

James Whitelocke's *Liber Famelicus*, 1570 - 1632

by

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Awarded 1994

For my Dad, and in memory of my Mum.

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Abstract

This thesis investigates the life and times of Sir James Whitelocke (1570-1632), lawyer, MP and eventually Justice of King's Bench in the reign of James I and Charles I. It bases this investigation upon the *Liber Famelicus*, the diary in which Whitelocke compiled his own observations on the period. The first part of the thesis analyses the value of the *Liber Famelicus* as an historical commentary, and considers Whitelocke's professional and social formation during his legal training at the University of Oxford and the Inns of Court and Chancery between 1588 and 1620. The second part of the thesis considers the current historiographical debate on early Stuart politics for the period 1608-1632, and locates Whitelocke within this debate through an analysis of his association with the Society of Antiquaries, his parliamentary career, his involvement in court politics, and his role in political controversy as Justice of King's Bench. The third part of the thesis investigates Whitelocke's social and professional connections in the county community over the period in which he built up a legal practice (1600-1620), and during his four years as Chief Justice of Chester (1620-1624). The thesis concludes with an assessment of James Whitelocke's world-view, the strains placed on this world-view in the period 1570-1632, and Whitelocke's overall achievement in pre-civil war society.

This work contains no material which has been accepted for the award of any other degree or diploma in any university or any other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

I give consent to this copy of my thesis, when deposited in the University Library, being available for loan and photocopying.

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Acknowledgments

Forty years ago Sir John Neale made the point that human beings are "the stuff of history".¹ As the value of the individual and the need for introspection has come under question even in the new, politically-driven tertiary institutions in this country, it is worth pausing for a moment to let Neale's words sink in. Now more than ever, historians are anxious to promote their trade as a business rather than a pastime. In our efforts to justify the practical value of history to society, we look increasingly for big themes that will shed light upon current or topical issues, as we simultaneously dabble with the paraphernalia of the social sciences in a claim for relevance. What makes history deeply relevant to any society, however, is something not easily found in disciplines which depend too heavily on predictable responses or current political agendas. The relevance of history lies, above all, with its ability to discern the "human touch", which often defies all attempts at prediction, rationalization or categorization. By placing too great an emphasis on an economic, statistical, or any other theoretical construct, we run the risk of writing people into the margins of history. If I had to justify my own attempt at historical biography, and the financial support the taxpayer of Australia has generously lent towards its completion, I would do so by stating my belief that a study of James Whitelocke, by releasing a voice from the past, has placed the human being first. Even in this agnostic-technological age, this is surely where we would hope ourselves to be placed, both now and in the minds of those who will judge us in the future.

All academic work revolves around the generosity of others, and without the financial support of Australian taxpayer, who granted me three-and-a-half years of funding through an Australian Postgraduate Research Award, this thesis would not have been written. In Adelaide, the generosity of the Barr Smith library and the Department of History in facilitating the resources for my research allowed me to pursue my task while facing the tyranny of distance. A trip to England which proved vital to my understanding

¹Neale, J.E., 'The Biographical Approach to History', *Journal of the Historical Association* 36 no. 128 (1951), p. 195.

of Whitelocke was made possible through a travel grant provided by the University of Adelaide, and additional funds for research provided by the financially strait-jacketed but remarkably generous Department of History. Finally, I am also enormously thankful to my parents, who extended their own resources to make my trip to the UK possible.

Almost all of my understanding of the study of history has been borrowed, rented, and occasionally picked up wholesale; it has been seldom paid for. I owe a great debt to most of the scholars whose works have found their way into my bibliography, but I thank especially those people upon who personally helped to make this thesis possible. In the years in which I decided to make history my trade the inspiration and expertise of Dr. D.E. Kennedy, Mr. J.R.J. Grigsby and Mr. Noel Lethborg were crucial. A special vote of thanks is due to Professor Conrad Russell for acting as my supervisor in London, and to Dr. John Adamson for hospitality in Cambridge during my brief stay in England. Dr. John Morrill was also a gracious host while I was visiting Cambridge, and has provided helpful suggestions as my work has progressed. Further thanks are due to the many members of the early modern seminar at the Institute of Historical Research; their advice and encouragement made my first London winter a pleasant and profitable experience.

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Finally, I would like to thank those who kept faith in me long after my own faith in my capacity to write this thesis had faded: in Melbourne, Marco, Louise, Charles, Emma, Sharon, David and Mabs; in Adelaide, Vishnu, Steve, Leigh, Petra, Dieni and Jane. Many others have helped me along the way, but in closing I would like to thank my family - Dad, Jo, Michelle, John, Ged, Antoinette, and David - who have seen me more often in flying visits than anything else over the past four years, but have continued to let me know that they love me and believe in me. I dedicate this thesis to those who gave me life, and the belief that life is fundamentally good, and worth living.



INTRODUCTION

James Whitelocke's *Liber Famelicus* and the world we seek to recover

Liber Famelicus.

This book I began to write in, the 18 April 1609, *anno 7 Jacobi regni sui Angliae, et Scotiae* 42.

In it I entend to set downe memorialls for my posterity of thinges most properly concerning myself and my familie.¹

By writing these words in a paper notebook in his thirty-ninth year, James Whitelocke invited his descendants to reflect upon his part in their family's history. As his success as a lawyer led to twelve years as a royal judge from the age of fifty, Whitelocke sketched an engaging account of his personal and professional fortunes in the *Liber Famelicus*. Passed on to his son Bulstrode at his death on 22 June 1632,² James Whitelocke's *Liber Famelicus* was remembered by his family for over three centuries. In 1791, Lieutenant-General John Whitelocke (1757-1833) had an elaborate manuscript copy of the *Liber Famelicus* prepared out of private interest.³ The original manuscript passed from the hands of a descendent in England to family members in Ireland,⁴ as ties dissolved with the Buckinghamshire region in which James Whitelocke had built up his estate. By the 1930s, the *Liber Famelicus* was in the possession of Percy Whitelocke-Lloyd in Dublin,⁵ from where it was eventually given to a family friend of the Whitelockes. Ruth Spalding managed to track the

¹BL Additional MS 53725, fol. 1; (see figs. 2 and 3).

²Spalding, R. (ed.), *The Diary of Bulstrode Whitelocke 1605-1675* (Oxford, 1990), p. 67; hereafter cited as *Diary*.

³Bodl. MS Dep. d. 804. John Whitelocke's copy ended up in the possession of the Royal College of Music, from where it is now on loan to the Bodleian Library.

⁴In 1858 John Bruce recorded the *Liber Famelicus* as in the possession of the grandson of Carleton Whitelocke, one of Bulstrode Whitelocke's sons by his third wife; see Bruce (ed.) *Liber Famelicus* (fully cited below), p. xix.

⁵Spalding, R., *The Improbable Puritan: A Life of Bulstrode Whitelocke 1605-1675* (London 1975), p. 257.

Liber Famelicus down to this location in 1965 and persuade its owner to sell the manuscript to the British Library, where it is available for inspection today.⁶

While James Whitelocke's descendants can be thanked for the preservation of the *Liber Famelicus* over three centuries, its status among historians owes much to John Bruce, who edited the manuscript for the Camden Society in 1858.⁷ Beyond his now dated historical introduction, Bruce's edition warrants no major textual correction, and a range of early modern scholars continue to draw upon this printed edition of the *Liber Famelicus* with confidence. There are several reasons for the popularity of James Whitelocke's *Liber Famelicus* with British historians. A dearth of informed contemporary political commentary for the Jacobean period is one. The frankness of Whitelocke's evaluation of events in the royal court and the courts of law is another.⁸ Free of the need to justify his remarks beyond the limited audience of his family, Whitelocke was not afraid to provide pointed character assessments of many eminent figures of state throughout the *Liber Famelicus*. His condemnation of Sir Thomas Ellesmere as "the greatest enemy to the common law that did ever bear office of state in this kingdom",⁹ contrasted with his praise of Sir Edward Coke as "the most just, honest, and uncorrupt judge that ever sate on benche",¹⁰ provides colourful evidence of legal and political tensions within the Jacobean state. Much later in life, Whitelocke was no less direct in his appraisal of Sir James Ley, earl of Marlborough, given the thankless task by Charles I of raising new revenue to fight the war with Spain.¹¹ Marlborough's attempts (in the context of a financial crisis

⁶BL MS Additional 53725. Ruth Spalding provides an engaging account of her location of this document as a postscript to *The Improbable Puritan*, pp. 244-261.

⁷Bruce, J. (ed.), *Liber Famelicus of Sir James Whitelocke, A Judge of the Court of King's Bench in the Reigns of James I and Charles I. Now First Published from the Original Manuscript*, Camden Society Old Series no. 70 (London 1858). This text is hereafter cited as *Liber Famelicus*. Nineteenth-century interest in the *Liber Famelicus* is further evidenced by J. Hunter's roughly copied extracts from the diary which survive in BL Additional MS 24481, fols. 62-75v.

⁸In this respect one might compare Whitelocke with the more familiar sources on legal and political controversy for the Jacobean period, such as Sir Edward Coke's *Reports*, or the tracts of Sir Thomas Ellesmere.

⁹*Liber Famelicus*, p. 53.

¹⁰*Liber Famelicus*, p. 51.

¹¹Lockyer, R., *The Early Stuarts: A Political History of England 1603-1642* (London 1989), p. 244.

brought about by war) to stall payment of the judges' salaries drew bitter invective from Whitelocke. The "old dissembler", Whitelocke recorded, had through his "crooked dealings" earned his nickname of Ben Jonson's "Vulpone".¹²

Whitelocke's outspoken criticism of Crown officials, based as it was on personal knowledge of events at court and in the courts of law, proved especially useful in the "Whig" interpretation of the English Civil War. This interpretation placed lawyers in the front ranks of an emerging division between "absolutist" and "contractual" notions of government. Critics of the Crown, it was argued, found a forum for their views in an increasingly assertive House of Commons.¹³ Remembered particularly for an outspoken speech made in parliament during the 1610 debate on impositions, Whitelocke's seemingly independent stance, and his seemingly aggressive declaration of parliamentary rights, has provided a new generation of scholars with food for thought. In his revised 1989 edition of *The English Civil War*, Robert Ashton commented:

A brilliant parliamentary lawyer such as James Whitelock [sic] might argue in the great debate on impositions in the House of Commons in 1610 that 'the power of the King in Parliament is greater than his power out of Parliament, and doth rule and control it', but four years earlier Chief Baron Fleming had handed down a judgement in Bate's Case on the same matter of impositions; although like Whitelock's it distinguished between two forms of royal power, it came to radically different conclusions on their relative priority.¹⁴

Ashton's reappraisal is actually little different from the interpretation of "constitutional" historians, such as Tanner, who wrote at the height of the Whig

¹²*Liber Famelicus*, p. 108.

¹³See the introduction to part 1.

¹⁴Ashton, R., *The English Civil War: Conservatism and Revolution 1603-1649*, (2nd ed., London 1989), p. 12.

orthodoxy.¹⁵ Their similarities underline the need to relocate Whitelocke in any revision of early modern political thought.¹⁶

While James Whitelocke's political career is important in its own right, there are good reasons to attempt a broader study of his life. Tinged with hubris, the *Liber Famelicus* is particularly expressive when Whitelocke's reputation was personally threatened, or in matters where he felt that his experience was distinctive or worthy of recognition. At pains to explain his occasional political setbacks, it notes Whitelocke's gradual rise in the social and legal communities of his day with equal care. For this reason Whitelocke has been, and continues to be, popular not only with political historians, but also with legal historians and social historians of early modern England. As attempts to integrate the social and political histories of early modern England continue apace, comments about Whitelocke's income,¹⁷ his involvement in court politics,¹⁸ his educational background,¹⁹ and his social networks,²⁰ appear increasingly relevant to any thorough reappraisal of his political identity.²¹

It is clear that James Whitelocke's public and private thoughts can be interpreted in many ways. In fact, by listing citations to James Whitelocke in historical sources over the last decade, one can detect many of the interpretative differences which affect current understanding of the Jacobean and Caroline periods. While J.P. Sommerville, for example, has used Whitelocke's "anti-absolutist" perspectives to contribute to his extended and refined version of J.G.A. Pocock's "common-law mind",²² Kevin Sharpe and Christopher Brooks deploy Whitelocke to prove that

¹⁵Tanner, J.R. (ed.), *Constitutional Documents of the Reign of James I* (Cambridge 1930), pp. 245-246; compare especially his treatment of Flemming's judgement on Bate's case and Whitelocke's speech.

¹⁶But see Burgess, P.G., *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (London 1992), pp. 139-145; Christianson, P., 'Royal and parliamentary voices on the constitution, c. 1604-1621' in L.L. Peck (ed.), *The Mental World of the Jacobean Court* (Cambridge 1991), pp. 79-85, 94.

¹⁷*infra*, pp. 44, 174-178, 216, 223-227, 234-236, 265, 277-279, 307-308.

¹⁸Ch. 5.

¹⁹Part 1.

²⁰Ch. 7.

²¹See especially part 2, and the sections on politics in ch. 7, ch. 8 and my conclusion.

²²Sommerville, J.P., *Politics and Ideology in England 1603-1640* (London, 1986), pp. 153-154.

such a mindset did not exist.²³ While Whitelocke's religious views have been used by Wilfrid Prest to show the strong presence of "Puritans and zealous Calvinists" at the Inns of Court between 1590 and 1640,²⁴ John Adamson has cited Whitelocke to stress the religious tolerance felt by the judges towards the "ecclesiastical changes in liturgy and ceremonial during the 1620s and 1630s".²⁵ And while Glen Burgess has seen an essential agreement between Whitelocke's 1610 speech on impositions and "royalist" notions of government,²⁶ Richard Cust has employed the same speech to trace "the roots of hostility" toward later "unparliamentary" forms of taxation.²⁷

While each of these authors' use of Whitelocke can be justified in the context of their investigation, the ambiguities which they suggest in James Whitelocke's position cry out for a detailed investigation of his perceptions and the forces which shaped them. Indeed, such varied interpretations suggest that a "contextualized" document, when located only within the parameters of a seventeenth-century political (or twentieth-century historiographical) debate, can be poorly attuned to the complex question of personal perspective. This is not intended as a criticism of studies which must, for the sake of brevity, reach a conclusion upon the weight of the evidence at hand. It is more a simple reflection that a detailed historical biography of Whitelocke, by thoroughly investigating the forces affecting his public and private thoughts and actions, has import for larger historical interpretations.

Interpreting the Liber Famelicus:

Forty years ago, the Russian linguist Mikhail Bakhtin urged readers to abandon their preconceptions and immerse themselves in an investigation of the historical past, in

²³Brooks, C.W., & K. Sharpe, 'History, English Law and the Renaissance', *Past & Present* 72 (1976), p. 137; see also Sharpe, K., *Sir Robert Cotton 1566-1631* (Oxford 1979), p. 23.

²⁴Prest, W.R., *The Inns of Court Under Elizabeth I and the Early Stuarts 1590-1640* (London 1972), p. 207; cf. Cliffe, J.T., *The Puritan Gentry: The Great Puritan Families of Early Stuart England* (London 1984), p. 89.

²⁵Adamson, J.S.A., *The Diary of Sir Richard Hutton 1614-1639* (book review); *Cambridge Law Journal* 51 pt 3 (1992), p. 552.

²⁶Burgess, *The Politics of the Ancient Constitution*, pp. 143-144.

²⁷Cust, R., *The Forced Loan and English Politics, 1626-1628* (Oxford 1987), p. 152.

order to appreciate the thought processes which inform all historical texts.²⁸ It is only by attempting to draw all of its threads together that one begins to realize just how multi-faceted a document the *Liber Famelicus* really is. Whitelocke's thoughts can be read as those of a political commentator, a lawyer, a judge, or a gentleman - but they must also be acknowledged as the thoughts of a father, a husband, a young man of increasing influence, an old man of declining health. In short, the *Liber Famelicus* invites its reader to re-appraise James Whitelocke time and again, as it draws one ever deeper into his changing perception of his world. For this reason, although structured around conventional historical practices, this thesis considers the ways in which James Whitelocke's thoughts were shaped by his environment, as it questions how to best recover these thoughts through the historical record that remains.

Written over twenty-three years, *Liber Famelicus* is best considered as a series of notes and observations rather than a coherent narrative. Bruce felt that the numerous lists of fees interspersed throughout the manuscript were detrimental to the "little continuity which is to be found in Sir James's narrative",²⁹ and largely omitted them from his edition of the *Liber Famelicus*. A comparison of the dates of Whitelocke's financial profits in the original manuscript with the dates provided in his narrative suggests its chronological sequence. It appears that Whitelocke wrote within days, and at most months, of the events he described. As he maintained a chronological sequence throughout the *Liber Famelicus*, there was some onus upon Whitelocke to keep the journal up to date. The time that passed between the event and Whitelocke's record appear to have varied greatly. While precisely dated "memorandums" of promotions may have been entered into the journal immediately, longer passages, such as his recollection of his imprisonment in 1613, or his failed attempt to win the recordership of London in 1618, appear to have been composed more carefully, and somewhat after the event. Frequently, an entry is followed by a

²⁸Bakhtin, M.M., *Rabelais and His World*, (trans. H. Iswolski, Bloomington Indiana 1984), p. 1 ff.

²⁹*Liber Famelicus*, pp. xiii-xiv.

long chronological silence; thus notes on his release from prison in June 1613 are followed by another passage on the summoning of a parliament in April 1614, which in turn is followed by a record, dated "September 1614", on the death of Sir Edward Phelips.³⁰

Such a loose chronology breaks up the narrative quality of the *Liber Famelicus*, giving it an anecdotal quality. It adds, however, a vitality which is often missing in accounts written from the safer vantage of hindsight. One gets the impression that while the *Liber Famelicus* was erratically kept, Whitelocke made good use of it when his interests were spurred by events, at least until the 1620s. Few attempts were made to add in information which served to supplement his earlier narrative as it came to hand. Such additions were limited to unrecorded dates or promotions among his friends; Whitelocke did not redact the text in any significant manner. At times, this lead him to posit views which were inconsistent with his earlier opinions; a notable example is Whitelocke's re-invention of Sir Lionel Cranfield, characterized on his first appearance as "an apprentice boy... thrust into the acquaintance of great men",³¹ as the "sun of a citizen, born in London... a marchant, and free of the mercers".³² Inconsistencies such as these allow one to tie Whitelocke's shifting perceptions back to changing circumstances; in the instance mentioned above, Whitelocke's pragmatic need to gain patronage from the Duke of Buckingham and his allies was probably less important than Cranfield's support for Whitelocke in the Court of Wards.³³ Unfortunately, Whitelocke's personal comments taper off after his appointment as a judge, leaving less information from which to gauge his opinions on the important questions facing the Caroline judiciary from 1625 to 1632.³⁴ It is frustrating that two additional notebooks mentioned by Whitelocke in the *Liber Famelicus*, the first of which may have shed important light on the

³⁰*Liber Famelicus*, pp. 40-43.

³¹*Liber Famelicus*, p. 54.

³²*Liber Famelicus*, p. 77.

³³See ch. 5.

³⁴See ch. 6.

workings of the Jacobean government,³⁵ and the second equally vital information upon events in the first parliament of the Charles I,³⁶ have been lost. The dispersal of Whitelocke's private papers during the English Civil War further complicate attempts to construct an accurate account of his views.³⁷ For this reason, I will have to speak to the silences, as well as the voices in the text.

Even when all of its limitations are acknowledged, Whitelocke's *Liber Famelicus* has much to recommend it. Beyond its candid nature, noteworthy in an age of rigorous self-censorship, its entries cover the entire span of Whitelocke's life, from recollections of an Elizabethan childhood, to a final record of professional receipts in the year of his death. My own investigation of James Whitelocke begins, as does the *Liber Famelicus*, with a few words about the world in which James Whitelocke located himself. Thereafter, I will follow his progress from childhood by considering his educational formation, his political profile as a barrister, a member of parliament and eventually a judge, and finally his social and familial connections in the county community.

David Cressy has remarked that the English gentry "were chronically fascinated by family history, and often knew their lineage and blood ties across several degrees and generations";³⁸ Whitelocke began the *Liber Famelicus* with a detailed genealogy compiled from records "among the evidences of our house", tracing his family back to the manor of Beeches in Berkshire, where land had been in their possession since

³⁵*Liber Famelicus*, p. 39: "sum passages of my trouble... I have compiled in a book by itself, and peradventure will in fit time insert into this volume, as they do fail who I know will be readye to take advantages against me".

³⁶*Liber Famelicus*, p. 104: "Concerning the passages in term and parliament see my booke of reports".

³⁷Bulstrode Whitelocke provides a graphic sense of the fate of these papers at the hands of the Cavaliers: "some they tore to pieces, others they burnt to light their tobacco, and some they carried away with them...losing very many excellent manuscripts of my father's"; Whitlocke, B., *Memorials of the English Affairs: or, An Historical Account of what passed from the Beginning of the Reign of King Charles the First &c* (London 1732), p. 65. Bulstrode Whitelocke's papers were interspersed with the papers of Sir Edward Littleton, which he acquired in 1646 (*Lords' Journals*, vol. 8, pp. 184a, 203a, 205b), and survive principally at Longleat House, the Cambridge University Library and the British Library.

³⁸Cressy, D., 'Kinship and Kin Interaction in Early Modern England', *Past & Present* 113 (1986), p. 49.

1231.³⁹ Dominating the first fifty folios of his journal, his detailed description portrays a family of solid but not spectacular means achieving moderate social success. With a smattering of lawyers, merchants and clerics among their ranks, the careers taken by other family members laid out the parameters of Whitelocke's own opportunities and expectations, and professional achievements were carefully noted. Whitelocke's eldest uncle William had pursued religious studies at Cambridge, eventually serving as vice-provost of King's College.⁴⁰ As he remained celibate, the family estate passed into the hands of Whitelocke's second uncle John, who passed away relatively early in life, leaving the family estate in the possession of Whitelocke's cousin William. Longevity was obviously not a family trait; Whitelocke's third uncle Hierom succumbed to "illness withe the stone" shortly after choosing a clerical life.⁴¹

James Whitelocke never met his father Richard Whitelocke, a merchant who fell ill and died while trading in Bordeaux on 7 November 1570, just twenty-one days before James Whitelocke's birth on 28 November.⁴² That which James Whitelocke knew about his father must have come from his mother and brothers, but he was obviously moved by a family portrait, in which Richard wore "a cap, a verye smale ruffe with black work, a side black coat of fine black clothe, a black satten dubblet, and a Spanishe cape of fine black clothe".⁴³ This portrait was the only visible image that James Whitelocke ever had of his father; while he thought his father's apparel "overgrave in an elder by ten years", he was obviously struck by Richard's grave and sombre appearance.⁴⁴ His father's career cut short by his unexpected death, Whitelocke began life as a younger twin of four brothers;⁴⁵ his fortunes were

³⁹*Liber Famelicus*, pp. 1-12. As a form of introduction to a 'family book', this kind of genealogical survey was common; Bulstrode Whitelocke would later begin his diary, as James Whitelocke had before him, with a recollection of his father's station at the end of life; *Diary*, p. 43.

⁴⁰*Liber Famelicus*, p. 3.

⁴¹*Liber Famelicus*, pp. 3-4.

⁴²*Liber Famelicus*, p. 5; Clarke, A.W.H. (ed.), *The Parish Register of St. Dunstan in the East, London 1558-1654* (London 1939), p. 11.

⁴³*ibid.*

⁴⁴*ibid.*

⁴⁵*ibid.*

always going to depend upon his own initiative.⁴⁶ He would end life as a knighted judge, and his influence would help to guarantee his own son a lasting place in English memory.⁴⁷ James Whitelocke's own experiences in early life would encourage him to look to education, rather than social connections, as a means of social progress.⁴⁸

⁴⁶For the difficulties facing men in Whitelocke's position cf. Thirsk, J., 'Younger sons in the seventeenth century', *History* 54 no. 182 (1969), pp. 358-377; Pollock, L., 'Younger sons in Tudor and Stuart England', *History Today* 39/6 (1989), pp. 23-29.

⁴⁷James Whitelocke's success has long been overshadowed by that of his son Bulstrode, but as we shall see, Bulstrode built his early career on the advantages his father was to provide him over life.

⁴⁸For a succinct consideration of Whitelocke's educational progress, see McConica, J., 'The Social Relations of Tudor Oxford', *Transactions of the Royal Historical Society*, 5th series no. 27 (1977), pp. 124-126.

PART ONE

Learning the Law, 1570-1632

Driven by a concern to recover both the institutional character and the educational philosophy of early modern England, several historiographical traditions have grown up around early modern education. Institutional histories (typically prepared for commemorative occasions) have assembled evidence of life in the English grammar schools, university colleges, and inns of court and chancery in which James Whitelocke was to spend his early years.¹ Of varied quality, these histories have painted a colourful but inconsistent patchwork on which more recent studies have built.² Since the 1950s, scholarship on Tudor social history has fixed attention upon educational institutions as a mirror of social change.³ Bringing a range of analytical methods to bear on university registers and related data, social historians have established questions and generalizations about Tudor education which still guide discussion in the area.⁴ Finally, specialists in the history of thought, such as W.S. Howell and Walter Ong, have studied the intellectual impulses which guided schools and universities in the sixteenth and seventeenth centuries.⁵ Debate on the

¹See, for example, Clode, C.M., *The Early History of the Guild of Merchant Taylors*, 2 vols. (London 1888); Costin, M.A., *The History of St. John's College Oxford 1598-1860* (Oxford 1958); Draper, F.W.M., *Four Centuries of Merchant Taylors' School 1561-1961* (London 1962); Mallet, C.E., *A History of the University of Oxford vol. II: The Sixteenth and Seventeenth Centuries* (London 1924); Richardson, W.C., *A History of the Inns of Court: With Special Reference to the Period of the Renaissance* (Baton Rouge 1980); Wilson, H.B., *History of Merchant Taylors' School, from its foundation to the present time*, 2 vols. (London 1812-14).

²Prest, *The Inns of Court*; O'Day, R., *Education and Society, 1500-1800: the social foundations of education in early modern England* (London & New York 1982); McConica, J. (ed.), *The History of the University of Oxford vol. III: The Collegiate University* (Oxford 1986).

³Hexter, J.H., 'The education of the aristocracy in the Renaissance', *Journal of Modern History* 22 (1950), pp. 1-20; Curtis, M., *Oxford and Cambridge in Transition 1558-1642* (Oxford 1959); Stone, L., 'The Educational Revolution in England, 1560-1640', *Past & Present* 28 (1964), pp. 41-80; Charlton, K., *Education in Renaissance England* (London 1965); Simon, J., *Education and Society in Tudor England* (Cambridge 1966).

⁴See for example Lytle, G.F., 'The Careers of Oxford Students in the Later Middle Ages' in J.M. Kittleton & P.J. Transue (eds.), *Rebirth, Reform and Resilience: Universities in Transition 1300-1700* (Columbus Ohio 1984), pp. 213-253; McConica, J., 'Scholars and Commoners in Renaissance Oxford' in L. Stone (ed.), *The University in Society*, 2 vols. (Princeton 1975), vol. 1, pp. 151-181.

⁵Howell, W.S., *Logic and Rhetoric in England 1500-1700* (New York 1956), Ong, W., *Ramus: Method, and the Decay of Dialogue* (Cambridge Mass. 1958); Greaves, R.L., *The Puritan Revolution and Educational Thought: Background for Reform* (New Brunswick 1969); Yates, F.A., *The Art of Memory*, (2nd ed., London 1984).

roles of scholasticism, humanism, Ramism, and other trends in early modern teaching continue to influence more specialized works on law and literature.⁶

Twenty years ago, in a seminal collection of studies on the educational histories of England and America, Stone declared that:

The most urgent necessity in modern research strategy is to marry intellectual history to social history... Very little is known about either the contents and significance of the curriculum or the quality of the teaching provided; equally little is known about the background or the future careers of the students.⁷

While recent studies of early modern schools, universities and inns of court have given a solid, if selective, analytical coherence to questions of education,⁸ Stone's words have continuing relevance. This section traces James Whitelocke's educational passage through the Merchant Taylors' School, St John's College Oxford, New Inn and the Middle Temple in London. It reflects upon two educational trends affecting England in the last decades of the sixteenth century: the growth of institutions catering especially for the sons of merchants and other "new men",⁹ and the increasing professionalism in law, religion and government,¹⁰ to ask what education offered for the many who sought, as did Whitelocke, to rise from urban, mercantile origins to a more genteel status.

⁶Cf. Levack, B.P., *The Civil Lawyers in England 1603-1641* (Oxford 1973); Prest, W.R., 'The Dialectical Origins of Finch's Law', *Cambridge Law Journal* 36 pt 2 (1977), pp. 326-352; Schmitt, C.B., *John Case and Aristotelianism in Renaissance England* (Montreal 1983).

⁷Stone, L., 'The Size and Composition of the Oxford Student Body 1580-1910', in Stone (ed.), *The University in Society*, vol. 1, p. 3.

⁸Cf. Kretzman, N., A. Kenny & J. Pinborg (eds.), *Cambridge History of Later Medieval Philosophy* (Cambridge 1982); Grafton, A. & L. Jardine (eds.), *From Humanism to the Humanities: Education and the Liberal Arts in Fifteenth and Sixteenth Century Europe* (London 1986). For a discussion of historiography compare Cressy, D., 'Educational Opportunity in Tudor and Stuart England', *History of Education Quarterly* 16 no. 1 (1976), pp. 303-306.

⁹As a "scholarship boy", the massive endowments made by Richard Hilles and Sir Thomas White to establish the Merchant Taylors' School and St John's College were fundamental to Whitelocke's success; cf. Simon, *Education and Society*, pp. 306-7.

¹⁰See the discussion in Simon, *Education and Society*, chs. 12 & 13; also Bouwsma, W.J., 'Anxiety and the Formation of Early Modern Culture' in B.C. Malament (ed.), *After the Reformation* (Manchester 1980), pp. 215-246.

CHAPTER ONE

Childhood and University Education, 1570 - 1598

In the Elizabethan age, godly zeal and social duty were constant themes in private and public writings on education.¹ The purpose of schooling, wrote James Whitelocke's headmaster Richard Mulcaster, was "so that the young fry may be brought up to prove good in the end, and serve their country well in whatever position they may be placed".² In Mulcaster's perfect world, the "end of every individual man's doings... and the end of the whole commonweal... are so much alike in aspect, and so entirely the same in nature, that when one is seen the other needs little seeking".³ In fact, a significant tension throughout James Whitelocke's schooling was the rationalization of public and private interest; from the outset Whitelocke's education had a defining influence on his social and material prospects.

James Whitelocke's pre-school years remain largely obscured. It is impossible to say, for example, if he attended elementary school, or received private tuition from his mother in the way that his wife would later begin the education of his own children.⁴ In the *Liber Famelicus* however, Whitelocke does note the pains taken by his mother, Joan Brockhurst née Colte, to ensure that her four sons received an adequate education from their earliest years. Joan Whitelocke remarried on 5 November 1571,⁵ and James Whitelocke's love and admiration for her comes through in his tale of her struggle with his "unthrift" and "unkind" stepfather, Thomas Price, to preserve the children's inheritance and to "finde meanes to bring them up in lerning and civility".⁶ As Whitelocke knew that social as well as

¹Simon, *Education and Society*, pp. 299-332; Kretzman *et al.* (eds.), *Cambridge History of Later Medieval Philosophy*, p. 767.

²Mulcaster, R., *Elementarie* (London 1582) in J. Oliphant (ed.), *The Educational Writings of Richard Mulcaster* (Glasgow 1905), p. 46; hence *Elementarie*.

³*Elementarie*, pp. 173-4.

⁴*Diary*, p. 44.

⁵Clarke (ed.), *The Parish Register of St. Dunstan in the East*, p. 97.

⁶*Liber Famelicus*, p. 6.

intellectual grooming was a prerequisite to a role in public life, he noted with pride that she:

did bring up all her children in as good sort as any gentleman in England wulde do, as in singing, dancing, playing on the lute and other instruments, the Latin, Greek, Hebrew, and Frenche tongues, and to write fair; everye on of them to that he was likeliest to do good in, but all wear by her appoynted and directed to the best course, that is, of lerning, and to have been professed scholers.⁷

James Whitelocke's regard for a good education was doubtless underpinned by the fortunes of his brothers, who never shared his enthusiasm for books. Of the three, Whitelocke's eldest brother Edmund seems to have held the most promise, winning a place at Christ's College, Cambridge, from the Merchant Taylors' School. Here his natural ability for languages, James recalled, was developed as he was "grownded in the liberall sciences", after which he went to study common law at the inns of court.⁸ Edmund's professional intent seems to have taken a back seat to his social life from this point, and a tour of the continent "to redeem his mispent time" at Lincoln's Inn led to a dozen years of travel without academic gain.⁹ On returning to England, Edmund's checkered career further deteriorated. Unfortunate associations with the earl of Essex and the earls of Northumberland and Percy led to his incarceration on suspicion of treason, and James Whitelocke implies that this may have contributed to an early death in the "mirth and good company" of the earl of Northumberland in 1608.¹⁰ If Edmund's misfortunes were a warning to his brother against squandering his educational potential, the fate of his twin brother William, who abandoned his studies for a life at sea only to be killed "in a conflict withe the Spanyards" at the tender age of twenty-seven,¹¹ was probably equally sobering. It seems that in a desire for stability, James was the odd man out in his family. His surviving brother Richard followed in the footsteps of his father, leaving school at

⁷*ibid.*

⁸*Liber Famelicus*, pp. 7-8.

⁹*Liber Famelicus*, p. 8.

¹⁰*Liber Famelicus*, pp. 8-10.

¹¹*Liber Famelicus*, pp. 11-12.

sixteen to travel, and eventually taking a Danish wife. According to Whitelocke's reflections in the *Liber Famelicus*, Richard "tasted many varieties of fortune, sumtime good and sumtime bad, and hathe travayled over many countries, and by the uncerteynty of trafique hathe susteyned great losses in his estate".¹² His comments suggest that whatever passing thoughts he may have had about abandoning his studies, the uncertain lives led by the other Whitelocke boys encouraged James to stay at home and channel his energy into a bookish existence less fraught with danger.¹³

Merchant Taylors' School to 1588:

"I was brought up at school under Mr. Mulcaster," Whitelocke recounted in the *Liber Famelicus*, "in the famous school of the Marchantaylors in London, whear I continued until I was well instructed in the Hebrew, Greek, and Latin tonges."¹⁴ Established in 1561 by the London guild from which it took its name, Merchant Taylors' was one of a number of grammar schools founded in Elizabeth's reign to attract the sons of an increasingly educated middle class.¹⁵ At Whitelocke's school, provision for the funding of one hundred students from poorer backgrounds went hand in hand with the plea of its headmaster Richard Mulcaster that the commonwealth "be prepared to give scope for ability, in whatever class it may be found".¹⁶ A noted humanist,¹⁷ Mulcaster perceived the role that the "middle sort of parents" had to play if "their children's capacity is in keeping with their parents' circumstances and position... to bring forth the student who will serve his country

¹²*Liber Famelicus*, p. 11.

