

# Sir Edward Coke: Royal Loyal Servant, Royal Favorite

by Al  
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Great cases make bad law, Justice Holmes remarked.<sup>1 2</sup> Similarly, it might be said that scenes of high drama make for dubious biography. In the long career of Sir Edward Coke, there are certain set-piece scenes upon which the eyes of biographers have lingered. There are the scenes of treason prosecutions, the trial of Sir Walter Raleigh and the Gunpowder Plotters; there are the speeches in the House of Commons; there are the scenes of professional quarrels with Sir Francis Bacon and domestic quarrels with Lady Elizabeth Hatton; and there are explosive disagreements with King James I. These scenes were colorful and intense; they were laden with historical consequence. They cannot be ignored, and they should not be. Yet the dramatic episodes in which Coke participated have too often lent themselves to a perspective that frames his long career in terms of continuing conflicts. Too often, in particular, Coke is remembered for his conflicts with James I and Charles I. And too often, those conflicts are discussed in political terms. They are framed in terms of Coke's defending the common law, or asserting judicial independence, or resisting royal absolutism, or challenging royal prerogative. That perspective has a place in Coke's biography. With his energy, obstinacy, and intellectual vanity, Coke was prone to quarrels – political, professional, and personal. But Coke's story is not a mere chronicle of controversy. Nearly always, the confrontations ended in compromise. The disagreements did not prevent Coke's rendering loyal service to the crown. Coke served for seven years as Chief Justice of Common Pleas; he served fourteen years as Solicitor-General and Attorney-General. He served three years as Chief Justice of King's Bench; he served seven years as a member of the Privy Council.

<sup>1</sup> *Northern Securities Co. v. United States*, 193 U.S. 197, 400-401 (

1904).

2 Coke was appointed Solicitor-General in June 1592, promoted to Attorney-General in June 1594, and was raised to the Common Pleas bench in June 1606. In October 1613 he was named Chief Justice of King's Bench, a position he held until he was removed in November 1616. Named to the Privy Council in October 1613, he was removed in June 1616, restored in September 1617, and served until December 1621, when he was sent to the Tower, his independence during the Parliament of 1621 having provoked James.

In the best-remembered of the confrontations between Coke and King James, there is a peculiar historical irony. This was indeed an explosive scene, with the chief justice lecturing the king and the king waving his fist at the chief justice – but the confrontation was the friction of a working relationship. It showed the frustration that arose of the demands that James placed on Coke as a counselor, the conventions that Coke insisted that the king observe, and the pressure under which the two men were working. **Coke as Servant of the Crown** In the early years of King James's reign, Coke's value to the crown lay in his long experience with the English land law and his energy as an advocate. As an expert on tenures and estates, Coke rendered yeoman service to his king. The crown was engaged in a campaign to wring money out of its estates – in particular, out of its copyhold tenants. The process had begun under Elizabeth, but was pursued with a new energy under James.

The Crown, after all, was still the nation's largest landowner, and the income from the royal demesne was still important in supporting the state. While the Crown had certain advantages over the private landowner . . . the problems it faced were common to all landowners – of eradicating custom, increasing fines, and if possible converting customary rents to market rents in the face of tenant resistance.<sup>43</sup> Increasing revenues from the royal estates preoccupied the greatest of the Lord Treasurers who served King James. Early in the reign, the earl of Dorset ordered a survey of the crown lands, sending out officers to identify what the crown held, verify on what terms the tenants held them, and recommend ways in which income might be increased. Dorset's goal was to enfranchise tenants – to persuade them to purchase the freehold rights to the lands that they already held as copyholders. Dorset's successor as Lord Treasurer, the canny

<sup>3</sup> Richard W. Hoyle, "'Vain Projects': The Crown and Its Copyholders in the Reign of James I," in *English Rural Society 1500-1800: Essays in Honor of Joan Thirsk*, ed. J. Chartres & D. Hey (Cambridge: Cambridge University Press, 1990), 73-101, 73.

<sup>4</sup> Hoyle, "Vain Projects," 79-81.

Robert Cecil, subtly orchestrated a shift in government policy. Cecil's plan was to collect rents and entry fines on terms governed not by custom, but

by the market value of the land. Dorset and Cecil were undertaking to shift the inertia of decades, decades in which Queen Elizabeth's stewards had laxly administered the royal estates – rarely raising rents, routinely ad-

mitting tenants, seldom insisting on the crown's full rights. King James's ministers meant simultaneously to replace entitlements ordained by custom with values set by the market, to put unaccustomed rigor and integrity

into royal administration, and to achieve these goals in the face of popular reluctance and legal resistance. The government's hope of increasing its revenues lay in the details of copyhold law. Tenants could be pressured into paying higher fines or buying their freeholds only where fines were arbitrary (*i.e.*, variable) and their copyholds were not inheritable tenures. The government could count on enhancing its revenues

only where it could establish that its records were more credible than a tenant's contrary claim of customary right and where its fines remained reasonable. When King James acceded to the English throne, the relevant law of copyhold – or, rather, the law of how copyholders' rights could be enforced in the royal courts – was a new body of law.<sup>6</sup> In this area, Coke was one of the realm's acknowledged author-

ities. The cases that had defined the rights of lord and copyholder included many that he had argued as a practicing lawyer. No one was better able to opine whether a fine was colorably reasonable, whether a conveyance to *sibi et sui*

or to *sibi et heredibus* conveyed an inheritable estate, or whether a copyhold fine was arbitrary or fixed (which typically involved balancing a dubious claim of custom against ambiguous documentation).

<sup>5</sup> The judges of Queen Elizabeth had extended the protection of the royal courts to the copyholder. While this has been generally recognized, by such scholars as Eric Kerridge and Charles Gray, rather less attention has been paid to the fact that "recognizing the rights of the copyholder" arrogated to the common-law courts a new jurisdiction, one that promised an infinite complexity and number of disputes, than

ks the willingness of tenants to resist threatened exactions by their feudal lords (rather on the model of pikemen standing off cavalry). Nor has due emphasis been paid to the speed with which the courts constructed a sophisticated law of copyhold, one that extended a surprisingly broad degree of protection to the copyholders.

