending from his favourite sister Anne and her husband Francis Stubbes, with Puritan circles. Though no Puritan himself, Boyer suggests that Coke 'vaguely but regularly gravitated towards causes which were strongly Protestant'. Here the author draws parallels between the dissenting tendencies of lawyers and Puritans – perhaps gentler and subtler, but tending to the same 'revolutionary implications' (in Boyer's own words) suggested in the work of Margaret Judson and more recently by others such as Wilfrid Prest.

An effective and often vitriolic agent of Crown interests in his years as solicitor-general and then attorney-general, Coke served in the front line of the Queen's defence against the perceived threat of Papistry, and against those unfulfilled and embittered courtiers who plagued her last years. Unlike Sir Richard Hutton or Sir James Whitelocke Coke left no distillation, in journal or common place book, of his private views – although his tendency towards personal reflection in voluminous published and unpublished law reports have always provided fertile ground for historical inference. Guided by the strengths and weaknesses of the evidence which attests to his role, Boyer's Coke is not always as present in the story as one would like in the chapters on his Crown service in the 1590s. Through the new emphasis Boyer gives to his early life as an orphan of modest beginnings, Coke's can be seen as preeminent among the 'rising' barristers who grew their wealth and influence through the legal and parliamentary machinery of Westminster. What comes through clearly is his sensitivity towards the status of the law and thus his own status, both of which drew measured and at times caustic criticism from those around him.

This is a good book, carefully researched and written in an accessible and engaging style. It integrates the best recent scholarship which brings light to bear upon the historical milieu in which Sir Edward Coke rose to prominence. By ending his study in 1603, Boyer avoids some of the most difficult areas of historical debate about Coke's reputation, a reputation both developed and assaulted under James I and Charles I in an atmosphere of growing political and ideological distrust. Coke deserves a second installment from the author, taking him on from the Elizabethan era in which he made his name into the complex and shifting political landscape of the early Stuarts.

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