¹³Without wanting to speculate too much on the effect on Whitelocke's psychological makeup, this comes through strongly when his account of his brothers on pp. 7-12 of the *Liber Famelicus* is read as a whole.

¹⁴*Liber Famelicus*, p. 12.

¹⁵Draper, *Four Centuries of Merchant Taylors' School*, pp. 5, 10; Simon, *Education and Society*, pp. 306-7. Whitelocke may have been entered for admission to Merchant Taylors' in 1575, but he was almost certainly a few years older before he actually began attending classes; Robinson, C.J., *A Register of the Scholars admitted into Merchant Taylors' School*, 2 vols. (London 1882), vol. 1, p. 22.

¹⁶*Elementarie*, p. 21; Draper, *Four Centuries of Merchant Taylors' School*, pp. 241-251; Simon, *Education and Society*, p. 306.

¹⁷See S.L. Collins' discussion of Richard Mulcaster in *From Divine Cosmos to Sovereign State* (Oxford 1989), esp. pp. 86-88.

best".¹⁸ He urged that scholarships be given on "genuine promise of usefulness", condemning those who would enhance the privileges of the gentry élite, whose minds, he said, "are the same as those of the common people" and bodies "often worse".¹⁹ If Mulcaster's writings are anything to go by, at Merchant Taylors' Whitelocke would have been able to concentrate upon his intellectual ability, and not his social position, as he was 'disciplined to "enrich the mind and soul itself" by tireless application to the tasks set before him.²⁰

Although Mulcaster left Merchant Taylors' in 1586, when he was replaced by Henry Wilkinson, the school's former undermaster,²¹ his educational philosophies must have had a strong impact upon the school. In trying to assess Whitelocke's studies at Merchant Taylors', we are fortunate to have two books prepared by Richard Mulcaster, the *Positions* (1581) and the *First Part of the Elementarie* (1582), in which he reflected upon the goals of education after twenty years at the school. Mulcaster's demand that any child be "reading perfect" in Latin and English "long before he dreams of studying grammar" testifies to the central importance of language in early modern education.²² In classes of fifty or more, Whitelocke and the other lads of Merchant Taylors' would from their first days at the school have concentrated upon the grammatical and linguistic skills necessary to read, write and eventually recite passages from "good" authors such as Cato, Aesop (in Latin) and Ovid.²³ While J.F. Fletcher has been at pains to point out the importance of English in the translation process,²⁴ the striking difference with today's classroom was the primacy of Latin as a medium of oral and written communication.²⁵ Through

¹⁸*Elementarie*, p. 21.

¹⁹*Elementarie*, p. 66.

²⁰*Elementarie*, p. 50.

²¹Robinson (ed.), *Register of Scholars admitted into Merchant Taylors' School*, vol. 1, p. xiii.

²²*Elementarie*, p. 34.

²³ The following discussion on grammar school teaching follows Fletcher, J.F., *The Intellectual Development of John Milton*, 2 vols. (Illinois 1956), esp. vol. 1, pp. 162-164, and Simon, *Education and Society*, esp. pp. 316 and 378.

²⁴Fletcher, *Intellectual Development*, vol. 1, pp. 182-198.

²⁵Mulcaster, who declared "I honour the Latin tongue, but I worship the English", considered there to be "two chief reasons which keep Latin, and to some extent other learned tongues, in high consideration among us, the knowledge which is registered in them, and their use as a means of

grammar and reading, students learned not only the form but the convictions, style and emphasis of the patristic and classical canon, gradually refining a knowledge of Latin necessary to tackle authors such as Terence, Horace, Vergil, Juvenal, Persius, Justin, Sallust and Cicero.²⁶ From about the fifth form Greek was taught along with Latin while a few of the more capable students, such as Whitelocke, took up instruction in Hebrew - although few could reasonably have claimed, as he did, to have been "well instructed" in all three languages during their years at grammar school.²⁷ Indeed, Bulstrode Whitelocke's testimony that his father's "abilities in learning were extraordinary" centred upon the fact that he was "expert in the Latin and Greek and well versed in the Hebrew, when he went to Oxford".²⁸

During his stay at Merchant Taylors', Whitelocke benefited from the help of the London linguist John Hopkinson, whose reputation, he tells us, was such Lancelot Andrews and other "great learned men" were frequent visitors.²⁹ In his desire to emulate Hopkinson, Whitelocke pursued a daily study routine lasting until midnight, which brought on "a dangerous disease" in his legs only cured through "violent exercise" and blood-letting the winter before he took up residence at Oxford University.³⁰ By concentrating upon hermeneutics (Whitelocke tells us he learnt the Book of Job, the Psalms and sections of Genesis),³¹ Hopkinson's tutoring complemented school routines of prayer and catechism to provide Whitelocke with a solid theological formation, further developed throughout his years at university.³² Assessing his father's educational abilities, Bulstrode Whitelocke recollected that he was, above all else, "deeply studied in divinity".³³

communication, in both speaking and writing, by the learned class throughout Europe"; *Elementarie*, pp. 46, 183.

²⁶In the *Elementarie*, p. 46, Mulcaster writes: "The study of language must be the basis of grammar, rhetoric, logic, and their derivatives".

²⁷*Liber Famelicus*, p. 12.

²⁸*Diary*, p. 47.

²⁹*Liber Famelicus*, p. 13.

³⁰*ibid.*

³¹*ibid.*

³²For a discussion of religious instruction at Merchant Taylors' and other grammar schools see Charlton, *Education in Renaissance England*, p. 98; Fletcher, *Intellectual Development*, vol. 1, p. 164; Clode, *Memorials*, pp. 403-404; Simon, *Education and Society*, pp. 325-332.

³³*Diary*, p. 66.

Of course, the syllabus of Merchant Taylors' School was not entirely devoted to book learning. Seeking a balanced if dedicated scholar, Richard Mulcaster encouraged his boys in a number of activities generally associated with gentlemanly "accomplishments" including sport, drawing, drama and music.³⁴ His prescription of a range of physical exercises to "accompany and assist the exercise of the mind" included walking, running, swimming, singing, dancing, and wrestling,³⁵ among which may be the forms of "violent exercise" employed by James Whitelocke in 1588 to balance his study and improve his health.³⁶ If the *Liber Famelicus* is any guide, he was probably more taken by the chance to perform as an actor in the plays presented before Queen Elizabeth, used by Mulcaster to teach his students, in Whitelocke's words, "good behaviour and audacity".³⁷

John Adamson has cited James Whitelocke's sympathetic attitude towards "organs et cathedral anthems",³⁸ often reviled by the "godly" as a disruptive influence on a spiritual life,³⁹ to stress the lenient attitude of some members of the Caroline judiciary towards high church ritual.⁴⁰ In light of his Calvinistic leanings (discussed below), Whitelocke's passion for music, which Bulstrode tells us was his chief recreation "within doores",⁴¹ might seem unusual. Although it is impossible to be sure, a formative influence upon Whitelocke's attitudes toward music may have come from Mulcaster, who openly argued that this medium enhanced, rather than disturbed, one's spiritual well-being. "I cannot forbear to place it among the most valuable means in the upbringing of the young", he

³⁴*Elementarie*, pp. 15, 37, 39; Simon, *Education and Society*, p. 316; Fletcher, *Intellectual Development*, vol. 1, p. 168.

³⁵*Elementarie*, p. 15.

³⁶*Liber Famelicus*, p. 13.

³⁷*Liber Famelicus*, p. 12.

³⁸Adamson quotes from Prest, W.R. (ed.), *The Diary of Sir Richard Hutton 1614-1639*, Selden Society Supplementary Series 9 (London 1991), p. 91.

³⁹See, for example, Mulcaster's comments in the *Elementarie*, p. 39, and Sir Henry Yelverton's comments in the conclusion to this thesis.

⁴⁰Adamson, *Cambridge Law Journal* 51 (1992), p. 552.

⁴¹*Diary*, p. 66. See also Bulstrode's comments on his father's love of music in the Longleat Papers, vol. 24, fol. 239.

remarked in one rejoinder to critics, eulogizing a medium which seemed in his eyes "to have been sent as a solace from heaven for the sorrows of the earth".⁴²

At every level of early modern education, encouragement of a student's ability to read, write, and think in Latin was accompanied by an expectation that he should try to speak it properly.⁴³ For the better students at Merchant Taylors' such as James Whitelocke, there was added incentive to show a good command of spoken Latin, as it was largely upon this basis that one or two were selected annually for a scholarship to St John's College Oxford. In the presence of the president and other senior members of the Company of Merchant Taylors, as well as the president and two senior fellows of St John's, students were chosen once a year to display their knowledge of the language and style of reputable classical authors in an exercise known as the "oration".⁴⁴ John Brinsley, writing on this exercise in his *Ludus Literarius; or the Grammar Schoole* (1612), suggested that in such circumstances, the "ancient scholar" asked to "make an Oration to entertaine a Benefactor, or other person of note" should, "excusing themselves by their tender yeeres, want of experience and of practice in that kinde", proceed to employ a "variety of choice phrases" to show their mettle.⁴⁵ There is little doubt that Wilkinson would have had his top students well versed in a basic rhetorical setpiece before he let them represent the school in the presence of his employers, and as a mature seventeen-year-old James Whitelocke probably knew he was being groomed for a place at university long before he took the stage to press his claim for a scholarship. Yet there was still the need to think on his feet as the invited guests questioned him on his knowledge of Latin, Greek and Hebrew, and it appears that here his gift for languages and his love of public performance did not let him down. On the Feast of St Barnabas (11 June) 1588, James Whitelocke was elected along with George Wright, "meteste as well for learninge, personage, poverty, and years, to be presently preferred" to the

⁴²*Elementarie*, p. 39.

⁴³Fletcher, *Intellectual Development*, vol. 1, pp. 210-211.

⁴⁴Clode, *Memorials*, pp. 405-408; Stevenson, W.H. & H.E. Salter, *The Early History of St. John's College Oxford* (Oxford 1939), pp. 147.

⁴⁵Quoted in Fletcher, *Intellectual Development*, vol. 1, p. 210.

College of St John the Baptist in Oxford.⁴⁶ In the summer of the Spanish Armada (in Whitelocke's understated words "a little distemper to the quiet course of studies"),⁴⁷ he thus began earnestly preparing himself for the rigours of university life.

The University of Oxford, 1588-1620

The collegiate university:

Over thirty years ago, Mark Curtis stressed changes within the universities at Oxford and Cambridge which underlined their importance in Tudor and Stuart society. Acknowledging the conservative nature of the formal curriculum, Curtis pointed to several developments resulting from an increasing lay influence in the universities, including the widespread appearance of fee-paying undergraduates alongside the traditional clerical fellows, the replacement of halls of residence by autonomous and powerful collegiate societies, an increasingly vigorous collegiate system of instruction alongside the formal syllabus, and the gradual impact of lay, humanist ideals upon the essentially medieval system envisaged by the formal statutes.⁴⁸ All in all, Professor Curtis's thesis has stood the test of time remarkably well.⁴⁹ In the recent *History of the University of Oxford*, James McConica essentially reiterates Curtis's view of the institution as a "unique compound" of clerical and secular ambitions,⁵⁰ seeing it as the product of "changes brought about by the reformation and by the triumph of humanism over the medieval schools".⁵¹

Over the past twenty years, Lawrence Stone and James McConica have attempted to elucidate the changing social role of the universities by statistical analysis of

⁴⁶*Liber Famelicus*, p. 12; Clode, *Memorials*, p. 408; Guildhall Library Microfilm 326, Merchant Taylors' Company Court Minute Book, fol. 211v.

⁴⁷*Liber Famelicus*, pp. 12-13.

⁴⁸Curtis, *Oxford and Cambridge in Transition*, *passim*.

⁴⁹For some general criticisms of Curtis see Charlton, *Education in Renaissance England*, pp. 167-168; Hill, C., *The Intellectual Origins of the English Revolution* (Oxford, 1965), pp. 300-314.

⁵⁰Curtis, *Oxford and Cambridge in Transition*, p. 50.

⁵¹McConica (ed.), *History of the University of Oxford*, vol. 3, pp. 730-731.

admissions.⁵² In his broad analysis of the Oxford student body, Stone identifies "two fairly distinct groups of students" at Oxford during the later sixteenth and seventeenth centuries.⁵³ He categorizes the first group as those who sought a career either in the Church or in teaching, which was largely under Church control. James Whitelocke falls into his second group, those planning a career in one of the other professions or seeking educational polish. Yet it is perhaps an oversimplification to place (as Stone has) men who saw an Oxford degree as a stepping stone to another profession with gentlemen of higher status who, in the words of the Jacobean Cambridge tutor Richard Holdsworth, "come to the university... only to get such learning as may serve for delight and ornament and such as the want thereof would speak a defect in breeding rather than scholarship".⁵⁴ In this sense, as Whitelocke's experience of university life says something about what Oxford had to offer for the many who employed higher education to rise from the "middling sort" to a higher status, it also stresses the difficulties in reconciling the fortunes of an individual with the educational trends of an institution. How, one might ask, does a "revolution" in education, proposed by Stone on the basis of a growth in undergraduate admissions at Oxford and Cambridge, equate with a decline in the number of candidates reading for the BCL during the same period?⁵⁵ Whitelocke can only cast a very small shadow on the broader questions of education at the University of Oxford - yet his experience offers much that is of interest.⁵⁶

Whitelocke's reflections on his stay at Oxford in the *Liber Famelicus* are brief, but serve to sketch his experience of university education.⁵⁷ As well as offering degrees

⁵²See for example, Stone, 'The Education Revolution in England', pp. 41-80 and 'The Size and Composition of the Oxford Student Body' in Stone (ed.), *The University in Society*, vol. 1, pp. 3-37; McConica, 'Scholars and Commoners in Renaissance Oxford', pp. 151-181.

⁵³Stone, 'The Size and Composition of the Oxford Student Body', p. 9.

⁵⁴Holdsworth, J., 'Directions for a Student at the Universitie', Cambridge University Emmanuel College MS 1.2.27; reprinted in Fletcher, *Intellectual Development of John Milton*, vol. 2, p. 647.

⁵⁵Stone, 'The Education Revolution in England'; Barton, J., 'The Faculty of Law' in McConica (ed.), *History of the University of Oxford*, vol. 3, p. 276; cf. Russell, E., 'The influx of commoners into the University of Oxford before 1581: an optical illusion?', *English Historical Review* 92 (1977), pp. 721-745.

⁵⁶Cf. G.F. Lytle's comments in Kittleson & Transue (eds.), *Rebirth, Reform and Resilience*, pp. 213-253.

⁵⁷See the *Liber Famelicus*, pp. 12-14.

in theology and the arts, St John's reserved twelve places for the study of civil law,⁵⁸ and James Whitelocke recalled that his probationary fellowship to read for the BCL came with the resignation of Roger Webb in November 1589.⁵⁹ Writing on his election as a probationer, Whitelocke was quick to note the men who were, during his years at university, the most immediate and significant figures of authority: Francis Willis MA, president of St John's from 1577 until his resignation in 1590 when he was replaced, Whitelocke tells us, by Ralph Huchenson; Ralph Ruvens MA, the vice-president, and two of the senior fellows who were present at his election, John Perrins MA and William Dixon. He went on to mention his tutor Rowland Searchfield, "then a young bachelor of arts", who was to play an important part in Whitelocke's personal and intellectual growth during his time at Oxford.⁶⁰ It is significant that Whitelocke discusses his Oxford education by recalling his college rather than the university itself; Whitelocke's Oxford years would have been dominated by the ordered and largely self-contained nature of college life.

James McConica has remarked that in the Tudor period "Colleges took over much of the function of the family, with parental authority represented in the life of the undergraduate by his tutor."⁶¹ One must conclude that despite the Puritanical outlook argued for him by several scholars,⁶² James Whitelocke cultivated friendships with many theological conservatives at St John's, in a "family" well known for its crypto-Catholic leanings.⁶³ Rowland Searchfield, with whom Whitelocke kept up ties as his former tutor rose to ecclesiastical prominence,⁶⁴ may not have fallen into this camp, which could be significant as Searchfield undoubtedly had some impact upon Whitelocke's religious thinking as well as training. Admitted

⁵⁸McConica (ed.), *History of the University of Oxford*, vol. 3, p. 46.

⁵⁹*Liber Famelicus*, p. 13; Bodl. MS Wood F 28, fol. 209.

⁶⁰*Liber Famelicus*, p. 12.

⁶¹McConica (ed.), *History of the University of Oxford*, vol. 3, p. 666.

⁶²Prest, *The Inns of Court*, p. 207; Cliffe, J.T., *The Puritan Gentry: The Great Puritan Families of Early Stuart England* (London 1984), p. 89.

⁶³Trevor Roper, H., *Catholics, Anglicans and Puritans* (London 1987), p. 57. See also Penry Williams's discussion of St John's College in McConica (ed.), *History of the University of Oxford*, vol. 3, pp. 411-423.

⁶⁴See *Liber Famelicus*, p. 76.

to St John's in 1582 from Merchant Taylors', Searchfield's clerical ambitions were encouraged by the college with regular provision of leave to preach in London.⁶⁵ While it is hard to establish Searchfield's theological perspective from the inadequate biographies that exist,⁶⁶ one clue is provided by the religious conservative John Manningham, who considered him "a dissembled Christian, like an intemperate patient which can gladly hear his physicion discourse of his dyet and remedy, but will not endure to obserue them".⁶⁷

Searchfield aside, Whitelocke's closest group of friends at St John's formed what Trevor-Roper has called the "Arminian nucleus" at Oxford,⁶⁸ who would later comprise the dominant members of Richard Neile's "Durham House Group" in London.⁶⁹ Whitelocke's "ancient friend and colleague" John Buckeridge was a foundation fellow of St John's and an able scholar; he was also one of the more prominent Arminians in Oxford during the 1590s.⁷⁰ Of the school of Lancelot Andrewes, Buckeridge taught high Church, anti-Calvinist doctrine which was to prove heavily influential on the thinking of his most famous student, Whitelocke's "loving friend and ancient colleague" William Laud.⁷¹ Buckeridge's friendship with Whitelocke, which continued as the lawyer became college steward and the cleric president of the college in the new century, was obviously close. In 1606 Buckeridge was named godfather to Whitelocke's second daughter Mary;⁷² six years later, as Buckeridge left St John's to take up the appointment as Bishop of Rochester, Whitelocke lent him the considerable sum of £400 "to shew my love unto

⁶⁵Stevenson & Salter, *Early History of St. John's*, p. 362.

⁶⁶See the *Dictionary of National Biography*; Stevenson, & Salter, *Early History of St. John's*, pp. 362-363; Wood, A., *Athenae Oxonienses*, 4 vols. (ed. P. Bliss, London 1815), vol. 2, p. 861; Foster, J., *Alumni Oxonienses*, 4 vols. (London 1891), vol. 3, p. 1329.

⁶⁷Bruce, J. (ed.), *The Diary of John Manningham*, Camden Society Old Series 91 (London 1868), p. 11.

⁶⁸Trevor Roper, *Catholics, Anglicans and Puritans*, p. 57; cf. Tyacke, N., *Anti-Calvinists: The Rise of Arminianism c. 1590-1640* (Oxford 1987), pp. 67-70; 106-124.

⁶⁹Tyacke, *Anti-Calvinists*, p. 107.

⁷⁰*ibid.* Having taken a Bachelor and Master of Arts, Buckeridge was, at the time of Whitelocke's admission, pursuing studies in divinity.

⁷¹Trevor Roper, *Catholics, Anglicans and Puritans*, pp. 46-48.

⁷²*Liber Famelicus*, p. 16.

him, and how far from covetousnes he had lived".⁷³ In 1617, Buckeridge gave Whitelocke 40s. per annum for life for legal counsel,⁷⁴ and as an invited guest he also contributed £5 to Whitelocke's law reading at the Middle temple two years later.⁷⁵

The most interesting of the relationships which developed between Whitelocke and the circle of high-church associates living at St John's was with William Laud. Whitelocke's friendship with the young Reading scholar was to extend through the early stages of Laud's career, beginning with their years shared together as scholars at St John's from 1594 to 1598, and continuing throughout Laud's time as President of the College from 1611 until 1620. While others were seeking to block Laud's appointment as President of St John's on religious grounds,⁷⁶ Whitelocke used his friendship with Laud to further his professional ties with the college. In 1616, Whitelocke recorded in the *Liber Famelicus* that King James had bestowed the deanery of Gloucestershire "upon my good friend Dr. Laud, president of St. John's Colledge",⁷⁷ while in another curious passage he recounted that his "loving friend and ancient colleague", now archdeacon of Huntingdon, had told him on 7 November 1619 that he was then forty-six years of age.⁷⁸ Whitelocke's last note in the *Liber Famelicus* of Laud's growing prominence in ecclesiastical circles was made after his consecration as Bishop of St David's in 1621,⁷⁹ but it is clear that up to this time at least, they maintained an amicable relationship despite their divergent views on religion and politics.⁸⁰ For Whitelocke, the continued friendship had the obvious advantage of furthering good relations with the college, for which he acted as steward during his first two decades in legal practice.⁸¹ The benefit of Laud's support is shown in his son Bulstrode's recollection of his admission to St John's in

⁷³*Liber Famelicus*, p. 26.

⁷⁴*Liber Famelicus*, p. 60

⁷⁵*Liber Famelicus*, p. 73.

⁷⁶Lake, 'Calvinism and the English Church', p. 50.

⁷⁷*Liber Famelicus*, p. 51.

⁷⁸*Liber Famelicus*, p. 77.

⁷⁹*Liber Famelicus*, p. 90.

⁸⁰Ruth Spalding makes this point in the *Diary*, p. 47, n. 5.

⁸¹*Liber Famelicus*, p. 15; Stevenson, & Salter, *Early History of St. John's*, p. 362.

1619, "where Dr Laud his father[']s great friend, and President of the Colledge, took charge and care of his education, and appointed a witty and learned person to be his Tutor, Dr Parsons a physitian, butt the President also took a strict account of his study and behaviour".⁸²

As Whitelocke makes no mention of Laud's meteoric rise to power under Charles I, it is hard to say what level of strain was put on their relationship by Laud's increasingly vigorous imposition of an Arminian design on the English Church. Here we have only the word of Whitelocke's son, who told parliament after the Judge's death that his father thought Laud "too full of fire, though a just and good man", and worried in his later years that the Archbishop's "want of experience in matters of state and his too much zeal for the Church... and heat (if he proceeded in the ways he was then in) would set this nation on fire".⁸³ James Whitelocke's distinctive religious outlook will be discussed further below.⁸⁴ For now, with the nature and impact of Laud's policies under some debate,⁸⁵ the associations outlined above stress the need to think carefully about the religious milieu in which Whitelocke moved during the early decades of the seventeenth century. Throughout his life, Whitelocke associated with a range of men whose convictions put them at opposite ends of the theological spectrum. It seems reasonable to conclude that Whitelocke was eager to avoid conflict over religious issues. Yet knowing that Whitelocke was prepared to entrust his son's education into the hands of a man who was, by the 1620s, becoming the most visible symbol of Arminianism in England,

⁸²*Diary*, p. 47.

⁸³BL Additional MS 37343, fol. 201v.

⁸⁴*infra*, pp. 61-65, 288-294.

⁸⁵Debate in this area is so hot that historiographical references run the risk of becoming obsolete. See Sharpe's references to forthcoming works in Sharpe, K., *The Personal Rule of Charles I*, (New Haven & London 1992), p. 275, and cf. Tyacke, N., 'Puritanism, Arminianism and counter-revolution' in C. Russell (ed.), *The Origins of the English Civil War* (Oxford 1973), pp. 119-134; Tyacke, N., *Anti-Calvinists*; White, P., 'The rise of Arminianism reconsidered', *Past & Present* 101 (1983), pp. 34-54; Tyacke and White, 'The rise of Arminianism reconsidered', *Past & Present* 115 (1987), pp. 201-229; Lake, P., 'Calvinism and the English Church 1570-1635', *Past and Present* 114 (1987), pp. 32-76; Foster, A., 'Church Policies of the 1630s' in R. Cust & A. Hughes (eds), *Conflict in Early Stuart England* (London 1989), pp. 193-223 and Sharpe, *The Personal Rule of Charles I*, ch. 6.

describing him as a "Puritan" is to give this term so elastic a meaning that it becomes almost meaningless.⁸⁶

Although in constant states of flux, colleges inevitably have their own character, and this character tends to be reinforced by the men who seek admission there. Several commentators have noted the religious motive stressed in Sir Thomas White's foundation statutes for St John's,⁸⁷ and the success of the college in furthering the traditional *raison d'être* of Oxford University - the training of a clerical elite - is easily demonstrated.⁸⁸ Less has been said about the mitigating force provided by the gentry presence in this college, or the lay, humanist influences which can also be detected in the foundation statutes. To understand James Whitelocke's experience of Oxford, one must look carefully at what the educational system offered for a man of his ambitions. From its inception, large numbers of fee-paying undergraduates were accepted by St John's; in Whitelocke's years at the college somewhere between twenty and thirty such boys were living alongside fifty college fellows.⁸⁹ These "commoners", drawn mostly from the gentry community and with quite different expectations from the "scholars" under whom they studied and served, provided much needed financial support to St John's, supplementing the fellows' emoluments with their fees and contributing to funds from which larger college projects could be financed.⁹⁰ Although Whitelocke himself says nothing about them, we can assume that his own social ambitions were fuelled in the process of rubbing shoulders with younger lads of higher social rank.⁹¹ More significantly,

⁸⁶For problems in reaching an adequate definition of what constitutes a 'Puritan' cf. Lake, P.G., *Moderate Puritans and the Elizabethan Church* (Cambridge 1982), pp. 1-5; 'Calvinism and the English Church 1570-1635', pp. 32-33; Brauer, J.C., 'Types of Puritan Piety', *Church History* 56 no. 1 (1987), pp. 39-42.

⁸⁷Stevenson & Salter, *Early History of St. John's*, pp. 141-149; the statutes are reprinted in pp. 439-471. See also McConica (ed.), *History of the University of Oxford*, vol. 3, p. 46; McConica, 'Scholars and Commoners in Renaissance Oxford', pp. 155-156, Mallett, *A History of the University of Oxford*, p. 177, n. 7.

⁸⁸Eminent fellows of St John's are detailed in the appendices of Clode, C.M., *Memorials of the Guild of Merchant Taylors of the Fraternity of St. John the Baptist*, 2 vols. (London 1875), vol. 2.

⁸⁹McConica, 'Scholars and Commoners in Renaissance Oxford', p. 165.

⁹⁰Curtis, *Oxford and Cambridge in Transition*, p. 48; McConica (ed.), *History of the University of Oxford* vol. 3, p. 47; McConica, 'Scholars and Commoners in Renaissance Oxford', p. 180.

⁹¹Cf. McConica (ed.), *History of the University of Oxford*, vol. 3, p. 723.

the lay presence at St John's modified the traditional role of the college to suit Whitelocke's educational ambitions.

By order of Sir Thomas White's original provisions for St John's, and subsequent additions made before the founder's death in 1567, thirteen places were reserved for founder's kin, one or two places were allocated to scholars nominated from the towns of Reading, Coventry, Tonbridge and Bristol, while the remaining thirty-seven were all reserved for scholars chosen from the Merchant Taylors' School.⁹² McConica's study of the St John's registers suggests that White's idiosyncratic provision of college fellowships, binding the college to the urban, merchant community (especially of London), gave it a social complexion "which was probably unique in the two universities".⁹³ He demonstrates that among the seventy percent of St John's men listed as "plebeian" foundationers the overwhelming majority were, like Whitelocke, drawn from the merchant class.⁹⁴ For these men a university degree opened up two doors for advancement. An ecclesiastical career was an obvious choice, and the majority of St John's graduates did take orders, either staying on in the college system or leaving for other offices.⁹⁵ For Whitelocke, who did not feel a religious calling, there was, however, another possible route of advancement. In some senses, Whitelocke recognized a "window of opportunity" at Oxford, squeezed between White's traditional design for St John's, and an emerging receptiveness at the college to lay, humanist ideals.

By statute, all of the twelve law students at St John's were bound to be in subdeacon's orders within ten years of beginning their study of the law, and priest's orders within fourteen years.⁹⁶ It was accepted practice by Whitelocke's time, however, to reserve these positions "primarily to enable those fellows who felt no vocation for the clerical life to postpone the moment when they would be obliged to

⁹²Stevenson & Salter, *Early History of St. John's*, pp. 400-402.

⁹³McConica, 'Scholars and Commoners in Renaissance Oxford', p. 156.

⁹⁴McConica, 'Scholars and Commoners in Renaissance Oxford', p. 167.

⁹⁵*ibid.*

⁹⁶Stevenson & Salter, *Early History of St. John's*, p. 145.

take orders or leave the college".⁹⁷ This lenient stance met opposition both at the university and the college level. Alarmed by the increasing use made of university fellowships as a springboard to a secular career, William Day, provost of Eton, urged that places at the inns of court be restricted, in order to put greater pressure on men purportedly at the universities for religious training. If this were not the case, he argued:

They will be taken from the universities after they have been their a whill and sent unto the lawes of the Realme wheras their is such a number as I understand that the houses cannot receaue them.⁹⁸

We see evidence of similar concerns at St John's itself, where in 1594 a dispute occurred between the President and some fellows on the question of how long jurists should hold their fellowships without ordination.⁹⁹ Four years later, four of the twelve scholars studying for the BCL were compelled to resign when they refused to take orders.¹⁰⁰ Yet Whitelocke's mention of other colleagues such as Humphrey May, who graduated Bachelor of Arts in March 1591 and left St John's to become his roommate at the Middle Temple, and Walter Pye (whom Whitelocke tells us "was my colleague in St. John's colledge in Oxon, and came to the Middle Temple a little before me"),¹⁰¹ reinforces the impression that this career path was frequently travelled by the end of the Tudor period.¹⁰² In fact, McConica estimates that up to a third of the scholars at St John's went on to a career in the law, medicine or commerce.¹⁰³

⁹⁷Barton, J., 'The Faculty of Law', p. 277.

⁹⁸Bodleian MS Tanner 50 fol. 53, quoted in R. O' Day, *The English Clergy: The Emergence and Consolidation of a Profession 1558-1642* (Leicester 1979), pp. 127-8.

⁹⁹Stevenson & Salter, *Early History of St. John's*, p. 286.

¹⁰⁰Stevenson & Salter, *Early History of St. John's*, p. 249.

¹⁰¹Clark, A., *Register of the University of Oxford*, 4 vols. (Oxford 1889), vol. 2, p. 166, vol. 3, p. 170. The registers make no mention of Pye.

¹⁰²*Liber Famelicus*, pp. 21; 90; cf. Knafla, L.A., 'The Matriculation Revolution and Education at the Inns of Court in Renaissance England' in A.J. Slavin (ed.), *Tudor Men and Institutions* (Baton Rouge 1972), pp. 241-243; Prest, W.R., *The Rise of the Barristers: A Social History of the English Bar 1590-1640* (Oxford 1986), p. 100, esp. n. 56.

¹⁰³McConica, 'Scholars and Commoners in Renaissance Oxford', p. 167.

Levack and McConica have drawn attention to a severe decline in the popularity of the law degrees at Oxford and Cambridge in the later half of the sixteenth century.¹⁰⁴ Over the years that Whitelocke studied for his degree, enrollments for the BCL at Oxford were shrinking so rapidly that by 1600 there were more legal fellowships in the university colleges than scholars to fill them.¹⁰⁵ In the *Liber Famelicus*, Whitelocke confessed that even before setting foot in Oxford, his ambition "had a farther reach, for I ever had a purpose to ayme at the common law".¹⁰⁶ Whitelocke's decision to study both civil and common law placed him among a handful of the thousands of men who studied law in the early modern period.¹⁰⁷ Explaining his motivation, he mentioned the influence of "a book set out by Dr Cosins, the dean of arches, intituled, 'An apologie of the ecclesiastical proceedings', in whiche I saw how great use he made of his knowledge of the common law to uphold the authority of his owne profession, and to direct others of his place".¹⁰⁸ Whitelocke's eirenic view of the relation of civil to common law was as unusual by this time as his decision to study both codes itself. For most common lawyers, attempts by civilian commentators such as Cosin,¹⁰⁹ John Cowell, and others such as Thomas Ridley to compare the rival codes was a source of consternation.¹¹⁰ Common-law hostility toward the "foreign" code of Roman law led civil lawyers in England to feel themselves increasingly under professional siege, and here Whitelocke's decision to by-pass a limited civilian enclave for the larger

¹⁰⁴Levack, *The Civil Lawyers in England*, pp. 50-52; McConica, 'The Social Relations of Tudor Oxford', pp. 116-117; *History of the University of Oxford*, vol. 3, p. 155.

¹⁰⁵McConica, 'The Social Relations of Tudor Oxford', p. 118; *History of the University of Oxford*, vol. 3, p. 155.

¹⁰⁶*Liber Famelicus*, p. 13.

¹⁰⁷Prest, *Rise of the Barristers*, p. 111.

¹⁰⁸*Liber Famelicus*, p. 14.

¹⁰⁹Richard Cosin, whom Fuller's *State Worthies* celebrates as "one of the greatest Civilians of our Nation bred, the grand champion of the Episcopacy", is also found under the name Coffin, Cozen, Cousines and Coffines. See the *DNB* under 'Richard Cosin'.

