
God v Caesar: Sir Edward Coke and the Struggles of His Time

DAVID LITTLE¹

Research Fellow, Berkley Center for Religion, Peace, and International Affairs, Georgetown University

Formerly TJ Dermot Dunphy Professor of the Practice in Religion, Ethnicity, and International Conflict, Harvard Divinity School

In the 1580s at Temple Church, a youthful Edward Coke, recently admitted to the bar, most likely witnessed the ‘Battle of the Pulpit’ waged between the Anglican Richard Hooker, who preached on Sunday morning, and the Puritan Walter Travers, who answered him on Sunday afternoon. That contest symbolised a broader conflict between the Anglicans and the Puritans in late sixteenth- and early seventeenth-century England over economic and political affairs that Coke would, in his own way, try to reconcile in both the theory and practice of English law. Embracing Hooker’s emphasis on the past and the seamless continuity of the English legal tradition, Coke would endeavour to make it look as though the strong contemporary impulses in favour of economic freedom and parliamentary government, close to the hearts of many Puritans such as Travers, were but a normal expression of the ‘ancient constitution’ associated with the reign of Edward the Confessor in the first half of the eleventh century. Though Coke temporarily succeeded in conciliating some of the Puritans, the compromise would not satisfy everyone.

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I was first in the precincts of the Temple Church some fifty years ago, doing research on a doctoral dissertation concerning the religious and legal conflicts between the Anglicans and the Puritans in late sixteenth- and early seventeenth-century England, and on the effects of those conflicts upon the legendary legal giant of the period, Sir Edward Coke. To come back now and report on my findings, and to do so from the present-day pulpit of Hooker and Travers, is an incomparable thrill.² This marks the third time, more recently, that I have

1 This article is the lightly edited and annotated text of a sermon delivered in the Temple Church, London, on 8 May 2016. I am grateful to Robin Griffith-Jones, the Reverend and Valiant Master of the Temple, for his kind invitation to preach and his warm hospitality. I am reliably informed that the relationship between the current Master and Reader at the Temple is a good deal more harmonious than that enjoyed by Hooker and Travers which I describe hereafter.

2 A fuller account of my findings is contained in D Little, *Religion, Law, and Order: a study in pre-revolutionary England* (New York, 1969; republished Chicago, 1984). An excellent re-examination of related matters, and especially of Coke’s role in the ‘struggles of his time’, is contained in J Greenberg, *The Radical Face of the Ancient Constitution: St. Edward’s ‘laws’ in early modern political thought* (Cambridge, 2001).

worshipped in the Temple Church. I was here in 2014 and 2015 in connection with celebrations of the eight hundredth anniversary of Magna Carta, which reminded us of the struggle between church and state, between God and Caesar, underscored by the fact that the first and last articles of Magna Carta declare the independence of the English Church from the control of the state, very much against the ambitions of King John. Differences over religious and political authority and the nature of government were equally current in the 1580s and, again, in this very church, when a youthful Edward Coke (1552–1634), having recently completed his education here at the Inns and entered the bar, was probably seated hereabouts on a Sunday morning taking notes on a sermon by Richard Hooker, Master of the Temple Church from 1585 to 1591.³

Coke's reputation was yet to be made. In due time he would become Speaker of the Commons and Attorney General, as well as Chief Justice of the King's Bench. There he would preside over historic decisions such as *Dr Bonham's Case*, declaring the king to be subject to the law and Parliament, a sentiment that King James did not at all appreciate, and one that eventually resulted in Coke's dismissal as Chief Justice in 1616. Standing firm for the rule of law, he thereafter helped pass the Petition of Right of 1628, and standardised existing law by completing *Coke's Reports* and his *Institutes of the Lawes of England* – thereby becoming one of the great figures of English history.

HOOKER AND TRAVERS

But, however promising his future, life, as Coke sat there scribbling his notes, was not peaceful at the Temple Church in the 1580s. Richard Hooker, who would, in a few years, become an eminent defender of the Anglican faith and Church, had been appointed Master instead of a rising Puritan leader, Walter Travers. Queen Elizabeth and her close counsellor Archbishop John Whitgift had found Travers too much the Calvinist firebrand and reformer, but Travers and his supporters were not happy about his being passed over, and an uneasy compromise was worked out. Every Sunday morning Hooker would preach his sermon, and every Sunday afternoon Travers would speak against him. It was called the Battle of the Pulpit, wherein 'Canterbury was preached in the morning and Geneva in the afternoon', as the saying went.

