

BEYOND THE PALE: JOHN CUSACKE AND THE LANGUAGE OF ABSOLUTISM IN EARLY STUART BRITAIN*¹

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ABSTRACT. *John Cusacke, an Irish gentleman who was educated on the continent and worked on the fringes of the court of wards, constructed a striking re-reading of kingship, law, colonial government, and parliament in a series of tracts written between 1615 and 1647. His writings provide insight both into seventeenth-century colonial theory and early Stuart political thought. Shaped in the cauldron of Irish land struggles and continental political thought, Cusacke rejected Old English constitutionalism, arguing instead that Ireland was a colonial dependency of England. Further, to gain royal favour for various projects, Cusacke recast contemporary conceptions of parliament and common law, rejecting the centrality of custom, insisting that the king was the law maker and vigorously attacking Sir Edward Coke. Cusacke's writings reached the libraries of James I and Charles I, and their officials Sir Robert Naunton, master of the court of wards, and attorney-general Sir Robert Bankes. Cusacke's tracts graphically demonstrate the existence of an absolutist political discourse in early Stuart Britain applied not to issues of theology or of international law but to domestic politics.*

Nothing may be reputed treason but what they will, soe none may raigne as a kinge but who they please... and your Majesty may be exposed as an outlaw to all manner of traiterous practices and attempts and nothing may be claimed high treason but the very act of public rebellion and the cutting of your throat.²

John Cusacke, 'England's liberty', c. 1629–42

In March 1724 Humphrey Wanley, librarian to Robert Harley, earl of Oxford,

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¹ Cusacke sought to uphold both in England and in Ireland the British imperium claimed by both James VI and I and Charles I. While Cusacke usually spoke of England and Ireland he occasionally referred to Great Britain and Ireland. See J. G. A. Pocock, 'British history: a plea for a new subject', *Journal of Modern History*, 47 (1975), pp. 601–28; David Cannadine, 'British history: past, present – and future', *Past & Present*, 116 (1987), pp. 169–91; Keith Stringer and Alexander Grant, eds., *Uniting the kingdom* (London, 1995); Nicholas Canny, 'The attempted Anglicization of Ireland in the seventeenth century; an exemplar of "British history"', in Julia Merritt, ed., *The political world of Thomas Wentworth, earl of Strafford, 1621–1641* (Cambridge, 1996), pp. 157–86.

² British Library (BL), Harl. 6867, John Cusacke, 'England's liberty: the anatomy of high treason', fo. 193.

noted receipt of several manuscripts bought by Harley from Bateman, the bookseller. These manuscripts included English histories and tracts by, amongst others, Sir Robert Cotton and Sir John Doderidge, as well as speeches by Sir Robert Cecil and ‘England’s liberty’ by John Cusacke.³ Cusacke’s tracts were later bound with two treatises by Sir Robert Filmer, the first his ‘Observations on Hobbes’ and the second his comments on Jean Bodin’s writings on sovereignty.⁴ Harley’s interest in politics, history, and heraldry had also led him to buy Bishop Stillingfleet’s library in which there were several more tracts by Cusacke from the 1630s. Today Bodin, Filmer, and Hobbes claim our attention and Cusacke has been forgotten.⁵ Yet, as Harley’s purchases suggest, Cusacke’s writings are part of the complex texture of early Stuart political thought.

Fifteen years of revisionist historiography have accustomed us to dismiss such complexity and, in particular, the language of absolutism from our vocabulary. John Pocock, of course, made ‘the common law mind’ a household phrase;⁶ James Daly demonstrated the many different meanings of absolute and absolutism in the period;⁷ Conrad Russell assured us that there were few lay absolutists in the early seventeenth century and J. P. Kenyon claimed that ‘everyone spoke the same language’.⁸ Glenn Burgess summed up the state of the argument this way: ‘On the whole, Jacobean and even Caroline divine-right theory was no more absolutist than its Tudor antecedents. Nor was it necessarily in any conflict with that deep reverence for the English constitution and legal traditions characteristic of “the common law mind.”’⁹ Burgess has shown how diverse were contemporary meanings of common law and carefully analysed what sixteenth- and seventeenth-century contemporary writers meant by custom.¹⁰ But John Cusacke presents a challenge to even his carefully nuanced discussion of early Stuart political thought.

John Cusacke – Irish gentleman, projector’s friend, court of wards solicitor, habitué of debtors’ prisons, poet, and spy – constructed a striking re-reading of

³ I am grateful to Colin Tite for a discussion of the Harley MSS. See C. E. Wright, *Fontes Harliana* (London, 1972), and C. E. and Robin Wright, *The diary of Humphrey Wanley* (2 vols., Oxford, 1966), II, p. 284.

⁴ While Wanley noted receipt of the Cusacke manuscripts he did not note the Filmer manuscripts.

⁵ Only Nicholas Canny has cited any of Cusacke’s writings. In *Kingdom and colony* (Baltimore, 1988), p. 4n, and *From Reformation to Restoration* (Dublin, 1987), p. 193, he notes ‘Ireland’s Cry’, Folger Shakespeare Library (hereafter Folger), G.a. 10, and comments on how it differs from most Old English views that Ireland was a kingdom not a colony. Johann Sommerville and Glenn Burgess have cited the present essay: Johann Sommerville, ‘Revisionism and the case of absolutism’, *Journal of British Studies*, 96 (1996), pp. 192–3 and 193n, and Glenn Burgess, *Absolute monarchy* (New Haven, 1996), pp. 37–8 and 37n.

⁶ J. G. A. Pocock, *The ancient constitution and the feudal law* (Cambridge, 1957), pp. 30–69.

⁷ James Daly, ‘The idea of absolute monarchy in seventeenth-century England’, *Historical Journal*, 21 (1978), pp. 227–50.

⁸ Conrad Russell, *The causes of the English Civil War* (Oxford, 1990), pp. 131–60; J. P. Kenyon, *The Stuart constitution* (Cambridge, 1966), p. 10.

⁹ Glenn Burgess, ‘The divine right of kings reconsidered’, *English Historical Review*, 125 (1992), pp. 840–1.

¹⁰ Glenn Burgess, *The politics of the ancient constitution* (London, 1992).

monarchy, parliament, and of the common law. The questions he addressed from 1615 to 1647 targeted issues of greatest interest to the early Stuart monarchy and himself: projects and money. While most of his writings remained in manuscript they were *not* written for his cabinet. Cusacke's writings reached the libraries of James I and Charles I, and the desks of Sir Robert Naunton, master of the court of wards, and Charles I's attorney-General, Sir Robert Bankes.¹¹

Situated at the intersection of continental languages of absolute monarchy and English colonial theory, Cusacke's treatises apply their scripts both to Irish and to domestic English law, taxation, and politics. Historians of political thought since J. N. Figgis have shown the application of theocratic ideas of divine right kingship to English domestic policy in response first to resistance theory, and secondly, to fiscal necessity imposed by war in the 1620s.¹² D. B. Quinn and Nicholas Canny have drawn attention to the development of the mentality of colonialism simultaneously in Ireland and the American colonies. But the translation of colonial discourse to domestic politics has not been analysed.¹³ As early modern historians examine the nature of the British imperium,¹⁴ the appearance of Great Britain upon the accession of James VI and I and his claim to be its emperor,¹⁵ they have begun confronting the knotty problem of writing 'British' history.¹⁶ But even as historians address the issues of 'Britishness and otherness',¹⁷ Cusacke startles by applying the political

¹¹ Public Record Office (PRO), SP 14/83/24, 11 Nov. 1615; PRO SP 63/243/417, John Cusacke to Secretary Conway, 14 Aug. 1626. Cusacke complained that Sir Humphrey May, James I's master of requests, and Sir William Becher, Charles I's clerk of the council, ignored his suits. He claimed that Sir Edward Coke had prevented King James's efforts to aid him, dismissing it as a 'Bedchamber resolution'. See Folger, G.a. 10, fo. 7v.

¹² J. N. Figgis, *The divine right of kings* (London, 1896); J. P. Sommerville, *Politics and ideology in early Stuart England, 1603–1640* (London, 1986); Burgess, 'The divine right of kings reconsidered', pp. 840–1.

¹³ See, for example, K. R. Andrews, N. P. Canny and P. E. H. Hair, eds., *The westward enterprise: English activities in Ireland, the Atlantic, and America, 1480–1650* (Liverpool, 1978). Wentworth wrote to Laud of the applicability of his policies in Ireland to England: 'I know no reason but you may as well use the Common Lawyers in England as I, poor beagle, do here... I am confident that the king... is able by his wisdom and ministers to carry any just and honourable action through all imaginary opposition... the debts of the crown taken off, you may govern as you please.' Quoted in Anthony Milton, 'Thomas Wentworth and the political thought of the Personal Rule', in Merritt, ed., *The political world of Thomas Wentworth*, p. 140.

¹⁴ J. A. Guy, 'The imperial crown and the liberty of the subject', in *Court, country and culture* (Rochester, 1991), pp. 65–87.

¹⁵ See Bruce Galloway, *The union of England and Scotland, 1603–1607* (Edinburgh, 1986); Brian Levack, *The formation of the British state: England, Scotland and the union, 1603–1707* (Oxford, 1987); Jenny Wormald, 'The creation of Britain: multiple kingdoms or core and colonies', *Transactions of the Royal Historical Society*, 6th ser., 2 (1992), pp. 175–94.

¹⁶ See Conrad Russell, *The fall of the British monarchies* (Oxford, 1991); Michael Perceval-Maxwell, 'Ireland and the monarchy in the early Stuart multiple kingdom', *Historical Journal*, 34 (1991), pp. 279–95; Ronald G. Asch, ed., *Three nations – a common history?* (Bochum, 1993); Canny, 'The attempted Anglicization of Ireland', pp. 157–86.

¹⁷ See Linda Colley, 'Britishness and otherness', *Journal of British Studies* (1992), pp. 309–29. Perhaps because they are more interested in politics and religion than political thought, historians interested in the 'new' British history have attended to the impact of Irish and Scottish rebellions

language crafted to bring Ireland under the control of the crown and its planters, to the English crown's fiscal and legal power at 'home'.

Moreover, Cusacke's views will not fit into that traditional category of Irish historiography, the Old English: he is not 'constitutionalist' in his analysis of the relationship of king and subject whether in England, Scotland, or Ireland.¹⁸ Neither is he concerned like Geoffrey Keating to recover the Irish past from Irish sources.¹⁹ Instead, his writings are situated in continental and British discussions of royal power stretching from the French legists in the sixteenth century, to James VI and I writing in the 1590s, to civilians like Gentilli and Cowell in the 1610s,²⁰ to clerics like Maynwaring and Sibthorpe in the 1620s and Filmer and Hobbes writing in the 1630s and 1640s.