¹¹⁰There are clear links between common-law responses to these authors. Sir Edward Coke attacked Cosin and Ridley's works together in his posthumously published *Twelfth Report*. While Cowell's clearest attempt to apply civil law principles to English law is found in his *Insitutiones juris Anglicani* (London, 1605), Ridley used his more controversial *Interpreter* as a legal authority in his *View of the Civile and Ecclesiastical Law* (Cambridge, 1607).

fields of common law underlines a general lack of optimism in the profession.¹¹¹ In fact, Whitelocke's desire to study common law led him, at the end of two years study at St John's, to "joyne the study of the common law with the civil" in a remarkable subterfuge.¹¹² Enrolling himself in New Inn (one of the eight inns of chancery in London which served as preparatory schools for the four greater inns of court) in Michaelmas term 1590, he "went into commons thear for a while", returning to St John's to continue his studies without arousing the suspicion of the college fellows.¹¹³

As a logistical exercise, Whitelocke's audacious pursuit of simultaneous training in common and civil law underlines the fact that whatever the founder's ideals for St John's, college statutes could be extremely flexible. Under White's original provisions, probationers were allowed thirty days absence from the college each year, while fully-admitted scholars could take up to sixty days of leave over this time. In practice, there were numerous ways to extend this period, as Statute 32 allowed two additional periods of sixty days grace per year to be granted to a scholar who gave the rather vague assurance under oath that his absence was *ex causis promotionis*.¹¹⁴ With six months potentially available for purposes outside the domain of study each year, Whitelocke could, by choosing his times and demonstrating a continued application to the tasks set for him by the college, easily sidestep the lenient and frequently unenforced university requirements for the BCL, which Barton has suggested was "the most easily gained of all degrees offered at Oxford in the sixteenth century".¹¹⁵ Over the course of one and a half years, he managed the customary stay required in a lesser inn before gaining admission to the

¹¹¹See Levack, *The Civil Lawyers in England*, pp. 50-85; *idem*, 'The English Civilians' in W.R. Prest (ed.), *Lawyers in Early Modern Europe and America* (London 1981), pp. 108-128.

¹¹²*Liber Famelicus*, p. 14.

¹¹³*Liber Famelicus*, p. 14. The legal terms of the inns were divided into Michaelmas (October 17 to November 28), Hillary (January 23 to February 20), Easter (which began seventeen days after Easter and ended the Monday after Ascension Day), and Trinity (which lasted for nineteen days after Whitsunday).

¹¹⁴Stevenson & Salter, *Early History of St. John's*, pp. 148; 290.

¹¹⁵McConica (ed.), *History of the University of Oxford*, vol. 3, p. 275.

Society of the Middle Temple on 2 March 1592.¹¹⁶ It appears that by this time Whitelocke's ambitions were common knowledge among the fellows of St John's, and in an act of considerable generosity on the part of the college, he henceforth "kept commons" in London "at all sutche times as I coulde have dayes, by ordinary licence, by grace, or for furthering of the colledge businesse, to be absent from thence".¹¹⁷ "Keeping thus by turnes in bothe places," he recalled, "I did my exercise in the divinity school, for my degree of bachelor of the civill law, in Lent 1594... and I was presented bachelor of law... by Albericus Gentilis, regius professor in law, at Midsummer 1594".¹¹⁸

Over the four years which St John's allowed him to keep his fellowship after graduating in the civil law, Whitelocke was lucky enough to find the new president, Ralph Huchenson, a supportive influence. According to Whitelocke, Huchenson "was willing to allow me dayes in the colledge behalfe, to dispatche them of their businesse and chargeable journeys to London"; he was thus able to keep the financial support of a fellowship, maintain a presence at the Middle Temple, and acquire a knowledge of college business which probably earned him the office of college steward three years after the resignation of his fellowship.¹¹⁹ Whitelocke held the office of clerk of accounts and steward of the lands for St John's from October 1601 until his appointment as a judge in 1620.¹²⁰ In his time at the college, Whitelocke was able to develop a number of professional associations at St John's to extend his income and his influence in Oxfordshire.¹²¹ It is little wonder that as his attention turned increasingly to the common law, he continued to maintain strong connections with the college over the years to come.

¹¹⁶The original minutes of the Middle Temple parliament are available for inspection at the Middle Temple; Whitelocke is noted in Minutes of Parliament C3 and D4, carefully edited in C.H. Hopwood (ed.), *Middle Temple Records*, 4 vols. (trans. C.T. Martin, London 1904); hence *Middle Temple Records*, vol. 1, p. 333.

¹¹⁷*Liber Famelicus*, p. 14.

¹¹⁸*Liber Famelicus*, p. 14; Clark, *Register of the University of Oxford*, vol. 3, p. 186: "supp. B.C.L. 7 June, adm. 1 July 1594".

¹¹⁹*Liber Famelicus*, pp. 14-15.

¹²⁰Stevenson & Salter, *Early History of St. John's*, p. 193; *Liber Famelicus*, p. 15.

¹²¹See ch 7.

University training:

James Whitelocke's training at Oxford involved three loosely related educational demands: the first came from the university, the second from the college of which he was a fellow, and the third from the tutor who was his educational mentor. While a recent commentary on early modern education has argued for the need to reconsider "hallowed clichés" about the university syllabus in the light of "rich" complementary evidence preserved in textbooks, student notes and theses, the historical record is less complete than this assertion might suggest.¹²² An obvious starting point for an investigation of James Whitelocke's training at Oxford is with the statutes regulating acceptance to the degree of the Bachelor of Civil Law. Under the Elizabethan statutes of 1564, Whitelocke was required in the course of his study to attend the lectures of the regius professor, in which the principles of Justinian's *Corpus Juris Civilis* (the major text on civil law) were expounded, for a period of five years.¹²³ However, as lectures tended to repeat information readily available in the texts, and as they were pursued in lacklustre style by Albericus Gentilis, the regius professor of Whitelocke's day, who frequently delegated the chore to a deputy,¹²⁴ it seems likely that university lectures were not a major factor in Whitelocke's educational life.

Under the Elizabethan statutes, Whitelocke was further expected to attend faculty disputations, held every second term, opposing as a junior and then responding as a senior with the forty or so other candidates for the BCL housed by the Oxford colleges. The only formal test of his training came in a public demonstration at the end of his five years of study. By disputing with two other fellows before the

¹²²Grafton & Jardine (eds.), *From Humanism to the Humanities*, pp. xii-xiii. In trying to assess the educational influences brought to bear on James Whitelocke through his course of study at Oxford, I am more inclined to agree with H.F. Fletcher, who concluded in his formidable study of John Milton's university education that while much is known *in general* about this question, "there is no adequate account anywhere of the details of a student's academic activities... the statutes offer little help in reconstructing what was actually the course or manner of study in the later sixteenth century"; Fletcher, *Intellectual Development*, vol. 2, p. 56.

¹²³Fletcher, *Intellectual Development*, vol. 2, p. 57; McConica (ed.), *History of the University of Oxford*, vol. 3, pp. 358, 647.

¹²⁴McConica (ed.), *History of the University of Oxford*, vol. 3, p. 292.

Faculty, on two questions drawn from the *Corpus*, Whitelocke had to demonstrate an understanding of the principles of civil law to be admitted to his degree.¹²⁵ Even if one presumes that the expectations of the faculty were high (and there is no good evidence to suggest that this was so), it is clear that for an aspiring BCL such as Whitelocke, the only exercise that carried any weight in the entire university syllabus was the final disputation. His legal training was shaped far more the by the expectations of the college, and in particular the prompting and direction provided by Rowland Searchfield.

At St John's the lectures of the the dean of law, Edward Sprott, supplementing those of the regius professor, were undoubtedly attractive to freshmen trying to enhance their understanding of the *Institutes*.¹²⁶ For the senior scholars, the bulk of their college work involved preparing for and participating in disputations and declamations. These exercises, carried out under the supervision of the dean and the senior fellows, served as a kind of full dress rehearsal for the final public performance by which all law scholars were required to demonstrate their command of the syllabus.¹²⁷ A college minute of 28 May 1592, in which the President and the seniors ordered that the weekly disputations between the law students be duly observed, suggests that during Whitelocke's years of training Sprott met with a certain amount of inertia on the part of the students, who knew full well that such exercises had no formal bearing on their degree.¹²⁸ As the statutes for the BCL placed almost the entire measure of achievement over five years of study upon one public exercise, perhaps the only real pressure that could be brought to bear on Whitelocke in this three-tiered system of education came from Rowland Searchfield, the tutor to whom he was assigned.

¹²⁵Barton, 'The Faculty of Law', pp. 274-276; Levack, *The Civil Lawyers in England*, pp. 16-18; Curtis, *Oxford and Cambridge in Transition*, p. 155.

¹²⁶Stevenson & Salter, *Early History of St. John's*, p. 271.

¹²⁷Cf. Barton, 'The Faculty of Law', pp. 257-299; Levack, *The Civil Lawyers in England*, pp. 16-18, and Curtis, *Oxford and Cambridge in Transition*, p. 155.

¹²⁸Stevenson & Salter, *Early History of St. John's*, p. 285.

Although we can be certain that Rowland Searchfield played an important role in Whitelocke's training at Oxford, the nature of his influence is harder to test. In the *Liber Famelicus*, Whitelocke recalled that under Searchfield he "continued the study of logique and the artes, but above all of historye; in whiche I toke great delite".¹²⁹ Beyond his reference to "Titus Livius" (Livy), in whom he considered himself "verye perfect",¹³⁰ we can assume that in covering "the artes" Whitelocke would have familiarized himself with the works of other classical historians such as Plutarch, Salust and Valerius Maximus, while his rhetorical skills were refined through the works of Cicero and Quintilian.¹³¹ Equally important in his tutorial guidance was the continued study of languages. Of course, his skills were continually refined in Latin, the accepted language of university discourse, but Whitelocke also "laboured mutche" in Greek and Hebrew, having been inspired by his former tutor Hopkinson, an "obscure and simple man for worldly affayres", whose fluency extended to "the lefthand tonges" such as "Chaldean" (Aramaic), Syriac and Arabic.¹³² The ability to deal with Hebrew undoubtedly distinguished Whitelocke and the more advanced linguists at St John's from the rest of their peers.¹³³

Beyond time spent "diligently" in history and languages, Whitelocke also recalled that under the guidance of his tutor he "red Aristotle in Greek" (presumably the *Ethics* and *Politics* from which moral philosophy was generally learned).¹³⁴ As some accounts have portrayed Cambridge as the more receptive to Ramism than Oxford in the later half of the sixteenth century;¹³⁵ Whitelocke's mention of Aristotle could be seen as evidence of the Aristotelian stance taken by that institution. In fact, Whitelocke subsequently employed Ramus's new "all purpose" method (*unica*

¹²⁹*Liber Famelicus*, p. 13.

¹³⁰*ibid.*

¹³¹I have based my assumptions on J.M. Fletcher's discussion of standard undergraduate texts in McConica (ed.), *History of the University of Oxford*, vol. 3, p. 174.

¹³²*Liber Famelicus*, p. 13.

¹³³Fletcher, *Intellectual Development of John Milton*, vol. 2, p. 58.

¹³⁴*Liber Famelicus*, p. 13.

¹³⁵For an example of two differing interpretations of the evidence cf. Charlton, *Education in Renaissance England*, pp. 152-155; Curtis, *Oxford and Cambridge in Transition*, pp. 253-255.

methodus) in his written work.¹³⁶ While there are cases of an intellectual advocacy of Ramism at St John's from the 1580s,¹³⁷ many who publicly supported Aristotelian methods may have taken up Ramist methodology in private as well. Thus although at an institutional level Oxford upheld Aristotle well into the seventeenth century, there is every reason to believe that whatever their "public" position on the matter, tutors and scholars at Oxford privately furthered the so-called "Ramist revolution" in education.¹³⁸

During Whitelocke's years at St John's, the college library was acquiring books at a rate which transformed a small but select collection of theological, legal and linguistic works into probably the largest library in Oxford.¹³⁹ When afternoons were free from the demands of university and college regulations,¹⁴⁰ it is fair to assume that a good deal of Whitelocke's time was spent in "book learning" as his competence grew, and tutorial assistance tapered off during his senior years. In his junior years, Whitelocke and Searchfield's other freshman would have been versed by their tutor in the central art of university life, the disputation. By observing Searchfield and the seniors, Whitelocke was assisted in the methods of logic and rhetoric, by which his understanding of the "good" authorities of the patristic-classical tradition was to be demonstrated. The ability to read, note and then memorize quotations and underlying principles in recognized texts was an essential skill, to be tested in bouts of oral duelling in which attack could come from any quarter. This was the end of the the large paper books in which undergraduates were encouraged by tutors to note the "many choice and witty sayings, sentences,

¹³⁶See, for example, his speeches to the Society of Antiquaries and his 1619 law reading, examined in below in ch. 3 and appendix 1.

¹³⁷Howell, *Logic and Rhetoric in England*, p. 191.

¹³⁸The authoritative text on the impact of Ramism is Ong, *Ramus: Method, and the Decay of Dialogue*.

¹³⁹Ker, N.R., 'The Provision of Books' in McConica (ed.), *History of the University of Oxford*, vol. 3, p. 460.

¹⁴⁰It is possible to trace Whitelocke's academic routine from his college and university schedule: after assembling for morning prayers in the college chapel at dawn a study period was followed on four days of the week by the 9am lectures of the regius professor, after which the entire college assembled at 11am for the main meal of the day. The afternoon was taken up with either college exercises or the occasional public exercises of the university; Fletcher, *Intellectual Development*, vol. 2, p. 57; McConica (ed.), *History of the University of Oxford*, vol. 3, pp. 358, 647.

and passages" of their authorities as they read,¹⁴¹ and here we are fortunate that one of Whitelocke's common-place books survives.¹⁴²

Erasmus declared that the function of common-placing was to "imprint what you read more deeply on your mind";¹⁴³ during James Whitelocke's time at university this was the preferred technique to help a student cope with the formidable mass of material he was expected to assimilate. James Whitelocke noted that his large commonplace book was:

divided... into two parts: in it first, there will be a discussion of life and manners,
in it second, of nature and her hidden laws.¹⁴⁴

Topics were organized alphabetically according to subject matter under a wide range of headings starting with "absona" and ending with "zona".¹⁴⁵ Under these headings, Whitelocke distributed what thoughts he had gathered from classical authors in the course of his reading. Judging from the large number of blank pages, Whitelocke's ambitions to cover a huge subject area outstripped his reading (or common-placing at any rate). Select headings such as "academia", "lingua (Graecia/Latina)" and "disputatio", however, are followed by half a page or more of examples drawn from Greek and Latin authors, and quoted in their original languages.¹⁴⁶ This information was gathered from the standard works: Varro's *De Lingua Latina*, Plato's *Respublica*, Cicero's *De Inventione (rhetorica vetus)* and *De Oratore*, Livy's *Epitomae*, Aristotle's *De Anima*, and so on. The range of subjects covered - one could start, for example, with "natura" and progress sequentially through "names ars nautica", "necessitas", "nouitas" and "nutritio" - suggest the vast

¹⁴¹Holdsworth, 'Directions for a Student in the Universitie' in Fletcher, *Intellectual Development of John Milton*, vol. 2, p. 642.

¹⁴²CUL MS Dd. 9.20. I am greatly indebted to Professor J.H. Baker for making me aware of this manuscript.

¹⁴³Erasmus, *On Copia of Words and Ideas* (trans. D.B. King & H.D. Rix, Milwaukee 1963), p. 89.

¹⁴⁴CUL MS Dd. 9.20, fol. 1 (translated from the Latin).

¹⁴⁵CUL MS Dd. 9.20, fols. 3, 470.

¹⁴⁶CUL MS Dd. 9.20, fols. 7, 114, 218.

range of topics on which an educated man was expected to be able to talk with authority.¹⁴⁷

In a smaller, second section treating "points which will be unravelled which deal with natural and theoretical science", subject headings read: "AFRICA", "ANIMA", "ANIMANTIA", "AMERICA", and so on. Once again, Whitelocke's ambitions to fill his headings were excessively optimistic; what little information he did offer comes from Cicero, Aristotle or Plato.¹⁴⁸ From folio 471, Whitelocke constructed a rudimentary grammar divided into "orthographical" categories such as etymology, syntax, dialectic, and authority. Again mostly blank, these headings were covered by intermittent references to Socrates, Plato, Ovid and others. Of course, once constructed, this common-place book served as a ready reference source to be added to at will, and Whitelocke ended the book with an alphabetical list of headings, citing the folios whence he had compiled his information.¹⁴⁹ As a man who was constantly expected to master new information throughout the course of his professional life, commonplacings was employed by him long after his student days had ended. Surviving in the Cambridge University Library, for example, is a commonplace book he compiled relating to the study of the common law.¹⁵⁰

Supplementing (and for the less motivated scholar doubtless supplanting) the academic routine of the university were the attractions of Oxford itself, and college records show that at St John's, breaches of discipline were usually met with leniency.¹⁵¹ While anyone who has tutored in a college would sympathize with Richard Holdsworth's concern for scholars who became "wanderers in a mistie wilderness", they would further agree that no tutor could be expected "to prescribe in all particulars what they ought to study and how the day ought to be spent".¹⁵² Whitelocke stated that the "hunting of hare on foot" was his single outlet from the

¹⁴⁷Shaller, T.K., 'English Law and the Renaissance: the Common Law and Humanism in the Sixteenth Century' (1979 Harvard University PhD thesis), pp. 34-37.

¹⁴⁸For example, CUL MS Dd. 9.20, fols. 250-256.

¹⁴⁹CUL MS Dd. 9.20, fols. 560-570.

¹⁵⁰CUL MS Dd. 3.69 (discussed below, pp. 73-74).

¹⁵¹McConica (ed.), *History of the University of Oxford*, vol. 3, pp. 604-605.

¹⁵²Fletcher, *Intellectual Development of John Milton*, vol. 2, pp. 57, 624.

academic regime, "but never so as that I detracted my times of study or scholasticall exercises by it."¹⁵³ This comment may have been intended for Bulstrode Whitelocke, whose academic progress in the face of regular extra-curricular activity was a constant worry to James.¹⁵⁴ Bulstrode later complained that due to his father's small allowance, he could not afford a horse for hunting during his own time at Oxford and nearly went lame as a consequence.¹⁵⁵ There is no reason to doubt, however, that James Whitelocke worked hard and enjoyed his intellectual pursuits. For the rest of his life private conversation and public performance of an intellectual nature provided an important part of his identity, and college life gave him the opportunity to make lasting friendships with like-minded young men.

J.M. Fletcher has noted the problems and tensions present in a "strange situation" where by the end of the sixteenth century "an influential body of Oxford students was following a course that had little connection with that prescribed by the statutes".¹⁵⁶ With the aims of university and college education in the early modern period often treated as a dichotomy between humanism and scholasticism,¹⁵⁷ a concluding assessment of James Whitelocke's university education must try to put the overall effect of these influences into some perspective. Firstly, the scholastic ideals of the university statutes were not as dogmatic as some authors might lead us to believe. The *Corpus Juris Civilis*, which formed the backbone of education in the civil law, was widely regarded as an important general text for a grounding in the liberal arts; Richard Holdsworth suggested to his students that the fortnight or so

¹⁵³*Liber Famelicus*, p. 14.

¹⁵⁴Bulstrode says that the "wisdom of the father would discend to discourse with his boy, for which this age was ripe and delightfull" (*Diary*, p. 44), and later that his father worked "by example and solid instruction, to heighten the mind and incourage the industry of his son"; *Diary*, p. 45.

¹⁵⁵*Diary*, p. 48.

¹⁵⁶McConica (ed.), *History of the University of Oxford*, vol. 3, p. 180.

¹⁵⁷Cf. Costello, *The scholastic curriculum at early seventeenth-century Cambridge* (Cambridge Mass. 1959). While earlier commentators dramatized the so-called "revolt against scholastic logic and traditional logic" (Howell, *Logic and Rhetoric in England*, p. 7), McConica, for example, has remarked that it is "difficult to see how subjects such as literature, history, geography, and modern languages... bore any relation to the study of logic"; *History of the University of Oxford*, vol. 3, p. 180. *The Cambridge History of Late Medieval Philosophy* (p. 818) has declared that despite the "attacks of humanists, Ramists, reformers, and plain haters of philosophy" scholasticism "experienced a notable revival" in the universities towards the end of the sixteenth century.

required to read Justinian was well worth the effort as the "smattering tast of these studies will be of great use, and if you gott but only the terms and method it is more than a perfect Scholar can well want".¹⁵⁸ During the course of their studies, civilians would have acquainted themselves with humanist authors such as Alciatus and Cujas as well as medieval commentators like Baldus and Bartolus.¹⁵⁹ And in fact beyond its content, the *style* of the university syllabus reinforces this impression that its differences with college instruction may not have been so great as Fletcher has argued. In expanding on the principles of the *Corpus*, the lectures of the regius professor stressed the development of a philosophically-educated mind, rather than any practical training in the law, which scholars were expected to acquire in their own time through court room observation.¹⁶⁰ The university disputation, placing the weight of academic expectation upon public display of one's capability in logic and rhetoric, linked the prompting of the earliest tutorial classes, and the college exercises, with the final measure by which one would claim a degree. The expanding college studies of an undergraduate, absorbing the heuristic possibilities opened up by printing, always came back to this expectation, as much of what was read or written was finally delivered orally.

Reviewing the syllabus which James Whitelocke was expected to master at Merchant Taylors' and then at Oxford, we would do well to consider its components as part of the general educational scheme of the later sixteenth century. Here vast differences with today's educational emphases stress changes that occurred with the advent of what one might call a "technological-agnostic" era. The importance of religious instruction in Whitelocke's life, formally promoted by the state through a political as well as moral impetus, gave education a dimension we would associate today with only the more fundamentalist theological colleges. Beyond this, the key

¹⁵⁸Holdsworth, 'Directions for a Student in the Universitie' in Fletcher, *Intellectual Development of John Milton*, vol. 2, p. 646; for a discussion of the limitations of Holdsworth's 'Directions' see Hill, *Intellectual Origins*, pp. 307-308.

¹⁵⁹Fulbecke, W., *A Direction or Preparative to the Study of the Lawe* (London 1600), p. 26v; Levack, *The Civil Lawyers in England*, pp. 17-18.

¹⁶⁰Levack, *The Civil Lawyers in England*, pp. 17-18; McConica (ed.), *History of the University of Oxford*, vol. 3, p. 260; Stevenson & Salter, *Early History of St. John's*, p. 291.

to the whole educational apparatus can be seen to lie in a thorough training in the languages and conventions of the classical-patristic age. "At its best" McConica has written, an Oxford education "matched mastery of style and a broad classical culture with a tested dialectical skill that was a formidable instrument in debate and exposition".¹⁶¹ In light of James Whitelocke's subsequent career, one sees in his training at Oxford things of inestimable value. By acquiring expertise in the accepted methods of argumentative persuasion, he developed the ability for public speaking essential in the life of a barrister. At Oxford, one sees the formative seeds of Whitelocke's later speeches in parliament, of his charges to the Chester Grand Jury, of his legal rulings, of a charge he delivered in Latin to a group of foreigners at the Oxford assizes, recalled by his son.¹⁶² Whitelocke's grounding in classical history, founded upon a command of Latin, but also a knowledge of the Septuagint based on Greek, of Jewish history based on Hebrew, and of English history (which Bulstrode tells us he knew "exactly")¹⁶³ created the polyglot comprehension that flavoured Whitelocke's activities from the House of the Commons to the Society of Antiquaries. It was in a form befitting the best traditions of university collegiate life that Bulstrode remembered his father as a man "full of witt and pleasantness especially at meales, and as there was occasion his discourse was mixed with excellent learning".¹⁶⁴ For James Whitelocke, education was more than a technical apparatus; as a significant life experience, it nurtured qualities required for a place on the Jacobean public stage.

¹⁶¹McConica (ed.), *History of the University of Oxford*, vol. 3, p. 731.

¹⁶²*Diary*, p. 66.

¹⁶³*ibid.*

¹⁶⁴*ibid.*

CHAPTER TWO

Education at the Inns of Court and Chancery, 1590-1620

Early in the seventeenth century, James Whitelocke prepared a paper on the historical development of the inns of court and chancery for the Society of Antiquaries, but offered no comment on the social and educational arrangements of his own time, "because no man here but understandeth it, and, I suppose, our meetings are to afford one another our knowledge of ancient things, and not to discourse of things present".¹ This is unfortunate, because the prominence of common lawyers in early Stuart society (which has led historians to speculate widely upon the social and cultural impact of the inns of court and chancery)² has been fuelled, and simultaneously hindered, by the careful manner in which common lawyers reinforced the identity of the inns. Promoted by Sir Edward Coke as "the most famous university for profession of law only, or of any human science, that is in the world",³ the inns were in fact, as Maitland observed, "associations of lawyers which had about them a good deal of the club, something of the college, something of the trade union".⁴ As in the case of many clubs, colleges and trade unions, lawyers shrouded the internal workings of their organizations, using a distinctive legal language,⁵ and an elaborate set of social rituals to reinforce their internal solidarity.⁶ Yet this "insular and arcane learning known only to those who had been

¹Hearne, T. (ed.), *A Collection of Curious Discourses written by Eminent Antiquaries upon several heads in our English Antiquities*, 2 vols. (London 1771), vol. 1, p. 79; hence *Discourses*.

²Hill, *Intellectual Origins*, p. 256; Stone, 'The Educational Revolution in England', p. 78; Baker, J.H., 'The Learning Exercises in the Medieval Inns of Court and Chancery' in *The Legal Profession and the Common Law*, pp. 7-8; Prest, *The Inns of Court*, pp. 220-221.

³Coke, E., *Third Report* (1602), 'Preface'.

⁴Maitland, F.W., 'English Law, 1307-1600' in H.M. Cam (ed.), *Selected Historical Essays of F.W. Maitland* (Cambridge 1957), p. 125.

⁵Common lawyers were widely criticized for maintaining Law French, "a motley dialect of Norman French, Latin, and English" as the language of the law; Croke, A., *The genealogical history of the Croke family*, 2 vols., (Oxford 1823), vol. 1, p. 478; cf. Baker, J.H. (ed.), *Manual of Law French* (2nd ed., London 1990), pp. 1-10.

⁶For an examination of the ways in which English lawyers continue to affirm these rituals, see Dean, J., *Middle Temple Hall: Four Centuries of History* (London 1970), *passim*.

initiated into its mysteries in the inns" was threatened,⁷ in Whitelocke's years of training, by the changes affecting the social composition of the inns of court.⁸

Twenty years ago, John Baker commented on the difficulties in recovering this legal arcana in 'The Dark Age of English Legal History';⁹ thanks to his own work,¹⁰ and the contribution of other historians such as Prest,¹¹ Brooks¹² and Seipp,¹³ we are in a far better position today to assess the relationship between early modern legal education and the culture of common law. There is, however, still much to be done in this area for the later sixteenth and early seventeenth century.¹⁴ By tracing James Whitelocke's progress through New Inn and the Middle Temple from 1590 to 1619, this chapter considers the perspective of one of who retained a vested interest in the educational standards of the inns during a recognized period of decline.¹⁵ It questions Whitelocke's contribution to the life of the inns, and the effects of his common-law training upon his personal and professional formation.

⁷Baker, J.H. (ed.), *The Reports of Sir John Spelman*, 2 vols., Selden Society 93 & 94 (1976 & 1977), vol. 2 pp. 142-143.

⁸Prest, *Inns of Court*, chs. 2, 5.

⁹Baker, J.H., 'The Dark Age of English Legal History' in D. Jenkins (ed.), *Legal History Studies* (Cardiff 1975), pp. 1-27; reprinted in Baker, J.H., *The Legal Profession and the Common Law: Historical Essays* (London 1986), pp. 435-460.

¹⁰Baker, J.H. (ed.), *The Order of Serjeants at Law* (London 1984); *The Reports of Sir John Spelman*; collected essays in *The Legal Profession and the Common Law*; and S.E. Thorne (eds.), *Readings and Moots at the Inns of Court in the Fifteenth Century*, 2 vols., Selden Society 71 & 105 (1954 & 1989).

¹¹Prest, W.R., *The Inns of Court*; 'The Learning Exercises at the Inns of Court, 1590-1640', *Journal of the Society of Public Teachers of Law* 9 (1967), pp. 302-313; 'The legal education of the gentry at the inns of court, 1560-1640', *Past & Present* 38 (1967), pp. 20-39, *The Rise of the Barristers*.

¹²Brooks, C.W., *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge 1986); 'The Place of Magna Carta and the Ancient Constitution in Sixteenth-Century English Legal Thought' in E. Sandoz (ed.), *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law* (Columbia and London 1993), pp. 57-88.

¹³Seipp, D.J., 'The Structure of English Common Law in the Seventeenth Century' in W.M. Gordon & T.D. Fergus (eds.), *Legal History in the Making* (London 1991), pp. 61-84; 'Bracton, the Year Books, and the "Transformation of Elementary Legal Ideas" in the Common Law', *Law and History Review* 7 no. 1 (1989), pp. 175-217.

¹⁴Baker (ed.), *Reports of Sir John Spelman*, vol. 2, pp. 124-125.

¹⁵Prest, *Inns of Court*, *passim*, esp. pp. 124-136; Baker, 'The Inns of Court and Legal Doctrine', p. 281; Baker and Thorne (eds.), *Readings and Moots at the Inns of Court*, vol. 2, p. lxxi; Carr, C. (ed.), *Pension Book of Clement's Inn*, Selden Society 78 (1960), p. xxx.

The social complexion of the inns of court and chancery:

The sixteenth-century educational "revolution", which saw an increasing desire for a "non-specialist academic education for the sons of the landed gentry and aristocracy", saw an "unprecedented expansion in enrolments" at the inns of court.¹⁶ Prest attributes declining student enrolments at the inns of chancery over the same period to the growing educational franchise of the universities, "because their previous function of preparing young men for the inns of court through a grounding in the technicalities of original writs had largely been taken over by more generalized academic studies at Oxford and Cambridge".¹⁷ Whitelocke would have known many of the young gentlemen who travelled down from Oxford to the Middle Temple in the 1590s,¹⁸ yet he was in a different position from the majority.¹⁹ As one of only eight law scholars who proceeded from an Oxford BCL to the inns of court between 1571 and 1603,²⁰ he was the single Bachelor of Civil Law to progress to the rank of bencher at the Middle Temple in the early modern period.²¹ Prest considers it likely that those who, like Whitelocke, proceeded from university to an inn of chancery were "rather constrained by economic circumstances than persuaded by broadly educational considerations".²² Whitelocke did not dwell on this issue, stating simply that he "became admitted into New Inn in Michaelmas term 1590, and went into commons there for a while",²³ but other evidence corroborates Prest's suggestion.

¹⁶Prest, *Rise of the Barristers*, p. 110; cf. *idem*, *Inns of Court*, pp. 21-25; Stone, 'The Educational Revolution in England, 1560-1640', pp. 41-80; Knafla, 'The Matriculation Revolution and Education at the Inns of Court', pp. 241-243, 246.

¹⁷Prest, *Rise of the Barristers*, p. 111.

¹⁸Prest cites a study by G. Lynch which demonstrates that at least one out of three entrants to the Middle Temple between 1585 and 1589 were Oxford educated; *Rise of the Barristers*, pp. 111-112.

¹⁹Prest, *Inns of Court*, p. 30 suggests that of non-honourific entrants to the Middle Temple between 1590 and 1639, less than a quarter came from non-gentry and non-peerage families of over the period.

²⁰Barton, 'The Faculty of Law', p. 282.

²¹Prest, *Rise of the Barristers*, pp. 111-112. Standing at the apex of the three-tiered hierarchy of the Middle Temple, the benchers responsible for governing the society were distinguished by their seniority and experience in matters of law. At the Middle Temple, those called to the bench were required to "read" or lecture on legal statute.

²²Prest, *Rise of the Barristers*, p. 113.

²³*Liber Famelicus*, p. 14.

James Whitelocke inherited £150 from his father's declared inventory of £1221. 11s. 7d., and an additional, undisclosed sum from his mother's sale of leases in her possession.²⁴ Whitelocke's later life suggests that he regularly lived on the very edge of his income, and it is likely that the financial support he received from his mother, his college stipend, and whatever payments he might receive from college transactions between 1590 and 1598 were stretched to the limit over this period.²⁵ In this light, Whitelocke's primary incentive to commence his training at New Inn was financial. While his fees for residence could not have been more than 7s. per term and may have been considerably less,²⁶ he faced the prospect of finding at least £30 a year to maintain residence at the Middle Temple.²⁷ Enrolling for one year at New Inn allowed Whitelocke to pay the reduced admission fee of 20s. on entering the Middle Temple, whereas 40s. was required from the members of other inns of chancery, and somewhere between 53s. 4d. and £5 for someone who could show no association with the Middle Temple.²⁸ By acquiring a practical training in handling plea rolls and writs, knowledge of which was essential for work in the lower ranks of the legal profession,²⁹ Whitelocke qualified himself at New Inn for casual work as "a 'common solicitor of causes' while pursuing his way to the bar at his inn".³⁰ A reference to 'Jacobus Whitlock' as attorney in a case listed in the Exchequer Appearance Books in 1597 shows that Whitelocke was supplementing his income with legal work fully three years before his call to the bar.³¹

²⁴*Liber Famelicus*, pp. 5-6.

²⁵*Liber Famelicus*, p. 15.

²⁶This assumption is based on Carr's discussion of the fees due at Clement's Inn for a later period; Carr (ed.), *Pension Book of Clement's Inn*, p. xxxiii.

²⁷Prest, *The Inns of Court*, pp. 27-29.

²⁸*Middle Temple Records*, vol. 1, pp. 164; 171.

²⁹Baker (ed.), *Reports of Sir John Spelman*, vol. 2, p. 128; Bland, D.S., *Early Records of Furnival's Inn* (Newcastle-upon-Tyne 1957), pp. 10-11.

³⁰Barnes, T.G., 'Star Chamber Litigants and their Counsel, 1596-1641' in Baker (ed.), *Legal Records and the Historian* (London 1978), p. 24; cf. Prest, *Rise of the Barristers*, p. 113.

³¹PRO E2/2 (unfoliated) E. 39. PRO, KB 158/162 (King's Bench Docket Rolls), which lists attorneys in the King's Bench for the period, make no mention of Whitelocke. I am grateful to David Crook for his advice on this matter.