The reference here is to a profound conflict that went well beyond the walls of the Temple Church. It would shake the foundations of religious and political authority in English life up through the seventeenth century, extending to the English Civil Wars and colonial policies, especially in North America, and it

3 Richard Hooker and Edward Coke are both the subjects of biographical portraits in M Hill and R Helmholz (eds), *Great Christian Jurists in English History* (Cambridge, forthcoming 2016), the particular chapters being authored by Norman Doe and David Chan Smith respectively.

would thereby set the stage for some of the opposing themes and opinions that Sir Edward Coke would confront and attempt to reconcile during his long life. Although the immediate subjects of dispute between them were matters of theology and liturgy, Hooker and Travers were divided by something ultimately much more consequential: the nature of government and church, and the relations between them.

Travers and Puritanism

English Puritans such as Travers have rightly been characterised as proponents of a ‘proto-revolutionary ideology’.⁴ To be sure, English and American Puritanism was a complicated movement, made up of a wide variety of different viewpoints. Some members were more moderate and compromising, others more polarising and extreme. The movement was also subject to shifting degrees of support and influence.⁵ But, however difficult it is to pin down the essence of Puritanism, a persistent theme is the reform of church and state in one form or other, and some of the proposals by Puritans were quite revolutionary indeed.

Travers, together with close associates such as Thomas Cartwright, was not part of the most extreme wing, such as those who sought a greater degree of separation of church and state and more protection for freedom of conscience. Travers and Cartwright were Presbyterians, which meant that they desired to replace the existing Anglican system with a brand new form of church order, one derived from their mentor and inspiration, the Genevan reformer John Calvin. They proposed a representative system of church government directed by *presbyteroi* or ‘elders’, who were to be elected by the various congregations. The arrangement favoured plural government – polyarchy, not monarchy – with the accent on election and participation.

In his popular book on church order, Travers wrote that open elections are like a banquet, ‘where everyman bringeth his dish, which is so much the daintier the more that come unto it’.⁶ And Cartwright rebuked Archbishop Whitgift for his commitment to ‘ecclesiastical monarchy’ since

it is harder to draw many into ... error than one ... [and] peace without truth is more execrable than a thousand contentions. For as by striking two flints together there cometh out fire ... sometimes by contention the truth which is hidden ... may come to light ...⁷

4 A phrase of Kevin Sharpe’s, mentioned in P Lake, ‘The historiography of Puritanism’, in J Coffey and P Lim (eds), *The Cambridge Companion to Puritanism* (Cambridge, 2008), pp 346–372 at p 360.

5 See D Como, ‘Radical Puritanism, c. 1558–1660’, and Lake, ‘Historiography of Puritanism’, in Coffey and Lim, *Cambridge Companion to Puritanism*, pp 241–258 and 346–372 respectively, for judicious assessments of the recent history of scholarly differences over the interpretation of Puritanism.

6 W Travers, *A Full and Plaine Declaration of Ecclesiastical Discipline* (Leyden, 1617), p 30.

7 J Ayre (ed), *The Works of John Whitgift*, 3 vols (London, 1851–1853), vol II, p 238. These volumes include the debates between John Whitgift and Thomas Cartwright, touching on civil and ecclesiastical government, between 1572 and 1577.

Incidentally, this emphasis on participatory government showed up in Presbyterian reflections on the state, pointing to the strong tendency among Puritans to favour parliamentary government: a form of government, let us recall, that is characterised by ‘speaking together’, as in the French root, *parlement*. In a formal debate over the idea of monarchy conducted at Cambridge University in 1564 before Queen Elizabeth herself, a youthful, impertinent Thomas Cartwright spoke against the idea: he argued that neither God nor nature ordains monarchy, for ‘mere men’, he said, ‘require a fellowship of labour and counsel’. Apparently, the queen was unconvinced.⁸

Central to the Presbyterian proposal was the right of the church to conduct its own affairs independent of state supervision. That point underscored the idea that the church constituted an altogether ‘new order’, consisting of novel forms of equality and freedom. Every member finally stands or falls on the basis of personal obedience alone, without regard to traditional rank and status. While the nobility and gentry are capable of religion and zeal, ‘the common and most usual calling of God resteth in more of the poorer than the richer sort’, wrote Cartwright. ‘Simple men which carry no great countenance or show will undoubtedly do more good to the church.’⁹