I

We know little of John Cusacke other than what can be teased out of his manuscript treatises and scattered references in correspondence and legal records.²¹ Descended from an Old English family, Cusacke was the great-nephew of Sir Thomas Cusacke, lord chancellor of Ireland in the 1550s. His father, John Cusacke, son of Robert Cusacke, Sir Thomas's brother, was a well-to-do Dublin merchant. Attainted of treason *c.* 1582, he died in 1583, and his estates were restored in 1584 when Cusacke was an infant.²² Cusacke later claimed that his father died 'possessed of a very riche shoppe furnished with wares and merchandizes great in silks stuffes and other commodities... then the richest shoppe of such commodities in all that city and amounting to the value of four thousand pounds sterling' with debts owed him of another £4,000. Because Cusacke was an orphan, his grandfather, Christopher Fagan, a Dublin alderman, was named executor. Fagan took all the goods and debts payable into his own hands and, dying suddenly, left his estate to his heirs in the Fagan family.²³ In the 1620s and 1630s John Cusacke's cousins, James and Adam Cusacke, enjoyed official positions in Ireland while his cousin Henry was head of the Jesuit mission in Dublin.

on English politics but have failed to notice the application of colonial theory at the centre by Irish and Scots and by English administrators who had served in Ireland.

¹⁸ For the ascription of the 'constitutionalist' position to the Old English see most recently Perceval-Maxwell, 'Ireland and the monarchy'. These categories have been questioned in recent work: see Ciaran Brady and Raymond Gillespie, eds., *Natives and newcomers* (Bungay, Suffolk, 1986).

¹⁹ Bernadette Cunningham, 'Native culture and political change in Ireland, 1580–1640', in Brady and Gillespie, eds., *Natives and newcomers*, pp. 166–7.

²⁰ See Brian Levack, 'The civil law, theories of absolutism, and political conflict in late sixteenth- and early seventeenth-century England', in Gordon Schochet, ed., *Law, literature, and the settlement of regimes* (Washington, 1990).

²¹ There were at least three John Cusackes in early seventeenth-century Meath, at least one of whom was cousin to the political theorist. For Cusacke's tracts see the Appendix.

²² I am grateful to Tim Wales for this research.

²³ PRO, SP 63/243/424, Cusacke to Conway, 21 Aug. 1626.

Like the offspring of many families of the Pale in the late sixteenth century John Cusacke was not educated in England but on the continent. He claimed to have studied 'Divinity and Philosophy and all liberal sciences in the most famous universities in Christendom' and to have achieved the degree of Master of Arts.²⁴ The Irish College of Douai was founded in 1594 by Father Christopher Cusacke who may have been his second cousin²⁵ and Louvain attracted many Irish students. He is likely to have studied for some time in France. John Cusacke's last work was endorsed by John Ponce, an Irish Franciscan who had taught sacred theology in Rome and Lyon and was superior of St Isidore's in Paris. Ponce, born in Cork, joined Luke Wadding, the founder of St Isidore's in Rome, in preparing a new edition of the work of Duns Scotus in 1633. In urging publication of Cusacke's manuscripts, Ponce called him that 'noble and learned man'. Cusacke's *Tessera Hiberniae* was published with the permission of Master M. Grandin, Sorbonne Doctor of Sacred Theology, on 14 June 1647.²⁶

Cusacke's writings share the views of late sixteenth-century French civilians.²⁷ In particular, he reflects the French *politique* Catholic writers who aligned themselves against the Leaguers. His tracts demonstrate his familiarity with the classics, civil law, and history. His dismissal of differences between Catholics and Protestants is similar to the views of the English Appellants of the late sixteenth century who challenged Catholic resistance theory in hopes of toleration.²⁸ Cusacke, like some other early seventeenth-century Catholic writers, argued that Catholics could safely take the Jacobean oath of allegiance.²⁹ He was arrested in 1633, along with others, 'coming from Masse from the Spanish Agents'.³⁰ His last tracts refer to his Catholic faith.

²⁴ Folger, G.a. 10; Inner Temple, Petyt MSS 538/27/14, fos. 160r-v. 'Architectonicall sciences of Divinity and Philosophy' were the foundation 'from whence every sound lawyer is to divine his most perfect knowledge'.

²⁵ Rev. John Brady, 'Father Christopher Cusack and the Irish College of Douai, 1594-1624', in Father Sylvester O'Brien, ed., *Measgra i gcuimhne Mhichil Uí Chleirigh* (Dublin, 1944), pp. 98-107. Robert Cecil received reports on the College from a spy who named 'the 60 young gentlemen eldest sons of the principal gentlemen of the Pale... besides many merchants' sons of Dublin and Drogheda... the rebel rout in Ireland whom they call the Catholic army, and Tyrone, by name, is daily prayed for there; they all speak Irish, and it is to be feared that those young gentlemen, the offspring of the colonies of the English conquest, may become in language and disposition fermented with the ancient hatred of Irish to English which is so great that I know of no disputing among brutes greater', quoted p. 101.

²⁶ *Tessera Hiberniae regnum Christianum* (Paris, 1647); 'John Ponce', *New Catholic Encyclopedia*, xi (Washington, DC, 1967). ²⁷ *Cal. SP Ireland, 1625-1632*, pp. 149, 152, 460, 638, 639.

²⁸ See Peter Holmes, *Resistance and compromise: the political thought of the Elizabethan Catholics* (Cambridge, 1982), pp. 186-204.

²⁹ See M. C. Questier, 'Loyalty, religion and state power in early modern England: English Romanism and the Jacobean oath of allegiance', *Historical Journal*, 40 (1997), pp. 311-29; idem, *Conversion, politics and religion in England, 1580-1621* (Cambridge, 1996). Another Catholic who may have shared these views was Richard Shepherd who published *Certain general reasons, proving the lawfulness of the oath of allegiance* (London, 1611) to which was bound the English translation of William Barclay's *politique* treatise *De potestate papae*.

³⁰ PRO, PC2/41, fo. 387, 17 Feb. 1632, 'This day Cutbert Prescott, Thomas Prescott, John Cusacke, George Matchett, Simon Price, John Browne and Margaret Clarke, taken by Humphrey

In Cusacke's writings the personal and the public came together: his life and writings were shaped by losing father, grandfather, family, estate, and status. Lacking mother (to whom he never refers), father, family, and patrimony, his writings constructed an elaborate celebration of patriarchy, legitimacy, and royal power. He wrote a long tract entitled 'Adam's Paradise' c. 1621 about life in the Garden of Eden before the Fall. He attacked the legitimacy of all other descendants of Sir Thomas Cusacke, finding fault along the way with a papal dispensation, an illegal divorce, adultery, bastardy, and a series of attainders, all of which left only his cousin german Henry who was disabled from inheriting the estate because he was a Jesuit priest.³¹

Cusacke lost two critical law suits in the Irish courts of chancery and exchequer: his claim to the estate of his father worth £8,000 and the estate of Sir Thomas, his great-uncle.³² The judge acknowledged his father's wealth but denied his suit. Like many Irish landowners of the period he sought relief in English courts asking in 1615 that the court of exchequer chamber, which he elsewhere referred to as 'a supreme court',³³ and the court of star chamber issue a writ of error to the Irish courts.³⁴ Cusacke was not as fortunate as Sir Piers Crosby who came to London for a similar cause and found court advancement.³⁵ By 1622 in *His Majesty's directions for ordering and settling the courts within his kingdom of Ireland* (1622), the crown sought to limit appeals from the court of King's Bench of Ireland.³⁶ Although he occasionally got royal favour, Cusacke was repeatedly jailed in England for debt, slander, and malfeasance.³⁷

Crosse one of the messengers of his Majesty's Chamber, coming from Masse from the Spanish Agents, entred their Appearance.' I am grateful to Sabrina Alcorn Baron for this reference.

³¹ Yale University, Beinecke Library, Osborne Collection, 'Adam's Paradise' c. 1621, dedicated to 'Sir Henry Montagu, knight, Lord Baron of Kimbolton, Viscount Mandeville, Lord High Treasurer of England and one of His Majesty's most honorable Privy Council' whom he hoped would countenance its being published. The MS belonged later to the Throckmorton family

³² Folger, G.a. 10, fo. 6. 'The common lawes of England, and Statutes of Ireland havinge unjustly denyed me their healps and a certaine courte for the recovery of my inheritance' either of Sir Thomas Cusacke's estate by 'an erroneous judgement of the Exchequier and of my fathers goods and chattels by my Chancery suite of seaven years from the heire and executrix of their wicked imbeasler, without probat of will, sworne Inventory, or letters of administration in my tender orfancy, to the value of foure thousand pounds by common estimation'.

³³ Folger, G.a. 10, fo. 12. ³⁴ Inner Temple, Petyt MSS 538/27/14; BL Harl. 1038.

³⁵ Aidan Clarke, 'Sir Piers Crosby, 1590–1646: Wentworth's "Tawney Ribbon"', *Irish Historical Studies*, 26 (1988), pp. 142–60.

³⁶ 'That whereas a judgement given in the court of Kings Bench of Ireland, is subject to reversal, if there be cause, by Writt of error in the court of Kings Bench of England; which of late (as his Majestie is informed) have bene more frequent then in former times, and pursued upon matters of forme, and for vexation and delay of execution. That therefore no such Writt of error be hereafter granted upon erroneous proceedings in forme, or other defects, saving upon the meere points in law.' G. J. Hand and V. W. Treadwell, 'His Majesty's directions for ordering and settling the courts within his kingdom of Ireland 1622', *Analecta Hibernica*, 26 (1970), p. 205.

³⁷ House of Lords Record Office, Main papers, 25 Jan. 1640–1. Cusacke's petition to the Lords committees of parliament describes him as 'John Cusacke gentleman, close prisoner in the Fleette, the Guardian of Wingfield Honninge an Idiot.' Cusacke received £10 to look after the estate and got into a dispute with the executor. After being questioned by Sir George Croke in Star Chamber

He worked on the fringes of the law courts following his 'private practice of soliciting' and continued to press his case. Indeed, his insistence on the king of England's right and obligation to give law and justice to his colony of Ireland is at the heart of his writings.

Yet Cusacke's life and finances remain obscure. He may have been the 'faithful Cusacke' who served as an informer on the continent for Sir Ralph Winwood in 1613 and who had ties to Irish merchants.³⁸ He may also have worked with Sir Robert Jacob, solicitor-general of Ireland. By 1615 he was in London and may soon thereafter have begun his career on the fringes of the court of wards.³⁹

We first hear Cusacke's voice in 1615. In the midst of the Overbury scandal, the trials of the astrologers, apothecaries, court officials, and London low lifes who had connections to the king's former favourite Robert Carr, earl of Somerset, and his wife, Frances Howard, countess of Somerset, accused of murdering Carr's former friend Sir Thomas Overbury in the Tower, Cusacke wrote urgently to Secretary of State Winwood to offer both information and a tract on royal power. He had discovered a secret of great moment: 'a branch of that rotten tree you are now hearing to the glory of God and the king'. Claiming his life was in danger, Cusacke would impart it only to Winwood in person.⁴⁰ Winwood had discovered the plot in July of that year through a continental informant. Whether Cusacke actually had such a secret to impart is impossible to know but for this or another service King James tried to reward him only to be stymied, Cusacke claimed, by Sir Edward Coke.⁴¹

In return for his information and for help with his law suits Cusacke promised the king a treatise

maintaining... His Highness's Royal Prerogative beyond that which the professors of common law do grant, also maintaining the oath of allegiance by sacred scriptures whereby all Papists of England and Ireland shall as freely take the same as any

he was fined £500 and imprisoned in 1640. Cusacke complained that as a result he no longer received his 'salary' of £10 pounds a year, was owed £15 of arrearages, and 'put to beare his own charges of dyett, fees and lodging during the time of his close imprisonment since the beginning of this last Trinity tearme... and to the charges of hyringe a servant to followe his businesses for his liberty with the losse of his private practice of soliciting besides contrary to justice'. He asked the Lords of the parliament to discharge the Star Chamber sentence. In proceedings over Sir Thomas Cusacke's estate, John Cusacke had called his cousin Richard a bastard and was then condemned as a slanderer. BL Harl. 1038, fo. 56.