<sup>6</sup> R.W. Hoyle, "Tenure and the Land Market in Early Modern England: Or A Late Contribution to the Brenner Debate," *Economic History Review* (2d Series) 43 (1990): 1-20, 7-8 (importance of variations in conveyancing language); Sir Edward Coke, *The Compleat Copyholder* (1630), Secs. 49, 56 (conveyancing language, reasonableness of fines); *Hobart and Hammond's Case*, 4 Co. Rep. 27b (K.B. Mich. 1585) (reasonableness of fine to be determined by justices or jury;

7 As attorney-general, Coke worked closely with the Lord Treasurer. Dorset, twenty years before, had been the same Lord Buckhurst to whom Coke had dedicated his first published report, a manuscript report of the decision in *Shelley's Case*. With Cecil, through whose family's patronage he had risen in government service, Coke's working relationship was even closer. He indefatigably advised on the legal end of matters of state, even coordinating with him certain trial strategies followed in the prosecutions of the Earl of Essex and the Gunpowder Plotters. Coke's authority – the reputation that he possessed, the power that he could exercise – served the crown well. Coke's involvement with the royal estates, the record suggests, was so important that it permanently shaped the form of his *Reports*. Routinely, Coke consulted Cecil in determining what cases would be

nonpayment of unreasonable fine does not forfeit copyhold); and *Bunting v. Lepingwell*, 4 Co. Rep. 29a (K.B. Mich. 1594) (conveyance to *sibi et suis* may create copyhold of inheritance upon proof of special custom).

7 In 1606, in *The Prince's Case*, 8 Co. Rep. 1 (1610), one of the first cases decided after his arrival on the Common Pleas bench, Coke dealt the king a favorable decision. *The Prince's Case* addressed the status of certain manors that Queen Elizabeth had granted away, out of the Duchy of Cornwall. Coke held that if a manor had been added to the Duchy of Cornwall by statute, it could not be granted away, out of the Duchy, unless there was a statute to authorize the grant. This made it possible for James's son Henry, as Duke of Cornwall, to recapture a number of manors that had been granted away during the final years of the reign of Queen Elizabeth. Graham Haslam, "Jacobean Phoenix: The Duchy of Cornwall in the Principates of Henry Frederick and Charles," in *The Estates of the English Crown 1559-1640* (ed. R.W. Hoyle (Cambridge: Cambridge University Press, 1992) 263-396, 267. Robert Cecil loyally surrendered immediately a manor that he had acquired in such circumstances, *id.*, and in 1611 a news writer noted the Prince's recovery of other estates from Sir Edward Cary and Sir Warwick Heale. *Collected Letters of John Chamberlain*, ed. Norman McClure (Philadelphia: American Philosophical Society, 1938) 1: 319 (27 Nov. 1611). As late as the Parliament of 1624, when Coke's role as a spokesman and man of affairs led his being named to numerous committees of the House of Commons, on one occasion at least, when the committee on Magna Carta was schedu

led to meet at the same time as the committee on the Duchy of Cornwall leases, Coke attended the meeting on Duchy leases. Chris R. Kyle, "Attendance, Apathy, and Order? Parliamentary Committees in Early Stuart England," in *Parliament at Work: Parliamentary Committees, Political Power, and Public Access in Early Modern England*, ed. Chris R. Kyle & Jason Peacey (Woodbridge, Suffolk: Boydell Press, 2003), 43-58, 56-57.

printed in new parts of his continuing *Reports*

.<sup>98</sup> The Fourth Part of Coke's *Reports*

, published in 1604, includes a section on the law of copyhold, 25 cases in all. None of these decisions were recent: the newest was from 1600, ten antedated the Armada, and *French's Case* had been decided as long ago as 1576. Coke had reached back into his notebook to locate decisions in an area of increasing legal importance. Given his work with Dorset and Cecil, it is unlike

ly that Coke ignored the government's interest in its copyhold estates in selecting these decisions for publication. By putting these cases into print, Coke was putting his imprimatur on what they represented. He was making available a set of precedents upon which the law of copyhold would be based – which also meant, the terms upon which the reorganization of the crown's copyhold estates would be worked out. At about the same time, possibly as early as 1604, Coke had gone beyond the simple effectuation of the government's legal business. He had turned

ned his knowledge of medieval law toward the active shaping of government policy.

He prepared an outline "of the antiquity of wardships," tracing this

institution far into the English past (perhaps the earliest instance of his reliance upon legal history). In the manner of Lord Burghley, he carefully worked out the profits

. There are at least three occasions on which Coke consulted Cecil over material that went into the *Reports*. Historical Manuscripts Commission, *Calendar of the Manuscripts of the Most Honorable the Marquess of Salisbury . . . Preserved at Hatfield House* 156: 235 (undated, but written between 13 May 1603 and 20 Aug. 1604) (discussing materials for the Fourth Part of the Reports); C.S.P.D. 7: 210 (in which Coke notifies Cecil that he has almost finished "his book, proving that the king's rights to the jurisdiction ecclesiastical throughout his realm is declared by ancient laws, and not merely by those of Henry VIII" – almost certainly the report of *Cawdrey's Case* that would be printed in the Fifth Part of the Reports) (April 1605)

; Historical Manuscripts Commission, *Calendar of the Manuscripts of the Most Honorable the Marquess of Salisbury . . . Preserved at Hatfield House* 20: 238 (11 Sept. 1608) (discussing an unidentified "case of the entails," which Coke notes "I mean that it amongst others shall be published with the great case of the *post nati*," which appears to be *Beresford's Case*

, 7 Co. Rep. 41a, the penultimate decision included in the Seventh Part). In this same letter Coke informs Cecil that he has conferred with the Attorney -

General and they have concluded that a case “concerning the double ignoramus” “will not produce any such effect as you expect, and therefore think that it should not be offered in public.” This may be *William House’s Case*, Cro. Jac. 40 (decided in the Court of Wards in Michaelmas term 1604).

9 SP 14/24/103, “Of the Antiquity of Wardships.” Obviously, this document may have been prepared to support the government’s case for the Great Contract. However, Conrad Russell has conjectured that this document may date to as early as 1604. A document demonstrating the antiquity and profits of the Court of Wards would have been admirably calculated to demonstrate the uniqueness of the common law’s rules on inheritance and the immediate value to the king of preserving this institution. Conrad Russell, “Topsy and the King: The English Common Law, King James VI and I, and the Union of Crowns,” in *Law and Authority*