Despite the tendency of Sir George Buc and other seventeenth-century commentators to refer to the inns of court and chancery as a single "university",³² their interdependence was deteriorating, both in educational and social terms, over the latter decades of the sixteenth century.³³ Brooks has shown that by 1585, three-quarters of the residents of the inns of chancery were active practitioners in the lower branch of the law, rather than students aiming to "graduate" to one of the inns of court.³⁴ Whitelocke gives some idea of the flux that ensued as the more ambitious students of the inns of chancery now left in droves, seeking a place at one of the greater inns.³⁵ It appears from the Middle Temple's record of admissions that Whitelocke had moved to the Middle Temple by August 1592, when he acted as surety for his Oxford associate Humphrey May.³⁶ Whitelocke was formally admitted to the Middle Temple himself in March 1593.³⁷ He was bound to Bartholomew Gosnold, who had himself arrived from New Inn a month earlier,³⁸ and to Peter Barnes, who had been admitted two years earlier, and whose father, Sir George Barnes, may have known Whitelocke's father through shared merchantile activities in London.³⁹ From 1594, Whitelocke and May lived "in the middle chamber of the house late belonging to Thomas Dashe, gardner of the Middle Temple" from 1594 onwards,⁴⁰ receiving May's brother Thomas into these rather lowly chambers in 1600.⁴¹

³²Buc, G., *The Third Universitie of England. Or a Treatise of the Foundations of all the Colleges, Ancient Schooles of Privilege &c* (appended to J. Stow, *The Annales, or Generall Chronicle of England*, London 1615).

³³Cf. Carr (ed.), *Pension Book of Clement's Inn*, pp. xvi-xxvii; Bland, D.S., 'Learning Exercises and Readers at the Inns of Chancery', *Law Quarterly Review* 95 (1979) pp. 245-249; Brooks, *Pettyfoggers and Vipers*, pp. 151-181; Bellot, H.H., 'The Jurisdiction of the Inns of Court over the Inns of Chancery', *Law Quarterly Review* 26 (1910), pp. 384-399.

³⁴Brooks, *Pettyfoggers and Vipers*, p. 162.

³⁵Brooks, *Pettyfoggers and Vipers*, p. 162.

³⁶The original minutes of the Middle Temple parliament are available for inspection at the Middle Temple; Whitelocke is noted in Minutes of Parliament C3 and D4, carefully edited in Hopwood, C.H. (ed.), *Middle Temple Records*, 4 vols. (trans. C.T. Martin, London 1904); hence *Middle Temple Records*, vol. 1, p. 330.

³⁷*Middle Temple Records*, vol. 1, p. 333.

³⁸*Middle Temple Records*, vol. 1, p. 331.

³⁹*Middle Temple Records*, vol. 1, p. 320.

⁴⁰*Middle Temple Records*, vol. 1, p. 345.

⁴¹*Middle Temple Records*, vol. 1, p. 401.

The *Liber Famelicus* tells us little about Whitelocke's early years at the inns of court and chancery, and it may well be that this was for him a difficult stage of life. At the Middle Temple, Whitelocke was bereft of the educational status he had been afforded as a scholar of St John's. The heavy demands placed upon his "economic and psychological resources" were certainly no less than those placed on those gentlemen who went out of their way to distinguish themselves from the professional students,⁴² and probably considerably greater. Whitelocke was fortunate that his roommate and lifelong friend Humphrey May was a "towardly student, and a principal reveller",⁴³ as he undertook a "long and tedious course of study" to ensure his own social progress.⁴⁴ This tough educational regime drew him towards the serious students and away from the young "gallants" who sought to polish their education with a stay at the inns.⁴⁵ As Whitelocke sharpened his knowledge of the law in mealtime debate and private conversation in chambers, he was fortunate to have (in the absence of a tutor) the company of other men, not all similarly dedicated to the law but all in part implicated in its culture, with whom to share the burden. Upon leaving the Middle Temple in 1619, Whitelocke paid tribute to "those whome I may call my *cooetanei*, for we began together in the universitye, came hether together, and have lived together ever sithence".⁴⁶ He thanked also those men he had met at the inn, whom he said:

may be called collegues, for we have lived together... in participation of studyes, in doing of exercises, in taking our degrees, and... have been *collaterales*, and sat on by the others side.⁴⁷

In his 1619 law reading, Whitelocke declared that there was "nothing more needfull to the upholding of civill society (as this wherein wee live)... then that every particular member thereof doe undergoe such burden as custome or order doe

⁴²Prest, *Inns of Court*, p. 41.

⁴³*Liber Famelicus*, p. 21.

⁴⁴Lincoln's Inn MS Misc. 486 (8), fol. 1.

⁴⁵Baker, 'Learning Exercises in the Medieval Inns of Court and Chancery' p. 9; Rashdall, H., *Universities of Europe in the Middle Ages*, 3 vols. (Oxford 1936), vol. 3, pp. 453-454.

⁴⁶*Liber Famelicus*, p. 82.

⁴⁷*ibid.*

impose".⁴⁸ Commitment to the educational life of the inns, he continued, was necessary "to preserve order and to continue the ancient formes of exercises in our profession... and maintaine the glory of our Societies". Whitelocke reflected that the Middle Temple's reputation had "of late hath been impayred in the exercises of young gentlemen which touch gentry and honour, and would soon be so in the exercises of the Ancients which touch learning and proficiency if good affection to the publick did not prevent it".⁴⁹ His suggestion that a gentry challenge to the traditional values of the inns lead to general apathy and educational decline must be taken seriously. The neglected "exercises" of "gentry and honour" he referred to may have been the masques and Christmas revels,⁵⁰ but whatever the case, there were good reasons for him to be disturbed by recent events. In 1617, as disciplinary problems had broken out over the Middle Temple's dress code,⁵¹ the administrators were challenged by a petition which argued that the "nursuries of the gentry" were being tarnished by the admission of "swarmes of attorneys" and the servants of the benchers.⁵² Having worked by necessity as an attorney himself, Whitelocke is unlikely to have supported this claim. His own servant, Richard Oakely, was admitted to the Middle Temple as a student in January 1613/1614,⁵³ and from 1619 lodged in the chambers Whitelocke reserved for his fourteen-year old son Bulstrode.⁵⁴ Prest has suggested that from 1617 an "era of collective defiance and disobedience" began at the Middle Temple which continued "until the end of the seventeenth century".⁵⁵ In 1619 groups of barristers protested against the compulsory observance of fast days,⁵⁶ and there is a hint of desperation in Whitelocke's reflection that over the course of his reading he "went to churche

⁴⁸Lincoln's Inn MS Misc. 486 (8), fol. 1.

⁴⁹Lincoln's Inn MS Misc. 486 (8), fols. 1-2.

⁵⁰Prest, *Inns of Court*, pp. 105, 112-113.

⁵¹*Middle Temple Records*, vol. 2, pp. 615-616.

⁵²Middle Temple MS unclassified, quoted in Prest, *Inns of Court*, p. 42.

⁵³*Middle Temple Records*, vol. 2, pp. 574-575; Prest, *Inns of Court*, pp. 101-102.

⁵⁴*Diary*, p. 49.

⁵⁵Prest, *Inns of Court*, p. 101.

⁵⁶*ibid.*

everye morninge and evening the whole reading, accompanied withe suche benchers, cubberdmen, and senior barristers as wolde goe withe me".⁵⁷

Unfortunately for Whitelocke, disinterest in the ceremonial aspects of his reading reflected a general apathy towards the exercise. Despite Whitelocke's contribution to the readings of John Forde and William Rives⁵⁸ (the two benchers appointed to oversee proceedings at Whitelocke's reading)⁵⁹ they failed to turn up, forcing Whitelocke to invite George Shurley, Autumn Reader for 1615, and Richard Hadsor, the Autumn Reader for 1617, to assist.⁶⁰ If not for the work of Hadsor and Shurley and the vigorous participation of John Hoskins (whom Whitelocke would support at his reading in Lent 1620),⁶¹ Whitelocke's celebrated reading would probably have been little more than an embarrassment to him before a range of eminent guests. The dual function of the Middle Temple as the residential club of the gentry, and the boarding school of serious law students, was for Whitelocke an unhappy compromise, which had eroded its educational ethos over his lifetime. He was less ready to admit that by seeking to advance his own position by all available means, he had in some ways contributed to this educational decline.

Although James Whitelocke's educational standards were generally high, they were driven from the outset by the expectation that a reputation for legal expertise was his main chance for recognition both within and beyond the ranks of his profession. Whitelocke was admitted to the Middle Temple seven years before his call to the bar, and thereafter "kept commons... at all sutche times as I could have dayes, by ordinary licence, by grace, or by furthering of the college businesse, to be absent from thence".⁶² He thus satisfied the judges' orders of 1598, which required seven years' continuous membership at an inn of court before this advancement.⁶³

⁵⁷*Liber Famelicus*, p. 74

⁵⁸*Middle Temple Records*, vol. 2, pp. 629, 634, 638.

⁵⁹*Middle Temple Records*, vol. 2, 638.

⁶⁰*Middle Temple Records*, vol. 2, p. 585, 619; BL Additional MS 53725, fol. 110. Bruce has incorrectly identified these cupboardmen as "Sturly" and "Hudson"; *Liber Famelicus*, p. 74.

⁶¹*Middle Temple Records*, vol. 2, p. 646.

⁶²*Liber Famelicus*, p. 14.

⁶³Prest, *Inns of Court*, p. 134.

Given his obligations at Oxford, however, this was a pragmatic response to the formal prerequisites for call, as Whitelocke was unlikely to have been anything more than an intermittent guest at the Middle Temple over this period.⁶⁴ Prest's assumption that, in the absence of aural instruction, books became for Whitelocke the "main means of learning the law, the learning exercises at best a supplement, at worst an irritating barrier to the rewards of a rich career" must be challenged.⁶⁵ As I will show below, the emphasis on Whitelocke's contribution to the learning exercises came in the last three years before call, but over this time he fulfilled his obligation to assist at moots at the inns of chancery, and participated vigorously in the educational life of the Middle Temple.

After his call to the bar, Whitelocke was a ready participant in the learning exercises when he could see the need to be present, although a fine of 20s. for "absence and being out of commons" during the August reading in 1604 testifies to an occasional absence.⁶⁶ Whitelocke's commitment to the learning of the inns, borne of a mixture of professional duty and personal gain, is evidenced by his eagerness to perform the 1619 Autumn reading, which contributed to extreme financial difficulties in the following year.⁶⁷ By 1619, the Middle Temple was the only inn to restrict full membership of the bench to readers,⁶⁸ and as only two readings were held a year (one in Lent and one in August), more ambitious Middle Templars such as Whitelocke could expect to spend twenty years or more as a barrister before progressing to the bench.⁶⁹ Cooper has suggested that, given his close monitoring of judicial advancement throughout the *Liber Famelicus*, Whitelocke was almost certain to have cried foul if his seniority had been ignored,⁷⁰

⁶⁴*ibid.*

⁶⁵*ibid.*

⁶⁶*Middle Temple Records*, vol. 2, p. 449. Note also Prest's comments on the limitations of the source in 'Learning Exercises at the Inns of Court'. p. 304: "The main purpose of the accounts was of course to furnish a statement of the society's financial position, and not to furnish future historians with evidence about academic delinquency."

⁶⁷*infra*, p. 236.

⁶⁸Prest, *Inns of Court*, p. 60.

⁶⁹See Prest, *Inns of Court*, pp. 60-62, 128-129.

⁷⁰Cooper, H.H.A., 'Promotion and Politics among the Common Law Judges of the Reigns of James I and Charles I' (1964 Liverpool University MA thesis), p. 24.

and Whitelocke was obviously pleased that his election to read was advanced a year with "the untimely death of Mr. Stirrell" in December 1618,⁷¹ which prompted the benchers to nominate him as Autumn reader on 29 January 1619.⁷²

At his reading, Whitelocke requested that his son Bulstrode be admitted to the Middle Temple, at a time when Bulstrode was only fourteen.⁷³ Bulstrode's admission fulfilled the vague requirement that a student have eight years' "learning and continuance" before his call to bar, at a time when "continuance was coming to be interpreted in the sense of membership of the society, rather than residence in commons".⁷⁴ The fact that his son's membership came fully three years before residency demonstrates the inconsistencies in James Whitelocke's public and private opinions on the need to uphold the "ancient formes" of the Society.⁷⁵ Whitelocke had progressed a long way from his humble beginnings at the inn by 9 August 1619, when the minutes of the Middle Temple parliament record that "Mr. Bulstrode, son and heir-apparent of James Whitlocke" should pay no fine upon admission to the inn, "his father being a Master of the Bench and Reader."⁷⁶ His once humble lodgings now included a large study, a bedchamber, and two separate smaller studies, and Bulstrode moved to his chambers without fine because his father had "spent money in building and enlarging the chamber and studies".⁷⁷ It seems that Whitelocke's application to the intellectual tasks set before him at the Middle Temple bore increasing fruit from 1619. To appreciate his achievement, we must follow his progress from the elementary exercises of New Inn to his own law reading at the Middle Temple thirty years later.

⁷¹*Liber Famelicus*, p. 70.

⁷²*ibid.*; *Middle Temple Records*, vol. 2, p. 634.

⁷³*Middle Temple Records*, vol. 2, p. 640.

⁷⁴Prest, *Inns of Court*, pp. 133-134.

⁷⁵Bulstrode's own progress at the Middle Temple depended on his fulfillment of the learning exercises, and he would himself later instruct his own sons that "constant putting of cases" was "the best way to improve knowledge of the law"; *Diary*, p. 51.

⁷⁶*Middle Temple Records*, vol. 2, p. 640.

⁷⁷*Middle Temple Records*, vol. 2, pp. 643; 653-4.

Learning the law at New Inn and the Middle Temple, 1590-1619:

As James Whitelocke began to survey "the confused particularity of the common law",⁷⁸ his prior knowledge and continued study of the civil law lent him several advantages. Mastering "law-French", the language in which common-law writs were drawn up and the year books were reported,⁷⁹ was a relatively simple task given Whitelocke's expertise in Latin and conversance with French. The ability to memorize and publicly present an argument, routinely demanded in college disputations and declamations, refined skills vital to Whitelocke's success in the aural exercises of the inns.⁸⁰ A broad grounding in scholastic and humanistic literature both legal and non-legal, as encouraged in Abraham Fraunce's *The Lawyers Logicke* (1588) and other guides to method, contributed to Whitelocke's understanding of common law by giving specific tools of analysis, and by placing the law into a broader intellectual context.⁸¹

The common law was, in the early modern period, largely real property law - a complex tangle of rights, obligations and exceptions passed down in the year books, reports, and statutes, and often retained locally from "immemorial custom".⁸² In order to grasp its workings, Whitelocke would have been forced to tackle the writs, before progressing to the voluminous year books which summarized pleadings and judgments in legal cases and principles dating to the middle ages.⁸³ William Fulbecke, in his *Direction or Preparative* (1600), suggested that all the year books should be read "if the student will attaine to any depth in the law", and in Whitelocke's years as a student numerous abridgements and digests were available

⁷⁸Prest, *Rise of the Barristers*, p. 113.

⁷⁹Prest, *Rise of the Barristers*, pp. 108-109.

⁸⁰Prest, *Inns of Court*, pp. 116-117.

⁸¹Prest, *Inns of Court*, pp. 145-149.

⁸²Barnes, T.G., 'Star Chamber Litigants and their Counsel', p. 23; Prest, *Inns of Court*, p. 221; Shaller, 'English Law and the Renaissance', p. 109; Brooks, 'The Ancient Constitution in Sixteenth-Century Legal Thought', p. 60.

⁸³Cf. Knafla, L.A., 'The Law Studies of an Elizabethan Student', *Huntington Library Quarterly* 32 no. 3 (1969), pp. 221-240.

to help in this task.⁸⁴ Fulbecke's suggested works encompassed standard medieval authorities such as Bracton, Britten and Glanville, Littleton's *Tenures*, the reports of Dyer and Plowden, and a range of commentators such as Fitzherbert, Brooke, Lambarde and Crompton.⁸⁵ Fulbecke argued that by "very diligent and earnest search" of their sources, students could "sift out the reason of the Law", which he saw as the "life and soule of the Law".⁸⁶ This "reason", often quoted by common lawyers as the basis of their art, was poorly defined.⁸⁷ One suspects that despite their rhetoric, the organizational principles it laid down were for all but the most accomplished lawyers poorly understood, and Whitelocke's book-learning was in this case of little help.

In trying to establish the maxims or general truths by which "good law" was ascertained,⁸⁸ the value of court-watching, an exercise as old as legal education itself, cannot be overestimated.⁸⁹ While the aural learning exercises of the inns could throw up theoretical conundrums worthy of academic consideration yet of little practical value,⁹⁰ by sitting in court students were able to observe first-hand the public engagement in which the labours of opposing lawyers would wither or bear fruit. As well as giving students a feel for the business of the bar, court-watching thus had a serious educational function: by note-taking students could begin to work out for themselves what counted for good legal argument and what did not. This is amply demonstrated in James Whitelocke's surviving notes on cases he heard from

⁸⁴Fulbecke, W., *A Direction or Preparatiue to the study of the Lawe* (London 1600), p. 27; Prest, *Inns of Court*, pp. 143-144; Seipp, 'The Structure of English Common Law in the Seventeenth Century', p. 61.

⁸⁵Fulbecke, *Direction*, pp. 27-29.

⁸⁶Fulbecke, *Direction*, p. 32.

⁸⁷Cf. Sommerville, *Politics and Ideology in England*, pp. 92-95; Burgess, P.G., 'Custom, reason and the Common Law: English Jurisprudence 1600-1650' (1988 Cambridge University PhD), *passim*.

⁸⁸Coke argued that reason must be gained by "long study, observation, and experience"; Coke, E., *The First Part of the Institutes of the Laws of England, or, A commentarie upon Littleton* (London 1628), p. 97v.

⁸⁹Cf. Barnes, 'Star Chamber Litigants and their Counsel', p. 23; Prest, 'Legal Education of the Gentry at the Inns of Court, 1560-1640', p. 23; *idem*, *The Inns of Court*, p. 131.

⁹⁰Baker, 'The Inns of Court and Legal Doctrine', p. 276; Jones, G., *The History of the Law of Charity*, (Cambridge 1969), p. 238.

Michaelmas term 1597 to Michaelmas term 1599, during his last two years as a student at the Middle Temple.⁹¹

Whitelocke recorded well over fifty cases in Michaelmas term 1597, and several hundred over the following two years. By noting the authorities employed in a range of cases heard mostly before King's Bench, but also in the Exchequer and Star Chamber, Whitelocke was able to familiarize himself with the legal works which were shown to be of significance in court. Statutes and year book references were listed in the margin alongside each case. As Whitelocke summarized the individual comments of the judges of the court, he was able to reflect on their explanation of their rulings, which are known to have been given, on occasion, specifically for the benefit of the students sitting in court.⁹² By cross-referencing cases which had already appeared in court, such as 'William v. William', first noted in Michaelmas term 1597,⁹³ which returned to the King's Bench through a writ of error in Hilary term 1598,⁹⁴ Whitelocke began to trace the complex patterns of litigation employed by the more successful barristers at Westminster.

As Whitelocke's understanding of the general principles which underlay the courtroom rulings increased, he began to extract what he saw as the more pertinent points arising from each case, summarizing them in separate notes. In one case, for example, Whitelocke noted that a plea had been entered that outlawry barred the defendant from pleading, challenged by the plaintiff's reply that the king had granted an exemption from this rule to outlaws in London:

Nota.

pardone roy non preajudice 3 parson

⁹¹CUL MS Dd. 8 .48, fols. 1-137.

⁹²Baker, J.S., 'Criminal Justice at Newgate 1616-27: some manuscript Reports in the Harvard Law School', *Irish Jurist* 8 (1973), p. 311; Cockburn, J.S., 'Trial by the Book? Fact and Theory in Criminal Process 1558-1625' in Baker (ed.), *Legal Records and the Historian*, p. 74.

⁹³CUL MS Dd. 8 .48, fol. 2.

⁹⁴CUL MS Dd. 8 .48, fol. 56.

In action le debt def(endant) pled utlarie in London in bar. Pl(aintif) reply que fuit pardon recycue que tous utlaries en London pertein al Londoners per graunt le roy; per quel appere que pardon le royne ne preiudicera lour droit semel accused.⁹⁵

Whitelocke's court notebook suggests how, through carefully recorded observation of the public spectacle of law, he began to comprehend the grounding principles or maxims around which effective legal arguments could be built.

Our knowledge of the learning exercises practiced at New Inn in the 1590s is fragmentary.⁹⁶ Minutes from the parliament of the Middle Temple indicate that 1591, the second year of Whitelocke's residence, was a desultory one for both houses. With the Lent reading at Middle Temple abandoned because of the threat of plague, the benchers ordered that exercises be henceforth resumed as normal, commanding that:

Fellows and students of New Inn shall continue and keep commons of the House.

The moots and exercise of learning are also to be kept up this Lent. There is to be a vacation as heretofore in reading times. The students of this House are to be moved to further and help the students of New Inn concerning the exercise of learning in reading times, if it be needful from the small number in commons.⁹⁷

That the benchers were prepared to order members of their house to assist the cadre of professional students still living at New Inn is encouraging; that they felt compelled to do so is instructive. What exactly constituted the "exercise of learning" referred to by the benchers of the Middle Temple is uncertain. The experience of other inns of chancery suggests that it was probably a basic task such as memorizing

⁹⁵CUL MS Dd. 8 .48, fol. 11: "In an a action of debt the defendant pleaded outlawry in London in bar; plaintiff replied that there was a pardon received by grant of the king pertaining to all outlawries in London, by which it appears that royal pardons will not prejudice their right [to plead] once accused." I am grateful to Wilfrid Prest for help with this translation.

⁹⁶For hypothetical reconstructions of the exercises at the inns of chancery based on sources of varied dates and from across the inns see Baker, 'Learning Exercises at the Inns of Court and Chancery' in *The Legal Profession and the Common Law*, pp. 16-19; Baker (ed.), *Reports of Sir John Spelman*, vol. 2, pp. 127-129; Thorne & Baker (eds.), *Readings and Moots*, vol. 2, pp. xxx-lxiv; Bland, 'Learning Exercises and Readers at the Inns of Chancery', pp. 249-251; Simpson, 'The Source and Function of the Later Year Books', pp. 103-106; Carr (ed.), *Pension Book of Clement's Inn*, pp. xxvii-xxxii.

⁹⁷*Middle Temple Records*, vol. 1, p. 331.

and reciting a writ in law-French, or perhaps a slightly more complex group exercise such as dinner-time debate on a straightforward point of law.⁹⁸ On the form taken by inns of chancery moots though, we can be more certain.

In the sixteenth century, "mooting" was a generic term for all exercises involving discussion *pro* and *contra*, and as Whitelocke progressed through New Inn and the Middle Temple the complexity, length and number of points raised in moots increased. In Whitelocke's time as a student at New Inn, there were attempts to limit the number of points raised in chancery moots to two, although in many cases from the 'Brocardia', a moot book in which Whitelocke recorded a number of cases from New Inn, Thavies Inn, Lyon's Inn, Clifford's Inn, and Staple Inn from a slightly later period, three points were raised:⁹⁹

Ten(ant) in fee gr(an)t al un et ses heires un rent de 20s pur an et q(uo)d proxime 3 ans serra loyal pur grantee et ses heires distreiner in la terre pur la dict rent al use pur S et ses heirs. Le rent non payer pur 3 ans c(ue)x que use distrein pur larrerages de tous les 3 ans ten(ant) port replev(en) et ceux que use avow pur tous larrearages.
Question, an avowry soit bon?

1. An le grant serra entend al use ceux que use pur le primer 3 ans. Neq(ue).
2. An le graunt de distreiner al us illeg ceux que use issint que distreinder. Neg.
3. Admit que le primer 3 ans sunt al sed use et que distres est transfer per le stat(ute) an point distrein pur le temps demand. Neg.¹⁰⁰

The form taken by the moots was to pose a hypothetical question arising from property law, which would then receive a point-by-point analysis. The notes that followed cited examples to explain the answers to the three points, and noted "bon cases" that could be found on the points of law raised by the question in the reports; in this case Whitelocke referenced an abridgement treating "le case de devise".¹⁰¹ The moots noted in the 'Brocardia' underline Baker's point that "The exercises in the

⁹⁸Baker (ed.), *Reports of Sir John Spelman*, vol. 2, pp. 128-129.

⁹⁹CUL MS Dd. 5. 7. Dated 9 August 1599, Whitelocke entitled this volume of "Moot-poynts" from the Latin term for an elementary principle or maxim of law.

¹⁰⁰CUL MS Dd. 5. 7, fol. 6; thanks to Wilfrid Prest for help with this transcription.

¹⁰¹*ibid.*

inns of chancery remained quite sophisticated, with a wide range of reference, well into the seventeenth century."¹⁰² Whitelocke's attempts to digest the myriad terms and conventions raised by mootings led him to compile two comprehensive tables at the end of the book. The first listed one hundred and ninety-three terms commonly employed in legal argument such as "remitter", "appeal", "originall respect", and "condition", summarized their meaning, and noted moots he had recorded in which their use could be checked.¹⁰³ His second list attempted to gather from the moots, and then briefly summarize, the more prominent statutes cited in legal debate.¹⁰⁴

During his time as "inner-barrister" at the Middle Temple,¹⁰⁵ Whitelocke was expected to perform perfunctory tasks such as the recitation of pleadings in "homely Law-Frenche" before debate was taken up by his seniors.¹⁰⁶ He did have a chance to share in the common erudition of the Middle Temple through conversation, and in hypotheticals regularly debated in groups of four over dinner.¹⁰⁷ At "chapel moots" held before the utter-barristers over the mean vacation, Whitelocke also had the chance to test his forensic and rhetorical skills under the watchful eye of barristers who presided as judges over the case.¹⁰⁸ Although men of higher social standing might advance "*ex gratia* or for favour",¹⁰⁹ it was the ability shown by Whitelocke in this kind of exercise that marked him as a man with a future in the law, and presaged his call to the inn. As he prepared to be called to the bar of the Middle Temple, he was required to assist in the conduct of the learning exercises performed

¹⁰²Thorne, & Baker (eds.), *Readings and Moots*, vol. 2, p. lxxi.

¹⁰³CUL MS Dd. 5. 7, fols. 175-186.

¹⁰⁴CUL MS Dd. 5. 7, fols. 195-200.

¹⁰⁵Inner-barristers were those students not considered experienced enough to moot before the whole house. These junior students could generally expect to wait five to six years before they would be called upon by the benchers to plead a case before them and thus proceed to the intermediate rank of "utter-barrister". BL Cotton MS Vitellius C. IX, fols. 319-323v, quoted in Thorne and Baker (eds.), *Readings and Moots*, vol. 2, pp. lix-lx and reprinted in Dugdale, W., *Origines Juridiciales* (2nd ed., London 1671), p. 194-195; Denton/Bacon/Cary Report printed in Waterhouse, E., *Fortescutus Illustratus* (1663), pp. 543-546, and quoted in Thorne and Baker (eds.) *Readings and Moots*, vol. 2, p. lx; Prest, *Inns of Court*, p. 48.

¹⁰⁶Dugdale, *Origines Juridiciales*, pp. 194-195.

¹⁰⁷*ibid.*; Prest, *Inns of Court*, p. 117.

¹⁰⁸Dugdale, *Origines Juridiciales*, p. 195.

¹⁰⁹Jessop, A. (ed.), *Lives of the Norths*, 3 vols. (London 1890), vol. 1, p. 21; Prest, *Inns of Court*, pp. 56-58.

during the "Grand Vacations" at the inns of chancery.¹¹⁰ In his role as a moot-sitter, Whitelocke worked alongside three other inner-barristers and four barristers under the supervision of Nicholas Overbury, a senior barrister who served as Chancery Reader.¹¹¹ At Chancery moots

two of every House of Court... sitting as Benchers doe in Court at their Motes, hear and argue such Motes as are brought and pleaded by the gentlemen of the same Houses of Chancery.¹¹²

In the year before his call to the bar, Whitelocke twice assisted in the moots conducted at Furnival's Inn, New Inn, Clifford's Inn, and once at Lyon's Inn.¹¹³

In August 1600, "[a]bout two years after" he had finally vacated his fellowship at St John's,¹¹⁴ Whitelocke was called to the bar by Nicholas Overbury, who as Chancery reader had had the opportunity to assess his conduct and competence during the final and most intensive period of training as an inner-barrister. Overbury's recommendation was confirmed by the benchers on 24 October.¹¹⁵ Upon his call to the bar, James Whitelocke acquired a more active role in the educational life of the inn, most notably in the "Grand Vacations" which formed the academic highlight of the year. Mooting before the benchers and judges who might be invited to sit in on the exercise, Whitelocke was also required to take a leading role at "readings" (lectures by a senior member usually drawn from a statute of law) held before the whole house, with the four appointed "cupboardmen" leading the debate.¹¹⁶ In 1611, Whitelocke was one of those appointed to provide the Reader's feast, and on 6 February 1617 he was ordered to "stand at the Cupboard" for Walter

¹¹⁰Carr (ed.), *Pension Book of Clement's Inn*, pp. xxiii; xxx; *Middle Temple Records*, vol. 2, p. 536.

¹¹¹Thorne and Baker (eds.) *Readings and Moots*, vol. 2, p. lxxi.

¹¹²Denton/Bacon/Cary Report quoted in Carr (ed.), *Pension Book of Clement's Inn*, pp. xxvii-xxviii; cf. Prest, *Inns of Court*, pp. 56-58.

¹¹³CUL MS Dd. 5. 7., fol. 218v (reversing).

¹¹⁴*Liber Famelicus*, p. 15.

¹¹⁵*Middle Temple Records*, vol. 2, pp. 407, 624.

¹¹⁶In the *Liber Famelicus* (p. 62) Whitelocke recalls: "In August 1618, being on of the cubberdmen of the Middle Temple, I went up to argue at the reading, the reader being Mr. Ford of Devonshire, to whome I gave a buck and 14s."

Pye, the Lent Reader for that year.¹¹⁷ Further ordered to the cupboard for John Forde, the Autumn reader in 1618 and again for William Rives in Lent 1619, Whitelocke's assistance at these readings was preparatory to his own election as Autumn Reader for 1619.¹¹⁸

Law readings of the early seventeenth century "have been almost totally overlooked by scholars".¹¹⁹ James Whitelocke's 1619 reading, hailed by historians as a "classic" and "notable" example,¹²⁰ has never been thoroughly investigated, nor has its significance to the legal profession. Whitelocke's reading can be appreciated as an event in the life of the Middle Temple through Whitelocke's observations in the *Liber Famelicus*, and notes which appear to have been taken at the actual reading.¹²¹ At the end of Trinity term Whitelocke informed the benchers of all the inns, and the judges who had originally been called to the bar from the Middle Temple, of his choice of a statute.¹²² Whitelocke also invited many old friends such as Sir Thomas Coventry, who now served as solicitor-general, Sir Henry Yelverton, who was now attorney-general, patrons such as Sir Julius Caesar and Sir Lionel Cranfield, and potential patrons such as Sir John Davies, as well as "divers knightes and men of good qualitye".¹²³ On Sunday August 1, the day before the reading, Robert Thomson, Dean of Westminster and afterwards Bishop of Salisbury, preached before the Middle Temple at Whitelocke's invitation, and the statute for his reading was circulated among the benchers after supper.¹²⁴ On the following day after breakfast, Whitelocke recounted:

¹¹⁷*Middle Temple Records*, vol. 2, pp. 407, 546, 624. Exactly what is meant by the cupboard is open to speculation; Dean suggests that it was a small table for the Reader to sit at which "fulfilled the function of the Chair on ceremonial occasions", and is still given this name and function at the Middle Temple today; Dean, *Middle Temple Hall*, p. 7.

¹¹⁸*Middle Temple Records*, vol. 2, pp. 629, 634, 638.

¹¹⁹Baker, 'The Dark Age of Legal History', in *The Legal Profession and the Common Law*, p. 445.

¹²⁰Baker, 'The Inns of Court and Legal Doctrine', p. 281; Richardson, *A History of the Inns of Court*, p. 117; Prest, *Inns of Court*, p. 120.

¹²¹CUL MS Ee. 6. 2, fols. 192-225v; cf. Richardson, W.C., *A History of the Inns of Court* (Baton Rouge 1975), pp. 112-113.

¹²²*Liber Famelicus*, p. 74.

¹²³*Liber Famelicus*, p. 75.

¹²⁴*ibid.*

I went to the cubberd, and thear, before all the house, toke the oathe of supremacy, then went to my place, the northe end of the long table, whear Mr. Palmer, a Londoner born, my sublector, red my statute, 21 Henry VIII ca. 13. After which I began, first made a speeche, and then went on to the statute, proposed my ten divisions, and put upon the division of that day ten cases, of whiche the puisne cubberd man chose on[e], and began *pro* and *contra*, *alternatim*.¹²⁵

As the reading progressed over the Monday, Wednesday and Friday of the next two weeks,¹²⁶ Whitelocke began each day with a new case, to which he provided debate and a detailed point-by-point analysis. His exposition provided a theme for the day's lecture, which was taken up by John Hoskins, George Shurly, John Tynte and Thomas Trist, his cupboardmen,¹²⁷ and the other barristers, benchers, and judges that were present at the reading.¹²⁸ The vigorous discussion that ensued after midday dinner required a good deal of mental dexterity on Whitelocke's part, as he was expected to reply to any of the barristers present at the reading who felt cause to object to his interpretations.¹²⁹ Notes on the reading suggest that Whitelocke's interpretation of his fourth and fifth cases was questioned at length by Richard Hadsor, who was pressing his own claim for admission to the highest ranks of the society, and met with lengthy reply from Whitelocke.¹³⁰ Two weeks after the reading began, Whitelocke concluded with a speech thanking the society, after which those assembled reflected upon the points that had been clarified in the course of the reading.¹³¹ Summing up, Whitelocke restated his ten divisions and six cases, which were quickly reassessed by Hoskins and Shurly.¹³² Whitelocke had the last word, "breefly opening the poynts only, whiche being done, I uttered my conceites".¹³³ These "conceits" (the principal points arising from the reading)¹³⁴

¹²⁵*ibid.*

¹²⁶*ibid.*

¹²⁷CUL MS Ee. 6. 2, fols. 193v, 199v; *Middle Temple Records*, vol. 2, p. 638.

¹²⁸Prest, *Inns of Court*, p. 123; CUL MS Ee. 6. 2, fols. 192-225v, *passim*.

¹²⁹*ibid.*

¹³⁰CUL MS Ee. 6. 2, esp. fol. 215v.

¹³¹*Liber Famelicus*, p. 74.