³⁸ Historical Manuscript Commission Reports, *Downshire*, iv, p. 76, Edward Eustace to William Trumbull, 27 Mar. 1613.

³⁹ In a 1636 chancery case Cusacke sued Elizabeth Marshall and Thomas Warmoll who hired him in a court of wards case. He asked for £30: £10 for expenses and £20 for his 'great diligence paines & industry taken in the searche of divers records extant in the towre, in the Rolls in the Exchequer & in the Court of Wards & in the reading of divers Cronicles... & of a great number of the wrytings & evidences belonging to the sayd Warmoll'. In response Marshall and Warmoll countersued accusing him of cozening them of £40 and having him arrested and imprisoned in the London sheriff's court. PRO, C3/399/190. ⁴⁰ PRO, SP 14/83/24, 11 Nov. 1615.

⁴¹ See Folger, G.a. 10, fos. 7-8. Sir Edward Coke too claimed secret knowledge about the plot as he tried the case.

protestant whatsoever, and all occasions of foreign war for point of religion shall be avoided.

He would demonstrate how the king could prevent corruption in his inferior judges in Ireland. James would become 'a true Solomon or Rex pacificus on the earth according to his own heart's desire'. Cusacke thus trawled for a role in James's well-known propaganda campaigns in support of the oath of allegiance, repeated contemporary attacks on the Irish judicial system, and flattered the king's own self-fashioning as Solomon. To complete the work with appropriate citations from authorities, Cusacke asked Winwood to arrange for a 'bookbinder or stationer' to loan him three or four books at a time for two or three months; he would return them in good condition.⁴² In 1616 King James attacked Sir Edward Coke's reading of the common law; it was to this formulation that Cusacke repeatedly returned.⁴³

All of Cusacke's tracts address issues of royal authority whether directly or indirectly. Many suggest projects, and Cusacke's projects, however self-serving, were formulated to sell. The language in which they were couched offers us an important reading of contemporary perceptions of the crown's attitudes and policies, since Cusacke obviously thought he was reflecting official policy.

Over three decades Cusacke proposed projects about lunatics, bastards, and orphans, supported projects for agricultural improvement and the king's control of building in London and constructed an emblematic demonstration of divine right. Reflecting the pervasive 'rent-seeking' of the period⁴⁴ all of Cusacke's projects focus on social problems, demonstrate the king's prerogative to rectify these wrongs and to benefit the projector. Cusacke distinguished a king from that of a tyrant: that is one who ruled for his personal profit or who through weakness did not rule enough.⁴⁵ He relied on the division of public and private that Brian Levack ascribes to those influenced by the civil law.⁴⁶ Most of the projects also allowed Cusacke the opportunity to beg help with his own legal problems.

Paul Slack emphasizes the connection between what contemporary justices of the peace called 'absolute power' and social welfare policies from the 1580s to the 1640s.⁴⁷ Cusacke had a sharp eye for contemporary policy; often the

⁴² PRO, SP 14/83/24, 11 Nov. 1615. 'For all the book is finished already saving only the perfect citation of the authorities... And lest the said stationer should be hindered in the sale of many of his books by my detaining of them, I will have him give me but three or four books at the most at once, and that which I shall take up newe books I deliver up the old, and as for my careful usage of the said books I do passe my word unto honour that they shalbe nothing the worse for my wearing of them.'

⁴³ Johann Sommerville, ed., *King James VI and I: political writings* (Cambridge, 1994), pp. xxiii, 205.

⁴⁴ On rent-seeking see Robert Ekelund and Robert Tollison, *Mercantilism as a rent-seeking society* (College Station, 1981); Linda Levy Peck, *Court patronage and corruption in early Stuart England* (London, 1990), pp. 134–60. ⁴⁵ Oxford, Bodleian Library, Rawlinson D 693, fo. 10.

⁴⁶ Levack, 'Civil law', pp. 40–1.

⁴⁷ Paul Slack, *Ford Lectures*, 1995. On the concept of necessity see also Michael Mendle, 'Parliamentary sovereignty: a very English absolutism', in Nicholas Phillipson and Quentin Skinner, eds., *Political discourse in early Stuart Britain* (Cambridge, 1993), pp. 106–7.

tracts coincide with royal proclamations on the subjects. His earliest extant tract was dedicated to Sir Robert Naunton, master of the court of wards ‘and patron of lunatics’.⁴⁸ ‘De Lunatico Inquirendo... instancing the manner and discovering the necessity of finding of lunatics for the king’, was written *c.* 1616–17. Cusacke’s hope that Naunton would ‘press the application’ of the discovery of lunatics with all his authority suggests an effort to enhance crown revenue.⁴⁹ Within a year of Cusacke’s tract in February 1618 the king created a commission to compound for wards, idiots, and lunatics.⁵⁰

In 1626 Cusacke, now a prisoner in King’s Bench, wrote to Lord Conway to proffer a project of concealed lands, one that addressed his own particular complaint. It was, he said

a large treatise entitled a Display of Bastardy... with the help of a noble patron I will make it a precedent for bringing above £100,000 into his Majesty’s coffers from other unlawful intruders in the inheritances of lawful and legitimate heirs by erroneous judgments, and establishing the colonial government of Ireland.⁵¹

Cusacke pointed out that uncertainty in land title both in England and Ireland offered possibilities of profit to the crown.⁵² He offered Conway £1,000 were his suit granted and £2,000 were Cusacke to recover Sir Thomas’s entire estate. ‘I doe not make these proffers as a bribe, but as the fruits of my duty, which for the requital of soe great a benefit as I require at his hands deserveth all my

⁴⁸ ‘De Lunatico Inquirendo’, Pierpont Morgan Library, MA 615. This is wrongly catalogued as dedicated to Stanton instead of Naunton.

⁴⁹ Pierpont Morgan, MA 615, fo. 33. The thirty signs of lunacy included gesture, look, clothing that violated status, mental states of bashfulness, suicidal tendencies, fear, melancholy, childish or ridiculous behaviour, violence toward servants, sorcery, or necromancy, ‘explicit or implicit contract with the Devil’, not understanding ‘the chief articles of Christian faith or of the 10 commandments... or the difference between holy days and working days, and the necessity of daily prayer’. But Cusacke placed the political first ‘by the observation of a man’s rude and disrespectful carriage, and behavior in the presence of a magistrate, arguing his stupidity in conceiving the perfect state, and condition of civil society, grounded on the government of magistrates, with sovereign power and authority’.

⁵⁰ STC 9238.5, 23 Feb. 1617–18. In fact the law on lunacy grants offered the subject a bulwark against the depredations of the crown; once recovered, a lunatic could sue a guardian for not handling his property appropriately: Cusacke himself was later fined for mishandling the case of Wingfield Honing that he addressed in the tract. On the court of wards see Joel Hurstfield, *The Elizabethan court of wards* (London, 1958). On the crown’s policy toward lunatics and idiots see Richard Neuberger, ‘Treatment of the mentally ill in medieval and early modern England: a reappraisal’, *Journal of the History of the Behavioral Sciences*, 14 (1978), pp. 158–69. On the treatment of mental illness in the period see Michael MacDonald, *Mystical Bedlam* (Cambridge, 1981). While the king had the right to the revenues of an idiot, the revenues of lunatics (those who were *non compos mentis*) were to be used to maintain their appropriate social status. Any surplus was returned when they regained their senses.

⁵¹ PRO, SP 63/243/417, John Cusacke to Secretary Conway, 14 Aug. 1626. Under ‘The colonial government of Ireland his Majesty’s aforesaid title is to be finally determined by writ of error in His Majesty’s Court of Exchequer Chamber in England for settling the said inheritance in a lawful and legitimate heir.’ Cusacke refers to the treatise in the 1640s in BL Harl. 1038, fo. 50v, and reuses some of the same material in the later tract.

⁵² Inner Temple, Petyt MSS 538/27/14, fos. 160r–v. When Cusacke reworked this material in his 1641 treatise he called the papal dispensation a ‘publique lawfull dispensation’ removing any mention of the pope. BL Harl. 1038, fo. 54.

inheritance.⁵³ Cusacke dedicated the tract to Henry Percy, earl of Northumberland,⁵⁴ who, after his release from the Tower, formed close ties with Charles's queen, Henrietta Maria.⁵⁵ As we have seen, Cusacke was in Paris in the 1640s and his views then were in keeping with those of the Caroline court in exile.

II

In the grip of financial exigency, the crown's and his own, Cusacke rewrote the ancient constitution. Claiming to build on the influential work of Sir John Davies, who had advocated the conquest of Ireland through the English common law, Cusacke sought to extend the judicial reach of English courts into Irish property disputes. He then applied his particular reading of common law and the royal prerogative to the English polity.

Common law, Cusacke argued, was neither custom nor judge-made law. Rather, using the concepts of Roman law, Cusacke defined it as law made by the king with the advice of his counsellors for the common good. He described the English parliament as a council assembled by the king to advise him, similar to other assemblies throughout Europe. Those lords spiritual and temporal whom the king chose to call did not have a right to be called and the Commons did not have to be included:

the court of parliament is properly and absolutely called *conventus principum* by Polydor Virgill and the barons court improperly by Cambden who by the error and ignorance of unlearned lawyers and heraalds neglecting the first necessary institution of that most honorable assembly in all civil monarchies by the stiles of *principes primores* and *patres* given to her proper subjects as grave counsellors of state... And the other called a full parliament with the addition of the Commons in all other cases of civil government by congruity not by necessity requiring their consents according to the obligation of their allegiances by common law which compelleth them to supplie your majesty's necessities according to their abilities in all your just and lawdable employments apertayning to the honour and dignity or right of your crown and obey all your Majesty's just sentences delivered and lawes made in parliament.⁵⁶

Cusacke wrote and rewrote his treatises appropriating current parliamentary debates and judicial decisions. In 1628 as the Petition of Right was being debated, Cusacke presented 'The kingdom's cry' to the king. He

⁵³ PRO, SP 16/39/77, 17 Nov. 1626. In return he promised to bind himself and his posterity to Conway and his, 'as to the patron and preserver of my ancient house of English gentry in Ireland nowe falling with me to the ground'.

⁵⁴ Inner Temple, Petyt MSS 538/27/14, c. 1626–32. The Inner Temple mistakenly catalogues the treatise as dedicated to the duke of Northumberland and dates it to the 1550s.