10that the crown derived from this and other feudal incidents: £33,000 annually from the Court of Wards, £6,000 from licenses to alienate, £2,000 from homages. Against this, Coke balanced the benefits that would accrue to both crown and subject were all tenures by knight service converted to socage. In a second memorandum, Coke proposed that all tenures by knight service be converted to socage, and that "all wardships and primer seisin, fines for alienation, and respect of homage to be utterly taken away." He then went beyond a call for reform; he elaborated in detail a procedure for bringing about these changes – how commissioners would be chosen for each shire, how tenants would compound for a year's rent in exchange for a ratification of the agreement under the great seal, how the court of wards was to be retained as a transitional mechanism.<sup>11</sup> During the Parliament of 1610, Coke appeared before the House of Lords, to deal with certain thorny issues that lay at the heart of the Great Contract. In exchange for a guaranteed annual income, the crown proposed to part with some of its feudal rights. It proposed to split off ancestral homage and ordinary homage, while retaining coronation homage "in respect of [the king's] honor." Socage was to be retained, but the crown proposed to part with its right to license alienation by a tenant. The issue was extraordinarily sensitive. What the government proposed was to unbundle the king's sovereign prerogative from the ordinary prerogative, preserving one while abolishing the other – and, at the same time, to alter the king's feudal rights without affecting the rights of all other Englishmen who held feudal lordships. Wardship and primer seisin were rights held by subjects as well as by the sovereign. Under the Great Contract, wardships and alienation were to be characterized as part of the king's ordinary prerogative, and the king proposed to traffic in them. With equal familiarity, other Englishmen had done much the same, in buying and selling manors. Nonetheless, it was difficult to explain why a statute that allowed the king to part with his feudal rights would not broadly undercut the rights of all other feudal lords.

in *Early Modern England: Essays Presented to Thomas Garden Barnes*, ed. B. Sharp & M.C. Fissel, (Newark, Delaware: University of Delaware Press, 2007), 64-76.

<sup>10</sup> SP 14/24/106.

<sup>11</sup> It was clear to all that the proposed statute could apply to copyhold land. *Proceedings in Parliament 1610*, ed. Elizabeth Read Foster, 1: 202-303 (31 March 1610).

Members of the Commons were quite aware that in aiding the king they might harm their own interests. Attempting to soothe them, Robert Cecil observed that the statutory solution for which he was asking would still allow subjects to exercise wardship rights over their own tenants. The government called in its most venerable legal counselors to explain that the statute would not affect the feudal rights of anyone other than the king. Lord Keeper Egerton framed the issue, and then adroitly stepped away from the question. Chief Justice Fleming of the King's Bench assured the Lords that no subject's rights would be affected, but could offer few details, beyond the assurance that the judges would not let this happen.

To explain its proposal, it was to Coke that the government turned.<sup>1312</sup> Coke explained to the Lords that the king could part with rights by statute, just as he could by letters patent. He cited at least three statutes from the reign of Edward III to prove that statute could limit the prerogative. He looked back to Magna Carta, and before, to argue that license of alienation had arisen by inference from an act of parliament, and then, conversely, that license of alienation could thus be abolished by an act of parliament.<sup>14</sup> This was fairly sound law –

or, at least, it offered a plausible basis in law for exchanging wardships for a guaranteed annual income. Yet legal reasoning was not enough to carry the day. The Commons did not trust the king. As John Cramsie has illustrated in his book *Kingship and Crown Finance*

, the ultimate obstacle was that the parties could not find an ironclad way to bind the crown to the Great Contract. The Commons suspected that the ulterior motive of eventually reviving wardship and other feudal incidents underlay the king's insistence that he was retaining some of his prerogatives as a "point of honor." They suspected that the king was trying to retain some of his feudal rights so that he might find a way to bring back what they had bought. "Our House thought," a member wrote, "that they could not safely contract for the tenu

res unless the same were wholly extinguished and destroyed in the roots.  
" The final problem

<sup>12</sup> *Proceedings in Parliament 1610* 1: 211-214 (20 April 1610).

<sup>13</sup> *Proceedings in Parliament 1610* 1: 64-65 (20 April 1610); 1: 210-212 (23 April 1610).

<sup>14</sup> *Proceedings in Parliament 1610* 2: 70 (23 April 1610). Another commentator observed that the Commons had a "fear of being circumvented in their contract; because they hold this matter of the wardship to be so fast annexed to the king's prerogative, that it cannot be wholly

<sup>15</sup>With regard to what the king off

ered in the Great Contract, the issue that Coke could not overcome, was

not legal; it was political.

### **Coke as Favorite**

As a counselor and advocate, as master of the common law, Coke had few equals. As a politician

he lacked the smoothness necessary to become a courtier of the first rank. He did not pretend to work in perennial harmony with other servants of the crown; and, when he differed with the crown itself, he did not

trouble to hide that disagreement. If he doubted a royal suggestion or begrudged a concession, the reluctance showed. On the other hand, even if Coke occasionally demonstrated his obstinacy, King

James could accept a great deal of independence from his servants. In Scotland, the breadth of King James' tolerance had been shown in his handling

of men like the earl of Huntly. Huntly showed every sign of being a turbulent and overmighty subject. He plotted with Spanish agents, in 1589 he orchestrated an abortive rebellion, and in 1594 his

men fought a pitched

battle against royal forces. The king disciplined Huntly

with a brief imprisonment and a few months in exile. Nonetheless, in the same span of years, the king preserved Huntly's estates, and even raised him from earl to the rank of marquess. Despite

his derelictions, Huntly never quite lost his status as a royal favorite. Clearly, a king who could stay on familiar terms with a rebellious

Scottish laird could expect no real problems in controlling with a hard-headed English judge. That James and Coke worked together for so long is explained not

only by Coke's willingness to serve (together with a dual capacity for stentorian assertiveness and sotto voce compromise), but

also by the king's administrative latitudinarianism. Furthermore, it was not only from James that a servant of the crown might find royal favor – and Coke enjoyed such grace as well. The affinity that made a

favorite was lacking between Coke and his king, but it unfailingly endured between Coke and James's queen, Anna of Denmark.

separa

ted from it, but by the extinguishment of the tenures whereby he doth hold them." Cra msie, *King ship and Crown Finance*, 106.

<sup>15</sup> Ruth Grant, "The Brig o' Dee Affair, the Sixth Earl of Huntly, and the Politics of the Counter-Reformation," in *The Reign of James VI*, ed. Julian Goodare & Michael Lynch (East Linton, East Lothian: Tuckwell Press, 2000), 93-109.

<sup>16</sup> Anna was born into the Oldenburg dynasty. Anna was less flamboyant than the warrior kings and royal dukes for whom the Oldenburg family is remembered, but she could be equally formidable. Her forcefulness showed in a quiet intensity. She had moods and quirks, and to these there was often a disquieting edge. In Scotland, once, she had barred her door against her husband, during what might have been an assassination attempt. Another time – by accident, it was said – she shot and killed his favorite hunting dog.<sup>1817</sup> Anna had Hapsburg blood, and to that inheritance may be traced a certain capacity for splendor. She stored her money in jewels and she oversaw elaborate masques. James granted her some political power; she demanded more.<sup>19</sup> Soon after Anna's arrival from Scotland, Coke began to play his own role in the queen's household. To oversee the jointure property of Queen Anna, a new institution was created, the Queen's Court of Chancery. Coke was one of the three commissioners who sat on this panel. The records of the queen's jointure property are nearly all lost, Richard Hoyle has observed.<sup>20</sup> Nonetheless, there are signs that Coke's oversight was active. Coke exercised the power of appointing officers for at least one of the queen's manors, and at least one petition survives which is directed to the Lord Chief Justice, asking that he redress the wrong or injustice of the queen's "court of chancery" – apparently on the presumption that this fell within the chief justice's sphere of influence.