¹³²*ibid.*

¹³³*Liber Famelicus*, p. 75.

were not left undisputed, but the senior bencher, who presided over the reading now moved to end the discussion, informing Whitelocke that "they wold expect my opinion the next term".¹³⁵

Without wading into the *minutiae* of an area of law O'Day has characterized as "of almost labyrinthine complexity",¹³⁶ a few points seem relevant as we attempt to assess the importance of Whitelocke's 1619 reading. Whitelocke's dual expertise in ecclesiastical and English law lead him to read on 21 Henry VIII c. 13,¹³⁷ which reverted many areas of ecclesiastical law to "a temporall cognizance", and was open to definition "both in respect of the spiritual and the lay".¹³⁸ The pluralities act, which formed a central tenet of Henry VIII's reformation of the clergy, set out to restrict the multiple holding of benefices (the stated income for a parish provided by tithes and glebe) to the more learned clergy, clarifying advowson, or right of presentation, held by lay patrons, and ensuring that clerics were in close enough proximity to their beneficed parishes to make pastoral care feasible.¹³⁹ The criteria for holding benefices were under constant revision over the course of the sixteenth century;¹⁴⁰ Whitelocke's reading suggests that they were put under inspection for three reasons. First, despite a vague rubric in the thirteenth chapter of the statute which prohibited "any profit or meddling" with leases and grants,¹⁴¹ patrons often saw an advowson as a commodity to be sold or granted on a conditional basis to "other laymen or clergymen... anxious to become patrons *de facto*".¹⁴² Second, lay and ecclesiastical patrons contested control of benefices for a combination of religious and financial reasons, and this led to frequent challenge of the candidates

¹³⁴Baker (ed.), *Manual of law French*, p. 75.

¹³⁵*Liber Famelicus*, p. 75.

¹³⁶O'Day, R., 'The Law of Patronage in Early Modern England', *Journal of Ecclesiastical History* 26 no. 3 (1975), p. 247.

¹³⁷21 H. 8 c. 13 has been reprinted in *Statutes at Large*, vol. 2, pp. 133-137.

¹³⁸Lincoln's Inn MS Misc. 486 (8), fols. 1-2.

¹³⁹O'Day, 'The Law of Patronage', p. 250; Swanson, R.N., 'Universities, Graduates and Benefices in Later Medieval England', *Past & Present* 106 (1985), p. 38 n. 49.

¹⁴⁰O'Day, 'The Law of Patronage', p. 247.

¹⁴¹21 Hen. VIII, c. 13, iii.

¹⁴²O'Day, *The English Clergy*, p. 105; Steig, M., *Laud's Laboratory: The Diocese of Bath and Wells in the Early Seventeenth Century* (Lewisburg 1982), p. 100.

and the rights of presentation.¹⁴³ Third, property law did not easily cope with changes in the structure of local parishes, such as two churches joining to become one,¹⁴⁴ and even allowed a benefice with cure to remain "when there is neither church nor inhabitant".¹⁴⁵

The issue of pluralism was already contentious in the early decades of the seventeenth century,¹⁴⁶ and would become increasingly heated as the Arminian push to improve the status of the clergy gathered momentum.¹⁴⁷ James Whitelocke's educational background placed him in an unusual position as he gathered his thoughts on the matter for his reading. While the civil lawyers who trained alongside Whitelocke at Oxford emphasized the provisions made in the statute of 21 H. 8 c. 13 "for Church and Crown dignitaries, peers, and men of learning",¹⁴⁸ many of his associates at the bar sought to restrict the financial and social powers of the church.¹⁴⁹ In 1610, for example, "divers utter barristers" of the two Temple societies circulated a petition against an increase in the stipend of their preacher, William Crashawe, complaining that he drew income from a Yorkshire benefice held *in absentia*.¹⁵⁰ In the face of general controversy, Whitelocke's reading presented a moderate appeal for the rights of the clergy.

While a benefice or "living" was always attached to an office, the beneficed clerk was presented to the benefice and the office separately, after which he held a freehold for life, unless excluded for certain offences such as felony, simony, and

¹⁴³O'Day, *The English Clergy*, p. 105; Hill, C., *Economic Problems of the English Church* (Oxford 1956), pp. 55-56.

¹⁴⁴Lincoln's Inn MS Misc. 486 (8), fol. 23.

¹⁴⁵Lincoln's Inn MS Misc. 486 (8), fol. 10.

¹⁴⁶Levack, *The Civil Lawyers in England*, p. 173; Steig, *Laud's Laboratory*, p. 95.

¹⁴⁷Hill, C., *Society and Puritanism in Pre-Revolutionary England* (London 1964), p. 495; *idem*, *Economic Problems of the English Church*, p. 316; Levack, *The Civil Lawyers in England*, p. 188. Of course arguments against plurality of benefices continued apace until the eve of the civil war, and are evidenced in such colourful works as the anonymous *A Purge for pluralities shewing the unlawfulness of men to have two livings, or, The downe-fall of double benefices: being in the clymacterial and fatall yeare of the proud prelates: but the yeare of iubilee to all poor hunger-pinch'd schollers* (London 1642).

¹⁴⁸Levack, *The Civil Lawyers in England*, p. 173.

¹⁴⁹Usher, R.G., *The Rise and Fall of the High Commission* (Oxford 1913), pp. 180-221.

¹⁵⁰*Middle Temple Records*, vol. 2, pp. 514, 516; Prest, *Inns of Court*, p. 198.

plurality.¹⁵¹ It was thus common for a patron to sell the right to next presentation,¹⁵² and Whitelocke's first case highlighted the ambiguities that could be caused "where two patrons present severally to one church and either hath a distinct glebe and a distinct rate of the tythes and doe agree to officiate in turne".¹⁵³ As the English church did not consider the sale of the right of next presentation to constitute simony,¹⁵⁴ it was relatively easy for a prospective patentee to find someone to purchase the right of presentation and then present him.¹⁵⁵ Whitelocke suggested that if one patron chose to relinquish his control of one advowson, there was nothing to stop the other patron from acquiring the moiety, and if allegations of simony were made, the onus was on the court to prove that the patron's choice of an incumbent had been motivated by payment of money.¹⁵⁶ If a cleric was removed from a benefice by writ of *quare impedit* and lost his living, Whitelocke argued, he was entitled to seek another living while the issue was still pending in the courts, and should not be disadvantaged for technically remaining in possession of the first living.¹⁵⁷ If he successfully overturned the *quare impedit* by writ of error, Whitelocke suggested, then he was free to choose the living of his choice.

At the heart of 21 Hen. VIII, c. 13 were the issues of pluralism and non-residence, and Whitelocke could not avoid discussing the laws of *commendam* and the exemptions that had been made to the restrictions on plurality granted in the statute,¹⁵⁸ which had led to widespread charges of abuse among the "court clergy", whom Hill considers the "worst pluralists, and probably the most numerous".¹⁵⁹ Whitelocke supported the exemptions given to deaneries, archdeaconries, prebends, and most offices in collegiate churches from restriction on pluralism,¹⁶⁰ and

¹⁵¹Steig, M., *Laud's Laboratory*, p. 92; Hill, *Economic Problems of the English Church*, pp. 50-51.

¹⁵²O'Day, *The English Clergy*, p. 82.

¹⁵³Lincoln's Inn MS Misc. 486 (8), fol. 7.

¹⁵⁴For what constituted simony, see 21 Hen. VII c. 13, iii-viii (*Statutes at Large*, vol. 2, p. 133).

¹⁵⁵Steig, *Laud's Laboratory*, p. 94.

¹⁵⁶Lincoln's Inn MS Misc. 486 (8), fols. 9-13.

¹⁵⁷Lincoln's Inn MS Misc. 486 (8), fols. 24-25.

¹⁵⁸21 Hen. VII c. 13, xiii-xxi, xxiii, xxix (*Statutes at Large*, vol. 2, p. 1(3)5).

¹⁵⁹Hill, *Economic Problems of the English Church*, p. 227.

¹⁶⁰Lincoln's Inn MS Misc. 486 (8), fols. 57, 104-107.

endorsed the right of élite patrons ranging from bishops to the sons of knights to present clergymen to livings with cure of souls above £8 a year.¹⁶¹ Acknowledging that the original intention of the statute on the law of *commendam* was to delegate a vacant benefice "to a learned man to see the cure served untill a fitt man could be provided",¹⁶² Whitelocke noted the "good advice" of the judges in the Bishop of Lichfield's case that the bishop should find a pastor and fill the office rather than retaining the living for his own profit.¹⁶³ He concluded, however, that while it "was not reasonable in many respects", "a benefice 100 miles distant... is as good in law as if it were 20 miles[,] for the power of the grantor is not qualified by the situation but discrimination".¹⁶⁴

If Whitelocke emphasized the rights of the clergy in the course of his reading, he presented an equally vigorous argument for the rights of the Crown, the largest holder of benefices in England.¹⁶⁵ The Henrician reforms had placed all livings below £20 in the charge of the Crown, where they were usually administered by a bureaucracy attached to the Lord Chancellor's office.¹⁶⁶ The Crown also controlled many larger livings, which reverted to it by default if patron and bishop failed to fill the living within eighteen months.¹⁶⁷ If the king promoted a cleric to the office of Bishop, Whitelocke suggested, he was entitled to hold his former livings until the time of consecration, which for legal purposes functioned as a donated gift.¹⁶⁸ Suggesting that an unlimited right of presentation was "a flower of the Crown and annexed to the king's person",¹⁶⁹ Whitelocke suggested that "there hath been noe question but for 40 yeares and above the Crowne hath presented upon avoidance by promotion", although he acknowledged that the law in "former times took no notice

¹⁶¹Lincoln's Inn MS Misc. 486 (8), fols. 94-103.

¹⁶²Lincoln's Inn MS Misc. 486 (8), fol. 69.

¹⁶³Lincoln's Inn MS Misc. 486 (8), fol. 71.

¹⁶⁴Lincoln's Inn MS Misc. 486 (8), fol. 72.

¹⁶⁵O'Day, *The English Clergy*, p. 113.

¹⁶⁶O'Day, *The English Clergy*, pp. 113-118.

¹⁶⁷O'Day, *The English Clergy*, p. 78.

¹⁶⁸Lincoln's Inn MS Misc. 486 (8), fol. 118-120.

¹⁶⁹*ibid.*

of this prerogative".¹⁷⁰ Whitelocke also upheld (with some reservation) the right of the Chancellor to present clerics to any benefice below the value of £20 as the "gift of the king", and argued that where a benefice was acquired by royal donation it should not be held against a cleric as a second living.¹⁷¹ Whether Whitelocke's endorsement of prerogative rights was politically motivated is hard to say, but this cannot have hurt Whitelocke's reputation among the numerous courtiers he invited to his reading, and may have presaged his rapid promotion to serjeant-at-law and then Chief Justice of Chester in 1620.

According to Lockyer, Whitelocke took the view that "episcopal pluralism was caused by necessity rather than greed: when his friend, John Buckeridge, on his appointment to the see of Rochester in 1611, 'kept in commendam with it the parsonage of South Fleet in Kent, the vicaridge of St Giles in London and his place [as canon] at Winsor', Whitelocke noted this as evidence of 'how far from covetousnes he had lived'".¹⁷² A careful examination of the passage quoted above suggests, rather, that Whitelocke stressed Buckeridge's financial difficulties, which he alleviated in part by a loan of £400, to defend his old friend from the imputation that he was manipulating the rules of *commendam* for his own profit.¹⁷³ Whitelocke was a loyal supporter of his clerical friends, yet as we shall see, his personal and professional views on the issue of pluralities did not always comfortably align.

On the third day of his reading, Whitelocke had affirmed the freedom of university colleges to protect their benefices from the influence of the visiting bishops, arguing that the "right of this visitor is not *patronatus*[,] the very right the law giveth to a founder, to see and provide that the possessions of this foundation be

¹⁷⁰Lincoln's Inn MS Misc. 486 (8), fol. 115.

¹⁷¹Bodl. MS Hargrave 91, fol. 289v; Lincoln's Inn MS Misc. 486 (8), fol. 49.

¹⁷²Lockyer, *The Early Stuarts*, p. 111.

¹⁷³*Liber Famelicus*, p. 26: "I did lend to my ancient friend Mr. Doctor Buckeridge, against his consecration to the bishoprik of Rochester, whiche was in June 1611, 400l. upon his own bond. He kept *in commendam* withe it the parsonage of South Fleet in Kent, the vicaridge of St. Giles in London, and his place at Windsor. This I set downe to shew my love for him, and how far from covetnous he had lived."

well governed".¹⁷⁴ He concluded, on this "notably debated" matter,¹⁷⁵ that while ecclesiastical law permitted a college to assert control of donated benefices after a patron's death, in common law the rights of presentation remained with the executor of the patron's estate.¹⁷⁶ Whitelocke was placed in an uncomfortable position in 1623, when he was asked to defend the interests of St John's College against his old friend William Laud, who was accused of usurping the rights of the college, and manipulating the rules of *commendam*, for his own profit. Following his promotion to the Welsh bishopric of St David's in 1621, Laud had resigned from the presidency of St John's under some pressure from the fellows, and sought new livings to redress his lost income.¹⁷⁷ By 1623 he held three country livings while serving as Dean of Gloucester, prebend of Westminster, and prebend of Lincoln.¹⁷⁸ Early in 1623, Laud moved to secure the living of the parsonage of Crick in Northamptonshire, which had been purchased by Sir William Craven "for the good of St. John's in Oxford" while he was serving as Lord Mayor of London in 1611.¹⁷⁹ Arguing that this reversion was "contrarie to the true meaning of Sir William Craven", Laud's incumbency was challenged on the basis of a tripartite indenture made between Whitelocke and his clerk Gavin Champineys on behalf of St John's, Sir Oliver and Lady Anna Cromwell, and the Company of Merchant Taylors, who jointly administered the parsonage for St John's.¹⁸⁰ While it is uncertain whether Whitelocke challenged his old friend by writ of *quare impedit*, it is interesting to note that Whitelocke makes no further mention of Laud in his diary after his promotion as Bishop of St. David's.

¹⁷⁴Lincoln's Inn MS Misc. 486 (8), fol. 53.

¹⁷⁵Lincoln's Inn MS Misc. 486 (8), fol. 65.

¹⁷⁶Lincoln's Inn MS Misc. 486 (8), fols. 66-67.

¹⁷⁷Trevor Roper, H., *Archbishop Laud, 1573-1645* (London 1940), p. 57.

¹⁷⁸Bell, H., *Archbishop Laud and Priestly Government* (London 1905), p. 29. In fact Laud seldom managed to visit even his bishopric, preferring the company of Richard Neile's "Durham House group" in London; Tyacke, *Anti-Calvinists*, p. 107.

¹⁷⁹Whellan, F. (ed.), *History, Topography, and Directory of Northamptonshire* (London 1874), p. 345.

¹⁸⁰Court Minutes of the Merchant Taylors' Company, 24 March 1623, quoted in Wilson, H.B., *The History of Merchant Taylors' School*, 2 vols. (London 1812-1814), vol. 1, p. 211.

The fact that at least nineteen manuscript copies of Whitelocke's 1619 reading have been located testifies to the high regard in which it was held among lawyers.¹⁸¹ Bulstrode Whitelocke noted this circulation of manuscript copies; it was not academic, but practical interest in *jus patronatus*, he claimed, that led students and barristers to seek "the solide law, and excellent and unusuall learning" of his father's reading.¹⁸² While the laws relating to benefices were a fairly common topic for readings in the early seventeenth century,¹⁸³ very little printed material relating to rights of patronage from a legal point of view was available in the early seventeenth century.¹⁸⁴ Whitelocke suggested that the issues raised in his first three cases were "matters ordinary and in use yet seldome handled by Readers", and was in little doubt "that the comoditys we shall find there will be usefull for our law".¹⁸⁵ The questions raised in the second week of the reading, he indicated, "hath not been handled heretofore by any Reader that I can learn".¹⁸⁶ Whitelocke expressed a familiarity with benefices from his associations with Oxford,¹⁸⁷ but he undoubtedly observed many of the cases at Westminster cited in his reading from the reign of James I, first noting a contested right of presentation brought before the King's Bench in 1597, while he was still a student at the Middle Temple.¹⁸⁸ Whitelocke had "seen visitations in Windsor by the Chancellor of England and in St Martyns le Grand by the Chancellor assisted by divers judges of the common law",¹⁸⁹ and as

¹⁸¹I have inspected BL Hargrave MS 91, fols. 196-295v; BL Hargrave MS 237, fols. 5-95v; BL Hargrave MS 198, BL Hargrave MS 91, fols. 296-319v; CUL MS Ll .3.12, fols. 326-477; CUL MS Ee .6.3, fols. 192-225v; Bodl. MS Dep. d 746; Bodl. MS Rawlinson C. 207, fols. 62-96v; MS Rawlinson C. 207, fols. 245-270, Bodl. MS Ashmole 1150 (1), fols. 1-83; Lincoln's Inn MS Miscellaneous 486 (8); Lincoln's Inn MS Law 14. ii; Lincoln's Inn MS Maynard 79, fols. 329-380; Middle Temple (uncatalogued copy, Muniment's Room). Other copies revealed in checks of the major repositories include Trinity College MS 853 (4); Trinity College MS 733 (3); Harvard Law School MS 1077; William Andrews Clark Library Selden-Hale Collection MS 586; and University of Pennsylvania Law School MS 1206. I am grateful to John Baker for making me aware of the existence of the American manuscripts.

¹⁸²*Diary*, p. 47.

¹⁸³Whitelocke admitted that he was "on the heel of my predecessor", William Rives, who lectured on the giving of benefices in the Statute of Westminster 2 c. 1 in the Lent 1619 reading; Lincoln's Inn MS Misc. 486 (8), fol. 2.

¹⁸⁴Steig, *Laud's Laboratory*, p. 93.

¹⁸⁵Lincoln's Inn MS Misc. 486 (8), fol. 78.

¹⁸⁶*ibid.*

¹⁸⁷Lincoln's Inn MS Misc. 486 (8), fol. 3.

¹⁸⁸CUL MS Dd. 8. 48, fol. 15, 'Gerard's Case'.

¹⁸⁹Lincoln's Inn MS Misc. 486 (8), fol. 55.

steward of St John's he observed courtroom battles over the control of donated benefices, "a matter of great consequence and hath been very lately notably debated".¹⁹⁰ It was this personal experience which lent authority and practical relevance to Whitelocke's analysis.

By concentrating upon the issue of pluralities,¹⁹¹ Whitelocke's reading digested, collated and informed a wide range of examples which were drawn from the statutes and law books, such trusted authors as Fortescue and Littleton, newer sources such as Coke's *Reports*, and more recent and topical cases in the courts of law. Baker has suggested that in the fifteenth century the reader's usual technique employed was to amass as many cases as possible, "listing example upon example in illustration of the subject matter".¹⁹² These examples, he has shown, were stacked one on top of the other for the sake of comprehensiveness, and to exercise the mind, "rather than to explore new doctrine, criticize old doctrine, or open up loopholes".¹⁹³ On occasion, Whitelocke was prepared to challenge other commentators, disagreeing over particular issues with Coke's *Reports*,¹⁹⁴ and even with a judgement handed down in the Court of King's Bench.¹⁹⁵ Juxtaposition of past and present (from the medieval bishop Stephen Langton to the current arrangements of the parish of Bampton in Oxfordshire in one example)¹⁹⁶ stressed the customary nature of the law. Whitelocke regarded these examples with little or no sense of anachronism, as he used custom to hold the entire edifice of his reading together by presuming a coherence which was not necessarily present.¹⁹⁷

¹⁹⁰Lincoln's Inn MS Misc. 486 (8), fol. 65.

¹⁹¹In his introduction, Whitelocke professed a desire "to comprehend variety yet with propriety... that we may... rather apply ourselves to debate that thoroughly which wee have in hand then to wander upon matters of another nature"; Lincoln's Inn MS Misc. 486 (8), fol. 7.

¹⁹²Baker, 'The Inns of Court and Legal Doctrine', p. 276.

¹⁹³*ibid.*

¹⁹⁴It should be stressed that Coke's peers did not expect to agree with him on every issue. Baron Altham and Justice Williams commented wryly that Coke "was not such a master of the lawes as he did take it on him, to deliver what he list for lawe, and to despise all other"; Egerton Papers, fol. 448 quoted in Foss, E., *A Biographical Dictionary of the Judges of England* (London 1870), p. 13.

¹⁹⁵Lincoln's Inn MS Misc. 486 (8), fols. 18-19.

¹⁹⁶Lincoln's Inn MS Misc. 486 (8), fol. 115.

¹⁹⁷For a contemporary criticism of this methodology, see Parson, R., *An Answer to the Fifth Part of the Reportes Lately set forth by Syr Edward Cooke, knight, the Kinges Attorney generall* (St. Omer 1607), p. 14.

By providing a list of cases which could be checked against the opinions of those who contributed to the discussion of each case,¹⁹⁸ particularly in the summing up of conceits that ended proceedings,¹⁹⁹ lawyers could establish, starting with a manuscript of Whitelocke's 1619 reading, the conventional wisdom, or "maxims" of the law, on the issue of pluralities.²⁰⁰ As a result, the reading acquired authority where it suggested "good law", or current legal thinking, on particular issues. A list of the authoritative points raised from each division in Whitelocke's reading, compiled together with notes on a related reading as 'Concepts sur le Stat de 32 Hen 8 c. 5 & c. 13',²⁰¹ testifies to the process by which a legal reading such as Whitelocke's helped to establish "good law" in a given area. Rather than the "conundrums" thrown up in many readings to challenge the mind but unlikely to be of any practical use at the bar,²⁰² Whitelocke's choice of a topic and selection of cases had a relevance which underlined the value of his reading to the legal profession. Ironically, the contribution of the better legal readings at the inns of court, by helping to shift the "hypothetical debate of the year books to the distinct rulings and judgments of the age of Coke", and "by giving a new meaning and force to precedent" unwittingly contributed to the downfall of the system of readings itself.²⁰³

The inns of court and the "common-law mind":

The high claims made by seventeenth-century common lawyers for their code - it was said to embody custom, reason, authority, antiquity and divine approbation - have been widely discussed for their bearing on political discourse before the civil

¹⁹⁸As in the notes taken of Whitelocke's reading in CUL MS Ee. 6. 2, fols. 192-225v.

¹⁹⁹See the "Conceyts" (concepts) listed from the reading in the last three folios of CUL MS Ee. 6. 2, fols. 192-225v.

²⁰⁰Cf. Baker, 'The Inns of Court and Legal Doctrine', p. 278.

²⁰¹BL Hargrave MS 91, fols. 296-319v.

²⁰²Baker, 'The Inns of Court and Legal Doctrine', p. 275; cf. Baker and Thorne (eds.), *Readings and Moots at the Inns of Court*, vol. 2, p. lxxii; Coke, *First Institute*, p. 280v.

²⁰³Baker (ed.), *Reports of John Spelman*, vol. 2, p. 124; cf. Barnes, 'Star Chamber Litigants and their Counsel', p. 23; Simpson, 'The Source and Function of the Later Year Books', pp. 92-93.

war.²⁰⁴ The important question of how legal education affected the political outlook of lawyers has brought historians to something of an impasse. Derek Hirst, taking up the Whig mantle, has argued that an "ingrained habit of thinking about politics in terms of the common law" had a major bearing on Jacobean parliamentary debate.²⁰⁵ Glen Burgess, seeing common-law rhetoric as "a pretence designed to protect their professional isolation and status", has viewed political debate in the period as concerning "not so much the relationship between royal sovereignty and the law, as the relationship between legal and non-legal definitions of authority".²⁰⁶ Wilfrid Prest, challenging the wholesale revisionist rejection of the Whig orthodoxy, has argued that most common lawyers "were influenced by a corporate ethos which at the very least sat uneasily with the political values generally favoured at Court".²⁰⁷ Of course, the men who gravitated to the early modern bar never sat down to work out what they held in common politically or intellectually themselves. That attempts to trace their collective outlook in terms of thought alone have proved rather wooden shows, perhaps, that *mentalité* needs to be considered in two ways: first, in terms of the language used by a particular group in society, and second, in terms of the psychological assurances (real or imagined) from which this rhetoric flows.

For James Whitelocke, life at the inns defined the broader psychological as well as narrower intellectual framework from which he constructed his identity. As John Baker has written:

That law schools influence the way lawyers think may perhaps be taken for granted.

Men do not easily shed the habits of mind which result from attending law courses, especially if the courses are as intellectually demanding as we know the inns of

²⁰⁴See below, and cf. Brooks, 'The Ancient Constitution in Sixteenth-Century Legal Thought', pp. 57-59; Weston, C.C. & J.R. Greenberg, *Subjects and Sovereigns: The Grand Controversy over Legal Sovereignty in Stuart England* (Cambridge 1981), pp. 1-34.

²⁰⁵Hirst, D., 'The Place of Principle' in Rabb & Hirst 'Revisionism Revised: two perspectives on early Stuart parliamentary history', *Past & Present* 42 (1981), pp. 83-89.

²⁰⁶Burgess, 'Custom, Reason and the Common Law', 'Introduction'; pp. 71-73.

²⁰⁷Prest, *Rise of the Barristers*, p. 257.

court curriculum to have been in the fifteenth and sixteenth centuries. The certainties of taught law are hard to break down.²⁰⁸

In the case of common law, these certainties are obscured, as it was the private conversation upon legal issues carried at in the inns of court and chancery which Coke called the "life of studie".²⁰⁹ Reflecting upon three decades at the Middle Temple in 1619, Whitelocke told the treasurer "and the rest of this worthy society" that it was for him "verye unpleasing... to be deprived of the dayly conversation of ancient frends... I fear that by my remove I shall misse sum of the effects of it".²¹⁰ "Mr. Treasurer," he continued,

it wolde be verye uncouth to me to be cut of from these contentments, and to lighte upon new men and manners. It is not my meaning to do so. I shall *solum mutare non animum*, and my remove shall cawse only seperation of our bodyes, not a divorce of our mindes.²¹¹

While civil law had strong philosophical currents running through its major works, these were largely absent from the common law and almost wholly absent from the training of the inns of court and chancery, which, I have shown, gave emphasis to the technical necessities of property law. Similarly, academic musings on such esoteric questions as "immemorial custom" were largely irrelevant to the day-to-day workings of the law.²¹² Devoid of an overt philosophical base, or even a clear analytical coherence, it is hardly surprising that in their discussion of the intellectual impact of the "common-law inheritance", historians have tended to assume the fact with little reference to the process itself.²¹³ Yet, as D.J. Seipp has recently noted:

²⁰⁸Baker, 'The Inns of Court and Legal Doctrine', p. 274

²⁰⁹Coke, *First Institute*, sig. qq²; cf. Prest, *Inns of Court*, p. 158; *idem*, *Rise of the Barristers*, p. 114.

²¹⁰*Liber Famelicus*, p. 82.

²¹¹*ibid.*

²¹²Prest, *Inns of Court*, p. 221; Shaller, 'English Law and the Renaissance', p. 109; Brooks, 'The Ancient Constitution in Sixteenth-Century Legal Thought', p. 60.

²¹³This is particularly true if we remove Sir Edward Coke from the equation. See Pocock, J.G.A., *The Ancient Constitution and Feudal Law* (rev. ed, Cambridge 1987); Prest, *Rise of the Barristers*, p. 257; Sharpe, K., *Sir Robert Cotton 1566-1631* (Oxford 1979), p. 23; Oakely, F., 'Jacobean

The language of the common law has a life and a logic of its own... Basic terms of the lawyers' specialized vocabulary, elementary conceptual distinctions, and modes of argument, which all go to make "thinking like a lawyer" possible, have proved remarkably durable in the literature of the common law.²¹⁴

To what extent James Whitelocke's political outlook was shaped by the common-law "inheritance", and to what extent he merely employed them to justify his political interests, is impossible to say.²¹⁵ We know that Whitelocke was aware of the rhetorical effect that could be made of the law, as his own interest in the common law was spurred by the sophistry of the noted sixteenth-century civil lawyer Richard Cosin.²¹⁶ Whitelocke recounted in the *Liber Famelicus* that in:

a book set out by Dr. Cosins... entitled 'An Apologye of the Ecclesiastical Proceedings'... I saw how great use he made of his knowledge of the common law to upholde the authority of his owne profession, and to direct others of his place.²¹⁷

Searching through the major common-law texts before Coke's *Reports*, one finds occasional passages apt for political interpretation in opposition to an "unbridled" prerogative. Bracton, for example observed that

The king must not be under men but under God and the law, because the law makes the king. Let him therefore bestow upon the law what the law bestows upon him, namely, rule and power, for there is no rex where will rules rather than lex.²¹⁸

Restated in a political context, such a constitutionally neutral observation easily became the language of "principled" dissent. In Christopher St German's *A*

Political Theology: The Absolute and Ordinary Powers of the King', *Journal of the History of Ideas* 29 (1968), pp. 323-346.

²¹⁴Seipp, D.J., 'Bracton, the Year Books, and the "Transformation of Elementary Legal Ideas" in the Early Common Law', *Law and History Review* 7 no. 1 (1989), p. 175.

²¹⁵As people seldom admit the extent to which they employ language to rationalize their position, some will be more cynical than others in interpreting early modern rhetoric; cf. Burgess, 'The Impact of Political Thought: Rhetoric for Troubled Times' in J. Morrill (ed.), *The Impact of the English Civil War* (London 1991), p. 67; Prest, *Rise of the Barristers*, pp. 256-260.

²¹⁶Celebrated by Fuller as "one of the greatest civilians of our nation bred, the grand champion of the Episcopacy"; Fuller, T., *The History of the Worthies of England* (London 1662), p. 817.

²¹⁷*Liber Famelicus*, p. 14; cf. Coke's allegation that Cosin would "obtrude upon the world" with his claims for the jurisdiction of the courts spiritual; Coke, E., *The Twelfth Part of the Reports of England* (London 1655), 'Premunire'.

²¹⁸Bracton, H. de, *De legibus et consuetudinibus angliae*, 4 vols. (S.E. Thorne trans, Cambridge Mass. 1968-1977), vol. 2, p. 33.

Dialogue betwixt a Doctor of Divinity and a Student in the Laws of England (1523) we find grounds for the excellence of common law - reason, the law of God, custom, and antiquity - heavily rehearsed in the speeches of James's parliaments.²¹⁹

Whether these ideas were borrowed for political effect or not,²²⁰ to some extent we are what we say we are, and our public impact is largely determined by our public voice. Whitelocke recalled a conversation with Sir Edward Coke in 1615 in which he had questioned the Chief Justice of King's Bench on his reluctance to dine at the royal court. Whitelocke was in little doubt that Coke's reply, "that whilest he stood by the king at dynner, he [King James] wolde be ever asking of him questions of that nature as he had as life be out of the roome", related to Coke's dogmatic assertion of common-law restraints on the royal prerogative, "whiche the king wolde take ill if he wear not answered in them as he wolde have it".²²¹ Both Whitelocke and Coke were to run foul of the Crown as a shared mindset that was largely insensitive to any non-legal context was confronted by the reality of other ways.²²²

In political terms, the overwhelming significance of the common law lay in its concentration on property rights. As individual rights flowed almost entirely from the right of property, property was the overwhelming preoccupation of the common law. Inherent in this approach was an adherence to precedent, which it was believed guaranteed stability in institutional and judicial policy; in Whitelocke's own words: "Permutation is a thing... much misliked in the common law".²²³ Deviation from, or alteration of "customary" principle, common lawyers were taught, would result in contradictions or ambiguities that would undermine the foundations of the law.²²⁴ It is this mindset that helps explain why many common lawyers were paranoid about "foreign" legal codes. More flexible by definition, and more open to innovation in

²¹⁹Foster, E.R. (ed.), *Proceedings in Parliament 1610*, 2 vols. (New Haven 1966), vol. 2, pp. 152-190; cf. Brooks, 'The Ancient Constitution in Sixteenth-Century Legal Thought', pp. 60-63.

²²⁰Cf. Christianson, 'Royal and Parliamentary Voices on the Ancient Constitution', pp. 71-95.

²²¹*Liber Famelicus*, p. 48.

²²²See ch 3.

²²³Lincoln's Inn MS Misc. 486 (8), fol.44.

²²⁴Kinney, A.F., 'Sir Phillip Sydney and Uses of History' in H. Dubrow & R. Strier (eds.), *The Historical Renaissance: New Essays on Tudor and Stuart Literature and Culture* (Chicago 1988), p. 304; Hirst, 'The Place of Principle', pp. 83, 88.

application, they ran counter to the essence of common-law jurisprudence.²²⁵ We find echoes of this concern in Whitelocke's plea to Robert Cotton that his removal from the Earl Marshal's Court did "much concern our whole order and other gentlemen of England, that naturallie desire to submitt all their fortunes to the rule of homeborn law".²²⁶ Needless to say, recourse to custom only makes sense if custom is of overriding importance, and in this sense the mythology that had grown up around the traditions of English law flowed from the narrower *modus operandi* by which lawyers were taught to argue general principles in the courts of law.²²⁷ It thus seems significant that Whitelocke's disagreement with the Crown over impositions in 1610 and 1614 flowed naturally out of a preoccupation with the regulation of property rights within accepted political parameters.²²⁸

Over thirty years Whitelocke achieved an intellectual emancipation of sorts as his opinions solidified and his educational skills were refined. An undated legal commonplace book in Whitelocke's hand, probably compiled during his years on the bench, reflected a lifetime of experience in the law.²²⁹ Unlike his fledgling attempts at commonplacing at Oxford, Whitelocke had no trouble filling its pages in this later stage of his career. He listed between fifty and two hundred points arising from individual points of law, and made reference to hundreds of examples in the statutes, year books and reports from which appropriate examples could be sought on each issue. The headings in the notebook reflect the range of knowledge, far surpassing fledgling comprehension of the principles of real property, required by a seventeenth-century judge. Technical points arising from the internal workings of the law such as 'Process', 'Arrests', 'Replevin', 'Assault and Battery', 'Trespass'

²²⁵Kinney, 'Sir Phillip Sydney', p. 305.

²²⁶Bodl. MS Smith, fol. 59.

²²⁷Cf. Sommerville, *Politics & Ideology*, pp. 86-111. Of course, this view had to be balanced against the needs of the state, and here one's political outlook, to some extent dependent upon one's station in life, was of equal importance. This qualification has provided will continue to provide a stumbling block to any "neat and tidy" discussion of legal thought under James I.

²²⁸See ch 4. I would endorse Brooks's view that too much emphasis has been placed on the "historical" understanding of common lawyers; 'The Ancient Constitution in Sixteenth-Century Legal Thought', p. 58.

²²⁹CUL MS Dd. 3. 69; I am grateful to John Baker for making me aware of this source.

were supplemented by information on the customary rights of cities such as Oxford, York and London, rights of purveyance, wardship, tithes, a long section clarifying the privileges of the royal family, and equally long sections outlining the rights and duties of the judiciary and of the 'Court de parliament'.