⁵⁵ Inner Temple, Petyt MSS 538/27/14, c. 1626–32. 'I have chosen your Lordship... upon the... motions which in my Impresse unto your Honor I have set forthe supposing that as... honor impryoned doth by the opposition of outward adversity inwardly increase... whence I refer that although my ancestors had not bene dependents from the ancestors of your Lordship and of myself with your Lordships allowance may beginne that dependency I cannot thinke but the number of your Lordships followers began to dyminish of your first imprisonment... yet the square of honor in you should not therefore faile but still continue the same gracing your adversity with your former tenor of munificence and magnanimity.' He also dedicated the tract to the lords of the court of the exchequer.

⁵⁶ BL Harl. 1038, fos. 58–9v.

attacked Sir Edward Coke ‘notwithstanding his great faction in Parliament and my current obscurity’; and accused him of high treason for his ‘discourse against your Majesty’s immediat act of Royall Prerogative in the institution of common lawe’.⁵⁷ According to Cusacke, common law was ‘an immediate act of Sovereigne command’; Sir Edward Coke was a ‘mountebank’ who never understood either the speculative or the practical aspects of common law, and the current practice of common law was sophistry.⁵⁸ Cusacke repeatedly accused Coke of high treason. He modestly described ‘Ireland’s Comfort’, *c.* 1629 as ‘a ruffe cudgell’ but hoped soon to make ‘a bright and sharper sword, for his beheading’.⁵⁹

Cusacke recalled that King James had conditionally referred his own appeal from the chancery of Ireland to be proved ‘before a Jury in the Court of King’s Bench in Ireland... to be grounded on a certificate to His Majesty from Sir Edward Coke knight being then Lord Chief Justice of the Kings Bench in England’. Coke, however, refused, expressly ‘excluding of the king from the acts of judicature’. Cusacke, in response, argued, as King James had, that the king could hear causes as a judge:

I followed this doctrine of Lipsius averring, that a kinge ought to hear... causes... as well by himself as by others, soe that himself also may profitably and decently perform that office of justice in public manner because it is not to be doubted that the ancient kings and emperors have done it.⁶⁰

(Filmer too argued that kings could hear causes.) Cusacke’s cause and the king’s were one. Soon after Cusacke received royal favour.⁶¹

III

Cusacke’s theories of common law, colonial government, and royal prerogative need to be set in their Irish and continental setting. The last two decades have seen a fruitful debate amongst historians of early modern Ireland about its communities and their political views.⁶² Traditionally these had been divided

⁵⁷ Folger, G.a. 10, fo. 9. Although Cusacke describes ‘The Kingdom’s Crye’ in ‘Ireland’s Comfort’, Folger, G.a. 10, fos. 8v–9, and BL Harl. 1038, I have not yet found it.

⁵⁸ Folger, G.a. 10, fos. 10v–11v, 124.

⁵⁹ *Ibid.*

⁶⁰ Bodleian, Rawlinson D 693, fo. 1v. See also Folger, G.a. 10, fos. 6v–7 where he describes the same episode: ‘And Sir Edward Coke knight being Lord Cheife Justice of the Kings Benche havinge disloyally, and unconscionably opposed his late Majesties resolution for my relief therein, by the exercise of his immediate act of Royall prerogative, with his conditionall sentence as a precedent of oppressed orfancy soe relieved, accordinge to my request by petition, and his Majesties most gracious grant by reference to his Lordship, and so advantaged, and emboldened one of the bastard intruders on my said inheritance, in the dark, and muddy waters of common lawe, to lay his snare for me with impunity, by his practice and combination with a corrupt Judge, and a cruel gaoler, for the diverting of my suite against him by my imprisonment of almost twelve years, under a false judgement of Woodstreat Comptor London at his suite.’

⁶¹ *Cal. SP Ireland, 1625–1632*, pp. 460, 638–9. Cusacke was to receive a grant of lands in Ireland from Sir Robert Jacob, solicitor-general of Ireland. In 1629, the year that he composed ‘Ireland’s Comfort’, Charles I ordered the lord deputy of Ireland to make sure that he got these lands.

⁶² See Canny, *Kingdom and colony*; Brady and Gillespie, eds., *Natives and newcomers*; Breandan O Buachalla, ‘James our true king; the ideology of Irish royalism in the seventeenth century’, in D.

into three: the native or Gaelic Irish who were Catholic, the Old English descendants of Normans who had laid claim to Ireland on behalf of the English monarchy in the thirteenth century and who, in the main, were Catholic, and the New English, that is Scots and English, who migrated to a series of plantations created by the crown in the early seventeenth century. Historians have ascribed political positions to each; the Old English asserted a ‘constitutionalist’ position that recognized Ireland as a kingdom co-ordinate with England under a single monarch; the new English saw Ireland (and the Irish) as a colony still to be conquered, planted with Protestant settlers who would civilize both the Gaelic Irish and the Old English who had shown an alarming tendency to degenerate into Irish behaviour according to the reports sent back by Sir Henry Sidney in the 1560s.⁶³ The Gaelic Irish were long thought, incorrectly, either to have been passive or subversive, seeking from the safety of the continent to overthrow their conquerors.⁶⁴ English policy toward Ireland has been seen as circling around two poles, constitutionalist, a process of surrender and regrant, with the Tudors encouraging Gaelic overlords to surrender their Irish lands and resume them under royal charters, and ruthlessly colonial by the 1590s with the claim that Edmund Spenser’s *A view of the state of Ireland* amounted to a call for genocide.⁶⁵

Although he always claimed his heritage as descendant of the Anglo–Norman conquerors, Cusacke’s writings will not fit conveniently into these pigeonholes. Unlike most Old English, he did not imagine Ireland as anything other than a dependency of the English monarchy. His ‘imagined community’ was not a conquered land but a land of conquerors.⁶⁶ Cusacke adopted the language of conquest through the extension of common law developed in Sir John Davies, *A discovery of the true causes why Ireland was never entirely subdued*,⁶⁷ but with a twist.

Unlike other Old English writers, Cusacke repeatedly referred to Ireland as a colony and in ‘Ireland’s comfort’, c. 1629, he directly addressed the nature of ‘the colonial government of Ireland’. Unlike the Spanish the English could

George Boyce, Robert Eccleshall and Vincent Geoghegan, eds., *Political thought in Ireland since the seventeenth century* (London, 1993).

⁶³ Nicholas Canny, ‘Identity formation in Ireland: the emergence of the Anglo-Irish’, in Nicholas Canny and Anthony Pagden, eds., *Colonial identity in the Atlantic world* (Princeton, 1987), p. 163.

⁶⁴ See Nicholas Canny, ‘The formation of the Irish mind: religion, politics and Gaelic Irish literature, 1580–1750’, *Past & Present*, 95 (1982), pp. 91–116; Brendan Bradshaw, ‘Native reaction to the westward enterprise: a case-study in Gaelic ideology’, in K. R. Andrews, N. P. Canny, and P. E. H. Hair, eds., *The westward enterprise*, pp. 66–80.

⁶⁵ See Nicholas Canny, *The Elizabethan conquest of Ireland* (Hassocks, 1976); Brendan Bradshaw, *The Irish constitutional revolution of the sixteenth century* (Cambridge, 1979); Brady and Gillespie, eds., *Natives and newcomers*.

⁶⁶ See Benedict Anderson, *Imagined communities: reflections on the origin and spread of nationalism* (London, 1991); BL Harl. 1038, fo. 47.

⁶⁷ See Pocock, *The ancient constitution and the feudal law*; Hans Pawlisch, *Sir John Davies and the conquest of Ireland* (Cambridge, 1985).

not claim a papal donation over their claims to Ireland, America, and the Indies.⁶⁸ Cusacke's model was Roman like those of other sixteenth-century writers such as Sir Thomas More. Where he differed from More, as we shall see, was in his definition of common law. Drawing on Aristotle and Cicero and contemporary writers such as Richard Stanihurst, Camden, and Davies, Cusacke wrote that colonial government 'is grounded on a relation of colonially dependency in the colony from her mother country, like unto that which is betwene a naturall child and his parent'.⁶⁹ This colonial dependency had been established during the twelfth century when Cusacke posited like many colonial theorists that Ireland was a waste land and therefore, perhaps, effectively empty. 'Ireland having neither lawfull kinge, or owner, (for every kinge is the lawfull owner of his owne kingdome...) nor forme of civill and Christian government... [was] a vast, and waste kingedome exposed to the absolut conquest of kinge Henry the second'.⁷⁰ By conquest the English kings had taken control of Ireland. They had consolidated their conquest through the imposition of common law; redress by 'colonians' was to the king himself not to the king in parliament.⁷¹ The Irish participated in their own rule: when Henry VIII granted Ireland the status of a kingdom in 1541, Ireland obtained the same 'liberties and priviledges' as the English had to make laws regarding trade and the economy with the authority of her own parliament 'by whose absences from the Parliaments of England, their publique consents are from the same separated'.⁷²

The English and Irish parliaments differed. In a chapter of 'Ireland's comfort' (c. 1629) entitled 'Of the state of the court of parliament in Ireland' Cusacke wrote:

As the immediat presence of the kinge in his parliament of England, doth by the exercise of his immediat act of Royall prerogative, which Bracton tearmeth iurisdictionem ordinariam, ordinary jurisdiction, make it to be a supreme court of common lawe, and equity, with the conformable extent of her power, & authority to the institution of all manner of lawes, as well common, for general inconveniences, Statues of equity, for perticular mischiefes, and of all monarchicall, political, and oeconomical lawes also, for the good government of England. Soe the want of that Royall presence and the incommunicable quality thereof to a deputy, or vicegerent, in the parliaments of Ireland, doth lymitt their publique determinations to the objects of politicall, and oeconomical lawes, whose scoaps, beinge to bringe the common wealth into a certaine mould of civill government, requireth the interposall of the kinge of England's judgement and resolution also in such consultations, accordinge to the provident act of Kinge Henry the seventh in that behaulfe made in the tenth yeare of his raigne by a parliament in Ireland ordayneinge, That noe act of Parliament should be after at any time agreed upon, without the former allowance, and aprobaton of the kinge, and privy counsell of England... for the better preservation of the colonially government of Ireland, according to her originall institution in a perpetuall conformity with England,

⁶⁸ For a discussion of comparative colonial theory see Anthony Pagden, *Lords of all the worlds: ideologies of empire in Spain, Britain and France* (New Haven, 1995).

⁶⁹ Folger, G.a. 10, fo. 164.

⁷⁰ Ibid. fo. 39.

⁷¹ Ibid. fos. 58, 78v.