<sup>16</sup> Oxford Dictionary of National Biography.

<sup>17</sup> Ethel Carleton Williams, *Anne of Denmark* (London: Longman, 1970), 164-65.

<sup>18</sup> In January 1605, it was provided that whenever the king was out of London, the Privy Council was to meet with Anna on a weekly basis. John Cra msie, *King ship and Crown Finance under James VI and I* (Woodbridge, Suffolk: Publications of the Royal Historical Society, 2002), 56, citing SP 14/12/13, fo. 17r.

-18 r (9 Jan. 1605).

<sup>19</sup> Hoyle, "Vain Projects," 75.

<sup>20</sup> See, e.g., CSPD 7: 45 (9 Oct. 1603) (Coke and Egerton are two of three commissioners appointed to Anna's Council; C.S.P.D. 7: 52; (4 Nov. 1603) (Coke

extends offer to his friend Michael Stanhope of an appointment as deputy steward of the queen's manor of Walton-cum-

Trembley). At the end of 1605, an assessment was made

of the queen's jointure and her debts, "with a plan for the distribution of her income." CSPD 7: 273 (23 Dec. 1605). *See further*

*N.R.R. Fisher, "The Queenes Courte in her Councill Chamber at Westminster,"* *English Historical Review* 108 (1993): 314-37.

In 1603, when Anna became queen, Coke had served a long series of apprenticeships with forceful female personalities. There had been his mother, who owned her own law-books; Lady Anne Gresham, Sir Thomas Gresham's widow, his most prominent client during his first years at the bar; his mother-in-law, Anne Bedingfield, who taught him his first lesson in charity; Queen Elizabeth, whom he had served for a decade as solicitor-general and attorney-general, for whom he had purchased jewels and who twice had made

him burst out in tears. Coke may have found something familiar in dealing with another strong-willed lady of title. And for her own part, Anna may have seen something familiar in the Attorney-General – a personal loyalty that was part of an assertive personality, something she had found in her brother Christian. In England, King Christian IV of Denmark is remembered for the carousing that marked his state visit in 1606, a bacchanal five weeks in length, during which both courtiers and masquers fell over drunk.<sup>2221</sup> However, in Denmark, where he reigned for nearly fifty-two years, Christian is recalled as a national hero – a robust, active,

learned king, a patron of universities and builder of cities, a Baltic warlord who fought unflinchingly in defense of his realm. "A plucky, hard-drinking man of grim wit and great resource," the Britannica says of him. He is recalled with the familiar fondness accorded to Henry VIII, and owed some of his popular reputation (as well as the discord amid which his reign ended) to having sired at least 24 children with a series only of three wives. Anna had ample opportunity to see that King Christian's vigor always threatened to outstrip his judgment. Nonetheless, she prided herself on her royal brother and saw him as the guarantor of her status and rights. Whenever Christian visited England, or threatened to visit England, the rumor flourished that Anna had summoned him to straighten

n out her problems. In Coke, Anna would have seen a servant whose loyalty was unquestioned and whose advice served her well. She would have seen in him a man on her brother's model – a lawyer whose energy often threatened to overcome his judiciousness, and who had fathered 12 children with two wives.

<sup>21</sup> A coded echo of this carousal is to be found in Coke's remark, ostensibly of antiquarian interest, that the Danes introduced drunkenness into England. 3 Inst. 200.

<sup>22</sup> In late 1614, not long after the death of the Earl of Northampton, Christian appeared in London, paying an unannounced call. It was rumored that Anna had summoned her brother to teach the late earl to show her due respect.

<sup>23</sup> In the greatest crisis as queen and mother, Coke took Anna's side with a forcefulness that even Christian might not have matched. In the autumn of 1615, Coke investigated the poisoning of Sir Thomas Overbury in the Tower of London. The murder of Overbury was ascribed to Robert Carr, Earl of Somerset, James' favorite, who had risen by relying on Overbury's advice, and was rumored to have killed his advisor in hopes of rising even higher. Adding an edge to the scandal were further rumors, less credible but widely credited nonetheless, that Somerset (or his countess, or his mentor the Earl of Northampton) had also poisoned Henry, Prince of Wales – James's heir and Anna's son.

In the hundreds of examinations that Coke took personally, in the leads that he chased until they became dead-ends, in the suspicions he voiced even though he could not prove them, Coke dug ferociously into the question of Prince Henry's death.<sup>24</sup> His queen rewarded him. Among the "rarities" that Coke possessed at the end of his long life was "a ring set with a great diamond cut with facets, given to Sir Edw. Coke by Q. Anne for the discovering of the poisoning of Sir Thomas Overbury, etc."<sup>25</sup> That *et cetera* deserves italics – even underlining. Coke knew and used this abbreviation as a coded reference, a signal that "doth imply some other necessary matter." That something lay behind every *et cetera* was a topic on which Coke was insistent, perhaps obsessive; in his own masterpiece, *The Commentary Upon Littleton*, he devoted a paragraph to indexing the 119 occasions upon which *&c* appeared in Littleton's *Tenures*. Coke had discovered the truth about the poisoning of Sir Thomas Overbury; that was universally known; it could be mentioned in describing a jewel he prized. Coke's reference to *&c* is something different – almost a personal memorandum. It offers a subtly coded statement that Anna had rewarded him for investigating the poisoning of someone beyond Overbury. Coke wore around his neck, on a chain, the ring that Anna had given him. In other ways her support was more tangible. In 1616, when Coke was being

<sup>23</sup> Anne Somerset, *Unnatural Murder: Poison at the Court of James I* (London: Weidenfeld & Nicholson, 1997) is the most recent work on the Overbury poisoning.

<sup>24</sup> C.W. James, *Chief Justice Coke, His Family and Descendants at Holkham* (New York: Charles Scribner's Sons, 1929), 318-19.

<sup>25</sup> Sir Edward Coke, *Commentary Upon Littleton* 17 a - 17 b (1628).