The new freedom, the new spirit of reform, was expressed in the active electoral and other forms of participation encouraged of members in both church and state, but it was also to be expressed in economic activity. Cartwright and Whitgift wrangled over the existence of so many holy days, conjointly imposed by the Anglican Church and the state. If holy days were to be observed at all, that should be determined by ‘the will of everyone’, wrote Cartwright, ‘and not by the command of the Church or magistrate’.¹⁰ It served neither ‘the wealth of the people’ nor the preservation of good order ‘that there should be so many days wherein men should cease from work, being a thing that breedeth idleness and poverty’.¹¹ This impulse to economic activity free from governmental and ecclesiastical restraint was expanded on in the latter part of the sixteenth century by other Puritan divines, and it would become an even more insistent Puritan theme as expressed in the anti-monopoly rhetoric of the seventeenth century.¹²

8 Recounted in Little, *Religion, Order, and Law*, p 84.

9 T Cartwright, *The Second Reply against M. Doctor Whitgift's Second Answer touching the Church Discipline* (?Zurich, 1575), pp 10–12.

10 Ayre, *Works of Whitgift*, vol II, p 582.

11 *Ibid*, vol II, pp 587 and 569.

12 John Lilburne, a leader of the leftish Puritan sect, the Levellers, would make clear in his *England's Birthright* (1645) that he opposed all monopolies, not only the one held by the established church over preaching or by the government and members of the Stationers' Company over the press, but also that held by the Merchant Adventurers over the cloth industry and by other guilds over bread and beer. In their March Petition of 1647, the Levellers called vigorously for the dissolution of the Merchant Adventurers and for the prohibition of all similar groups with monopoly control. See J Frank, *The Levellers: a history of the writings of three seventeenth-century social democrats: John Lilburne, Richard Overton, and William Walwyn* (Cambridge, MA, 1955), pp 62 and 114.

We must not leave the Presbyterians without calling attention to one contradiction in their proposals. The radical talk of new freedom was real enough but it was seriously curtailed by the belief that their church should be legally established in place of Anglicanism. In effect, they wanted to ‘force people to be free’, in Rousseau’s words – something easier said than done. Other Puritans rejected the contradiction, holding that true Christian freedom could only be realised by separating church and state altogether.

Hooker and ‘Anglicanism’

So much for the Puritan challenge represented by Walter Travers. Richard Hooker and his close associate Archbishop Whitgift undertook to meet the challenge head on. Hooker resigned as Master in 1591 and, with the help of Whitgift, soon began publishing his famous work, *The Laws of Ecclesiastical Polity*, dedicating the lengthy fifth book to Whitgift. Living and working within the Inns of Court for six years, Hooker was in constant contact with lawyers and the law, and in his magnum opus he sought to crystallise the fluid legal and political thought of his day, albeit in strongly theological terms.

Both men perceived the Puritans as posing severe danger to the existing English system. Hooker disparaged them as ‘patrons of liberty’, imperilling duly established laws and commandments, propelled by the thought that ‘everyman is left to the freedom of his own mind in such things’. It was they, said Hooker, who ‘shaketh universally the fabric of government’, ‘overthrow[ing] kingdoms [and] churches’, and everything else that got in their way.¹³ Whitgift went out of his way to denounce the Puritan call for economic freedom as a special threat to good order. Whatever Cartwright might say, the magistrate had full authority over his subjects to ‘call them from bodily labour or compel them unto it, as shall seem to him most convenient’.¹⁴

In opposing the Puritan menace, Hooker and Whitgift stood fast for the Henrician and Elizabethan settlements. They consistently affirmed the ‘nationalisation’ of the church of 1534, underwritten by the Supremacy Act, making the lay monarch supreme head of the church, and, by the Uniformity Act, establishing Anglicanism as the only lawful religion in England.

They also defended the virtues of monarchy and hierarchy in church and state, as well as the great value of the indissoluble relationship between them. Whatever Puritans might say, monarchy was incomparably better than polyarchy in both church and state. ‘Where many rule’, declared Whitgift, ‘there is no order’;¹⁵ and ‘any platform’ that ‘bringeth equally high and low into parish

13 R Hooker, *Of the Laws of Ecclesiastical Polity*, with an introduction by C Morris, 2 vols (London, 1958–1960), vol II, pp 362–363.