⁷² Ibid. fos. 90–1.

whereby the intermeddling of that court, with the publique resolutions, and determinations of common lawe and equity, or monarchy, is a thinge improper.⁷³

The powers of the parliament of Ireland were circumscribed. Issues of jurisdiction, peace, and justice 'belonge to noe man, but to the Crowne'. Remedy was to be obtained directly from the king as promised in Magna Carta which Henry III had ordered read in Ireland and sworn to by the nobility 'for the obseruinge of the lawes, and constitutions of England'.⁷⁴

How did Cusacke define Irish national identity? Cusacke asked King Charles that

*all the natives of Ireland may from their forme of subjection to English governement be by your Majesty declared to be Englishmen by their nationall appellation, and Irishmen by their legall denomination... as perfect members of the English colony in Ireland, and free Denizens of England, equallie, and indifferently with the English natives there capable of all honors... and of the benefitt of protection by the lawes, customs and charters thereof.*⁷⁵

Ireland was a new nation created out of sundry former private nations; English kings had instituted its civil government and given them the laws of England, extinguishing their former Irish customs.⁷⁶ He urged Charles I to assume 'the exercise of the same soveraignety... in professinge your sacred person to be the onely author and institutor of the sayd several lawes in Ireland under God'.⁷⁷

In the kingdom or Empire of Rome whose liberties did extend beyond the bounds of her proper seate in Italy to many partes of foreign countries by her subdued for the participation thereof as well by foreigners borne in those parts as by Romans borne within her owne bowells... In which manner also the Denizens and inhabitants of the whole realme of Ireland by vertue of the English colony by King Henry the second there planted and since inlarged into a kingdom as a profitable grasse inserted into a wild stocke altering the name and nature of her fruit by confirming the same with the proper name and nature of her grasse are by the ancient charters of Ireland to be styled deemed and reputed Hiberni Anglici and free denizens not resident of England for their enjoying the laws liberties privileges and immunities of a free Denizen of England.⁷⁸

IV

As Cusacke's writings need to be set in their Irish context, they need also to be put in their continental and Catholic content. Cusacke was an Aristotelian and a Thomist as his definition of law suggests. Aquinas had written that law required command.⁷⁹

⁷³ Ibid. fos. 109v–10v.

⁷⁴ Ibid. fos. 110v–111v.

⁷⁵ Ibid. fo. 174, my italics. The Irish could match wits and spirits with any in civil or martial discipline; 'employed as good subjects for a good king to govern from... golden dispositions, endeavors and industries (as I may say with Plato) and their fertile and plentiful soil, by their conformable government he (King Charles) may reap more honouor, profitt then the King of Spain doth from his west Indy mines considering that no gold is comparable to virtue'.

⁷⁶ Ibid. fos. 133–5.

⁷⁷ Ibid. fos. 170v–1.

⁷⁸ Bodleian, Rawlinson D 693, fo. 26.

⁷⁹ Howell A. Lloyd, 'Constitutionalism', in J. H. Burns and Mark Goldie, eds., *The Cambridge history of political thought* (Cambridge, 1991), p. 266.

Lawe is a certaine reason, flowing from the mynd of God, which with soveraigne commaund commandeth right things, forbiddeth their contraries, contayning a true, and perfect discovery of the matter of common lawe in her integrity, in beinge a certaine reason flowinge from the mynd of God, that perswadeth right things, and forbiddeth their contraries, and of her forme in her confirmation by Royall authority, in beinge an immediate act of Soveraigne command.

In defining common law as natural law Cusacke put greater emphasis on command than on custom.⁸⁰

Without which Royall confirmation, the justest sentence in the world can be noe lawe... and remaineth in the state of a materiall lawe under the name of equity, whose formall, and essentiall difference from lawe is on the same grounded, With which definition of common lawe, I doe araigne all the precedents of common lawe made without Royal confirmation as apocripha in their attempt, and traiterous in their intent before your Majesty and that lawier for a traitor that dares to call any of them lawe.⁸¹

In *The ancient constitution and the feudal law*, John Pocock argued ‘the common law was by definition immemorial custom’.⁸² The paradigmatic statement is that of Sir John Davies, the English common lawyer and Irish attorney-general, who wrote

For the *Common Law of England* is nothing but the *Common Custome* of the Realm; and a Custom which hath obtained the force of a Law is always said to be *Jus non scriptum*; for it cannot be made or created either by Charter, or by parliament... it can be recorded and registered no-where but in the memory of the people... being continued without interruption time out of mind, it obtaineth the force of a law. And this Customary law is the most perfect and most excellent, and without comparison the best, to make and preserve a Commonwealth.⁸³

While John Cusacke claimed to continue the work of Sir John Davies’s *Reasons why* in ‘Ireland’s cry’ based on Cusacke’s own experience with the administration of justice in Ireland,⁸⁴ his theory of custom was strikingly different. Indeed, it resembled the view of the followers of Bodin. J. H. S. Salmon writes ‘the theorists of sovereignty accepted the existence of custom but would not grant it the status of law until it received the tacit or express sanction of the sovereign’.⁸⁵ Thus, in *A defense of honor*, written between c. 1638 and c. 1641, Cusacke explicitly contrasted his view of custom with that of Davies, whose description of custom he quoted, and attacked him directly along with other common lawyers. Cusacke argued that only those customs approved by royal authority became part of the common law.

Custom is a lawe, which lightly drawn from nature, use hath fedd and made greater, as religion. And on this manner of institution, the waightiest ordinances in nature are

⁸⁰ I owe discussion of this point to Mark Goldie. ⁸¹ Folger, G.a. 10, fos. 10v–11v.

⁸² Pocock, *The ancient constitution and the feudal law*, p. 37. ⁸³ Ibid. pp. 32–3.

⁸⁴ Folger, G.a. 10, fo. 5.

⁸⁵ J. H. M. Salmon, *The French religious wars in English political thought* (Oxford, 1959), p. 68. ‘By this fiction it was held to be equivalent to his will. This had been the opinion of Bodin, although at times he had seemed to express reservations.’ See also William Church, *Constitutional thought in sixteenth century France* (Cambridge, 1941).

grounded... whereby it is not the force of popular inclination but the implicit act of Royall approbation, that in a well established monarchy maketh custom to be a law considering that lawe is to be conceived the formall effect of a lawemaker... in a monarchy all her publique binding acts by the name of a lawe howsoever they may sometime derive their beginningg from popular inclination yet they have their binding power and authority from an implicit, or explicit act of Royall approbation in that behaulf elicited, whose explicit effect, is a written lawe, and his implicit effect is a custom.⁸⁶

Cusacke's view of the relationship of king, parliament, and custom may have been influenced by French practice. Beginning with Francis I, the French *parlement* issued redactions of French custom with royal approval throughout the sixteenth century. But Cusacke goes beyond Bodin in claiming for the monarch a right to his subject's property.

V

Cusacke's views on kingship, law, colonial government, and parliament were shaped in the cauldron of Irish land struggles and continental political thought. At the same time his writings form part of one important strand of the political culture of the late 1620s and 1630s. Maynwaring and Sibthroe had recently argued the king's right to impose the Forced Loan and Filmer was drafting *Patriarcha*; at the same time 'Ireland's Comfort' found its way into Charles I's library and was bound with the king's coat of arms.

In the 1630s Cusacke continued to write tracts that used the language of absolute monarchy and colonial domination to justify specific projects, one to maintain the king's control of building in London, the other for agricultural improvement. In 1630 Charles I issued 'A Proclamation concerning New Buildings'⁸⁷ which followed Elizabeth and James I in attempting to control London building, prevent the creation of tenements and foster the building in brick rather than wood. The purpose was threefold: to glorify the capital 'our Royall Chamber, and the Imperial seate of Our Kingdomes'; to promote health and order by preventing the increase of inhabitants 'to such an excessive number that they could neither be governed nor fedd'; and to compound with violators to increase royal revenues.

Similarly the crown sought to regain the right to fine London builders. Henry VI had granted the City of London the 'fines for building on wastes, streets, and public places'. Although declared void five years later the City's right to collect the fines was confirmed again by charter by Henry VII. Valerie Pearl notes that James I questioned the City's right to these fines in 1614 and

⁸⁶ Folger, G.a. 10, fo. 94v-95v.

⁸⁷ James V. Larkin, *Stuart royal proclamations*, vol. II, proclamation 136, pp. 280-7. For the commission on new building see T. G. Barnes, 'The prerogative and environmental control of London building in the early seventeenth century: the lost opportunity', *California Law Review*, 58 (1970); Robert Ashton, *The city and the court* (Cambridge, 1979); Valerie Pearl, *London and the outbreak of the puritan revolution* (Oxford, 1961); Norman G. Brett-James, *The growth of Stuart London* (London, 1935).

1618 but later confirmed them. Christopher Vernon, an exchequer official, proposed to Attorney-General Bankes in October 1635 that the crown might raise at least £4,000 a year from assessing the fines itself.⁸⁸

In *Via regia*, dedicated to King Charles, ‘King of Great Brittain France and Ireland and of their several colonies’, Cusacke used a case in which he was involved in the court of wards as the springboard to enforce the king’s right to regulate buildings that overhung the public highway in London because the king had a title ‘in capite to all jettings of houses into the streets of cities or boroughs or into public highways of England and Ireland’.⁸⁹ Cusacke composed a wide-ranging discussion of the nature of royal power over cities. He noted that ‘there was a great difference between the Conceit of Universities and the Conceit of England concerning the proper and perfect grounds and Principles of royall government by lawe in her institution and administration’.⁹⁰ He urged the king to examine the work with his ‘most learned prelates and nobility who are your chief and proper counsels of state ... according to the constant practice of your royal ancestors’ and urged him to consult the universities. The result would be ‘the extirpation of Atheism and Barbarism in law ... your Majesty’s reformed government of England by law ... to be an everlasting glorious precedent to all other’.⁹¹

Basing his argument on natural law, conquest theory, and public utility, Cusacke argued that those who held land by burgage tenure nevertheless held their liberties and privileges in capite, that is, by feudal tenure:

a citizen must be conceived to include a tenure in capite by knight service for his lawes liberties and privileges as he doth contain a tenure in burgage in his estate from the ground of his obligation to do that kind of service unto the king when either public utility or necessity shall require it at His Majesty’s command.

Cusacke emphasized the similarity between imperial Rome and England’s imperial relation to Ireland to nail his thesis. He concluded that it was ‘high treason in a subject to say that the streets of the city of London or of any other city within his Majesty’s dominions of England or Ireland are not his Majesty’s proper possessions and that the buildings on or over any of them raised are not held in capite’.⁹² In 1637 the king ordered Attorney-General Bankes to prepare a commission for Thomas Doughtie and others to inquire into encroachments on the streets of London. Such encroachments included ‘sign-posts, rails, posts ... shopboards and footsteps into houses, and also concerning cellar-

⁸⁸ Pearl, *London and the puritan revolution*, pp. 21–2, 84n.

⁸⁹ Bodleian, Rawlinson D 693 (n.d.). Cusacke refers to ‘a restorative of violated dignity and a sovereign salve of wounded liberty in your Majesty’s realms of England and Ireland’, fo. 3. Reflecting the Stuart policy of urging building in brick rather than wood, he would inquire into whether houses which were ‘demolished and changed into brick buildings ... extinguish the king’s former lawful claim by a tenure in capite’.

⁹⁰ *Ibid.* fos. 1v–3.

⁹¹ *Ibid.* fos. 2–3.

