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Review of *Law, Liberty and Parliament: Selected Essays on the Writings of Sir Edward Coke*. edited by Allan D. Boyer

Margaret McGlynn  
*The University of Western Ontario*

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Allen D. Boyer, ed. *Law, Liberty and Parliament: Selected Essays on the Writings of Sir Edward Coke*. Indianapolis: Liberty Fund, 2004. xiv + 406 pp. \$24.00 (cloth), ISBN 978-0-86597-425-8.

Reviewed by Margaret McGlynn (Department of History, University of Western Ontario)

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## Sir Edward Coke: A Man for Our Times?

The book opens with a brief biography of Coke by Allen Boyer, but for the most part the collection of essays is left to stand for itself. Boyer notes that the essays were published on two different continents and over the course of seventy years, but makes no statement about the principle of selection that animates the edition. There is also no clear guidance in the organization of the papers. There are, however, a number of themes which run through the volume, overlapping in various different papers. The most obvious is Coke as a servant and promoter of the law. There appears to be general consensus that Coke's greatest concern was to maintain the law, rather than to oppose king, chancery or parliament as such, and there are papers which show him opposing all of the above as circumstances demanded. However, a number of the papers also seem to challenge this view, demonstrating Coke's willingness to argue his own interpretation even when it demonstrably contradicted the facts. A second, related, theme is the proper relationship of the courts, most obviously the common law courts and chancery, but also other equity courts, provincial courts, and parliament. This takes us to the relationship between the common law and prerogative, also an element of most of these papers, either through the issue of jurisdiction, or of monopolies. The third theme is the nature of the common law which Coke professed, examined through "artificial reason," through rhetoric, and through the process of writing and structuring the *Reports*. Most of the papers touch on more than one of these elements, and the complexity of the arguments surrounding Coke help explain the challenge of organizing this collection.

The first two papers focus on Coke's view of the law. Thomas Barnes sets out to explain the apparent contradiction within Coke's career, the speed and thoroughness with which the king's man became a thorn in the king's side, while Richard Helgerson opens with the hoary question of the "reception" of Roman law in England. Although both men approach the problem in very

different ways, they conclude that while Coke recognized the king's procedural prerogatives and his authority, he argued for the supremacy of the judge over the king in the explication and application of law. Coke's *Reports*, Helgerson argues, are the manifestation of this belief, and his voice the personification of the law.

A. W. B. Simpson's and David Jones's papers move away from these broader issues to more specific questions, though in very different ways. Simpson examines Coke's role in *Slade's Case* to indicate the ways in which he influenced the development of *assumpsit*, even though his argument was incorrect as the pleading stands. Jones looks at his influence on the development of ideas of allegiance in the seventeenth century, and suggests that again his authority counted for more than his accuracy. Plucknett's paper, a little later in the volume, adds to this picture from a different perspective. Focusing on *Bonham's Case*, he looks at Coke's sources and finds them a shaky foundation for such an imposing edifice.

The next papers focus on a topic of quiet satisfaction to lawyers and puzzlement to laymen, the "artificial reason" of the common law. John Underwood Lewis argues that Coke believed that law should be obeyed because it is "reasonable," but that it is important to realize that this reason is not that of any rational man, but of those trained within the peculiar science of English law, who can recognize the internal consistency of the system. Charles Gray makes much the same point, rather affectionately, while Harold Cook returns to *Bonham's Case* to look more closely at the historical context within which the case was argued.

Barbara Malament focuses on economics, arguing that Coke was not a supporter of *laissez-faire*. In fact, Malament argues, Coke was perfectly prepared to regulate trade, but his aim was to do so in harmony with broader social aims and ideas, and to have parliament, rather than prerogative, do the regulating. Overall, his concern was with freedom from arbitrary intervention

in trade which might affect prices, quality or the right to earn a living; some regulation, he thought, was both necessary and beneficial, though parliament was the safer regulator than the king. Boyer looks at the role of Ciceronian rhetoric in Coke's work, arguing that a better understanding of the role of rhetoric in the training of the Elizabethan lawyer will enable us to better understand the ways in which rhetoric shaped the making of public policy.

Sir John Baker and W. J. Jones both consider the relationship between the courts. Baker looks at the events of 1616, and the king's promise that all the courts should maintain their ancient boundaries. The guarantee for the courts was the king's prerogative, however, and one commentator at least found this to be an ominous prospect. Baker argues that, this point aside, the issue itself was to some extent a storm in a teacup. Jones argues that any real understanding of the relationship between king, parliament, and the common law needs to proceed against a more thorough understanding of how the system worked in practice. Overall, the impression is given of a structure struggling to respond to new problems, but hampered by the weight of old expectations and personalities.

The next two papers focus on Coke's parliamentary role. Elizabeth Read Foster and John Guy look at the issue of monopolies and the five knights' case respectively. Both assume a House of Commons conscious of their role as representatives of the country at large, with an obligation to report the concerns of the country and to fight for redress of grievances which could not be handled anywhere else. Both papers look at the judicial as well as the political role of parliament, and the ways in which those roles could clash. Coke is not the central focus of these

papers, but in both his legal knowledge and his authority offers parliament a way to proceed in difficult circumstances.

In the final paper John Baker reconstructs Coke's notebooks, both those surviving and those still missing, in order to re-construct the process by which Coke put together his *Reports*. After a tour through the lawyer, judge, rhetorician, and parliamentarian, we are brought back to the source of Coke's lasting influence.

This is a rich and stimulating collection of essays, but also a puzzling one. There is no question about the quality of the scholarship or its influence, but the principle of selection is curious; with the exception of Boyer's own article (published in 1997), the most recent article is from 1992 and the oldest from 1926. Though J. G. A. Pocock hovers over several of the articles, he is not included, and there are other obvious omissions. The book is published by Liberty Fund Inc., a foundation "established to encourage the study of the ideal of a society of free and responsible individuals." It is hard to quibble with an institution with such a noble goal, and the willingness to spend its money to support its aims; this is a beautifully produced book, and it sells for a remarkable price. The papers in the volume are too dissimilar to suggest any obvious agenda; they present a stimulating review of the various sides of Coke, and the ways in which he struggled to maintain an older view of the relationship between king, parliament and common law at the same as he effectively changed the law and shaped the new world that would emerge on both sides of the Atlantic. Nevertheless, the book presents a quiet confidence in the supremacy of the law and Anglo-American democracy which seems a little out of tune with the times.

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