It seems fitting to conclude our discussion of Whitelocke's intellectual endeavours with this little notebook, which refined techniques that began with notebooks gathered from court watching and mootings decades before. As a judge, Whitelocke continued to build upon a lifelong preoccupation with the method and techniques of the law. For James Whitelocke, learning the law was a lifelong process which engaged not only his mind, but his daily existence. His determination to master the education that promised him status as a lawyer cannot be separated from his vision of personal and professional success. By the end of his life, as Justice of King's Bench, Whitelocke could be satisfied that his commitment to the educational life of the law had paid off handsomely.

PART TWO

Politics and Parliaments, 1600 - 1632

William Shakespeare, whose fame was already considerable by the time James Whitelocke began his long association with the royal courts of law, had Tranio urge his listeners in *The Taming of the Shrew* to "do as adversaries do in law/ Strive mightily, but eat and drink as friends".¹ Tranio's admonition raises questions about consensus and conflict in the legal arena of early Stuart England which historians continue to debate. As James Whitelocke built up a legal practice in the central courts of London, he competed in a political culture in which men sought preferment through an often distasteful combination of public courtesy and private venom. This was the world in which he would spend the greater part of his life, experiencing real setbacks but ultimately obtaining considerable professional success. We would do well to consider from the outset the nature of this world.

In the older "Whig" accounts of early Stuart society, which followed pioneering efforts by S.R. Gardiner and Wallace Notestein to construct an impartial interpretation of events,² men fell into opposing ideological camps from the beginning of the Stuart dynasty. The first of these ideologies, it was argued, stressed the king's obligation to rule through conventions embodied in Parliament and the common law. This "parliamentary" ideology was contrasted with a "royalist" or "absolutist" view which stressed the force of an "unbridled" royal prerogative.³ Over the past twenty years, revisionist scholars led by Conrad Russell have systematically undermined this orthodoxy. The revisionists argue that early Stuart England is more correctly seen as an arena of political consensus, and political power as residing firmly with the Crown. The "principled" arguments of the Whig

¹*The Taming of the Shrew*, I, ii, 276-7 in J.P. Wilson (ed.), *The Complete Works of William Shakespeare* (London 1980), p. 276.

²Gardiner, S.R., *History of England from the Accession of James I to the Outbreak of the Civil War 1603-1642*, 10 vols., (London 1883-4); Notestein, W., 'The winning of the initiative by the House of Commons', *Proceedings of the British Academy* 1924/5.

³Cf., for example, Tanner, J.R., *English Constitutional Conflicts of the Seventeenth Century* (2nd ed., Cambridge 1962); Judson, M.A., *The Crisis of the Constitution* (New Brunswick 1949).

orthodoxy have been reinterpreted as the product of factional rivalries in a delicate and constantly shifting political balance.⁴ To find the causes of the English Civil War (revisionists have argued) we must look to the latter years of the reign of Charles I, and to the particular hostility aroused by Charles's policies as the Crown's troubled involvement in Ireland and Scotland convulsed English domestic politics.⁵ Russell, in his *Causes of the English Civil War*, concludes that "the makeshift and almost ramshackle manner" in which constitutional arguments

were put together to meet circumstances as they arose, tend[s] to suggest that the body of ideas about how the country should be governed were not really the central element in the cause for which they fought: they were, like their medieval predecessors, ad hoc ideas constructed out of any materials ready to hand, to serve the immediate purpose of clipping the wings of a king with whom they simply could not cope.⁶

This revisionist interpretation contrasts with another view, most forcefully argued by Theodore Rabb and Derek Hirst over a decade ago,⁷ in which an emerging and relatively coherent political ideology propelled resistance to the perceived constitutional abuses of James I and his son. In 1981, Rabb argued for the "persistent and rising expression of opposition to official policies from 1604 onward";⁸ as recently as 1988, Brian Levack maintained that:

⁴Russell, C.S.R., 'Parliamentary History in Perspective, 1604-1629', *History* 61 (1976), pp. 1-25 and collected essays in *Unrevolutionary England, 1603-1642* (London 1990); *The Causes of the English Civil War* (Oxford, 1990); Sharpe, K., 'Parliamentary History 1603-1629: In or Out of Perspective?' in K. Sharpe (ed.), *Faction and Parliament* (London 1978) and collected essays in *Politics and Ideas in Early Stuart England* (London 1989).

⁵Cf. Russell, C.S.R., *The fall of the British monarchies, 1637-1642* (Oxford 1991); Sharpe, K., *The Personal Rule of Charles I* (London and New Haven 1992); Kenyon, J.P., *The Civil Wars of England* (London 1988).

⁶Russell, 'The Rule of Law: Whose Slogan?' in *Causes of the English Civil War*, p. 160.

⁷Rabb, T.K., & D. Hirst, 'Revisionism Revised: two perspectives on early Stuart parliamentary history', *Past & Present* 42 (1981), pp. 55-99.

⁸Rabb, T.K., 'The Role of the Commons' in Rabb & Hirst, 'Revisionism Revised', p. 78.

the new theories influenced by the civil law that emerged in the early seventeenth century played a significant part in causing the political divisions and tensions that arose before the civil war.⁹

More recently, Richard Cust and Anne Hughes have presented a heavily modified version of the revisionist account, in which ideology has once again been granted an important role in a political appraisal of the early Stuart era.¹⁰

A flurry of historiographical reviews of early Stuart politics over the last decade reflects the mental jarring which often accompanies the shock of the new; they are a telling reminder of the intellectual flux still affecting the discipline today.¹¹ In a sense, *all* current scholarship on pre-civil war politics is "post-revisionism" of one kind or another - firm testament to the scholarship of Professor Russell and those (notably Kevin Sharpe) who have taken up his insights. A few points are pertinent to the historiographical debate which remains. In 1989 Sharpe observed that a "particular reason for the lack of interest in the relationship between ideas and events" in the field was because "revisionist scholarship has widened the gulf between intellectual and political history".¹² In the absence of any thorough revisionist reappraisal of the reign of James I,¹³ this methodological "gulf" has increased the conceptual divergence between the more prominent interpretations of Jacobean and Caroline politics. In a widely noted (and criticized) study of the

⁹Levack, B.P., 'Law and Ideology: The Civil Law and Theories of Absolutism in Elizabethan and Jacobean England' in Dubrow & Strier (eds.), *The Historical Renaissance*, p. 236.

¹⁰Cust, R. & A. Hughes (eds.), *Conflict in early Stuart England: studies in religion and politics 1603-1642* (London 1989); Hughes, A., *The Causes of the English Civil War* (London 1991); Cust, *The Forced Loan and English Politics 1626-1628*. Recent studies attempting the same kind of synthesis include Reeve, L.J., *Charles I and the Road to Personal Rule* (Cambridge 1989).

¹¹For a selective sample, cf. White, S.D., 'Observations of Early Stuart Parliamentary History', *Journal of British Studies* 18 no. 2 (1979), pp. 158-170; Hill, J.E.C., 'Parliament and People in Seventeenth-Century England', *Past & Present* 93 (1981), pp. 100-124; Cust, R. & A. Hughes, 'After Revisionism' in Cust & Hughes (eds.), *Conflict in early Stuart England* (London 1989), pp. 1-46; Burgess, P.G., 'On revisionism: an analysis of early Stuart historiography in the 1970s and 1980s', *Historical Journal* 33 no. 3 (1990), pp. 609-627; Cogswell, T., 'Coping with revisionism in early Stuart history', *Journal of Modern History* 62 no. 3 (1990), pp. 538-551

¹²Sharpe, K., 'A commonwealth of meanings: languages, analogues, ideas and politics' in *Politics and Ideas in Early Stuart England*, pp. 3-4.

¹³But see Knafla, L.A., *Law and Politics in Jacobean England: the Tracts of Lord Chancellor Ellesmere* (Cambridge 1977), Levack, *The Civil Lawyers in England*, and Thomas, G.W., 'James I, Equity and Lord Keeper John Williams', *English Historical Review* 91 (1976), pp. 506-528; Peck, L.L., *Northampton: patronage and policy at the court of James I* (London & Boston 1982); Peck, L.L., *Court Patronage and Corruption in Early Stuart England* (Boston 1990).

Jacobean and Caroline periods, J.P. Sommerville has gravitated towards public documents of the period, such as parliamentary speeches and polemical works, to suggest the presence of contesting political "ideologies" in the reign of James I.¹⁴ In his recent study of the Caroline period Kevin Sharpe, in line with his earlier comments, has paid less attention to such deliberately rhetorical forms of evidence, casting a cautious eye on the public actions of men driven by ambition, but constrained by strong cultural mores of right and obligation.¹⁵ While Sharpe has warned against "Excessive concentration on the evidence of speeches", and attaching too much importance to the "rhetorical embellishments with which arguments were decorated",¹⁶ Quentin Skinner has posited a claim, more in line with Sommerville's thinking, that "political historians tend to assign a somewhat marginal role to political ideas and principles in seeking to explain political behaviour",¹⁷ challenging the view that the relationship "between ideology and political action is purely an instrumental one".¹⁸

For anyone who would try to find a place for "principle" within a "post-revisionist" framework, some reconciliation of these methodological differences is vital.¹⁹ With this in mind, the relationship of public speech, private thought, and the written word form a central concern in my study of the private and public life of James Whitelocke. Concurring with John Reeve that to "attempt to understand the interplay of political and personal forces with ideological ones is really to topple into

¹⁴Sommerville, *Politics & Ideology*. Cf. Sommerville, J.P., 'Ideology, Property and the Constitution' in Cust and Hughes (eds.), *Conflict in Early Stuart England*, pp. 47-71; *idem*, 'Parliament, Privilege and the Liberties of the Subject' in J.H. Hexter (ed.), *Parliament and Liberty From the Reign of Elizabeth to the English Civil War* (Stanford 1992), pp. 56-84. More cautious assertions for the place of principle in early Stuart England are found, for example, in chapter 8 of Prest's *The Rise of the Barristers* and chapter 2 of Hughes's *The Causes of the English Civil War*.

¹⁵Sharpe, *The Personal Rule of Charles I*.

¹⁶'Parliamentary History 1603 -1629: in or out of Perspective?', p. 7.

¹⁷Skinner, Q., *The Foundations of Modern Political Thought*, 2 vols. (Cambridge 1978), vol. 2, p. xi.

¹⁸*ibid.* Cf. Skinner, Q., 'The Principles and Practice of Opposition: The Case of Bolingbroke versus Walpole' in N. McKendrick (ed.), *Historical Perspectives: Studies in English Thought and Society* (London 1974), pp. 91-128; 'Motives, Intentions and the Interpretations of Texts', *New Literary History* 3 no. 2 (1972), pp. 393-408.

¹⁹For revisionist critiques of Skinner and Sommerville, cf. Sharpe's comments on Skinner in 'A commonwealth of meanings' (*Politics and Ideas*, pp. 4-7) and his appraisal of Sommerville in 'Culture, Politics and the English Civil War' (*Politics and Ideas*, pp. 283-288) with Russell's comments in 'The Rule of Law: whose slogan?' (*Causes of the English Civil War*, pp. 144-146).

a bottomless pit",²⁰ the second part of this thesis argues that in order to grasp the interplay of principle and pragmatism in political controversy, the perceptions of those personally involved are instructive. Close to political controversy throughout his life, James Whitelocke has left a variety of public and private documents for the historian, of varied purpose, date, and circulation. By contextualizing this evidence, we can reach some understanding of the reasons why Whitelocke, deferential in private request for patronage and support, could speak out in open opposition to the wishes of the king in a widely circulated public speech. It is through these sources that I will try, above all, to let James Whitelocke speak. If his voice makes a small contribution to the great debate on causes and methods in this area of historical enquiry (which will continue for as long as there are differences in the historians who assess it) this thesis will have achieved its aim. For if we want to hear the voices of the past, the touchstone of our historical intimacy with any society, we must be prepared to listen - and listen again.

As one of a handful of early modern common lawyers fully trained in civil law, and a man whose legal practice ranged from the Court of King's Bench to the High Court of Chancery, James Whitelocke was entirely conversant with the arguments and personalities circulating in the central courts in the early decades of the seventeenth century. By introducing Whitelocke's involvement in the world sketched briefly above through his involvement with the Society of Antiquaries, we can begin to investigate the legal and political society of Westminster in the Jacobean period. In the minutiae left by Whitelocke's unevenly detailed, but often informative account of his personal and professional associations, this section traces the interplay of personality, office, principles and pragmatism in the environment through which Whitelocke navigated during a long legal and political career. Broadly speaking, it attempts a synthesis of sorts between the insights of revisionism, and the revised teleological stance which has reinjected "principle" into

²⁰Reeve, *Charles I and the Road to Personal Rule*, p. 4. See also Michael Walzer's comments upon the relationship between action and ideology in *The Revolution of the Saints* (Cambridge 1965), p. 66.

current debate on the causes of the English civil war. While that debate will continue to affect early Stuart studies for as long as political historians continue to view the period 1603-1642 as an entree to the main feast, it is not a direct concern of this thesis. Our story ends with James Whitelocke, fully a decade before a once unthinkable political breakdown became inevitable. We begin this part of it at the turn of the seventeenth century, as he began to feel his way in the busy legal world of London.

CHAPTER THREE

The Society of Antiquaries, 1601 - 1614

The history, nature and form of society meetings, 1601-1607:

James Whitelocke's first recorded oration to the Society of Antiquaries was delivered in 1601. It seems likely, therefore, that he took up membership around the turn of the seventeenth century, as his call to the bar cemented his association with London's legal society.¹ The society had been founded in the 1580s by the noted antiquarian scholar William Camden, his protégé Robert Cotton, James Ley and Henry Spelman.² Meeting at regular intervals, it provided a forum for the discussion of papers generated by antiquarian research. By 1600 society meetings were conducted at the private apartment of Sir William Dethicke, Garter King of Arms, at intervals aimed to coincide with the legal terms when lawyers were resident in the capital.³ The strong association between the antiquarians and lawyers began at the society's inception - Ley and Spelman were practicing barristers, while Camden had spent time at a legal inn - and throughout its life lawyers would continue to shape the society's membership and interests.

Schoeck has shown that twenty-four common lawyers, one civilian, and at least seven others exposed to the law through a stay at the inns of court were among the forty-three recorded members of the Society of Antiquaries.⁴ Although the *Liber Famelicus* makes no comment on the matter, one suspects that James Whitelocke's involvement with the Society of Antiquaries may have been motivated, in part, by an

¹Whitelocke listed his name, along with "Lee" (James Ley), "Thin" (Francis Thynne), "Doderidge" (Sir John Dodderidge), "Tate" (Francis Tate), Agar (Arthur Agarde), "Holland" (Joseph Holland), and "Patent" (William Patten) to consider 'the antiquity, services and duties appertayning to a knights fee', the second question to be investigated for a meeting in Michaelmas term 1599-1600; CUL MS Dd. 8. 48, fol. 139.

²Sharpe, *Sir Robert Cotton*, p. 17. For the history of the Society see also Evans, J., *A History of the Society of Antiquaries* (London 1956); chs. 1 & 2.

³*Archaeologica: or Miscellaneous Tracts, relating to Antiquity* (London 1770) vol. 1, pp. v-vi; *Discourses*, vol. 1, p. cxx.

⁴Schoeck, R.J., 'The Elizabethan Society of Antiquaries and Men of Law', *Notes and Queries* 199 (1954), pp. 417-421. The discussion on membership in the text is based upon Schoeck's findings, checked against Sharpe and the *Dictionary of National Biography*.

opportunity to reinforce professional contacts. Members of the Society of Antiquaries from Whitelocke's own inn (the Middle Temple) included Sir John Davies, Sir John Savile, Francis Tate, Robert Weston, William Bowyer, Richard Carew, Sir John Dodderidge and Sir William Fleetwood. While Fleetwood was later to serve with Whitelocke on the Buckinghamshire commission of the peace,⁵ Davies and Dodderidge were both in Whitelocke's vision throughout his career. Davies's career as King's Serjeant, and eventually Attorney-General of Ireland, was closely monitored by Whitelocke,⁶ and Dodderidge was also to gain high legal office, serving as serjeant to Prince Henry and then Justice of King's Bench from 1612 until his death in 1628, by which time Whitelocke was working alongside him as a judge of the same court.⁷ This convergence of talented Middle Templars, and of other eminent legal and political figures,⁸ helped to establish professional contacts. The Society probably also encouraged Whitelocke's professional ambitions.

Schoeck has argued that antiquarianism "was an outgrowth or by-product" of legal interests compatible with lawyers work and education,⁹ and in part he is right to suggest the crossover in methods and interests. One seventeenth-century commentator saw antiquarianism as nothing more than an ability to "turn over so many musty Rolls, so many dry, bloodless Chronicles and so many dull and heavy paced Histories" in search of relevant scraps of information;¹⁰ he could easily be describing the techniques by which James Whitelocke and other lawyers constructed a legal argument. Since a significant percentage of members were lawyers, it is hardly surprising that questions of legal custom were common topics of enquiry. Surviving papers include 'The Antiquity of Terms for the Administration of Justice',

⁵*Liber Famelicus*, p. 63.

⁶*Liber Famelicus*, pp. 75, 76, 85, 101, 102, 105.

⁷*Liber Famelicus*, pp. 97, 100, 102, 108, 109.

⁸For example Robert Beale, secretary to the Council of the North in York, Sir Thomas Lake, secretary of state to James I, and Sir Walter Cope, Chamberlain of the Exchequer.

⁹Schoeck, 'The Elizabethan Society of Antiquaries and Men of Law', p. 421.

¹⁰Bolton, E., *Hypercritica, or A Rule of Judgment, for Writing or Reading our Histories* (1618) in *Critical Essays of the Seventeenth Century* (ed. J.E. Spingarn, Oxford 1908), vol. 1, p. 97.

'The Antiquity of the Houses of Law' and 'Of the Antiquity of the Office of Chancellor'. Yet the *raison d'être* of the Society of Antiquaries can be traced to a preoccupation not with law but custom. Society papers demonstrate an agenda for research which Kevin Sharpe has characterized as the "study of culture, institutions, custom, and topography of their native realm, principally through research into English sources".¹¹ Among surviving papers are a number treating "sterling money", others on tombs and monuments, and several on native geographical features such as woods, shire boundaries, and the dimensions of England. Chivalric traditions, duels, coats of arms and the antiquity and privileges of heralds were all topics for discussion.¹²

Although James Whitelocke's antiquarian pursuits may have been spurred by his interest in history,¹³ antiquarians defined themselves apart from an emerging group of historians,¹⁴ whose political narratives caused some controversy in the reign of James I.¹⁵ Sir Robert Cotton, Sir John Dodderidge and Sir James Ley's call for the establishment of facilities "tending to the preservation of History and Antiquities, whereof the Universities, long buried in the arts, take no regard",¹⁶ stressed the particular domain of the antiquarian. Four completed speeches to the Society of Antiquaries, prepared by Whitelocke as one of the two topics proposed for discussion at each society meeting, demonstrate a range of interests. Two papers, dated 22 May and 28 November 1601, concern the 'Antiquity, Use and Ceremony of Lawful Combats in England'¹⁷ and the 'Antiquity and Office of Herald's in

¹¹Sharpe, *Sir Robert Cotton*, p. 18.

¹²These examples have been taken from Hearne. A large number of papers delivered to the society survive in the B.L. Cottonian and Stowe manuscripts and the Bodleian Rawlinson collection.

¹³*Liber Famelicus*, p. 13.

¹⁴Ferguson, A.B., *Clio Unbound: Perception of the Social and Cultural Past in Renaissance England* (Durham N.C. 1979) p. xi.

¹⁵Baker, H., *The race of time: Three lectures on Renaissance historiography* (Toronto 1967), pp. 16-34; Prest, *Rise of the Barristers*, pp. 198-199.

¹⁶BL Cott. Titus B V, fol. 184; *Archaeologica*, vol. 1, p. iv.

¹⁷*Discourses*, vol. 2, pp. 190-194, BL Additional MS 25247, fols. 93-95, BL Stowe MS 596 fols. 35-39, BL Harley MS 4176 fols. 16-18, Bodl. MS Ashmolean 856 fols. 149-153, Bodl. MS Tanner 278 fols 141-142v, Bodl. MS Tanner 85 fols. 16-38. Two manuscripts on this topic I have identified but not inspected are Edinburgh University MS Laing. II. 645/1 fols. 34-38, and College of Arms MS Vincent 43 fols. 26-42.

England'.¹⁸ An undated address on the 'Antiquity, Use, and Privilege of Places for Students and Professors of the common laws of England'¹⁹ showed Whitelocke's knowledge of his own professional traditions, while another undated manuscript, preserved in draft form along with two autograph copies, discusses the 'Antiquity, Variety and Reason of Motts with Arms of Noblemen and Gentlemen in England'.²⁰ A rough draft on 'The antiquity of terms for administration of justice and their returns, for al thinges properly belonging thereunto' is also preserved among the Whitelocke family papers.²¹ The survival of twelve manuscript copies of Whitelocke's speeches in four separate collections, and the deliberate preparation of manuscript copies for circulation by Whitelocke, raises a significant question: the circulation of manuscripts among the educated classes in the early decades of the seventeenth century. It is a topic that will be returned to in the course of this thesis, but for now it is sufficient to say that manuscripts had a major impact on the circulation of ideas, and were less open to the scrutiny of the state than the printed word.

Whitelocke began his discussion of mottoes and coats of arms with an appraisal of the thirty-odd authorities in his "computation" which mentioned the subject.²² Despite many narratives on arms and armour in classical sources only Jeronimus Ruscellius, "in a treatise set out together with Paulus Jovius",²³ pertained directly to Whitelocke's investigation.²⁴ Accordingly, Whitelocke turned to a wide range of sources including Homer, Vespasian, the Bible (where he compared Moses's cry "Who is lyke unto thee, O Lord?" in the *Book of Exodus* to Henry V's famous motto "Non nobis, Domine"),²⁵ and one appealing reference to Chaucer:

¹⁸*Discourses*, vol. 1, pp. 55-56.

¹⁹*Discourses*, vol. 1, pp. 78-82, BL Cottonian MS Faustina E.v., fols. 51-52 (autograph).

²⁰Printed as 'anonymous' in *Discourses*, vol. 1, pp. 268-272, CUL MS Oo.6.114, fols. 106-114 (draft and two autograph copies).

²¹Longleat Papers, vol. 24, fols. 269-270.

²²*Discourses*, vol. 1, p. 268.

²³The work Whitelocke refers to is possibly *The worthy tract of Paulus Jovius* (trans. S. Daniel, London 1585).

²⁴*Discourses*, vol. 1, p. 268.

²⁵*Discourses*, vol. 1, pp. 268-269.

O smale coral about her one she bare
 A paine of bedes, gawded all with greene;
 And there on hung a branch of gold full sheene,
 On which there was wetten a crowned A,
 And after that (*amor vincit omnia*).²⁶

Greek, Hebrew, and Latin mottoes were quoted in their original languages; it is entirely possible that Whitelocke showed his command of these languages by quoting from untranslated texts.

The force of custom upon his own society was stressed in Whitelocke's discussion of the origin and function of mottoes. Contesting an unnamed author "of no smale credit", he suggested that mottoes predated impresses (the symbolic figure such as a hound or a stag which accompanied a motto on the coat of arms)²⁷ upon the strained logic that coats of arms were of greater antiquity than impresses, and mottoes of "equal tyme" with coats of arms.²⁸ In rather disjointed fashion, Whitelocke went on to argue that the proliferation of mottoes throughout his own society reflected "the diversity of the minds of their bearers", citing the mottoes of Chief Baron Sir John Jeffrey (*Que fra je fra*), Bishop Goodwin of Bath and Wells (*Win God, win all*), and that of "Wickham" (William of Wykeham) the founder of New College Oxford (*Manners maketh man*).²⁹ Whitelocke suggested that an etymological study of these mottoes required knowledge of their "secret" connotations, "lest I should make rash constructions" of them, and that this explained the absence of mottoes in works such as John Boswell's *Workes of armorie, deuyded into three bookes* (London 1597).³⁰ By signifying its bearer, Whitelocke suggested, a coat of arms, together with the family motto, "described the giver of them, both in body and mynd". The deep psychological connections

²⁶*Discourses*, vol. 1, p. 270; cf. Chaucer, G., 'The Canterbury Tales' General Prologue I (A), lines 158-162 (in F.N. Robinson (ed.), *The Works of Geoffrey Chaucer*, 2nd ed., London 1957), p. 18. Numerous editions of Chaucer's works were available in England from 1532 onwards.

²⁷Fitzhugh T.V.H., *The Dictionary of Genealogy*, (2nd ed., Sherborne 1988), p. 35.

²⁸*Discourses*, vol. 1, p. 270.

²⁹*ibid.*

³⁰*Discourses*, vol. 1, p. 271.

between family identity and heraldic device was stressed, Whitelocke implied, by the prominence of mottos on "tombs in manye places".³¹ Whitelocke reflected in his appraisal of the rules that governed mottos, that although it was conventional to disregard obscure or long phrases as possible sources of inspiration, the motto of "Paul Baglione the Italian", "thoughe yt be a whole hexamiter" was "good enough, had yt not been made subject to a bitter jest of an Italian gentleman, for a worse respect then the length of yt".³² Whitelocke went on to recount that Baglione's griffin crest could not save him from the "treachery" of the Pope, leading friends to jest "that he might have done himself more good with a pair of winges to have flown out of the snare, then by defending himself with his beake and talons, to be thus taken prisoner".³³ As with his other speeches, Whitelocke attempted to contribute to rather than define the discussion, leaving it open for others to explore related matters "to the perfecting of this discourse".³⁴ He concluded this first paper with a description of his own crest, "a falcon raying herself upward toward the sky from a high tower", and the motto "Oculis in folem, alis in Caelum" he would eventually replace with "Nec beneficio, nec metu".³⁵

In his brief speech on heralds, Whitelocke traced the word herald to its Anglo-Saxon derivation "herauld", meaning "old soldier", and compared the word to its Greek and Roman equivalent.³⁶ Moving to Greek and Roman literature, he cited Dionysius of Halicarnassus as a principal source of information on heraldic duties, along with Livy and Aulus Gellius.³⁷ Among other things, Whitelocke observed that in ancient times a declaration of war was made by nothing more formal than the

³¹*ibid.* See figure 4, in which the Whitelocke family motto figures heavily in the design of James Whitelocke's own memorial at Fawley Church.

³²*Discourses*, vol. 1, p. 272.

³³*ibid.*

³⁴*ibid.*

³⁵*ibid.*

³⁶*Discourses*, vol. 1, p. 55.

³⁷Livy, T., *The Romane Historie* (trans. P. Holland, London 1598); it is likely that Whitelocke used Latin texts of Dionysius's *de Urbe Roma* and Aulus Gellius's *Noctes Atticae*, which were not translated into English until the seventeenth century; see Bolgar, R.R., *The Classical Heritage and its Beneficiaries* (Cambridge 1954), pp. 512, 547.

herald hurling his spear into enemy territory, known as the "giving of defiance".³⁸ English customs, he declared, "I will leave to the disclosing of... those that are of the profession",³⁹ acknowledging his regard for the range of expertise which could be drawn from society members. Whitelocke was content to conclude by praising the office of herald as "the very exercise of honor", mentioning heraldic duties as messengers for the Crown in times of peace and war.⁴⁰

Whitelocke's paper on lawful combat began with a distinction between unlawful combat, "fought by private men upon private quarrells",⁴¹ and those "tolerated in the common wealth for triall of causes which cannot be discussed by evidence on either part".⁴² The purpose of single combat, it continued, was "not to decide or discuss, but to condemn or acquit by an accident".⁴³ Suggesting that this custom had probably arrived in Italy with the Longobards, "more addicted to martial discipline than civill government", Whitelocke distinguished English law, which tolerated trial by combat, and canon law, in which it was condemned.⁴⁴ In England trial by combat could be employed in civil actions in cases of "honor and arms, or in titles of land", or in criminal actions such as felony, murder, or robbery.⁴⁵ While cases of trial by combat in criminal causes were "frequent in our law bookes", Whitelocke furnished a rarer case of trial by combat in a civil litigation from the reign of Edward III, revolving around a contested coat of arms.⁴⁶ The "ceremony" of combat for cases of treason was, Whitelocke decided, well enough known to his audience through a case recorded in the reign of Richard II; he chose instead to concentrate upon this ceremony in the case of felony.⁴⁷ Whitelocke suggested that to initiate proceedings, defendant and plaintiff took an oath which stated the cause of their

³⁸*Discourses*, vol. 1, p. 56.

³⁹*ibid.*

⁴⁰*ibid.*

⁴¹There were concerted attempts to stamp out private duels in the reign of James I; Stone, L., *The Crisis of the Aristocracy, 1558-1641* (Oxford 1965), pp. 141-145.

⁴²*Discourses*, vol. 2, p. 190.

⁴³*ibid.*

⁴⁴*Discourses*, vol. 2, p. 191.

⁴⁵*ibid.*

⁴⁶*ibid.*

⁴⁷*ibid.*

disagreement and their willingness to seek justice through open combat, "and this I will defend [or deraign] against you with my bodye as the court shall award". Having declared an oath to ward off suspicion of sorcery, "whiche they much stood in awe of in that blinde age", combat ensued on an open field.⁴⁸ Whitelocke's lengthy discussion of the ceremony of combat in civil causes drew from the Statue of Henry I (1H. 6. 7.), "the longest description of the ceremony of single combats in this our common-wealthe that I have read of, either in our history, or law books".⁴⁹ In an elaborate ritual, defendant and plaintiff were asked by the Chief Justice if they were prepared to commit themselves to combat, seeking the assurance of the serjeants who accompanied both parties. If no reason was provided why combat should not proceed, plaintiff and defendant were then ordered to proceed to St Paul's and Westminster Abby respectively, to pray for victory.⁵⁰ Admitting that the origin of lawful combat in England was something he could "but gesse at", Whitelocke left this issue "to them that have better instruction of it".⁵¹

Whitelocke's discussion 'Of the Antiquity, Use, and Privilege of Places for Students and Professors of the Common Laws' began with a series of deductions about the origins of the inns, based mainly on references in Sir John Fortescue's *De Laudibus Legum Angliae*, written about 1470.⁵² "I do not find any evidence for the antiquity of our society of common lawyers in the Temple before Edward the 3's time" he instructed members, "in whose reign I suppose that the conveniency of the place caused some of that profession to hire and take lodgings there of the knights of the order of St. John of Jerusalem".⁵³ Baker has shown that by the 1350s the inns had acquired educational as well as residential functions,⁵⁴ but in the absence of any patents or grants, James Whitelocke could only surmise that the privileges of the

⁴⁸*Discourses*, vol. 2, pp. 192-193.

⁴⁹*Discourses*, vol. 2, p. 193.

⁵⁰*Discourses*, vol. 2, pp. 193-194.

⁵¹*Discourses*, vol. 2, p. 194.

⁵²Whitelocke cites the work as *The commendation of the laws of England*, which is the title of the translation provided by R. Mulcaster in 1567.

⁵³*Discourses*, vol. 1, p. 78.

⁵⁴Baker, 'The Inns of Court in 1388' in *The Legal Profession and the Common Law*, p. 1.

inns began with "the regular knights that lived there, and so continued in the place, as it were in succession, to the students that followed".⁵⁵ He noted that the four inns of court were estimated by Fortescue to have provided lodgings for two hundred students each. Comparing this number with the "200 or 10 or 11 score" which he estimated to be currently in commons "when there are most", he added the plausible suggestion that Fortescue may have meant "only those that at that time were as residents and students in those houses at some time or others".⁵⁶

Turning to the inns of chancery, Whitelocke cited Fortescue's description of ten inns of a hundred students each, in comparison to eight surviving inns (whose membership in 1600 varied between fifty and eighty students).⁵⁷ The educational role of these lesser and greater inns, Whitelocke concurred, was in Fortescue's time "in the study of the chiefest points of law in the inns of court, of the grounds and originals of this law in the inns of chancery, in music, in armory, and generally in gentleman-like qualities, as he setteth it down".⁵⁸ In the second part of the paper, Whitelocke discussed those "privileges" or traditions associated with his profession, again by following Fortescue. The degenerate form of French used by common lawyers in Whitelocke's day, he wrote, was in Fortescue's time "far finer than commonly spoken in France", and Fortescue's equally dubious explanation that employment of French was the reason why the common law was omitted from the universities was also accepted at face value.⁵⁹ After a look at the dress, customs and educational requirements relating to the higher ranks of the profession such as serjeant and judge, little changed over the hundred and thirty years that separated them,⁶⁰ Whitelocke was content to leave off his discussion where "so grave a judge and so expert as Fortescue" did.⁶¹ His final comments, on "the many jars" that had occurred as the Mayor of London took "about the carrying of his sword upright... at

⁵⁵*Discourses*, vol. 1, p. 82.

⁵⁶*Discourses*, vol. 1, p. 79.

⁵⁷Brooks, *Pettyfoggers and Vipers of the Commonwealth*, pp. 163-165.

⁵⁸*Discourses*, vol. 1, pp. 79-80.

⁵⁹*Discourses*, vol. 1, p. 80.

⁶⁰See Baker (ed.), *The Order of Serjeants at Law*, pp. 68-87.

⁶¹*Discourses*, vol. 1, p. 81.

the serjeants feast" brought his listeners back to the concerns of custom-ridden seventeenth-century London, where matters of precedence frequently led to altercation.⁶²

The intellectual and political impact of the Society of Antiquaries:

Almost forty years ago, Schoeck concluded that the Society of Antiquaries' "influence upon English intellectual life, scholarship and literature was considerable".⁶³ More recently, Ferguson has seen the society as the harbinger of a new mode of historical thought, which employed humanist techniques to raise consciousness of English institutions and traditions, and linked them with seventeenth-century concerns.⁶⁴ Refuting the claims of Kelley, Sharpe and Brooks have argued that antiquarian studies provided a European basis of comparison to balance xenophobic interpretations of common law,⁶⁵ while Peck has remarked that "Renaissance historiography created a new role for the antiquary, not only as propagandist, but... government advisor".⁶⁶ James Whitelocke's antiquarian experiences add perspective to these varied claims.

I have shown that Whitelocke employed a range of philological, etymological, legal and historical methods to illuminate questions of English custom and antiquity. It is fair to assume that Whitelocke kept a wide variety of classical and legal texts in manuscript and printed form, and probably supplemented his research with visits to the private libraries of other antiquaries, whose collections were in many cases extensive.⁶⁷ In consulting these sources, Whitelocke seems to have worked specifically with an eye to amassing as much data as possible from which he could select and stack examples to build his discussion. His method shows the Ramist

⁶²*Discourses*, vol. 1, p. 82.