⁹² *Ibid.* fo. 10. The administration of a county palatine where the earl held sway as a petty king resembled that of a city ‘but with this difference that the mayor is chosen by the citizens but created by the king and in a county the Earl is bothe chosen and created for the supreme governor of the county by the kinge for the distinction of a popular state in a city from a royall state in a county with the equal use and exercise nevertheless of a royal government in both’.

windows and stairs descending into cellars which are made habitations, tap-houses and forges for smiths, with power to treat and compound with offenders, or to remove the said nuisances'.⁹³

Cusacke continued to write tracts that used the language of absolute monarchy and colonial domination to justify specific projects. In the 1630s Charles I's attorney-general, Sir John Bankes, received dozens of proposals for industrial and agricultural projects.⁹⁴ Sometime after the judges issued their advisory opinion in February 1637 on the legality of ship money (the tax levied annually by the crown from 1634 to support a fleet in the English Channel), probably after *Rex v. Hampden* was decided in April 1638, Cusacke wrote to Bankes on behalf of a project that promised to increase the production of corn, beef, mutton, butter, cheese, and all other provisions in England, Wales, and Ireland through new, unspecified techniques. The projector had asked 'free liberty without interruption of the owners of the lands to improve what lands he finds meet for improvement' and in return would divide the profits in thirds with the king and the landowner after expenses were deducted.⁹⁵ The language of improvement was pervasive in early Stuart Britain and the American colonies.⁹⁶ But the Statute of Monopolies passed by parliament to control, if not eliminate, projects in 1624 forced projectors to use loopholes in the law to justify such licences in the 1630s.

Cusacke's tack was different. To legitimate the project Cusacke applied his radical re-reading of the common law, of parliament, and of the royal prerogative. In addition he drew attention to the broad implications of the ship money decision. Clarendon later wrote of the case's formidable political impact:

But when they saw in a court of law (that law that gave them title and possession of all that they had) apothegms of state urged as elements of law ... they had no reason to hope that doctrine, or the preachers of it, would be contained within any bounds.⁹⁷

Cusacke's arguments bear out Clarendon's conclusions.

⁹³ *Calendar of State Papers, Domestic (CSPD), 1637–1638*, p. 116 [?1637]. There is no reference to this project in the Bankes MSS index.

⁹⁴ Bodeian Library, Bankes MSS. For a discussion of these projects see Joan Thirsk, *Economic policy and projects* (Oxford, 1975); Peck, *Patronage*, pp. 136–43.

⁹⁵ Bodeian, Bankes MSS 48/22, c. 1637–9.

⁹⁶ Jack P. Greene, 'Changing identity in the British Caribbean: Barbados as a case study', in Canny and Pagden, eds., *Colonial identity in the Atlantic world, 1500–1800*, pp. 228–9. Canny, 'Identity formation in Ireland', p. 193: 'Cork insisted that his recently appointed tenants improve the land that they rented from him and devote themselves to advanced agriculture. His insistence, and the enforcement of the same requirements by most other principal planters in Munster, resulted in the physical and economic transformation of the better lands of the province on which the planters had settled.' See also Cusacke, 'Ireland's cry', Folger, G.a. 10, fo. 92.

⁹⁷ Edward Hyde, *The history of the rebellion and the Civil Wars in England* (2 vols., Oxford, 1840), 1, pp. 29–31. I am grateful to Glenn Burgess for this citation: 'the pressure was borne with much more cheerfulness before the judgement for the king ... men before pleasing themselves with doing somewhat for the king's service, as a testimony of their affection, which they were not bound to do; many really believing the necessity ... others observing, that the access to the king was of importance ... But when they heard this demanded in a court of law, as a right, and found it, by sworn judges of the law, adjudged so, upon such grounds and reasons as every stander-by was able

Cusacke appropriated the argument that ship money was legitimately levied because of the national emergency posed by foreign threat to support this internal project.

The King of England by his royal prerogative without an act of parliament may compel his subjects to give way to his royal design for the improvement of their lands in things concerning the public good of his kingdom, and also allow the propounder and agent in the work his desired recompense and reward for effecting of the same by common law... By common law or the law of nature, royal dignity being *de iure divino*... it doth challenge the handling of all things concerning the public good of the kingdom by the king's prerogative in despite of the subject's teeth... and who denieth this supreme act in the King of England, or in any other absolute king, is a traitor by the definition of high treason by common law.⁹⁸

Glenn Burgess situates absolutism in Jean Bodin's definition of sovereignty: 'the principal point of Sovereigne majesty and absolute power... lies in giving laws unto the subjects in general, without their consent'. Maynwaring and Sibthorpe, the Caroline clerics who preached the subject's divine obligation to pay the forced loan in 1627, were exceptional according to Burgess, who concludes: 'It is only by taking theological statements of the duty to obey as if they were statements designed to answer legal questions that one can make a case for the existence of absolutism by divine right in the political thought of the period'.

Is Burgess right to argue that 'to qualify as a theorist of "absolutism" an English thinker would need to make the claim that the king could give laws to his subjects, without consultation, which in practice amounts to the claim that proclamations should have force superior to that of statute or common law'.⁹⁹ Such a definition is not necessary particularly if the theorist redefined common law and parliament. Let us take a closer look at Cusacke's arguments on behalf of Chiver's project.

By the laws of England there is a twofold parliament: the one termed a parliament, consisting of prelates, nobility and judges as many as the king shall please to assemble on any occasion and the other a full parliament, consisting of the Commons too. And Common laws are made by the parliament of Prelates, nobility and judges *in curia ordinaria*, and some state laws which are termed proper or municipal laws too are made by them... before common law shall be, by my definition, truly understood there may be a gross mistaking and confounding of common law with custom and proper or municipal law which in law differ *toto coelo* from one another and to doubt whether the king may produce or exercise the proper and perfect acts of his royal prerogative without the assent of the Commons in parliament is to turn monarchy into democracy and to make him the servant of the people instead of being a divine vicegerent and their

to swear was not law, and so had lost the pleasure and delight of being kind and dutiful to the king; and instead of giving were required to pay, and by a logic that left no man any thing which he might call his own; they no more looked upon it as the case of one man, but the case of the kingdom.'

⁹⁸ Bodleian, Bankes MSS 48/13, n.d. [c. 1637–9].

⁹⁹ Burgess, 'The divine right of kings reconsidered'.

master; and to expose common law to the judgement of the Commons is to cast a pearl before swine ... he knoweth not either what common law or king is who doth doubt of the free and absolute exercise of his royal prerogative in this particular act concerning the public good of his kingdom which is the chief ground of his challenge of ship money now unto him allowed by common law; and he who denieth the one must also deny the other by plain consequence... the King of England makes the laws of England, and to admit any other lawmaker in England is high treason.¹⁰⁰

Cusacke's views and response to the ship money decision was by no means unique.¹⁰¹

Moreover, Cusacke presents the king as lawmaker in terms that Daly and Burgess might agree was absolutist. Moreover, in a previous tract of the 1620s Cusacke had argued that the king could make law either in parliament or in the exchequer chamber.

I compare your Majestie's absolut act of lawmaking by your proceedings either in Parliament, or in the Exchequier Chamber (which two severall Statutes have ordayned and apointed to be your Majesty's publique council for law, a supreme court of common lawe and a vicegerunt of Parliament in that behaulf) to the act of one mans seeing with two divers Spectacles, havinge but one glasse...for bothe, consideringe that the same Judges of the Exchequier Chamber are they, whose opinions the Parliament doth alwaies followe in her determinations of common law.¹⁰²

Finally, Cusacke's arguments presented privately to Bankes were *not* condemned: Robert Chiver, the agricultural projector, got his grant on 10 March 1640 'for the sole practice of a new way by him invented for improving and manuring of land'. The king's share was increased to half and any inconvenience in the project was to be determined not at common law but by the king or the council.¹⁰³

VI

We turn now to Cusacke's most unusual project. Even as he petitioned Attorney-General Bankes on behalf of Chiver's project in 1638, he asked King Charles for a 'lightsome' room in Whitehall Palace where he could display three imprese, 'which are in their several frames six yards long and an ell deep'. Cusacke's emblems addressed Charles as 'King of England, Scotland, France and Ireland and of their Several Colonies'. These emblems would both demonstrate the king's right to rule *iure divino* and help to quell the current

¹⁰⁰ Bodleian, Bankes MSS 48/13, n.d. [c. 1637–9].

¹⁰¹ Cusacke's language had a familiar ring in the later years of the Personal Rule. In 1638 after the judges split 7 to 5 in *Rex v. Hampden*, Thomas Harrison, a minister who served as chaplain to William Juxon, who was both archbishop of Canterbury and lord treasurer, publicly denounced Justice Richard Hutton for treason in deciding against the king. Harrison was tried, found guilty, and sentenced to pay a heavy fine and to suffer humiliating punishment. Kevin Sharpe suggests that Harrison's response was unique. How different were Harrison's and Cusacke's views? Harrison said that the king might impose his will by common law and 'something else'. Cusacke claimed that the common law itself was something else. On the response to the ship money decision see Kevin Sharpe, *The Personal Rule of Charles I* (New Haven, 1992), pp. 545–600, 716–17.

¹⁰² Folger, G.a. 10, fo. 12: the two statutes to which he referred were 1 Edw. 3 c.12 and 27 Eliz. c. 18.

¹⁰³ *CSPD 1639–1640*, p. 532.

insurrection in Scotland by ‘the necessary establishment of the English orders of knighthood as the true grounds of civility and the proper props of monarchy’.¹⁰⁴ Perhaps they were connected with efforts made during the Personal Rule to raise money from the king’s feudal rights.¹⁰⁵

Conjuring up images heraldic and mnemonic the emblems were meant to be read, contested, and approved not only in England but in the rest of Europe. The first, ‘A threefold Emblem of State which with divine types and sentences grounded on sacred scriptures shewith the royal prerogative in her first earthly subject to be *iure divino*... and the proper tenure thereof by common lawe’. The second ‘Aurea Periscellis’¹⁰⁶ showed that the order of the garter was ‘the most honorable...in the Christian world’. Indeed the tract urged the creation of the Order of St Patrick for the Irish which, in fact, was not implemented until the eighteenth century. The third, ‘Simbolum Militare’, demonstrated that the king as Defender of the Faith was ‘the universall author of bothe to all Christian knights’.

The emblems, accompanied with explanatory treatises, were to be judged at Whitehall, each by a different set of experts.

The threefold emblem of state by such... Protestant learned divines, civilians and common lawyers as your Majesty shall nominate... Aurea Periscellis and Simbolum Militare by three learned civilians, three learned knights of the garter, three learned knights of the Bathe, 12 learned knights bachelors of your Majesty’s nomination and by all your heralds.

These ‘referees’ would meet weekly to examine them and hear Cusacke’s arguments.

But Cusacke was not content to demonstrate his views to the English or to Protestants alone.

¹⁰⁴ BL Harl. 1038, fos. 105v–7. ‘The Preface for the publique defenses of England’s Majesty and Heroical Glory’; Cusacke obviously expected publication: this ends with directions to the printer: ‘Under this discourse you must place the rowe of Crosses and set under them the verses and haulfe moones of vertues and in both sides of the blewe garter you must sett the banners of knighthood and the foure patrons [patterns] of England Scotland France and Ireland and two on both sides of the title.’

¹⁰⁵ BL Harl. 885, fo. 46. Cusacke claimed that the emblems should promote ‘the reformation of great errors and gross abuses committed against Royall dignitie and publique libertie which are now proved to be by his Majesty’s most gracious direction in his commission seriously examined sincerely brought to light and loyallie certified that they may be by his majestie...graciously reformed.’