<sup>26</sup>questioned by his fellow Privy Councillors, Anna raised her voice on his behalf. Unspecified “uncivil carriage” was offered to Coke by the Lord Chancellor’s men, “whereof the queen taking notice, his majesty the king . . . sent word that he would have him well used.” In 1617,

when Coke and his wife were fighting in public over the marriage of their daughter, it was at the queen’s behest that a Privy Council warrant issued in Coke’s favor.<sup>2827</sup> This was the favor that eventually led to Coke’s return to political life. **The Jacobean Fulcrum: 1607 -**

**1610** At the same time that King James’s servants were engaged in surveying the royal estates, the king had involved himself in a broader and grander project. He had embarked on a project to ascertain and validate his rights as a monarch – something very much like a survey of the entire realm. Between 1607 and 1610, James devoted himself to this task with notable energy. The king was moving to demonstrate a firm control of the royal patrimony. As early as the fall of 1604, James had instructed Egerton not to pass under the Great Seal any further conveyance, until the Act of Entail that he contemplated had been passed. In 1609, the king created what was labeled as an entail of the crown’s estates, an agreement not to transfer away certain properties without consent of Privy Councillors.<sup>29</sup> James sought to ascertain the crown’s rights over the royal forests. Only in this early period, it has been considered, did the crown’s attempt to manage its forest lands bear any resemblance to a principled policy.

<sup>26</sup> McClure, *Chamberlain Letters* 2: 29 (26 Oct. 1616):

<sup>27</sup> McClure, *Chamberlain Letters* \_\_: \_\_ (July 17, 1617).

<sup>28</sup> Francis Egerton, *The Egerton Papers* (London: Camden Society Publications, 1840) 12: 396-97. In May 1609, the king signed an indenture by which he engaged not to part with lands specified therein without the consent of a certain number of Privy Councillors. C.S.P.D. 7: 509-510 (May 8, 1609).

<sup>29</sup> Philip A. Petit, *The Royal Forests of Northamptonshire* (Northampton, Engl

and: The Northamptonshire Records Society, Vol. 23, 1968). *The Case of Leicester Forest*, decided in 1607, was one of the centerpieces of this effort. Cro. Jac. 155 (Easter 1607). The decision is also reported as *The Case of Forests*, 12 Co. Rep. 22. In this decision, the assembled judges of England ruled on several important economic rights: the rights of those who pastured sheep or kept rabbits inside

Parliament had failed to effectuate by statute the union that James had desired between England and Scotland. Unhappy but undaunted, the king and his counselors set about to obtain a second-best alternative, by bringing a test case before the judges. *Calvin's Case*, or *The Case of the Post-Nati*, when it was decided in May 1608, set forth by what right the Scottish and English people showed allegiance to a monarch who had united their respective crowns. This offered a practical, evolutionary solution to the problem of unification. It also articulated and gave judicial imprimatur to an acceptable theory of by what right James had come to hold the English crown. The years 1608 and 1609 were the period in which the government pursued an inquiry into waste and corruption in the navy.<sup>31</sup> They were the years in which King James addressed himself personally to the problems of the realm. He issued a series of proclamations on issues of significance: grain, forests and timber, foreign trade, piracy, building in London, the starch industry, the alum industry, and the oath of allegiance.<sup>32</sup> In late 1608, with an advisory opinion from the judges, the king obtained a ruling that settled a jurisdictional dispute between the common-law courts at Westminster and the stannary courts in Devon and Cornwall. Having settled this jurisdictional issue, the king moved

forests, whether subjects who owned timber land within a forest could fell trees, and whether subjects who had parks within forests could enclose them. The case also addressed the perennial issue of whether purlieu-men, subjects whose land fell within the jurisdiction of the forest, could kill deer that came out of the king's woodland onto their property.

<sup>30</sup> Robert W. Kenny, *Elizabeth's Admiral: The Political Career of Charles Howard*, Earl of Nottingham 305-12 (Baltimore: Johns Hopkins University Press, 1970).

<sup>31</sup> These proclamations, and numerous others, were issued in 1608 and 1609. *Stuart Royal Proclamations: Royal Proclamations of King James I 1603-1625*, ed. J.F. Larkin & P.L. Hughes (Oxford: Clarendon Press, 1973). See further Thomas G. Barnes, "The Prerogative and Environmental Control of London Building in the Early Seventeenth Century: The Lost Opportunity," 58 *California Law Review* 58 (1978): 1332-63.

<sup>32</sup> 8 Co. Rep. 1 (1606). The decision had the effect of sharply limiting the cases that

t stannary courts could hear and decide – limiting them to cases on the tin industry, between tinnors, or over lands within the stannary. Because the stannary courts were concentrated in Cornwall and Devon, this decision represented advance planning for the installation of Prince Henry as Duke of Cornwall. It could be foreseen that the new Duke might make new financial demands on the tenants of his duchy. The opinion of the judges eliminated one venue in which such demands might be resisted.

to another area of contention: the dispute between the common-law courts and the courts of the Church of England. Beginning in the fall of 1608, the king sponsored a series of conferences between the Church and the bench. At these conferences, the two Chief Justices traded accusations with Archbishop Bancroft and his stable of civil lawyers.<sup>34</sup> Across the Atlantic, orders went out to assert the king's rights on the American frontier. The officers of the Virginia Company were supplied with a copper crown and directed to place it upon the brow of a man whom James regarded as a subordinate ruler: Wahunsonacock, werowance of the Powhatan confederation. Captain John Smith was skeptical, and Wahunsonack was skeptical, reluctant, and distrustful – but a coronation ceremony was duly staged in the fall of 1608.<sup>35</sup> An issue of particular importance to the king was the authority that he possessed in the principality of Wales. With regard to Wales, the king pursued two test cases of great strategic importance. In early 1608, in a case involving the appointment of judges to the Court of Great Session in Wales, the king tested his prerogative power. Technically, the issue was whether judges in Wales could be appointed by letters patent (as the authorizing statute provided), or whether they could be appointed by royal commission (as the king had decreed). Behind this lay a constitutional question. In 1543, by Act of Parliament, Henry VIII had been given authority to legislate for Wales. The question brought before James to his judges was whether such

<sup>33</sup> Roland Usher, *The Rise and Fall of the Court of High Commission* (Oxford: Clarendon Press, 1913).

<sup>34</sup> Ivor Noël Hume, *The Virginia Adventure: Roanoke to James Towne: An Archaeological and Historical Odyssey* (Charlottesville, Virginia: University of Virginia Press, 1994), 213-220.

. There was a precedent: on the young chieftain Manteo, who had traveled to England with Raleigh's returning expedition of 1584, Queen Elizabeth had conferred the title of Lord of Roanoke.