⁶³Schoeck, 'The Elizabethan Society of Antiquaries and Men of Law', p. 421.

⁶⁴Ferguson, *Clio Unbound*, pp. 1-82, esp. pp. 63, 80.

⁶⁵Brooks & Sharpe, 'History, English Law and the Renaissance', p. 137; see also Sharpe, *Sir Robert Cotton*, p. 23.

⁶⁶Peck, L.L., 'Court Patronage and Government Policy: The Jacobean Dilemma' in G.F. Lytle & S. Orgel (eds.), *Patronage in the Renaissance* (Princeton 1981), p. 35.

⁶⁷Sharpe, *Sir Robert Cotton*, p. 36.

touch; information was utilitarian and organization was the key both to access and to understanding.⁶⁸ Whitelocke's presentation of his material reflected an educational training which directed attention not only to constructing a thesis, but to citing "worthy" authorities in support of one's position on any given matter.

One can admire the dedication which Whitelocke brought to this study, and can sense his obvious interest in and enjoyment of antiquarian pursuits. It is hard, however, to overlook obvious deficiencies in his methodology and interpretation. All of his surviving papers crudely linked varied times and places in search of a thematic whole. Throughout, Whitelocke sequentially linked historical sources with few solid attempts at critical analysis or thesis-building. It is also hard to be overly excited by Whitelocke's erratic attempts to extrapolate and interpret from his data. Here Whitelocke's own biases were self-evident; while Sir John Fortescue's account of the inns of court and chancery was accepted at face value, the claims of other authors were disputed with little justification. Finally, the sources themselves set the tone and depth of engagement; the overall effect is of an ahistorical farrago. Whitelocke's famous contemporary John Selden, a cut above Whitelocke (and most of his associates) in his understanding of the sources, could reasonably remark that "too studious affectation of base and sterile antiquitie" was "nothing els but to be exceedingly busie about nothing".⁶⁹ Without endorsing Selden's view, it would be misleading to depict Whitelocke's antiquarian endeavours as anything more than the product of a pastime. Yet, if there is fleeting significance to these papers, they also throw up matters of passing note and some things of real interest.

Kelley, arguing for the insularity of English legal thought in the seventeenth century, considered the Society of Antiquaries "parochial", while its activities, in his opinion, "appear more as a riot than a revolution of learning".⁷⁰ Rebutting Kelley, Brooks and Sharpe have cited James Whitelocke's training under the eminent civilian émigré, Alberico Gentili, as evidence of the receptivity of English common

⁶⁸Cf. Prest, 'The Dialectical Origins of Finch's *Law*', pp. 329-330.

⁶⁹Selden, J., *Historie of Tithes* (London 1618), sig. a2r-a2v.

⁷⁰Kelley, D.R., 'History, English Law and the Renaissance', *Past & Present* 65 (1974), p. 30.

lawyers to continental legal and historical traditions.⁷¹ Subsequent debate on the "common-law mind"⁷² has continued to contest the insularity of English legal thought.⁷³ James Whitelocke's antiquarian speeches stress the fact that knowledge of foreign custom does not necessarily lead to a sympathetic reading of this custom; indeed, this knowledge may well have served to increase Whitelocke's highly Anglocentric world view. Whitelocke knew of, and at times employed continental sources, and was equally prepared to acknowledge that English customs arose "as... have most of our civil actions, by imitation from other nations".⁷⁴ Yet he maintained a blinkered, often irrational regard for native legal traditions.⁷⁵ While Whitelocke was quick to criticize many sources for their biases, at times disagreeing with the opinions of classical authors of "noe smale creadit", and commenting upon the limitations of English works such as John Bosswell's *Workes of armorie, deuyded into three bookes* (London 1597),⁷⁶ he accepted the impartiality and historical accuracy of Sir John Fortescue's *De Laudibus Legum Angliae*, and Dyer's report of trial by combat, without question. In this sense, Whitelocke's subjective understanding of his sources was (as Baker has suggested in the case of Sir Edward Coke) "a guide not to the past but to the present", while the sense of continuity which they conveyed to him was often "of rhetorical and emotional and political, rather than historical value".⁷⁷ A self-interested, eulogistic vision of traditions maintained in native custom bound Fortescue's *De Laudibus Legum Angliae* to Sir Edward Coke's legal panegyrics, and tied Whitelocke temperamentally to the mythology that had grown up around the common law.⁷⁸

⁷¹Brooks & Sharpe, 'History, English Law and the Renaissance', p. 137; see also *Sir Robert Cotton*, p. 23.

⁷²This debate stems from J.G.A. Pocock's seminal work *The Ancient Constitution and Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge 1958); see Pocock's revised edition and retrospect, Cambridge 1987.

⁷³Burgess, *The Politics of the Ancient Constitution*, pp. 12-15, 79-82, 87, 104-105.

⁷⁴*Discourses*, vol. 1, p. 268.

⁷⁵Sharpe, *Sir Robert Cotton*, pp. 24-25.

⁷⁶*Discourses*, vol. 1, p. 272.

⁷⁷Cf. Baker, 'The Dark Age of English Legal History', p. 435.

⁷⁸Cf. Bouwsma, W.J., 'Lawyers and Early Modern Culture', *American Historical Review* 78 (1973), p. 327; Prest, *Rise of the Barristers*, pp. 188-189; 257; Brooks, 'The Place of Magna Carta and the Ancient Constitution', pp. 58-59, 84-88.

Peck's claims for a political dimension to antiquarianism are best discussed in light of the history of the Society of Antiquaries itself. In 1607, to use Sharpe's carefully chosen words, the society "dissolved, or fell apart... in puzzling circumstances".⁷⁹ An anonymous pamphleteer, petitioning the Duke of Buckingham for the establishment of an antiquarian academy in 1617, cited the death of several prominent members, together with the lack of royal patronage, as the reason for its demise.⁸⁰ Yet a continued interest in antiquarianism, most fully demonstrated by attempts to revive the society in 1614, makes it difficult to understand why the loss of some members should lead to the abandonment of meetings. In fact, the date of the deaths of members cited by the petitioner in support of his argument range from 1584 to 1616; it seems that in downplaying controversy, he avoided the real issues which underlay the society's collapse. Given the seemingly erudite nature of society papers and the fascination of members with obscure antiquities, it is difficult at first glance to explain the increasingly controversial dimension of society meetings from the turn of the century.

Sharpe has speculated that the collapse of the society may have resulted from external pressure felt by members as the Crown became concerned with its topics of discussion.⁸¹ It is equally possible that the society voluntarily disbanded in response to tensions which were surfacing from within. As we have seen, the Society of Antiquaries used the Sir William Dethicke's apartment at the College of Arms as its meeting place, and others in the society with a professional interest in heraldry included Francis Thynne, Joseph Holland, and Ralph Brooke. It is not surprising then to find that heraldic institutions were on the agenda for discussion; besides Whitelocke's paper, others on the Herald's Court and the offices of High Steward, Constable and Earl Marshal survive in their dozens.⁸² Looking closely at

⁷⁹Sharpe, *Sir Robert Cotton*, p. 28.

⁸⁰'A Motion for erecting an Academy Royal, or College of King James, written in 1617', in *Archaeologica*, vol. 1, pp. xvi-xvii, probably written by Henry Ferrars.

⁸¹Sharpe, *Sir Robert Cotton*, pp. 29-32. The first historians of the Society were similarly convinced, writing that members abandoned meetings "for fear of being prosecuted as a treasonable cabal"; *Archaeologica*, vol. 1, pp. xiv-xv.

⁸²Twenty-nine manuscripts on this subject are reproduced in Hearne alone.

these papers, one sees how seemingly innocent questions of precedent could have explicit legal implications. At the time of James's accession, the Herald's Court (known alternatively as the Court of Constable, Court Military and Earl Marshal's Court) had been conducted without the presence of a high constable for over eighty years, after an act of disloyalty had prompted Henry VIII to behead the then Lord High Constable, Edward Duke of Buckingham, in 1521.⁸³ In a condition ratified by James at his coming to the English throne, the court was ruled over by the Earl Marshal as the president of a commission composed of Privy Councillors.⁸⁴ Along with many other quasi-judicial bodies, the vaguely defined jurisdiction of the court was increasingly disputed by common lawyers from the last decades of Elizabeth's reign.⁸⁵ One legal fiction employed by them argued that the legitimate jurisdiction of the Earl Marshal's Court had ended with the vacancy of the constableness, an argument which was only settled by a royal enquiry and the issue of letters patent to the Earl Marshal in 1622.⁸⁶

Against this backdrop, seemingly innocent discussion of the chief offices of the court of Constable and Marshal take on a new light. In 1613 James Whitelocke was employed as legal counsel for his antiquarian associate Ralph Brooke in a case against Richard St. George (who along with Spelman, Cotton, Ley, Sir John Davies and William Hakewill, initiated the push for renewed Society meetings a year later).⁸⁷ A bellicose character, Brooke was already involved in a long and complicated legal dispute with Sir William Dethicke, another society associate.⁸⁸ His suit against St George may have been encouraged by the actions of William Penson, Lancaster Herald, who filed a similar suit against colleagues in the Court of

⁸³Squibb, G.D. *The High Court of Chivalry* (Oxford 1959), pp. 1-28; Ashman, P.M., 'Heraldry and the Law of Arms in England', *Journal of Legal History* 9 no. 1 (1988), pp. 69-70.

⁸⁴Plott, R., 'A defence of the jurisdiction of the Earl Marshal's Court in the vacancy of a Constable, and of his disowning prohibitions sent thither from other courts' in *Discourses*, vol. 2, p. 259; Squibb, *The High Court of Chivalry*, pp. 33-40.

⁸⁵Ashman, 'Heraldry and the Law of Arms in England', p. 69.

⁸⁶Squibb, *The High Court of Chivalry*, p. 30; Ashman, 'Heraldry and the Law of Arms in England', p. 70.

⁸⁷Sharpe, *Sir Robert Cotton*, p. 36.

⁸⁸Wagner, A., *Heralds of England: A History of the Office and College of Arms* (London 1967), pp. 199-221, 225, 227-230, 232, 235, 384.

Chancery in 1612.⁸⁹ Whatever the case, Whitelocke moved to have Brooke's case redirected to the Court of Chancery by employing the common-law legal fiction outlined above. His argument met with an unsympathetic response from the Lord Chancellor - and Whitelocke, sarcastically declared to be "omniscious, and [to] know all things", quickly found himself defending his actions before the Privy Council.⁹⁰ Robert Plott, citing the incident in support of his defence of the Earl Marshal's jurisdiction, remarked that the Chancellor had directed the cause to "the lords commissioners for the office of earl marshal, as a matter most proper to be decided in their court", while Whitelocke's allegation "that there was no such court as the earl marshal's court, but the court of the constable and marshal, which could only be held at such a time as there was a constable or commissioners for that office",⁹¹ was refuted by public declaration in the Chancery decree and order books.⁹² Whitelocke's troubles with Ellesmere will be discussed in greater detail below;⁹³ for now the significant point is the obvious connection that can be seen to be operating between antiquarian associations, methods, and interests, and issues threatening harmonious relations within the society.

Other clues about the undercurrents operating in antiquarian circles are provided in an intriguing letter from James Whitelocke to his society associate Sir Robert Cotton.⁹⁴ Of uncertain provenance, Sharpe has interpreted it as regarding Whitelocke's right to practice before the Privy Council.⁹⁵ A closer examination of the context, however, suggests that it relates in fact directly back to the debate on the Earl Marshal's Court touched upon above. In the letter, Whitelocke reminded Cotton of his presence in the Council Chamber at Whitehall "when my Lord of Northampton took exception to my practising there before the Lord Commissioners

⁸⁹Wagner, *Heralds of England*, pp. 229-230; Squibb, *The High Court of Chivalry*, pp. 42-43.

⁹⁰*Liber Famelicus*, p. 36; Squibb, *The High Court of Chivalry*, pp. 43-44.

⁹¹Plott, 'A defence of the jurisdiction of the Earl Marshal's Court', p. 260.

⁹²PRO C33/126, fols. 122v-123.

⁹³See ch. 5.

⁹⁴Bodl. MS Smith 71, fol. 59; BL Cottonian MS Julius C. III, fol. 89. The BL copy is dated '1609?' in the left hand margin.

⁹⁵Sharpe, *Sir Robert Cotton*, pp. 40, 147.

as being unusual and improper to a Professor of the Law of England". If the commissioners Whitelocke refers to were in fact presiding in this context over the Court of Constable and Marshal, then Whitelocke's subsequent tale makes a great deal of sense. Squibb has shown that by this stage of the court's history, parties were regularly represented by common lawyers, although in theory the jurisdiction remained with civilians.⁹⁶ Whitelocke went on to tell Cotton of his surprise at Northampton's objection, and his recourse to his qualifications in civil law as an immediate defence. From there, he joined with associates (it is uncertain whether they were from the antiquarian ranks) to establish beyond doubt that common lawyers were entirely within their legal rights to practice in this court. Whitelocke closed the letter by asking Cotton to check the records produced in support of their argument, and then to "mediate between my Lord of Northampton and our whole profession".⁹⁷ Whitelocke's enlistment of Cotton's support makes sense, as Cotton had been acting as Northampton's chief legal adviser for many years.⁹⁸ While Cotton's response to Whitelocke's letter is uncertain, this correspondence underlines the complex entanglement between antiquarianism and jurisdictional debate.

In a paper delivered to the Society of Antiquaries in the early years of the new century, Francis Thynne confidently remarked to fellow members:

I know that in this learned society, there can nothing be overpassed, what civil or common law, or historicall or record matter may afford, but that will be delivered by some one.⁹⁹

In light of subsequent events, his words have a pointed ring. The brevity of most papers, together with the selection of chosen topics for discussion at meetings, leaves one suspecting that the most interesting aspect of society gatherings was the one entirely invisible in the historical record - the discussions prompted by the

⁹⁶Squibb, *The High Court of Chivalry*, pp. 42-43.

⁹⁷Bodl. MS Smith 71, fol. 59; a paper prepared by Cotton for the Society of Antiquaries on the Earl Marshal and Constable's jurisdiction is preserved in College of Arms Vincent MS, fols. 17-25.

⁹⁸Sharpe, *Sir Robert Cotton*, pp. 41-42; Peck, 'Court Patronage and Government Policy', pp. 35-37.

⁹⁹*Discourses*, vol. 2, p. 113.

speeches themselves. Given the presence of lawyers drawn from across the legal spectrum, it may have become increasingly difficult to stop purportedly academic endeavour from spilling over into argument.¹⁰⁰ With an eye to this kind of tension, James Whitelocke's own experience serves as a case in point. And comments such as one preserved in an anonymous paper on 'The Antiquity and Office of the Constable of England' appear more a manifesto than a talking point:

And if any will complayne, that any plea be commenced before the constable and marshal, that might be tryed by the law of the land, the same complainant shall have a privie seal to the king, without difficulty, directed to the said constable and marshal, to surcease in that plea till it be discussed by the king's councill... otherwise to be tryed by the common law of the realme of England...¹⁰¹

In 1614, an attempt was made to revive the Society of Antiquaries. Whitelocke's incomplete draft on the terms for the administration of justice, one of two topics proposed for the first meeting,¹⁰² survives as a telling indicator of this endeavour. It was never completed or delivered, as plans to renew the society were abandoned. Looking back on events, Sir Henry Spelman concluded that royal disapproval of the project had been the critical impediment:

we had notice that his Majesty took a little mislike of our Society, not being inform'd, that we were resolv'd to decline all matters of state. Yet hereupon we forbade to meet again, and so all our labours lost.¹⁰³

By this time tensions in the courts were growing and James, already forced to declare the common law "most favourable to a king... though the civil law be necessary and *lex gentium*", may have been wary of renewed society activity.¹⁰⁴

Besides Whitelocke, the 1617 petition for establishing an antiquarian academy cited

¹⁰⁰As in a topic proposed for Easter term of 1605 on "the antiquity and authority of the civill lawe in England", BL Cottonian MS Cleopatra E I fol. 242; cf. *Sir Robert Cotton*, p. 30.

¹⁰¹'The Antiquity and Office of the Constable of England' in *Discourses*, vol. 2, p. 70.

¹⁰²Gibson, E. (ed.), *Reliquiae Spelmanniae. The Posthumous Works* (1727), p. 69.

¹⁰³Gibson (ed.), *Reliquiae Spelmanniae*, pp. 69-70.

¹⁰⁴Foster, E.R. (ed.), *Proceedings in Parliament 1610*, 2 vols. (New Haven 1966), vol. 1, p. 45ff.; vol. 2, p. 61 ff; hence *Proceedings in Parliament 1610*.

Sir Edward Coke, dismissed from the King's Bench in 1616 for obstructing the prerogative, Dr Richard Cosin, whom Coke had declared would "obtrude upon the world" with his claims for the jurisdiction of the courts spiritual, and Dr John Cowell, whose *Interpreter* caused such a furore in the 1610 session of parliament that James had to suppress its publication.¹⁰⁵ Mention of this group as "persons fit to keep up and celebrate" antiquarianism was hardly likely to create a sense of comfort in the king's mind,¹⁰⁶ and invited speculation on a likely corollary - renewed political argument touching his own authority. For those hoping for the re-establishment of the society in 1614, the timing could hardly have been worse.

Attempts to paint the activities of the Society of Antiquaries as a kind of "think-tank" for a radical brand of constitutional thinking have proved unrewarding,¹⁰⁷ like any other institution promoting learning in the early Stuart state, it accommodated a wide variety of opinions. This is not, however, to dismiss out of hand the very real possibilities afforded by the Society of Antiquaries as an institution capable of aiding and abetting political dissent. When one considers James Whitelocke's own position, the reasons why the Crown may have been anxious to stop the revival of the society are fully demonstrated. Firstly, the society afforded Whitelocke access to a range of legal and historical documents which were employed by him to argue against impositions in 1610 and again in 1614. Sharpe has shown that the need to establish claims for precedent led to a scramble for historical records in which antiquarians were enlisted by advocates and opponents of impositions.¹⁰⁸ The leading role taken by Whitelocke in this matter was undoubtedly due, in part, to his familiarity with the records needed to build a case. Beyond archival knowledge,

¹⁰⁵Coke, *Twelfth Part of the Reports*, 'Premunire'; Simon, J., 'Dr. Cowell', *Cambridge Law Journal* 26 no. 2 (1968), pp. 260-272.

¹⁰⁶*Archaeologica*, vol. 1, p. xvii.

¹⁰⁷Following Notestein's claim that antiquarians "read the rolls in manuscript and out of them forged chains to bind fast Stuart kings" (*Winning of the Initiative*, p. 51), Farnell has argued that "the English antiquarians may well be described as historical revolutionaries"; Farnell, J.E., 'The Social and Intellectual Basis of London's Role in the English Civil Wars', *Journal of Modern History* 49 no. 4 (1977), p. 647. This comment may have been made for effect, but it shows little real understanding of the sources.

¹⁰⁸Sharpe, *Sir Robert Cotton*, pp. 154-164.

Whitelocke's acquaintance with society members such as Robert Cotton furnished informal connections which facilitated effective exploitation of private and public records for parliamentary ends.¹⁰⁹ In 1614, the king ordered notes prepared by Whitelocke and other prominent opponents to impositions burnt with the unhappy dissolution of his second parliament.¹¹⁰ Royal support for the Society of Antiquaries, which facilitated the exploitation of information relating to institutional custom in political debate, was unlikely.

When considering the role of the society as a catalyst for political dissent, the capacity of antiquarian research to influence lines of thought, and hence lines of argument, also deserves consideration. In a widely read sixteenth-century text on education, Juan-Luis Vives concluded that "The whole of the law flows out of history... So that law, whether human or any other law, is nothing else than that part of history which investigates the customs of any people."¹¹¹ The role of custom in James Whitelocke's parliamentary speeches in 1610 warrants careful thought. Whitelocke's "antiquarian" interpretation of the past lacked the didactic emphasis normally claimed for history, yet it nurtured a comparable reading of custom to that which is found in his parliamentary speeches. Lacking in solid analysis of the changing historical context in which institutions such as parliament had evolved, this approach emphasized the place of custom as a link between past and present concerns. Jacques Amyot's essentially "antiquarian" view of history as "an orderly register of notable things sayd, done, or happened in tyme past, to mainteyne the continuall remembraunce of them, and to serve for the instruction of them to come" is precisely the kind of "political" argument used by Whitelocke in his 1610 speech on impositions.¹¹²

Ultimately, the desultory history of the Society of Antiquaries provides an interesting reflection upon some of the problems facing Jacobean society.

¹⁰⁹Cf. Peck, 'Court Patronage and Government Policy', p. 35.

¹¹⁰*Liber Famelicus*, p. 41.

¹¹¹*On Education [De tradendis disciplinis]* (trans. F. Watson, Cambridge 1913), p. 237.

¹¹²Translated by Sir Thomas North in his edition of Plutarch's *Lives of the Noble Grecians and Romans*, 5 vols. (1579), vol. 1, p. ix.

Whitelocke's involvement suggests that social tensions, pushed beneath the surface, threatened to crack the facade of public harmony if allowed a public voice. In an unsigned paper on the 'Antiquity, Power, Order, State, Manner, Persons, and Proceedings of the High Court of Parliament in England', one member warned his colleagues that parliament was:

no place for particular men to utter their private conceits for the satisfaction of their curiosities, or to make show of their eloquence, by spending the time with long studied and eloquent orations: for the reverence of God, their king and their country being well settled in their hearts, will make them ashamed of such toys...¹¹³

Whitelocke himself, whose speech on impositions is among the longest preserved from the 1610 sessions, may well have shared Francis Tate's sentiment in another antiquarian paper on parliament:

The end of the meeting is to do something to God's glory, the king's good, and the benefit of the whole land: and the means to effect the same, is by consultation and consent.¹¹⁴

From his experience as a member of the Commons, Tate remarked, he knew that in the presence of the monarch and the peers of the realm, one "will scarce have the audacity to speak, but when necessity maketh him crave help".¹¹⁵ Despite this it was, he added, not merely the right, but the duty of members of the lower House to request the redress of grievances where necessary. In this case members of the House of Commons,

being most in number, and such as live in all parts and places of the land, are like to have most and best notice of such things as are most likely and meet to be provided for; and being weak in power, and most subject to feel inconveniences, as greatness may lay upon them; are therefore fittest... to lay open their griefs, and pray reformation.¹¹⁶

¹¹³*Discourses*, vol. 1, p. 309.

¹¹⁴*Discourses*, vol. 1, pp. 299-300.

¹¹⁵*ibid.*

¹¹⁶*ibid.*



The power of the Commons, its reluctance or willingness to provide for the king's "establishment" while addressing the grievances of the "country", and the general level of harmony achieved within early Stuart parliaments, are the questions upon which our understanding of pre-civil war politics still essentially turn. They form a major theme in James Whitelocke's controversial parliamentary career.

CHAPTER FOUR

Parliamentary Politics, 1610 - 1621

James Whitelocke's parliamentary career began with selection as MP for Woodstock on 6 December 1609.¹ His participation in the last two sessions of James's protracted first parliament confirmed his rising status in Oxfordshire, reflected in landholdings, patents, and his prior election to the position of recorder for the borough in 1606.² Whitelocke noted in the *Liber Famelicus* that he was returned "in the place of Sir Richard Lea" who died in office on 22 December 1608,³ thus forcing a bye-election for the borough in which the high steward, Sir Henry Lee, supported Whitelocke's nomination. While it is noteworthy that Lee was a tenant of St John's College of which Whitelocke was steward,⁴ Whitelocke suggested in the *Liber Famelicus* that "it was ever usual" to elect the recorder of Woodstock to parliament, and that Sir Richard Lee had used his influence with Sir Lawrence Tanfield, who had served as MP for Woodstock for decades until 1604, when his elevation to the Court of the Exchequer made him ineligible for the office,⁵ to gain selection for his half-brother.⁶

Whitelocke's participation in the parliaments of 1610-1621 raises important questions of historical interpretation. Using the groundwork laid by Gardiner, and assuming his teleological approach to evidence of "constitutional conflict" between James I and parliament, an orthodoxy was built during the first thirty years of this century tracing the "rise" of an increasingly assertive House of Commons in the

¹*Liber Famelicus*, p. 19; Williams, W.R., *Parliamentary history of the county of Oxford, 1213-1899* (1899), p. 198.

²*Liber Famelicus*, p. 16.

³Williams, *Parliamentary history of the county of Oxford*, p. 197.

⁴The forthcoming History of Parliament Trust biography suggests a more direct connection between Lee's patronage and Whitelocke's appointment. I would like to thank Mr John Ferris of the History of Parliament Trust for allowing me to consult this (as yet) unpublished manuscript on Whitelocke's parliamentary career, cited hereafter as *History of Parliament Trust*.

⁵Tanfield was last elected in 1601, when he was serving as a serjeant-at-law; Williams, *Parliamentary history of the county of Oxford*, pp. 196-197.

⁶*Liber Famelicus*, p. 19.

period 1603-1621.⁷ The importance of the 1610 debate on impositions (in which James Whitelocke was highly prominent) was such to "the progress of constitutional ideas",⁸ Tanner concluded, that if:

the policy of the Stuart dynasty... should appear to threaten the public weal as the country gentry and the commercial classes conceived it, Parliament was now qualified to come forward as a critic of the Government, or even a rival to the Crown, if any powerful motives should arise to induce it to take up an attitude of independence.⁹

In more recent times this orthodoxy, maintained by Rabb and Hirst in the 1970s¹⁰ and Hexter in the 1980s,¹¹ has come under trenchant criticism.¹² In articles published in 1976 and 1984, Conrad Russell convincingly demonstrated the need to consider the mutability of parliament as a political institution, the practical nature of parliamentary business, and the concern of members in the lower House for local interests and the invisible hand of their patrons.¹³ In 1986, Sharpe asserted that revisionists:

no longer accept that the period 1603 to 1641 saw an inevitable constitutional conflict centred upon rival claims to power between an absolutist monarchy and a developing House of Commons... the court and the House of Commons were not united blocs, belligerently eyeing each other across the terrain of issues that divided them... both court and House of Commons were divided within themselves. Moreover, allegiances and connections ran vertically as well as horizontally:

⁷Cf. Maitland, F.W., *The Constitutional History of England* (London 1908); Notestein, 'The Winning of the Initiative by the House of Commons'; Tanner, *English Constitutional Conflicts of the Seventeenth Century*.

⁸Tanner, *English Constitutional Conflicts*, p. 44.

⁹Tanner (ed.), *Constitutional Documents*, p. 201.

¹⁰Rabb & Hirst, 'Revisionism revised', *passim*.

¹¹Hexter, J.H., 'Power Struggle, Parliament and Liberty in Early Stuart England', *Journal of Modern History* 50 no. 1 (1978), pp. 1-50; 'The Early Stuarts and Parliament', *Parliamentary History* 1 (1982), pp. 181-215.

¹²Note the comments of Sharpe on the reaction to this criticism in 'Crown, parliament and locality: government and communication in Early Stuart England' in *Politics and Ideas*, p. 76.

¹³Russell, C., 'Parliamentary History in Perspective, 1604-1629', pp. 7-29; 'The Nature of a Parliament in Early Stuart England' in H. Tomlinson (ed.), *Before the English Civil War: Essays on Early Stuart Politics and Government* (London 1984), pp. 123-150.

factions at court had clients in the Commons, and members of the Commons looked to patrons in the Lords and at court.¹⁴

J.P. Kenyon, revising his first edition of *The Stuart Constitution* in the same year, concluded that:

in 1610 the Commons' attention was focussed on impositions almost entirely, and the fact that a body composed almost entirely of landowners should be so moved on this matter suggests the presence of a powerful merchants' lobby, inside and outside parliament.¹⁵

To date, James Whitelocke has yet to be convincingly relocated in this revisionist account of events. And while the political alignments and constitutional issues of early Stuart parliaments can no longer be neatly woven into a teleological tapestry marking a "high road" to civil war, equally, those who would set out to erase this orthodoxy must face thorny individual evidence of conflict, both in action and words, well before the eventual political breakdown of King Charles's reign. By exploring the impact of James Whitelocke's thoughts and deeds in a parliamentary setting, this chapter questions the causes and effects of political dissent in the early parliaments of James I.

The parliament of 1610:

Reflecting on "the various mixture and composition" of the House of Commons in the year in which James Whitelocke rose to parliamentary prominence, Francis Bacon declared:

We have in our house learned Civilians that profess a law that we reverence and sometimes consult with...we have grave professors of the Common Law, who will define unto us that these are parts of sovereignty and of the royal prerogative...¹⁶

James Whitelocke's training, both in civil and common law, earmarked him for an

¹⁴Sharpe, 'Crown, parliament and locality: government and communication in Early Stuart England', p. 75.

¹⁵Kenyon, J.P. (ed.), *The Stuart Constitution, 1603-1688* (2nd ed., Cambridge 1986), p. 47.

¹⁶Harleian MSS 6797, fol. 136, quoted in J. Spedding (ed.), *The Works of Francis Bacon*, 14 vols. (London, 1858-1874), vol. 11, p. 165; hence *Works*.

active role in parliamentary affairs, while his association with the Society of Antiquaries added to his reputation as an authority on legal precedent.¹⁷ Whitelocke's nomination to a range of committees was achieved with the support of fellow parliamentarians who knew him through a range of associations: members of the merchant guilds, lawyers from the inns and the courts of law, associates from the Society of Antiquaries, and "country" associates such as Sir John Croke, who had served as speaker for the House in the first session of 1604.¹⁸ The issues that had shaped the development of earlier sessions - James's desire for finance; the emotional arguments which beset debate over the proposed union with Scotland; the Commons' insistence on the need to have their grievances discussed and redressed before forwarding the king supply¹⁹ - all would have been well considered by Whitelocke before he set foot in Westminster Hall.²⁰ As the session progressed, Whitelocke was to take a strong and independently-minded attitude towards emerging issues which he felt had a bearing on the success of the parliament. At thirty-nine years of age, with an established legal practice and a broad range of contacts within the parliament, Whitelocke was well prepared to advance his ideas and raise his profile by vigorous participation in the activity of the House. It is clear that members of the Commons saw his potential. In the fourth session, he would be named to no less than twenty-four parliamentary committees.²¹

Recently, historians have diverted our eyes away from well-known debates to the routine business of parliament in which members represented the concerns of their constituencies.²² The range of committees on which James Whitelocke served

¹⁷Note Bacon's assesment of Whitelocke in 1614 as "learned and diligent, and conversant in reports and records"; BL Cottonian Titus F IV, fol. 12; BL Lansdowne MS 486, fols. 15-16.

¹⁸The procedure of the time was for members to be nominated by calls from the floor; I am grateful to Conrad Russell for information on this matter.

¹⁹Notestein, W., *The House of Commons 1604 -1610* (New Haven & London 1971), pp. 60-255; Munden, R.C., 'James I and 'the growth of mutual distrust': King, Commons, and Reform, 1603-1604' in Sharpe (ed.), *Faction and Parliament*, pp. 43-72; Lockyer, *The Early Stuarts*, pp. 158-182.

²⁰See Whitelocke's introductory remarks in his speech of 2 July 1610 in Howell, T.B. (ed.), *A Complete Collection of State Trials*, 34 vols. (London 1809-1828), vol. 2, col. 479; hereafter cited as *State Trials*.

²¹*Commons' Journal*, pp. 394b, 398b, 399b, 400b, 407a, 418a, 418b, 419a, 419b, 423a, 432a (2), 443b, 444b, 445a (2), 445b, 446b, 447b, 449b, 450a.

²²Hirst, 'Court, Country, and Politics before 1629', pp. 105-106; Sharpe, 'Crown, Parliament and

during his stint in the parliament of 1610 underlines their point. Whitelocke's thorough knowledge of local property law, gained through work as steward of St John's and recorder of Woodstock, promoted him as a candidate for several committees, including a committee for resolving the estate boundaries of a Berkshire gentleman, a committee against forcible entry, and a committee preparing bills on university residence.²³ Knowledge of the principles of common and civil law (and perhaps also a rhetorical ability noted by legal and antiquarian associates) primed Whitelocke for a vigorous role in the more passionately debated issues of the parliament. Whitelocke helped to prepare for two conferences with the House of Lords during the Commons' vigorous attack on John Cowell's *Interpreter*, and later assisted in the preparation for a conference on the Great Contract, where he pursued a similar line to the one he had adopted during impositions, suggesting that "this matter of support [by way of a fixed parliamentary subsidy to the Crown] was a thing strange and never heard of in Parliament but once".²⁴ While these tasks were important, it was on the issue of impositions that Whitelocke took his most visible public role in 1610.

Although the story of impositions is well known, it warrants a brief appraisal.²⁵ Meeting in 1606 under some political pressure from Robert Cecil,²⁶ the barons of Exchequer had ruled against John Bate's legal challenge of the King's impositions on currants. Baron Clark, stressing the ambiguity of precedent, declared that matters of royal revenue "shall not be according to the rules of Common Law, but according to the precedents of this Court wherein these matters are disputable and determinable."²⁷ Chief Baron Fleming ruled that the office of the king involved an "ordinary" and "absolute" prerogative. According "to the wisdom of the King for the common good", he suggested, this loosely defined "absolute" prerogative was

Locality', p. 87.

²³*Commons' Journal*, pp. 399b, 418a, 418b (2).

²⁴*Commons' Journal*, pp. 400b, 407a, 449b.

²⁵Cf. Burgess, *The Politics of the Ancient Constitution*, pp. 139-144.

²⁶Croft, 'Fresh Light on Bate's Case', *Historical Journal* 30 no. 3 (1987), pp. 535-536.

²⁷*State Trials*, vol. 2, col. 382.

subordinate only to the dictates of statecraft:

And whereas it is said that if the King may impose, he may impose any quantity what he pleases, true it is that this is to be referred to the wisdom of the King, who guideth all under God by his wisdom, and that this is not to be disputed by a subject; and many things are left to his wisdom for the ordering of his power, rather than his power shall be restrained.²⁸

The political import of this ruling was not lost on Cecil, now earl of Salisbury and newly appointed lord treasurer, who used it as the precedent to introduce a new Book of Rates in the Spring of 1608 which extended duties widely, in the face of a royal debt approaching a million pounds.²⁹ In the *Liber Famelicus*, Whitelocke directed his readers to consider the impact of this dramatic extension of impositions on the final sessions of parliament by reading the record "amplye related by the clerk of the parliament", as well as his treatise "wherein is expressed the most alledged for the righte of the subject".³⁰ It is to these sources that we must look to draw our judgement.