¹⁰⁶ BL Harl. 1038, fo. 88, is the Latin version of ‘Aurea Periscellis’, BL Harl. 885, contains other versions: ‘Apology for the Defense of a Royall Emprese intituled Aurea Periscellis which was presented unto his Maiestie in January 1636 and of a more complete Royall presente contayinge many necessarie discoveries of the errors and true grounds of Heraldry’, fo. 46. Both Harl. 1038 and Harl. 885 later belonged to Bishop Stillingfleet. Bodleian Library, Ashmolean 843, appears to be another treatise related to the emblem project: ‘A Display of Honour, countayinge a proper and perfect discovery of the nature of Honour and of the proper grounds and principles thereof, the Lawes of Honor, for the erecting and establishing of their proper court under the jurisdiction of the Lord High Constable in England, for the preservation and perfection of Monarchie and for the general reformation of many gross errors detected in the practices of heraldry and of common and civil lawes prejudicial to Monarchie.’ The tract is addressed to Charles I.

The proper judges of the said three emblems and of their severall treatises by which they are explained...are by the universality of their contents not onely the divines, civilians...and heralds of your realme of England but of all other Christian kingdoms which are competitors with your realm of England for precedency in those particular points of honor, namely, in the royal prerogative which their most learned and loyal subjects do acknowledge to be iure divino.

Cusacke had prepared a Latin letter to all hereditary Christian kings and delivered it to their ambassadors resident in England. He asked that

as many Roman Catholic learned divines, civilians and knights as the Embassadors of France and Spayne and of any other Roman Catholic prince or state now in England shall nominate [be]...made acquainted with the contents of the said three emblems ... for the discovery of the truth concerning the divine condition of royal prerogative by the law of nature equally existing in all hereditary kings without exception and concerning the eminency of your royal order of the garter above all other royall orders of knighthood.

Once all agreed, the emblems and their treatises would be published 'for the glory of God... advancement of royal dignity and public liberty and the honor of England'.¹⁰⁷

Cusacke's imprese can be situated in the context of the rage for emblems and imprese in Renaissance Europe. Alan Young has discussed the Shield Gallery in the Palace of Whitehall in which the imprese of individual knights who took part in tournaments were displayed. Part of the tour of Whitehall Palace, the gallery was described by Lupold von Wedel as 'a long passage... which on both sides is beautifully decorated with shields and mottoes' and by Thomas Platter 'as a chamber built over the water, hung all round with emblems and mottos'.¹⁰⁸ Young points out that in *Minerva Britannia* Henry Peacham transformed the imprese into emblems by adding poetry to explain the devises 'reserved in the private Gallery at Whitehall'.¹⁰⁹

Cusacke's emblems thus draw on a long tradition in English culture and continental models. As Karl Josef Holtgen writes, 'The emblem is the most important of verbal-pictorial art forms in the Renaissance and Baroque Ages. Its meaning, a general truth or insight, at first often a little obscure, emerges from the interaction of its three parts, Motto, Picture and Epigram'.¹¹⁰

¹⁰⁷ In his petition to Attorney-General Bankes written about the same time Cusacke promised a treatise *Speculum regium pro via regia* which would address the issues of divine right and of common law 'not only to the King of England but to all the kings of the world'. This is Bodleian, Rawlinson D 693.

¹⁰⁸ Alan Young, *The English tournament imprese* (New York, 1988), pp. 11–12. In dedicating his manuscript on bastardy, Inner Temple, Petyt MSS 538/27/14, c. 1626–32, to Henry Percy, earl of Northumberland, Cusacke wrote: 'I have chosen your Lordship... upon the... motions which in my Impresse unto your Honor I have set forthe supposing that as... honor imprisoned doth by the opposition of outward adversity inwardly increase...'

¹⁰⁹ Quoted in Young, *The English tournament imprese*, p. 12. I am grateful to John Adamson for this reference.

¹¹⁰ Karl Josef Holtgen, *Aspects of the emblem* (Kassel, 1986), p. 25; Peter M. Daly, *The English emblem and the continental tradition* (New York, 1988), p. 5, suggests 'the combination of motto, picture and epigram is best regarded both as an art form and as a mode of thought'.

Cusacke described one of his emblems this way

This royal Emprese is contayned in two peeces of velum set in a large frame of two peeces... with hinges opening and shutting like a book of two leaves and in the first peece hath a large Emblem made on the garter with some small types about it gracing the work and expounded and in the second piece hath a large discourse handlinge the matter of Christian Chivalry and the great dignity of the royal order of the knight of the garter in England at large with the addition of divers small types intermixed therein gracing the worke and expounded also as followeth.¹¹¹

The most important emblem book in English, Francis Quarles's *Emblemes*, was published in 1635 and went through over fifty editions into the nineteenth century. Quarles borrowed from Hermann Hugo's Jesuit emblem book, *Pia Desideria*, published in Antwerp in 1623. Unlike earlier emblem books Hugo included lengthy meditations and poems. Quarles, a London poet with court connections, established the forms of Catholic Baroque emblems.¹¹² His devotional materials captured the mentality of the culture of Henrietta Maria's court.¹¹³ Cusacke's elaborate political and religious emblems, which cite the church fathers, appear to parallel the elaborate emblems of Hugo and Quarles.

Cusacke also put forward another solution to the 'bloody insurrections' in England, Ireland, and Scotland, urging Charles I to follow the examples of other Christian kings,

imploring the helps of all forraigne renowned universities... by an imitation of Philip II King of Spain in his challenge of the Crowne of Portugal and of King Henry VIII in the question of a divorce between him and his queen Katherine... as the knowledge of common law and of high treason by common lawe are the objects of universal knowledge in all monarchies.

But what of the religious differences amongst these monarchies and universities? Cusacke argued here that issues of state were above doctrinal differences.

The most important... matters of state and civil government [are] to be decided and determined by the most sharpe, learned and profound wits and judgments... in their

¹¹¹ BL Harl. 1694, 'Aurea Periscellis', fos. 105vff. 'In the first peece which I call the Emblem over the imperial crown of England about bothe the sides of the Crosse fixed in the top and about the other three sides and in the four corners within the marginal red lines you see how and why the King of England is styled Defensor Fides and what his subjects in his four kingdoms ought to be... alluding to the four Evangelists whose divine doctrine he is bound to maintain as the ground of his faith and honor perfection and felicity liberty and immortalitie.'

On the right side of the crowne you see the fatal roote of discord betweene the two houses of Yorke and Lancaster by their several types and verses and the collar of this noble order of the Garter shewing their return to union and by what means.

Under the crown you have two Angells with one hand supporting the Crowns and uttering divine sentences for the commendation of vertue and with the other hand shewing that sentence by which the wearing of a blue ribbon for a badge of vertue is a divine institution... and between the two Angels a sentence with some verses under declaring the imperfect state of man's life in the lists of vertue.'

¹¹² Karl Josef Holtgen, 'Emblem and meditation: some English emblem books and their Jesuit models', *Explorations in Renaissance culture*, 18 (1992), pp. 55–91.

¹¹³ Erica Veivers, *Images of love and religion* (Cambridge, 1989).

most famous and learned universities...Notwithstanding their varieties of divers opinions in religion...in the present confusion and distraction of the Christian world with the multitude of opinions in the choosing of a good religion [people should] be enabled to understand and imbrace the best of them all for their natural preservations, moral perfections, civil estimations and eternal salvations.

And what of the uniqueness of English law? Cusacke advised:

There is no kingdom in the Christian world more dangerously deluded and abused with the impostures of lawe then your Majesty's realme of England is at this present where the most learned professors and practices of common lawe can not without the help of this my definition of common law tell certainly properly and perfectly what common law is.¹¹⁴

VII

In 1641 Gaelic Irish and Old English Catholics rebelled against the Protestant planters in the name of Charles I. Cusacke, once more from jail, returned again to patriarchalism. He argued that:

a king is the proper and absolute owner of his kingdom as the father of a family is of his housewife, children and servants... and to deny this assertion of common lawe is high treason... Parliaments are royal institutions for the help of a king by his Council of State in his royal government.¹¹⁵

As Strafford was tried and executed Cusacke claimed that it was the erroneous use of the common law that had caused the Irish conflagration.¹¹⁶ While Sir John Davies and Cusacke himself had seen the extension of the common law as the way to conquer and subdue Ireland, law had become

the instrument of popular faction instead of divine reason... causing civil combustions... If the Commons will show their zeal of the publique good which they pretend in their violent prosecution against the Earl of Strafford to be grounded on reason and not on faction they will turn against the judges and prime professors and practicers of common law who, by their gross imposture in their arguments of ship money, avering common lawe to be grounded on custom, have been the cause of all his lordships errors for which he is nowe questioned.¹¹⁷

According to Aristotle there were two kinds of philosophers: the one who flatters the king that 'his will may be a law. As Strafford is made example'; the other who flatters the commons in their liberty: both were guilty of treason and of subverting monarchy into tyrannical government.¹¹⁸

Cusacke confronted Strafford too and repeated his view of their relationship of all inhabitants of Ireland to the crown.

¹¹⁴ BL Harl. 1038, fos. 76–7.

¹¹⁵ Ibid. fos. 44v–5.

¹¹⁶ See Hugh Kearney, *Strafford in Ireland* (Cambridge, 1959, 1989).

¹¹⁷ BL Harl. 1038, fo. 47.

¹¹⁸ Ibid. fos. 47–8. Strafford, 'by his fatal sentence doth make a necessary precedent for the inflicting of the same punishment on all the Judges of Westminster who after an arbitrary manner have handled the case of ship money and all their other judicial sentences which they call common law and, without the warrant of an act of parliament, being unjust must be arbitrary and therein a subverting of lawe and monarchy'.

I must tell the Earl of Strafford that my native country your majesty's realme of Ireland, inhabited for the most part by the English race there planted as in their colony of England is not a land conquered but a land of conquerors, the same occupying and enjoying as free Denizons of England there resident and ruled by the same common lawes with the subjects and inhabitants of England to whom the incorporation of the Irish natives by way of Denization doth also make them to be partakers of the same liberties, privileges and immunities with them by common lawe for which their peculiar manner of civil and legal existences your majesties subjects of your realm of Ireland are to be properly stiled Anglo Hiberni from their offspring, conquest, abode and government and therein Denizens not resident of England exempted from all her provincial or proper lawes and not absolutely Hibernis and in England honoured as her glorious offspringe.

We might compare Cusacke's position with that of Patrick Darcy, an Old English lawyer in the Irish parliament in 1641 who claimed that the Irish were a free people to be governed by the common laws of England.¹¹⁹ Where Cusacke and Darcy differed, of course, was on the origin and the definition of the common law, which Cusacke claimed was made by the king.¹²⁰ Cusacke also made clear Ireland's colonial status.