14 Ayre, *Works of Whitgift*, vol II, p 570.

15 J Stype, *Life and Works of John Whitgift*, 4 vols (Oxford, 1822), vol III, p 72.

churches', or 'seeketh to make the nobility vulgar', stated Hooker, must be rejected, since the Church of God 'esteemeth [nobles] of more worth than thousands'.¹⁶ Moreover, church and state were so entwined, Hooker argued, that weakening the one must also weaken the other: "There is not any man in the Church of England but the same man is also a member of the commonwealth, nor any man a member of the commonwealth which is also of the Church of England."¹⁷ Membership in church and commonwealth was perfectly coterminous.

Most importantly for Hooker, the authority of law and government rested on their antiquity: 'there are few things known to be good till such time as they grow to be ancient'.¹⁸ The voice of the people equalled the voice of God, but it must be the 'general and *perpetual* voice', expressed as that which the people have '*at all times* learned'.¹⁹ What was agreed to of old was the foundation for what was agreed to at present. 'Corporations are immortal', says Hooker. 'We were then alive in our predecessors, and they in their successors do still live.'²⁰

Hooker takes this point about the inseparability of ancestors and descendants very seriously. While changing the law may at times be required, it is at best very precarious, since the authors of change risk contradicting themselves. If we abrogate a long-standing law as being poorly drafted, 'do we not', he asks, 'revoke our very own deed, and upbraid ourselves with folly?' So indistinguishable are the acts of past and present. 'Further, if it be a law which custom and continual practice of many ages or years hath confirmed, to alter it must needs be troublesome and scandalous ...'²¹

COKE'S REACTION

Faced with the struggle of views between Richard Hooker and Walter Travers, manifested in their 'Battle of the Pulpit', Edward Coke appeared, at first blush, to side exclusively with Hooker and against Travers. He remained an Anglican all his life, declaring that those 'who would have no bishops among us' 'do strive' 'to pluck the right hand of government' and 'to break in sunder the golden frame of just authority, for if no bishops, then no laws, and if no laws, no King'; 'For never was there a nation known to flourish having a monarchy in the kingdom, and [something different] in the church'.²²

16 Hooker, *Laws of Ecclesiastical Polity*, vol II, p 475.

17 J Keble (ed), *Works of Richard Hooker*, 3 vols (Oxford, 1888), vol III, p 330.

18 Hooker, *Laws of Ecclesiastical Polity*, vol II, p 29.

19 *Ibid*, vol I, p 176 (emphasis added).

20 *Ibid*, vol I, pp 194–195.

21 *Ibid*, vol I, p 422.

22 E Coke, *The Lord Coke His Speech and Charge*, given at Norwich, 1606 (London, 1607), unpaginated.

Beyond that, Coke shared two other things of the greatest importance with Hooker. One was Hooker's unbounded confidence in the legal profession and its indispensability in maintaining peace and order. The other was Hooker's traditionalistic mindset. In describing his theory of law, Coke sounds again and again like Hooker:

For any fundamental point of the ancient common law and custom of the realm, it is a maxim in policy, and a trial by experience, that the alteration of any [law] is most dangerous; for that which hath been refined and perfected by all the wisest men in the former succession of ages, and proved and approved by continual experience to be good and profitable for the commonwealth, cannot without great hazard and danger be altered or changed.²³

It is the case that Coke never renounced or turned away from his backward-looking perspective. But it is also the case that he managed, by means of stunning feats of sleight of hand, to reconstruct much of the legal tradition in the image of his own time. He did that by introducing reforms dear to the hearts of Puritans, while making it appear that they were not reforms at all but had always been part of the ancient law. By making the new look old, Coke succeeded, I am suggesting, in combining the messages of both Hooker and Travers, of both the Anglican and the Puritan.