<sup>35</sup> On the issue of James's concern with the powers of the Council in the Marches and the Four Shires Controversy, see generally Peter Roberts, "Wales and England After the Tudor Union," in *Law and Government Under the Tudors: Essays Presented to Sir Geoffrey Elton*, ed. C. Cross, D. Loades & J.J. Scarisbrick, 111-13

8 (Cambridge: Cambridge University Press, 1988); R.E. Ham, "The Four Shire Controversy," *Welsh History Review* 8 (1977): 381-400; and Penry Williams, "The Attack on the Council in the Marches 1603-1642," *Transactions of the Honorable Society of Cymmrodorion* 1 (1961): 1-22.

legislative power had been granted solely to Henry, or whether it had been inherited to other monarchs. A ruling that Welsh judges could be appointed by commission would be a ruling that James I possessed the powers granted to Henry VIII – and that confirmation was what James was seeking. The judges returned an answer that disappointed the king.

They ruled that the legislative authority granted to Henry VI II had been personal to Henry VIII.<sup>3736</sup> Unsatisfied and undaunted, James pursued the issue. In November 1608, he asked the judges for another ruling on his authority in Wales. This time, the question was whether, by an exercise of his prerogative, the king could extend the jurisdiction of the Council in the Marche

s of Wales over the four English shires that ordered on the principality.

On November 3, 1608, the king asked the judges for their opinion on this matter. The judges declined to answer; upon which the king spoke to them in anger. He denounced their insubordination and reminded them that they derived their powers from the crown. The king pres

sented the question, with Prince Henry at his side. He told the youth that “this concerneth you, and I hope you will lose no thing that is yours.” The king then denounced the judges for having issued prohibitions to the Council in the Marches, and reminded them that they derived their powers from the crown. Again the judges refused, but by this time their own self-

control was wearing thin. The Lord Chief Justice and Chief Baron, it was reported, “swelled so with anger that tears fell from them.”

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<sup>36</sup> *Justice In Wales Not To Be by Commission*, 12 Co. Rep. 48 (Hil. 1608), discussed at Peter Roberts, “Wales and England After the Tudor Union.” The issue was not unprecedented. In 1556, in *Hill v. Grange*, the judges had addressed the issue of whether Edward VI could succeed to his father’s rights under the statute 32 Henry VIII c. 34. Lorna Hutson, “Not the King’s Two Bodies,” in *Rhetoric and Law in Early Modern Europe*, ed. V. Kahn & L. Hutson (New Haven, Connecticut: Yale University Press, 2000), 166-98, 176-77.

<sup>37</sup> The conference is reported in Huntington MS EL 1763, summarized in Caroline Skeel, *The King’s Council in the Marches of Wales* (London: H. Rees, 1904), 144-145. To the king’s initial request, the judges replied that when such a case came before them judicially, they would resolve it then. Lord Keeper Egerton urged the judges to answer – *unavailing*. The king rejected a suggestion, made by Coke, that the ca

se of the Council's power should be referred to a jury. Pressing further, the king once again asked the judges for a ruling; and the judges yet again refused to provide an immediate answer.

<sup>th</sup>In the same fortnight – perhaps even in the same week – there was another meeting between the king and his judges in which tensions were equally elevated. This was the conference at which flared up the confrontation between King James and Sir Edward Coke that has caught so many biographers' attention. The conference, probably held on November 13, was ostensibly scheduled to address the issue of the ecclesiastical courts. It also ranged

across the king's request for a determination of his rights with respect to Wales – now a subject of heightened inflammability. Sir Julius Caesar reports that James stated, "he came not to make or hear orations. That he expected an answer from the judges after Tuesday touching the four shires whether in the jurisdiction of the Marches of Wales. This no less matter than robbing the Prince of Wales of his jurisdiction, if the

four shires be denied to belong thereunto."<sup>39</sup> The conference began with discussion of the prohibitions issued by the common law courts in matters of tithes. "Questions short. Deliberations long. Conclusions pithy," recorded Sir Julius Caesar. Then, inevitably, given the king's preoccupation, the discussion gravitated to the personal authority of the sovereign – which meant, the issue of Wales. Coke was soon quoting medieval precedents on the king's lack of power to make arrests and decide questions of title. As Coke wrote: <sup>38</sup>

Then the king said, that he thought that the law was founded upon reason, and that he and others had reason, as well as the judges: to which it was answered by me, that true it was, that God had endowed his majesty with excellent science, and great endowments of nature; but that his majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects; they are not to be decided by natural reason but by the artificial

<sup>38</sup> Lansdowne MS 16 0, fo. 423-24, quoted in Roland G. Usher, "James I and Sir Edward Coke," *English Historical Review* 18 (1903): 664-75.

<sup>39</sup> The precedents that Coke was quoting, denying the monarch's personal power to withdraw cases from the common law courts, arrest or imprison, or decide cases involving real property, seem consistent with an argument that the Council in the Marches could not be such authority. The power of the Council to imprison was a central issue in the debate that was on-going throughout James's reign. Paul Halliday of the University of Virginia, in his current work on habeas corpus in the early modern era (most recently in "The Jail or Jailed," presented at the 2007 British Legal History Conference) is ably exploring this same theme.

reason and judgment of law, which law is an act which requires long study and experience, before that a man can attain to the cognizance of it: that the law was the golden met-wand and measure to try the cause of the subject; and which protected his majesty in safety and peace; with which the king was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said; to which I said that Bracton saith, *quod rex non debet esse sub homine, sed sub Deo et lege*.<sup>41</sup><sup>40</sup> The king was more than greatly offended. He responded furiously, "with that high indignation as the like was never known in him, looking and speaking fiercely with bended fist." As the king saw it, Coke had begun with a provocation and followed with an insult. A monarch tutored by Andrew Melville, who had spent decades pursuing and establishing his claim to the throne of England, who had written treatises on speculative political science, was not to be told that the lawyers' arcane science was beyond him. James was so furious that Coke knelt before him as a show of submission, which availed him little. The king was not mollified until Robert Cecil knelt as well, and asked the king's pardon.<sup>42</sup> The dispute was not to be easily brushed aside. Three months later, when the judges finally delivered their opinion, the king would forbid its publication. Yet the confrontation was not, as a simplified Whig history might have it, a political conflict between a king who was demanding absolute power and a single judge who was heroically maintaining the authority of the common law. On James's side, the anger was the exasperation of a demanding client. James had become exasperated with a lawyer who insisted on telling him that the law could not give him the answers he sought – and who, when pressed for an explanation, supplied an essentially condescending answer. On Coke's side, one

<sup>40</sup> *Prohibitions del Roy*, 12 Co. Rep. 63, 64-65.

<sup>41</sup> Neither Coke nor the king may have said in one exchange of words everything that they afterward claimed to have said. Yet there can be little doubt that such a confrontation occurred. No fewer than three sources, including the scrupulous Sir Julius Caesar, record the quarrel. Roland Usher, "James I and Sir Edward Coke," *Eng*

*lish Historical Review* 18 (1903): 664-75.