Cusacke incorporated new shibboleths into his political discourse. He called for annual parliaments just as the bill for annual parliaments was introduced by William Strode and Oliver Cromwell and as in February 1641 King Charles gave his assent to the Triennial Bill. But the call for annual parliaments, based on Edward III's statutes, was not only the view of members of the Long Parliament. Francis Bacon had suggested to James I that he include such an assurance in his speech to parliament in 1614.¹²¹ Moreover, Cusacke continued to define parliaments by medieval precedent calling for 'annual parliaments of justice consisting of prelates and noblement alone',¹²² not unlike fifteenth-century Irish practice.¹²³

Anthony Pagden suggests that at the end of the sixteenth century, "universal monarchy" replaced *imperium* as a term for the continuing aspiration to supra-national authority... The concept of a single law, a *ius publicum*, for all the several states within the monarchy.¹²⁴ Cusacke presents this view:

¹¹⁹ Perceval-Maxwell, 'Ireland and the monarchy', p. 292. ¹²⁰ BL Harl. 1038, fo. 48.

¹²¹ See Pauline Croft, 'The debate on annual parliaments in the early seventeenth century', *Parliaments, Estate and Representation*, 16 (1996), pp. 170, 174.

¹²² BL Harl. 1038, fos. 49–50. Cusacke rehearsed his notion of the twofold nature of parliament now emphasizing that the first made up of prelates and noblemen alone was a parliament of justice which should, according to statutes of Edward III, meet annually.

¹²³ *Ibid.* fos. 58–9v. Cusacke defined the different councils of the king; '43 Ed III made by the king himself and his counsell alluding to his counsell of state in the assembly of his prelates and noblemen and not to his privy counsell whence Polydore Vergill stileth concilium domesticum... to be distinguished from his counsell [of] state which is always autonomastice in lawe to be understood by the absolute name of the kings counsell therein and from his learned counsell in his judges sergeants attorney and solicitor general at law who are his counsell secundum... the servants of his council of state to inform them of the practical parts of law as they are to instruct the learned counsell in the speculative parts thereof.' BL Harl. 1038, fos. 58–9v.

¹²⁴ Pagden, *Lords of the world*, pp. 43, 45.

Common law belonged to the person of a king as Rex in solio in parliament ... practicing his divine vice gerency with his royal lawe therein distinguished from statute law and custom as a general law from a particular and a perfect and divine lawe from an imperfect human lawe...whereby the parliament of a supreme kingdom in a... universal monarchy must prescribe common lawes to the subjects of a subordinate monarchy...whereby your Majesties subjects of Ireland and Scotland are for the remedy of their oppressions sustained contrary to common lawe and equity to implore their helps from your Majesty in your royal throne and Parliament of England.

Personal salvation was never far away from the public: describing the Irish uprising Cusacke claimed to be the 'sole surviving heir male of whole blood of his said ancient and noble family ... the rest of the ancient noble families of the English conquerors planted in your Majesty's realm of Ireland hitherto make the most dangerous civil combustions and bloody insurrections' although they had been 'the chief props of the honour of the crown of England'. Cusacke now called for the arrest of James, Patrick, and Adam Cusacke, the branch of the family that long ago had triumphed in the Irish law courts but had thrown in their lot with the 1641 uprising.¹²⁵ Claiming his right against the Fagan family who had gone off with his father's fortune Cusacke demanded £20,000 'to erect and maintain a house of orphans in Dublin', to be made its chief governor, and thereby 'universal patron and protector of all orphans in your realme of Ireland'.¹²⁶

Cusacke attacked his sentence in star chamber 'this last Trinity term' for the long-standing case of the guardianship of Wingfield Honninge and continued to attack the judges. The judges had changed

your royal government by lawe into tyrannical without lawe in their act of usurping the ordinary jurisdiction of parliament by their sentence and censure of fine, pillory and imprisonment pronounced against your subject for the punishment of his most lawdable and lawfull and necessarie act in procuring the protection of Idiots according to common lawe...which your subject doth more largely and exactly set forth in his treatise entitled The Trial of Idiots.¹²⁷

Sent to jail by Sir George Croke, one of the ship money judges, Cusacke once again claimed that Magna Carta was incorporated into the king's coronation oath:¹²⁸

a king doth by his solemn vow made at his sacred coronation promise not to sell delay or deny justice or right to any man, he doth then generally...command his judges to observe the strict rules of virtue and perfection [in] all their judicial acts by them produced as his vicegerents.

¹²⁵ BL Harl. 1038, fos. 59v–61. By Strafford's abuse of authority the king had become 'the destroyer of those men with whose loyalties you are chiefly to be preserved'.

¹²⁶ Ibid. fo. 68.

¹²⁷ Ibid. fo. 78.

¹²⁸ Ibid. fos. 73v–4. In describing the relationship of kingship and liberty Cusacke provided space for the subject's redress. 'Royal dignity must be the preservative of public liberty and publique liberty must be the preservative of royal dignity as correlatives in nature the one being but a power to command just things in the king and the other a power of doing just things in the subject.'

By 1647 the Catholic alliance in Ireland had split into two factions, one supporting secular Irish lords, the other the leadership of the papal nuncio. Cusacke turned up in Paris, once again proposing a publishing project as he had in 1615. Cusacke's *Tessera Hiberniae* was endorsed by the apostolic nuncio: he commended Cusacke and urged contributions so that Cusacke could 'undertake his journey to Ireland, complete these books there and cover the necessary expenses of printing'.

The nuncio reviewed the ten manuscripts Cusacke promised to publish; these must have been based on the treatises that we have discussed; they recall his earlier analysis of kingship, parliament, and law and reassert Ireland's colonial status. In 'The salve of Ireland', Cusacke would 'prove by the authority of two statutes of Edward III that the realm of England, Ireland ought to be ruled by a Parliament of the spiritual and secular princes under the king'. 'The liberty of Ireland' was 'conducive to establishing a perfect monarchy in Ireland under the king of England'; and 'Of the union of three realms' sought 'to preserve the three kingdoms in perpetual peace and concord'.

But now, as if drawing back a curtain, Cusacke displayed the larger context within which he wrote. King and priests were the two vicars of the divine word and common law should be subordinated to the law of grace. The apostolic see had a quadruple duty in any Christian kingdom;

the apostolic delegate assumes the highest voice and seat in any public gathering of the regal, spiritual or secular, for the purpose of establishing laws...so that he might preserve the royal majesty, the Catholic faith, public liberty and the common peace inviolate and eliminate heresies and all impieties from the laws.

England's upheavals, which had changed its monarchy to one mixed with aristocracy and democracy, had

stirred up the present horrible civil fires in the three realms of England, Ireland, and Scotland in order to establish a profane and insane democratic regime...for seditious flatterers of the people to excite an impious rebellion against God and the king at the same time under false pretenses persuade the people that they and not the king especially represent the realm in Parliament, and that the absolute election of the king is in their power, so that they either compel the king to be popular in his rule and thus a rebel against God or they depose him. This is against the law of nature, which places in God the Absolute and voluntary selection of the king as a divine vicar.

Obviously Cusacke did not endorse designation theory.

Cusacke described himself as 'battling under the pious protection of the Roman pontiff to emancipate the Catholic faith and Christian liberty. This treatise, *Tessera Hiberniae regnum Christianum*, was the only one Cusacke ever published. It appeared with the approval of the Sorbonne and the imprimatur of the papal nuncio in 1647.

In conclusion, Cusacke claimed that natural law and civil law, not customary law, were properly common law. Drawing heavily on Aristotle and Aquinas, he presents the case for a very high view of the prerogative not in a theological

or international context but on behalf of specific domestic English projects and begins to do so under James VI and I. He implies that the Norman conquest extinguished earlier laws in England too but suggests in one tract that the Conqueror was a usurper. His tracts rely more on natural law theory than on feudal law. While he invokes the king's feudal tenures to uphold his control of building he explicitly denies the view that he ascribes to Camden that the nobility had to be called to parliament.¹²⁹

John Cusacke's writings should be situated both in the line of writings about Tudor and early Stuart Ireland and continental writings on kingship, law, and colonial theory. In particular, Cusacke's tracts graphically demonstrate how continental theories of absolute monarchy and the colonial reinforced one another, especially in the 1630s. Cusacke – the Mennochio of early Stuart political thought – invites us to address the colonial in seventeenth-century British politics. This is a familiar agenda to nineteenth- and twentieth-century historians of Britain, Ireland, and the empire, one we would do well to take up.

Cusacke's views also, I would argue, provide insight into the mood of the 1630s and what one court hanger-on thought the Caroline regime wanted. He provides part of the context for reading the work of other, more prominent, writers, for instance Sir Robert Filmer. Both Filmer and Cusacke wrote in the aftermath of the violent dissolution of the parliament of 1629 and Filmer's earliest draft of *Patriarcha* has recently been dated to *c.* 1629–32. Writing political theory and seeking royal favour at the same time, Filmer's treatment of kingship, parliament, and law resembles Cusacke's. Cusacke's tracts, written for court officials and received if not read, suggest the intersection of the languages of absolute monarchy and the colonial whether in the writings of the Irish themselves or of those who had served in Ireland in the discourse of the 1630s. If Cusacke can be said to fit the model that 'everyone spoke the same language', it is a model that no longer has explanatory value. Instead, he suggests the strength of absolutist discourse in early Stuart Britain, whose sources and strategies needs further exploration.

APPENDIX

BL Harl. 1038, *c.* 1641, contains a list of Cusacke's tracts:

1. The Kingdoms Cry showing the lawe and monarchy of England to be grounded on the perfection of reason in lawe discovered by your Majesty in a two fould parliament called a parliament of justice consisting of prelates and noblemen and a full parliament of them and the commons together and by the neglect of both divers oppressions caused by 32 impostures of lawe observed in the argument of shippe money and in the familiar practice of common lawe charged with high treason by common law [referred to in Folger Shakespeare Library, G.a. 10].

2. The anatomy of high treason shewing the natur of thereof and of common lawe by their severell proper and perfect logicall certainty beyond exception.

¹²⁹ See John Guy, 'The rhetoric of counsel in early modern England', in Dale Hoak, ed., *Tudor political culture* (Cambridge, 1995).

3. The Imposters arraignment maneteyninge the contents with above 60 statutes and other authorities instancinge the charges of the kingdome's cry with the addition of 3 charges more

4. The Defense of Majesty for exemptinge your Majesty from beinge in a penall lawe comprised by the generall name of a common person with the confutation of a dangerous imposture in Magdalen College Case lib. ii. Report

5. The Poor Man's Crie shewinge the inconveniencies of the statutes against maintenance and champerty for their repeale.

6. The Tyrall of Idiots for the necessary protection of six sorts of Idiots with the same priviledges by common lawe [Pierpont Morgan]

7. A display of Bastardy maintaining the honour of legitimacy from blemish by bastard intrusion on her rights with false titles of legitimacy by common lawe [Inner Temple, Petyt MSS]

8. A display of honor for the discovery of her proper lawe object and scope for the perfection of royall government which with out it cannot subsist [BL Harl. 885]

9. The foxe trappe for the discovery and condigne punishment of false confederacies by common law

which severall treatises I doe intend with God's helpe to publish in convenient tyme for your Majesty's necessary use to be made of them as a pilot in the poupe doth make use of the mariners discoveries who is wet... with the leaks of the hould in the same shippe to him propounded.

Additional tracts by Cusacke are cited in the text.