Let me conclude with two abbreviated examples, one economic, the other political. Many of Coke's rulings and pronouncements regarding economic life amounted to an ideology of deregulation and free enterprise that matched certain Puritan sentiments. Coke started out focusing his opposition against efforts by Elizabeth and James to regulate the economy by granting patents and monopolies. However, his passion against government interference finally got the best of him, as when he declared grandly that 'monopolies in times past were ever without law, but never without friends'.²⁴ Whatever one might think of the harm caused at the time by some forms of royal intervention, the notion that there was no ancient precedent entitling the crown to grant monopolies and patents, or giving merchant and trade guilds the right to exclusive control of commerce, was 'outrageously unhistorical', in the words of one historian.²⁵ Despite what Coke said, it was not the past but the future that was contained in his rulings on economic life. The changes that he authorised would indeed come eventually to 'shake universally' the foundations of the existing social order, as Hooker had warned.

23 E Coke, *The Reports of Sir Edward Coke In English in Thirteen Parts Compleat. . .*, 7 vols (London, 1738), vol IV, Preface, pp v–vi.

24 E Coke, *Coke's Institutes of the Lawes of England*, vol III, (London, 1648), p 182.

25 S Thorne, *Sir Edward Coke, 1552–1592* (London, 1957), p 12.

The same assessment applies to Coke's growing preference for parliamentary government in opposition to the insistent exercises of royal prerogative by James I and Charles I, another point of agreement between Coke and many Puritans of his time. He became a great defender of the supremacy of the rule of law and Parliament, leading, as mentioned earlier, to his dismissal by King James as Chief Justice in 1616, and his championing of the Petition of Right in 1628. As with his reforms of the economic order, these efforts opened the door to significant social and political change by advancing the cause of popular participation in government and equal protection under the law.

The only problem was that Coke mistakenly claimed ancient warrants for Parliament that did not exist. He asserted that Parliament originated in pre-Norman times, and was as such part of the 'ancient constitution', as it was known, associated with the legendary King Edward the Confessor. In fact, of course, Parliament did not come into being until the mid-thirteenth century. Thanks in part to Puritan agitation, it was gaining new authority during Coke's lifetime, and Coke backdated the sources of that authority to the early eleventh century so as to show, again, that what is new had always been so.²⁶ An anonymous contemporary rhyme attested to Coke's capacity for inventiveness: 'Coke could cook law books. But he couldn't cook by the books. He could only cook books for Cokes.'

CONCLUSION

I am proposing, then, that in his own way Coke was, consciously or not, trying to mediate the struggles of his time, symbolised by the Battle of the Pulpit between Richard Hooker and Walter Travers, right here at Temple Church in the 1580s. For a time, and despite his strong Anglican proclivities, Coke found strong allies among the Puritans: one sixteenth-century Puritan divine dedicated several pamphlets to him. Coke's resistance to what was regarded as extensive royal overreach, and especially his efforts to subordinate church courts to the rule of common law, resonated loudly in Puritan ears. Interestingly, Coke considered the Presbyterians the 'least dangerous' among the Puritan groups, suggesting on his part readiness for a working alliance with at least some of them.

However, as events unfolded, and proceeded to move inexorably toward the English Civil Wars (or Puritan Revolution) in the 1640s, Coke's efforts to disguise certain Puritan interests in the clothes of the past – to 'Hookerise' Travers, if you will – no longer worked for more radical Puritans, such as the Levellers, who were leftish members of Oliver Cromwell's New Model Army. They came to reject explicitly Coke's backward-looking perspective, including

26 See J Greenberg, *The Radical Face of the Ancient Constitution* (Cambridge, 2001), especially pp 116–117, 142–145, 167–168, 178, 193, 203.

his loyalty to an established Anglican Church. They found him insufficiently dedicated to the rule of law, as they understood it. They asserted in much bolder terms the ‘proto-revolutionary ideology’ introduced fitfully and inconsistently by Presbyterians such as Travers and Cartwright, calling for a brand new form of government based on a written constitution, created deliberately and self-consciously by an express ‘act of the people’, and committed, unlike Travers and Cartwright, to the complete separation of church and state and freedom of conscience.

As things worked out, that ideology would come to have more long-term effects in the American colonies – and, eventually, in the founding of the United States – than it would in England. But that is altogether another story.²⁷

27 See D Little, ‘Differences over the foundation of law in seventeenth- and eighteenth-century America’, in R Griffith-Jones and M Hill (eds), *Magna Carta, Religion and the Rule of Law* (Cambridge, 2015), pp 136–154, for an elaboration of this concluding point.