<sup>42</sup> James Spedding, "Preface," *Works of Francis Bacon* 15: 111-112, ed. J. Spedding, R. Ellis & D.D. Heath (London: Longman, Green, Longman & Roberts 1861-74). Spedding cites the Petition of Grievances, *State Trials* 2: 519, from William Petyt, *Jus Parliamentarium* (London: John Nourse, 1739).

can sense a countervailing frustration – the frustration of a lawyer with a client who insisted that there had to be a royal road running directly to the conclusion he demanded. Overall, the sparks that flew between the king and the chief justice were not the sparks of battle. They arose from the friction within a working party – a group of advisors who had fought their way forward, over months, over a series of hurdles. The most celebrated example of a conflict between Coke and James arose from the collaborative enterprise in which they were engaged. **Coke's Year**

### **s on the Privy Council**

**il** In August 1613, when Lord Chief Justice Fleming died, it was suggested that Coke be moved from the Common Pleas to replace him. Significantly, the idea of appointing Coke to the Privy Council was linked to this judicial reshuffling. Sir Francis Bacon, in recommending Coke's transfer, specifically urged the king that if Coke were made Lord Chief Justice, "my lord Coke will think himself near a privy councillor's place, and thereupon turn obsequious."<sup>443</sup> The transfer did not make Coke obsequious. Rather, it immediately embroiled him in political controversies. Coke already had long experience already in working with Privy Councillors on economic matters. For decades he had been the government lawyer to whom the Privy Council referred investigations – on fisheries, draperies, enclosures, and the like. However, first-hand participation in such matters may have been a new experience for Coke. Despite his familiarity with business, almost immediately, Coke took action that suggests he was in unfamiliar political depths.

<sup>43</sup> Sir Francis Bacon, "Reasons for Remove of Coke," in *Letters and Life of Sir Francis Bacon* (ed. James Spedding, F. Ellis & D. D. Heath), 4: 381

-82 (London: Longman, Green, Longman & Roberts 1861-74). It was also reported that Coke refused to accept the transfer to King's Bench, unless it came with an additional honor, which was thought to be a seat at the Council Board. McClure, *Chamberlain Letters* 1: 479, 481-85 (14 Oct. 1613).

<sup>44</sup> A summary of Coke's work for the Privy Council can be found in the appendix to Stephen White, *Sir Edward Coke and "The Grievances of the Commonwealth"* 1621-28 (Chapel Hill: University of North Carolina Press, 1979).

<sup>45</sup> In the fall of 1613, Coke was one of the Privy Counsellors who spoke most strongly in favor of the project of Alderman Sir William Cockayne. Cockayne proposed that the crown revoke the right

of the existing Merchant Adventurers' Company, which exported unfinished cloth from England to the Continent; and instead support a venture that he himself was organizing, which would dye and finish English cloth in England, and then export the finished textile.

Coke's role in the Cockayne Project was initially to prepare the legal case for revoking the monopoly of the Merchant Adventurers. During the summer of 1613, he had lent his support to a petition being preferred by the clothworkers and dyers of England, calling for the export of finished cloth (perhaps growing out of

his work for the guilds of the City of London as well as any personal alliance with Alderman Cockayne). Citing laws dating from the years of Edward III and Edward IV (seventy-four statutes in all), condemning the Merchant Adventurers' charter as an impermissible monopoly,

arguing for a policy that would support the merchant and maintain the clothier, Coke supplied a basis in law for the shift that Cockayne and his supporters were seeking. The Merchant Adventurers' charter was revoked, and the New Company of Merchant Adventurers received its letters patent in August 1615. At the time, those who had wrought this change were happy to congratulate each other. Coke announced that he had not been "either frigid or perfunctory, because it was the king's commandment." The king himself asserted that he had revoked the old charter and established the new company "with only zeal for his country's good, and loss of 30,000 lib. yearly to himself." James then went on:

That my Lord Coke told

him in conference between the two, that the work was very profitable to the state, and feasible, as he thought, but by little and little and with time. . . . That no councillor or other had any carriage of message from him in this business, but all directions came from himself, after private conference with Mr. Cockayne and the Lord Coke at

<sup>45</sup> Astrid Friis, *Alderman Cockayne's Project and the Cloth Trade: The Commercial Policy of England in its Main Aspects 1603-1625* (Copenhagen: Levin & Munksgaard, 1917), 244-48, 458-46  
9; see also R.H. Tawney, *Business and Politics under James I: Lionel Cranfield and Merchant as Minister* (Cambridge: Cambridge University Press, 1958); Menna Prestwich, *Cranfield: Politics and Profits under the Early Stuarts* (Oxford: Clarendon Press, 1966).

<sup>46</sup>several times, and with the Lords in general, and after hearing of both companies old and new. To be singled out for praise by a Stuart monarch, upon the inauguration of a promising venture, was customarily the preference to being blamed for the project's conclusion in disappointment or disaster. When the king praised the new export project – and in the same breath mentioned the income that he had lost – and praised the counsel that his Chief Justice had given him – Coke may have sensed what would come to pass. He had seen too many monopolies fail, prosecuted too many courtiers from whom royal favor had passed. The Cokayne Project would prove a disaster – among the long and dubious list of Jacobean projects, perhaps the single greatest fiasco. It provoked a trade war with the Dutch, who had bought most of England's unfinished cloth, and retaliated by banning England's exports of finished cloth. A trade depression resulted, for which "Alderman Cokayne's project" and its supporters were blamed. Coke may have learned from this; he seems never again to have allowed his name and credit to be so closely connected with a mercantile venture. This was not enough. In the same months, in his unfamiliar seat on the Privy Council, Coke was also drawn into the perennial, inconclusive arguments over the financing of the court. In September 1615, at a memorable meeting of the Privy Council, Coke was one of the most prominent speakers. He began by bluntly naming the amount of the king's outstanding debts, which he estimated at £701,000. To deal with these deficits, he asserted, it would be necessary both to reduce the hemorrhage of royal finances and to increase royal revenues. He proposed an investigation into how the king had been defrauded and how the subjects had been aggrieved. "This is to be referred to the king's learned counsel," the reporter recorded. "*In this he will take pains.*" A second course of action followed: "to stay all offensive grants and examine grants, to be referred to the judges. *In this he will also take pains.*" Coke saw a solution in the enforcement of existing laws. He recommended, "the statute of employment and other statutes to be executed. *In this he will take pains.*"

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458, 464. <sup>47</sup>

<sup>4648</sup> Friis, *Alderman Cockayne's Project*,

<sup>47</sup> Cra msie, *King sh ip and Crown Finance*, 13 2 -33.

<sup>48</sup> Ellesmere MS 26 28, fo.2 ("2 8 September 16 15 / Opinions of the Counsel.")

. This is printed in J.D. Als o

p, "The Privy Council Debates and Committees for Fiscal Reform, September

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Coke was willing to discuss inconvenient truths, but he had learned, to this extent, not venture far from his legal experience. In proposing solutions, he pointed to the legal institutions that he knew so well – the statutes that could be employed, the experienced lawyers and judges whose wisdom might be drawn upon. It was in these areas that he promised to take pains. And yet Coke did not restrain his fatal mix of bookishness and stubbornness. To his bluntness he added sarcasm. He advised the Council that that much could be made of “the statute of 4 Henry IV for future gifts.” The statute of 4 Henry IV c. 4 (1402), to which Coke apparently referred, provided that any subject who sought gifts or grants from the king, without deserving them, “shall be punished by the advice [of the king] and his counsel, and he that maketh such demand, shall never have the thing so demanded.”<sup>5049</sup> This was an arcanelly encrypted remark, but it would have made its point – Ellesmere certainly would have understood.

Such comments did not extend Coke’s tenure on the Privy Council. Yet in the spring of 1616, when his days on the judges’ bench and at the Council table were clearly numbered, he prepared a detailed review of Queen Anna’s estates. The queen, no less than the king, had debts – of lesser magnitude, but no less pressing. Coke worked out for Anna a plan by which her household could be put in order. The document is in his own handwriting, and the handwriting has that absolute legibility that is found only on those documents that Coke viewed as of rare importance. In advising Anna, Coke did not shrink from naming embezzlement as a risk, which suggests that it had been a fact. He directed that pensions and wages not be paid before their due date, lest the payee have died. This suggests

that Queen Anna’s household had been plagued by dead pays and absentee office-holders. ~~As well as bring such financial leakage under control, Coke proposed ways of increasing the queen’s revenues. On two manors where the estates were~~

1615,” *Bulletin of the Institute of Historical Research* 68 (1995): 191-211, 20

6. The clerk of the Privy Council recorded in the margin, by each of Coke’s statements, the Lord Chief Justice’s assertion that he would take pains.

<sup>49</sup> *Statutes at Large* 2:426-27, ed. Danby Pickering (Cambridge: Cambridge University Press, 1762).

<sup>50</sup> PRO SP 14/86/104, fo. 175a-175b (March 1616).

copyholds, he propose

d that the copyholds "be improved," and the funds invested, as a sinking fund. The objective, which Coke believed could be realized, was to pay off the queen's debts entirely in three years. If Anna followed faithfully the advice of her counselor-at-law, she would have succeeded in leaving an unencumbered estate to her younger son, Charles. Coke had drawn up the retrenchment plan in 1616; Anna died in 1619. Coke would hold attention at her state funeral. He was the last mourner to enter, as protocol required, following the dignitaries who had offices and title: a solitary, somber knight, perhaps the most stalwart of the late

queen's champions; the figure with whom the procession ended. **Conclusion** The two periods in which Coke served as chief justice belong

to different periods of the reign of King James. From 1607 to 1612, when Coke was Chief Justice of the Common Pleas, James wielded that capacity that military men call grip, the ability to superintend, respond, and command. He had a clear dynastic agenda, to settle his authority as king. He had a specific goal toward which he was energetically working, to prepare for the installation of his son as Duke of Cornwall and Prince of Wales. He could count on

the support of two statesmen of vision, Robert Cecil and Archbishop Bancroft. After November 1612, when Prince Henry died, there was a marked change in the character of the reign. The change was from grip to drift. Bancroft was dead. Cecil was dead. Queen Anne had withdrawn from her husband's court. Rather than

working toward future goals, the government and the court came to busy themselves in the present, in amassing influence and dividing profits. Coke's years on the Common Pleas were years of open and forthright

debate. The King's Bench years were a period of rivalry, even of intrigue. In the eyes of the world, Coke's promotion to the Privy Council and translation to the King's

Bench, marked the highest gratification of his ambition – but, ironically, Coke was most effective as a judge and as a servant of the crown when he was on the Common Pleas, and at a distance from the

crown. As a lawyer, Coke never failed – and, very often, he could be successful. Whatever proposal

of *King James the First* (J.B. Nichols, 1828), 3: 543.

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<sup>51</sup> John Nichols, *Progresses*

the government might put forward, he could always square it with accepted precedents. Where conflicts could not be resolved, he could consistently check political adversaries by articulating opposing arguments.<sup>5352</sup> However, as a Privy Councillor, he was no more able than any other minister of state, to put in place for King James a government that would be sound, responsible, and financially stable. Nor was the Privy Council an environment in which Coke was likely to succeed. It is hardly surprising that a member of the Jacobean Privy Council would find himself embroiled in bitter and duplicitous political infighting. To be sworn in as a Privy Councillor, in the latter part of 1613, was the equivalent of stepping on-stage to take up a role in *The Duchess of Malfi*. In this environment, it made all the difference that Sir Francis Bacon was a shamelessly flexible courtier and that Ellesmere was a canny bureaucrat. Coke blamed the man for procuring his dismissal from the bench; and the close quarters

in which this struggle was waged was an environment in which they were successful. In his time on the Common Pleas bench, Coke had been the crown's most experienced lawyer. The king might disagree with Coke, but he relied upon him, and much could be forgiven him. Indeed, for a very long time, the two men's disagreements did not even disrupt Coke's service to the crown. The tempests of legend, so to speak, may be seen as the thunderstorms of a balmy summer. By

contrast, when Coke reached the King's Bench and the Council Board, he became one of the innermost circle of officials – officials who were on familiar terms with the crown. This may have been Coke's undoing.

With James, familiarity did not breed respect. Coke was only one of the numerous courtiers in whom, *seriatim*, the king took an interest, offered promotion, lost that interest – and then dropped for another courtier who appeared to promise more. The Edward Coke who loyally served his king is not the titan of the traditional histories. To reduce the Lord Chief Justice to human size brings hom

e an

<sup>52</sup> The conferences over prohibitions and the powers of the High Commission, with Bancroft's host of objections in equipoise with Coke's mass of collected authorities, ended without a decision recorded for either side. The continuation of the status quo was a victory for the lawyers.

<sup>53</sup> Coke's greatest service as a Privy Councillor would be to investigate the Overbury poisoning, a particularly heinous political murder that one Privy Councillor had orchestrated and that another Councillor was trying desperately to cover up.

awareness of Coke's role as a working judge, a figure in a particular landscape. If his career was marked by conflict, he made his way by tacking and trimming. If he was an unexceptionable servant of the crown, it was because of his service that he had the opportunity to succeed as a judge.