In 1610, disagreement over impositions began with parliamentary attempts to verify the precedent for this type of royal levy. On 1 May 1610, along with Robert Cotton, Roger Owen, Francis Tate, Heneage Finch, Nicholas Fuller and Anthony Dyott, Whitelocke was nominated as a member of a sub-committee, "to make search of all such records and precedents as may give light on furtherance of that business".³¹ Pressure from the king to disband the larger committee on impositions, which monitored the activity of this sub-committee, led the Commons to lodge a petition protesting their right to continue this investigation on 24 May.³² On June 16, as the Commons moved to frame a petition on the basis of relevant precedents, Whitelocke was asked to bring twenty records from the Tower to the

²⁸*State Trials*, vol. 2, col. 391.

²⁹Lockyer, *The Early Stuarts*, p. 77-78.

³⁰*Liber Famelicus*, p. 24.

³¹*Proceedings in Parliament 1610*, vol. 2, p. 74.

³²Longleat Papers, vol. 1, fol. 90: "Remonstrance on his Majesty's commandment of restraint from debating his right of imposing upon goods exported or imported".

House for presentation to the full committee.³³ On July 10 he was again nominated, along with Sir Edwin Sandys, Fuller, Thomas Crew, William Hakewill, Finch and four of the king's counsel, to gather the arguments assembled for the case of impositions, reduce them into writing, and a "case to be made thereof".³⁴ Although there is evidence that this project never reached fruition, it was from the assembled lists of records on impositions, and joint discussion of them, that a case was created by which members would oppose impositions.³⁵ It appears that throughout the session committee members were in close contact with one another and other members of the House. Surviving in Whitelocke's papers is an order for the lawyers of the House of Commons to assemble at the parliament chamber of the Middle Temple on June 12,³⁶ to assess copies of records assembled from the Tower and the Exchequer on impositions, and report back to the Commons upon their bearing on the Crown's position.³⁷ On 17 June Whitelocke wrote to Robert Bowyer, clerk of the House, urging speed in the dispatch of copied records from the Tower.³⁸ Their interaction continued apace as Whitelocke inspected parliamentary rolls dating from the reigns of Edward III and Richard II and began to prepare a case.³⁹

Whitelocke's early comments to the House of Commons on the matter of impositions were made in response to King James's speech to both Houses on the issue on May 21. Although the king tried to dampen controversy on the subject before attention was diverted away from his own political agenda, his speech would have done little to inspire his members' confidence in the royal commitment to the

³³*Proceedings in Parliament 1610*, vol. 2, p. 149; *Commons Journals*, p. 440.

³⁴*Proceedings in Parliament 1610*, vol. 2, p. 272.

³⁵*ibid.*

³⁶As noted above, the governing body of the Middle Temple was known as its parliament, hence the term parliament chamber.

³⁷Longleat House, vol. 1, fol. 92.

³⁸H.L.R.O. Main Papers, H.L., 17 June 1610; cited in *Proceedings in Parliament 1610*, vol. 2, p. 149; *H.M.C. Third Report*, p. 13. Many of the notes and records examined by Whitelocke during the preparation of a case on impositions in 1610 (discussed below) survive in Inner Temple Petyt MS 537, vol. 14, fols. 187-213v.

³⁹Inner Temple, Petyt MS. 537, fols. 187v-213v. Of 31 records, four are noted as having been examined by Whitelocke and seven are certified by Robert Bowyer.

rights of parliament. In an uninspired analogy, he reminded parliament that in other realms "all kings Christian as well elective as successive have power to lay impositions. I myself in Scotland before I came hither, Denmark, Sweden that is but newly successive, France, Spain, all have this power".⁴⁰ Chiding those who challenged his rights on this issue, James warned that it was "an ill consequent... to say that because kings have done so they have no power to do otherwise... You cannot clip the wings of greatness".⁴¹ In an assembly acutely conscious of their individual and collective rights as members of parliament, and defensive in the extreme about their political heritage, such rhetoric was hardly placatory.⁴² Whatever his intention, James's conclusion that "Many things I may do without parliament, which I will do in parliament, for good kings are helped by parliament not for power but for convenience that the work may seem more glorious" must have sounded to many present not like a conciliatory remark, but a thinly veiled threat.⁴³

As the lower House assembled on the following day, Whitelocke was one who responded to the king's speech. His words suggest a measured reaction to the position taken by James. Stressing the need for a conciliatory position, he urged that while insisting upon their right to discuss impositions, "some course may be taken by us with duty and respect, not with reluctance and contention, to give the King satisfaction and show him that it is fit for us to proceed".⁴⁴ Whitelocke suggested that to back down on the issue altogether, however, was of consequence

⁴⁰*Proceedings in Parliament 1610*, vol. 2, p. 102.

⁴¹*Proceedings in Parliament 1610*, vol. 2, p. 103.

⁴²The anxiety felt by some members should not be underestimated in the context of a sometimes impassioned sitting. The furore created over John Cowell's *Interpreter* reflected the nervousness of a house deeply concerned for its rights, and acutely sensitive towards changes in tone adopted by ecclesiastics and civilians stressing an exalted view of the prerogative. Whitelocke's associates from the committee on impositions were amongst the most outspoken on this matter. Richard Martin asked "Who will not be afraid when he shall hear a man in high place say, if the king takes anything without Parliament 'tis his right, if in parliament 'tis his grace?" He condemned those that "preach in pulpits and write in corners the prerogative of a king, and dare put into the King... that which hath made him do things here which he never did in Scotland, nor his predecessors in England"; *Proceedings in Parliament 1610*, vol. 2, p. 328.

⁴³*Proceedings in Parliament 1610*, vol. 2, p. 105.

⁴⁴*Proceedings in Parliament 1610*, vol. 2, p. 109.

to "the ancient frame of the commonwealth", reminding members of those points he thought uniquely characteristic of the English constitutional arrangement:

One is that we are masters of our own and can have nothing taken from us without our consents; another that laws cannot be made without our consents, and the edict of a prince is not a law; the third is that parliament is the storehouse of our liberties.

All these are in danger to be lost by this power, for *de modo et de fine non constant nobis*.⁴⁵

His deduction was simple but pointed: "We know not how this may stretch."⁴⁶ His words are not easily dismissed as rhetoric; Whitelocke later told members that while the inconvenience of the impositions to merchants "needs no debate", establishing "the point of right" was vital to those more "desirous that the truth may be knowne, and right be done, than that the opinion of myself or any other prevail".⁴⁷ In the vein suggested by Whitelocke's speech of the 22nd, the House prepared a petition insisting upon their right to debate the matter openly, a copy of which was kept by Whitelocke for future reference.⁴⁸ Eager to promote support for the Great Contract, James wavered and then finally consented to a "great debate" on impositions between 23 June and 3 July in which members could voice their opinions. The fullest surviving record on Whitelocke's thoughts upon the question of impositions survives in a manuscript prepared from his speech to the house on 2 July.⁴⁹

Focussing attention upon a number of questions which had not, in his opinion, been fully considered in earlier speeches, Whitelocke made plain his view that the outcome of this debate had wide-ranging constitutional implications. Beyond narrower issues of royal revenue, he urged, the case of impositions was one of "our very essence".⁵⁰ Whitelocke then laid out the central thesis of his argument:

⁴⁵*ibid.*

⁴⁶*ibid.*

⁴⁷*State Trials*, vol. 2, col. 480.

⁴⁸Longleat Papers, vol. 1, fol. 90.

⁴⁹The treatise prepared from the speech is reprinted in *State Trials*, vol. 2, cols. 479-520. How closely Whitelocke's speech followed the surviving treatise is impossible to say, but to read the entire document aloud takes approximately one and a half hours.

⁵⁰*State Trials*, vol. 2, col. 479.

if there be a right in the king to alter the property of that which is ours without our consent, we are but tenants at his will of that which we have. If it be in the king and parliament, then we have propertie, and are tenants at our own will, for that which is done in parliament is done by all our wills and consents.⁵¹

Whitelocke's assumption was that the terms of the letters patent by which impositions had been set constituted an innovation, disregarding accepted principles of taxation. By prosecuting those who refused to pay on imposed customs not ratified in parliament, the king had either unlawfully assumed possession of the goods, or his letters patent had assumed the force of law.⁵² These were the issues, Whitelocke stressed to his listeners, which concerned them - and it was here that the danger of the duties lay, "for if he [the King] alone out of parliament may impose, he altereth the law of England".⁵³

Declining to discuss those "great mysteries of policie and government" which had prompted the letters patent, Whitelocke suggested his concern for the "reference to the rights and practices of forraine princes" which prefaced the book of rates.⁵⁴ Employing his knowledge of civil law to stress the differences between Justinian's code and the legal traditions of his own country, Whitelocke reflected that just as, in civil law, kings "have an absolute power to make law, they have also a power to impose".⁵⁵ He continued with a blunt but perceptive warning on the possible ramifications of a placid endorsement of the king's claim:

And if this power of imposing were quietly settled in our kings, considering what is the greatest use they make of assembling of parliaments, which is the supply of money, I do not see any likelihood to hope for often meetings in that kind, because they would provide themselves by that other means.⁵⁶

⁵¹*ibid.*

⁵²*State Trials*, vol. 2, cols. 483-484: "But if you will deny, that the king doth in this case take the goods of the subject without his assent, then you must fall upon mine alternative position, that the king's patent hath in this case the power of a law."

⁵³*State Trials*, vol. 2, col. 483.

⁵⁴*State Trials*, vol. 2, col. 481.

⁵⁵*State Trials*, vol. 2, col. 486.

⁵⁶*State Trials*, vol. 2, col. 487.

Turning to legal precedent, Whitelocke admitted the essential ambiguity of evidence already discussed and debated, but suggested the need to seek the constitutional conventions which underlay the practice of kings in former times. It was a reading at once ahistorical in its understanding of the practices of former times, and persuasive, placing the issue in a long sequence of supposed right and obligation. "Can any man give me a reason" Whitelocke asked members, "why the king can only in parliament make lawes? No man ever read any law whereby it was so ordained, and yet no man ever read that any king practised the contrary".⁵⁷ Here was direct reply to the philosophy of kingship which underlay Fleming's 1606 Exchequer judgment and James's speech to the House of 21 May, for the inference was that in matters of statecraft the king was bound to respect conventions which, Whitelocke would argue, were immutable and sacrosanct.

The range of individual statutes which Whitelocke cited from the reigns of Edward I to Elizabeth reflected a thorough search of the available records within the terms assigned to him for the debate.⁵⁸ Driven by the interpretative methodology considered above, his argument flowed naturally from his understanding of these records.⁵⁹ In the study which laid the groundwork for his professional advancement, Whitelocke had encountered hundreds of legal documents touching upon the practical demarcation of the king's power within the framework of statute law. Collectively, these documents presented a view of monarchy centred upon the relationship of past kings to the laws of England, as executed in the courts of law, and authorized by Parliament. As this reading of the past moved through time, it surrounded the king's prerogative in a complex framework of right and obligation.

⁵⁷*State Trials*, vol. 2, col. 483.

⁵⁸For his medieval precedents Whitelocke relied mainly upon the statute books, citing 1 R. 3, cap. 2; 5 E. 2, cap. 14; 2 E. 3, cap. 7, 9 E. 3, cap. 1, 21 E. 3, cap. 16, 21 E. 3, cap. 1, 34 E. 3, cap. 1; 1 H. 7, cap. 19. For the later period he employed a range of legal commentators including Bracton (1.1.c. 8), Fortescue (*De Laudibus Legum Angliae*, ch. 9), Phillippe de Comines, *An epitome of all the lives of the kings of France* (book 4, ch. 8), and particularly the reports of Dyer from the reign of Elizabeth I. Other sources included the parliamentary rolls (2 H. 4, number 109), and an Exchequer judgement drawn from the court rolls in the seventeenth year of Richard II.

⁵⁹Cf. Harris, G.L., 'Medieval Doctrines in the Debates on Supply, 1610-1629' in Sharpe (ed.), *Faction and Parliament*, pp. 75-81.

Like a building covered in scaffolding for so long that one ceases to remember its original appearance, Whitelocke now found it impossible to reconcile the King's prerogative to impose without implicating those structures that in his mind had always tempered prerogative rights.

To Whitelocke's way of thinking, lines of demarcation between Crown and parliament were firmly set in some vague yet immemorial manner. He acknowledged that "unparliamentary" impositions existed in the past, but only to prove that kings had overstepped the mark in each instance, and had been subsequently forced to seek parliamentary sanction for their actions: "never any imposition was set on by the king out of parliament, but complaint was made of it in parliament: and not one that ever stood after such complaint was made, but remedy was afforded for it".⁶⁰ Whitelocke could raise some clear examples to demonstrate that earlier parliaments had taken strong exception to royal impositions levied without their consent, and that kings had found it politically expedient (if not, as Whitelocke implied, imperative) to remove these impositions. He chose to ignore, however, the frequently blurred lines between exception, right and obligation that surrounded their dealings. Ignoring the malleability of parliament over its long history, this blinkered reading of custom allowed Whitelocke to argue that the past must dictate the "natural policy and constitution of our commonwealth".⁶¹

Like Hakewill, Fuller, Sandys, and the others who spoke against impositions in 1610, Whitelocke appealed to custom as a reasonable benchmark by which to weigh issues "requiring certainty in matter of profit between the King and the subject".⁶² By exploring the range of rights guaranteed to the royal prerogative in law, all of these men argued that customary boundaries could be shown to operate on non-parliamentary methods of taxation. No one but Whitelocke, however, went on to define the structure of English political sovereignty itself. Here it would appear that

⁶⁰*State Trials*, vol. 2, col. 503.

⁶¹*State Trials*, vol. 2, col. 514.

⁶²Tanner (ed.), *Constitutional Documents*, p. 250.

Whitelocke's thoughts were once again encouraged by his understanding of the evidence, which in his eyes stressed a balance of political power, shared by kings and their parliaments, that flowed naturally from their contractual obligations to each other.

Like all Jacobeans, James Whitelocke was forced to reconcile the office of kingship to the person of the king by means of two (loosely corresponding) capacities, the "ordinary" and "extraordinary" prerogative.⁶³ Personal experience as a lawyer would have impressed upon him practical limitations upon the prerogative, and underlined the institutional mechanisms by which royal power was dispensed. The respect paid to parliament by Whitelocke reflected in part its central role in the construction of law, as well as its importance in law as the place of final recourse. Whitelocke noted that when "a judgement be given in the King's-bench, by the king himselfe, as may be, and by the law is intended, a writ of error, to reverse the judgement, may be sued before the king in parliament".⁶⁴ In his brief but often quoted consideration of sovereignty, Whitelocke stressed two forms of royal power more or less corresponding to the "ordinary" and "absolute" prerogative. "The soveraigne power", he told members, "is agreed to be in the king: but in the king is a two-fold power; the one in parliament, as he is assisted with the consent of the whole state; the other out of parliament, as he is sole, and singular, guided merely by his own will."⁶⁵ He argued that the "subordinata" or personal prerogative was always responsive to the "suprema potestas", or public prerogative achieved with parliamentary sanction. "It will then be easily proved", he claimed "that the power of the king in parliament is greater than his power out of parliament, and doth rule and control it".⁶⁶ Never intended to be inflammatory, it was a simple and perhaps daring conclusion.

In the parliament of 1610, lawyers such as James Whitelocke did not seek to

⁶³Explored at length in Calvin's case (1608); *State Trials*, vol. 2, cols. 611-658.

⁶⁴*State Trials*, vol. 2, col. 482.

⁶⁵*ibid.*

⁶⁶*ibid.*

question the nature of the constitution; the King's legal authority was forced into question under the specific pressure of events. Defined and debated in the House, an ambiguous theoretical framework of obligation and right summed up in Bracton's tautology that "The King can do nothing upon earth (seeing he is the servant and lieutenant of God) but that which he may lawfully do",⁶⁷ was shown to be an arrangement broad enough in its maxims to accommodate important, perhaps critical differences of emphasis. Heneage Finch underlined the tensions in this situation when he raised the pointed question of prerogative rights as the debate on impositions was getting underway:

I hear sometimes of indisputable prerogatives and I agree there are such, namely those that are prerogatives so clearly to be yielded that they are without dispute... Other sense of this word I am yet to learn... for it hath been already disputed both here and in the Exchequer and we are not yet agreed. I will not deny the distinction of two powers in the king, a limited power and an absolute... but what absolute power is, is all the question.⁶⁸

It was a question that the Commons now attempted to clarify as they sought to gain the king's acceptance of a petition which acknowledged the force of customary convention. Dudley Carleton wrote at the conclusion of the debate:

when the powder was all spent on both sides, we grew in the end to this peaceable conclusion - not to put the question of right to condemn hereby the judgement of the Exchequer in the matter of currants, whereof all this is consequence, but to frame a petition by way of grievance, implying the right... and so the rest of the grievances... were drawn up into a large scroll of parchment... and so presented by the Solicitor, accompanied by twenty of the House.⁶⁹

On 3 July Whitelocke had been appointed to help draft this petition, and over the following week he continued to be at the forefront of attempts to "digest the dispute

⁶⁷Woodbine, G.E. (ed.), *Bracton De Legibus et Consuetudibus Angliae*, 4 vols. (trans. S.E. Thorne, Cambridge Mass. 1968), vol. 2, p. 305.

⁶⁸Foster (ed.), *Proceedings in Parliament 1610*, vol. 2, p. 234.

⁶⁹Birch, T. (ed.), *The Court and Times of James I*, 2 vols. (London 1848), vol. 1, p. 122. 'Dudley Carleton to Sir Thomas Edmondess, 13 July 1610'.

on both sides".⁷⁰ It must have been with some satisfaction that Whitelocke viewed the fifth section of the final draft, presented to James on 7 July, treating 'Impositions upon merchandise'. One sees in its carefully worded assertions the substance of his own thoughts on the issue.⁷¹ "The policy and constitution of this your Majesty's kingdom", the petition reminded James, "appropriates unto the kings of this realm, with the assent of parliament, as well the sovereign power of making laws, as that of taxing or imposing upon the subjects' goods or merchandises, wherein they justly have such a propriety, as may not without their consent be altered or changed". The assumption mirrored Whitelocke's own: that the King was obliged to act in accordance with a convention, historically demonstrated, "in imitation likewise of your noble progenitors".⁷² By their petition of grievances, the Commons attempted to steer a middle path, allowing the King to retain existing customs duties whilst stressing their right to regulate all subsequent duties. As an attempt at compromise, it met with little success. On 10 July Salisbury replied to the petition on behalf of the King. Standing on the legal ruling in Bate's Case, he refused to yield to the Commons' claims on the point of right: "The King hath the law to justify him and precedents to speak for him. I know not what he should have more," was his unequivocal reply.⁷³ The weak response of the Commons to this message says more about the transient nature of parliaments than the feelings of MPs towards the treasurer's reply; by the 19th of July Sir Edwin Sandys reported to Salisbury that the "lawyers [have] gone to their circuits and out of the town and our bodies [are] much wasted."⁷⁴ The expectations of James Whitelocke and others in the House would receive a new forum for discussion in the parliament of 1614.

Placing James Whitelocke's speech on impositions into a constitutional context is not easy. While most would agree that Whitelocke stepped out onto new ground in

⁷⁰*Commons' Journals*, pp. 445a, 445b, 446b, 447b, 450a.

⁷¹It is notable that the petition is presented as a preface to his arguments in the manuscript that records his speech.

⁷²*Proceedings in Parliament 1610*, vol. 1, pp. 129-134.

⁷³*ibid.*; Gardiner, S.R. (ed.), *Debates in 1610; edited from a member of the House of Commons*, Camden Society Old Series 81 (London 1862), pp. 155-158.

⁷⁴*Proceedings in Parliament 1610*, vol. 1, p. 154.

1610, exactly where he went, or indeed where he had come from, is open to question. Many commentators have treated his argument for the supreme power of king-in-parliament as a progression from contemporary views, marking a shift in constitutional thinking that would eventually find fuller development in parliamentary arguments levelled against Charles I.⁷⁵ Derek Hirst, echoing the view of Kenyon twenty years ago, has argued that in 1610 Whitelocke was "alone" in finding a clear view of the balance between king and parliament, while "the rest remained in the morass."⁷⁶ Whether he stumbled or strode towards this higher intellectual ground is not made explicit by Dr Hirst. Weston and Greenberg, and more recently Burgess, have attempted to relocate Whitelocke's views by arguing that his concept of a king-in-parliament would find fruition in royalist, and not parliamentary arguments during the civil war.⁷⁷ Conrad Russell, arguing for the essentially conservative character of the concept of the "king-in-parliament", has suggested the need to look back to the speeches of Lord Burghley for an Elizabethan parallel to Whitelocke's arguments.⁷⁸

The range of interpretations outlined above suggests that before one can place James Whitelocke's arguments within a firm constitutional context, this context must be defined. Yet as Oakely and Levack have observed, thoughts about the constitution at the turn of the seventeenth century were, to say the least, vague.⁷⁹ For Jacobeans, the mechanics of political sovereignty were not subject to frequent inspection because the system itself was, quite fairly, assumed to work. Put under strain, it proved malleable enough in most instances to avoid the need for closer

⁷⁵Tanner (ed.), *Constitutional Documents*, p. 245; Wootton (ed.), *Divine Right and Democracy*, p. 34; Sommerville, *Politics & Ideology*, p. 179.

⁷⁶Hirst, 'Revisionism Revised', p. 88; Kenyon writes that Whitelocke was the only man able to rise above the "incorrigible antiquarianism of the Commons"; Kenyon (ed.), *Stuart Constitution* (1st edition), p. 56.

⁷⁷Weston & Greenberg, *Subjects & Sovereigns*, p. 19; Burgess, *The Politics of the Ancient Constitution*, pp. 143-144.

⁷⁸This point was made to me in private conversation with Professor Russell in March 1992, but see Russell, C.S.R., 'English Parliaments 1593-1606: One Epoch or Two?' in D.M. Dean and N.L. Jones (eds.), *The Parliaments of Elizabethan England* (London 1990), pp. 191-213.

⁷⁹Oakely, F., 'Jacobean Political Theology: The Absolute and Ordinary Powers of the King', *Journal of the History of Ideas* 19 no. 3 (1968), pp. 339-340; Levack, 'Law and Ideology', p. 226.

inspection. Put under inspection, it proved vague enough in its definitions to accommodate competing claims.⁸⁰ Perhaps rather than seeking ways to reconcile Whitelocke's views with or distinguish them from "contemporary" political thought, we should simply acknowledge what his speech really emphasizes: firstly, that early Stuart political theory was far from homogeneous both in its outlook and its influences, and secondly, that it was characterized by competing notions of the nature of the contract between the king and his subjects. By proposing a definition of sovereignty in his arguments in 1610, Whitelocke was undoubtedly right to note in his diary that he had "expressed the most alleged for the right of the subject."⁸¹

And what of the ideological content? In his chapter on the "rule of law" delivered as part of the 1988 Ford Lectures, Professor Russell stressed the inconsistent and in his eyes incoherent nature of early Stuart parliamentary speeches touching the contract between king and parliament. Pointing to the basic similarities between James's view of his obligations and that of his parliamentarians, Russell played down the force of pre-civil war ideology as a catalyst for conflict.⁸² In part he has been rightly done so: in 1610, James Whitelocke (and no other member of the Commons) would have dared to openly and personally question the king's actions. The trial of Charles I in 1649, by judging the king unfit to rule over a system in which he was sovereign, represented not only a political breakdown but the collapse of a mental culture. How then, could Whitelocke's views have had any relevance to later events?

In his desire to balance the teleological histories of the past, Russell may have overlooked the way in which ideas, and particularly publicly-recorded ideas preserved in manuscript or printed form, built bridges in people's consciousness during the reigns of James and Charles I.⁸³ By making particular conceptions of

⁸⁰Cf. Daly, 'Cosmic Harmony and Political Thinking in Early Stuart Society', *Transactions of the American Philosophical Society* 69 no. 7 (Philadelphia 1979), p. 18.

⁸¹*Liber Famelicus*, p. 24.

⁸²Russell, *Causes of the English Civil War*, p. 160.

⁸³Cf. Hollinger, D.A., 'T.S. Kuhn's Theory of Science and Its Implication for History', *American Historical Review* 78 no. 2 (1973), pp. 370-393, esp. pp. 373-377.

reality seem predictable and logical, previously expressed theories of political sovereignty were the stepping stones which provided people with the confidence to move into uncharted waters. In this sense, what went before 1642 was entirely significant, because it was something to grasp, something to re-read and reinterpret in light of present troubles. In this sense the impact of James Whitelocke's speech on impositions, touching several hundred men at best, was far less significant than the impact of the manuscript treatise that was prepared from it. Presented together with the Commons' petition to the king, this treatise appears to have been widely circulated in manuscript form after the session ended,⁸⁴ and further copied from prepared manuscript versions, as by Sir John Davies in his notes on the debate.⁸⁵ In 1641, the speech made its way from the printing press as *A learned and necessary argument to Prove that each Subject hath a Propriety in his Goods* in the opening shots of a propaganda war with the king which would reach extensive proportions in 1649. Thus preserved, Whitelocke's thoughts on impositions were always open to reinterpretation in a shifting political context, a context with which Whitelocke himself would have been by the end entirely unfamiliar. It was the capacity of one idea to sustain a multitude of people, in different places and different times, rather than the capacity of any individual to sustain a particular belief over their own lifetime, that holds the key to understanding the role of ideology in early modern society.

Three features which stand out from Whitelocke's participation in the "great debate" on impositions in 1610 sit uncomfortably with the revisionist appraisal of this parliament. The first is complete lack of evidence to suggest any dependence on his part to "patrons" in the Lords or outside the parliament.⁸⁶ Whitelocke's first

⁸⁴A brief search of the major English manuscript repositories revealed four copies: BL Additional MS 36, 082, fols. 105-176v; BL Stowe MS 298, fols. 89-140v; CUL MS Dd. 2.25; Lincoln's Inn MS Maynard 52 (4).

⁸⁵CUL MS Ff .3.17, fol. 75ff.

⁸⁶Of all the so-called "revisionist" views that have gained currency in recent years, the relationship between patron and client remains for me the most contentious and most susceptible to oversimplification; cf. my comments on Whitelocke's patronage in the courts of law and the counties, pp. 224-225, 228-230, 234-236.

remarks on impositions in the *Liber Famelicus* note simply that "the credit of the judgment given in the Eschequer in the case of currants... did not satisfy me" though "I only opposed my self at the first to the receiving of it, and so toke hold a little."⁸⁷ Here one notes the interplay of principle, politics and pragmatism; like many other barristers who opposed impositions forcefully in the parliament, Whitelocke's interest in "the point of right" had been stimulated considerably by the subsequent extension of duties to numerous other types of merchandise.⁸⁸ Subsequently, he tells us, he "took better hold", directing us to his parliamentary actions. No doubt Whitelocke had a keen interest in the extension of duties - his father had been a merchant, as was his twin Richard, and many within his circle of acquaintances had mercantile interests.⁸⁹ Eight years after the 1610 parliament, Whitelocke recounted that he had earned the "good opinion" of many prominent members of the corporation of the city of London "for the good service they conceived I [had] done for the citye in the parliament".⁹⁰ No stronger connection can be demonstrated between Whitelocke's associations with a "merchants' lobby" and his vocal criticism of impositions in 1610, and this incident speaks to me less of patronage and more of simple gratitude.

In light of revisionist claims that the term "opposition" ignores the fragmented alliances of the Jacobean parliaments,⁹¹ a second feature of events in 1610 that warrants careful attention is the pattern of parliamentary management that emerged over the issue of impositions.⁹² In fact, while no coherent group of political "rivals"

⁸⁷*Liber Famelicus*, p. 24.

⁸⁸In his speech of July 2 Whitelocke noted impositions "do extend to the number of many hundreds, as appeareth by that printed book of rates, and are set in charge upon the whole kingdom as an inheritance to continue to the king, his heires and successors for ever..."; *State Trials*, vol. 2, p. 481.

⁸⁹It should be noted, however, that Whitelocke never belonged to either the Court of Aldermen or the Court of Common Council for the city of London, and I can find no mention of any association with the Company of Merchant Taylors' beyond his election as probationer of St John's in 1588.

⁹⁰*Liber Famelicus*, p. 64.

⁹¹See in particular Kishlansky, M.A., 'The Emergence of Adversary Politics in the Long Parliament', *Journal of Modern History* 49 no. 4 (1977), pp. 617-640.

⁹²The biographical detail upon which this discussion is based has borrowed freely from the 'Biographical Dictionary' appended to T.B. Clendenin, 'The Common Lawyers in Parliament and Society: A Social and Political Study of the Common Lawyers in the First Jacobean Parliament' (1975 University of North Carolina PhD thesis).

can be said to have existed in opposition to the Crown in 1610, committees were rapidly formed which served as the nucleus for opposition to particular Crown policies. Of those elected to the sub-committee ordered to gather precedents on impositions, Robert Cotton, Sir Roger Owen and Francis Tate would all have been familiar to Whitelocke through their association with the Society of Antiquaries. Cotton and Owen, unlike their committee colleagues, had studied law without making a career of it. Robert Cotton's expertise in antiquarian matters was widely acknowledged and his library and personal expertise were constantly in demand both in and out of parliament.⁹³ Owen's knowledge of the common law was considerable; in 1616 he would complete a manuscript entitled 'Of the Authoritie, Ampleness and Excellencie of the Common Lawes of England', which ran in its completed form into twenty effusive chapters.⁹⁴ Along with Francis Tate, who was a practising barrister and a Middle Templar of some note (he would be elected treasurer of the society in 1615), Thomas Crew, Heneage Finch, and Nicolas Fuller were all practising lawyers.

When one considers the working groups subsequently called to refine the House's stance on impositions, the patterns of association emerging from this initial group are reinforced. Apart from Sandys, whose influential role in parliamentary affairs needs no repetition here, every member was a practicing barrister. John Hoskyns was a fellow Middle Templar called to the bar in the same year as Whitelocke, and also one of several whose criticism of the Crown would lead to prosecution. William Jones, who like Whitelocke had strong connections with Oxfordshire, was serving as MP for the city of Oxford and had recently been made a bencher of Lincoln's Inn. Whitelocke's "friend and convert" William Hakewill was also a merchant's son who had been called to the bar from Lincoln's Inn.⁹⁵ Thomas

⁹³Sharpe, *Sir Robert Cotton*, pp. 154-164.

⁹⁴BL Harleian MS 3627, BL Harleian MS 1572, BL Lansdowne MS 646; see Strathmann, E.A., 'Raleigh's *Discourse of Tenures* and Sir Roger Owen', *Huntington Library Quarterly* 20 (1956/7), pp. 219-232.

⁹⁵Jansson, M. (ed.), *Proceedings in Parliament 1614 (House of Commons)* (Philadelphia 1988), p. 55; hence *Proceedings in Parliament 1614*.

Wentworth was another Lincoln's Inn man known to Whitelocke through work on the Oxford circuit; Wentworth, Hakewill, Jones, Hoskyns would all be noted by Whitelocke as having an important part to play in the presentation of arguments against impositions in 1614.

These existence of committees which contained within them many outspoken critics of the Crown raises a third point at odds with the revisionist interpretation, by stressing the consequences of political dissent. Nicholas Fuller had been imprisoned in 1607 for his passionate arguments against the ecclesiastical High Commission,⁹⁶ and had first taken up John Bate's cause in the House after the Exchequer ruling of 1606.⁹⁷ Thomas Wentworth was to be imprisoned in May 1614 for remarks made to the House in that session, as was John Hoskyns, sent to the Tower after his verbal assault on Scottish favourites during a parliamentary debate.⁹⁸ In the wake of the "addled" parliament, Sir Roger Owen was struck off the commission of the peace⁹⁹ while Sir Edwin Sandys, questioned by the Council for his conduct in the parliament of 1614, was ordered not to leave London without permission and to provide bonds for his appearance whenever called upon.¹⁰⁰ While Cotton was less inclined to criticize the government,¹⁰¹ in 1615 he survived a spell of nearly eight months in jail for his part in a factional intrigue involving the earl of Somerset, while concern was expressed about the collection of records he was building up on sensitive government issues.¹⁰² In 1618 Whitelocke noted that Thomas Crew was named personally by the king as a man he would not permit to hold the office of recorder of London.¹⁰³ Whitelocke felt that his own parliamentary conduct had jeopardized his chances of election to the same office; five years earlier, he had been

⁹⁶There is no adequate consideration of Fuller's prosecution by the High Commission in 1607, but see Usher, R.G., 'Nicholas Fuller: A Forgotten Exponent of English Liberty', *American Historical Review* 12 no. 4 (1907), pp. 743-760; Greaves, R.L. & R. Zaller (eds.), *Biography of British Radicals in the Seventeenth Century* (Brighton 1982) vol. 3, pp. 318-319.

⁹⁷Croft, 'Fresh Light on Bate's Case', p. 533.

⁹⁸*History of Parliament Trust*.

⁹⁹*Liber Famelicus*, p. 43.

¹⁰⁰*ibid.*; *DNB*, vol. 50, p. 287.

¹⁰¹See Sharpe, *Sir Robert Cotton*, *passim*.

¹⁰²*DNB*, vol. 12, p. 310.

¹⁰³*Liber Famelicus*, p. 67.

imprisoned for his criticism of government policy.¹⁰⁴ In all, seven of the eleven members of the parliamentary committee on impositions mentioned above were formally censured for opposing the interests of the Crown between 1610 and 1621.

Sir Thomas Ellesmere, Chancellor of England from 1596 to 1616, was a man who would have a good deal to do with James Whitelocke's political fortunes after 1610.¹⁰⁵ A vigorous defender of Crown rights, he had written a brief to the Privy Councillors following the parliament warning against those that "quarrel and impeach his Majesty's prerogative, and his regal jurisdiction, power and authority, as those specially touching his Highness' proclamations, touching his right and power of imposition and rates of merchandises".¹⁰⁶ He noted that "some particular persons (desirous to be remarkable and valued and esteemed above others for their zeal, wisdom, learning, judgment and experience) have presumed to use in the lower House publicly very audacious and contemptuous speeches against the King's regal prerogative and power, and his most gracious and happy government".¹⁰⁷ The King himself, having tried to stop the Commons from entering into any discussion of his prerogative rights, would save much of his greatest rhetorical invective for those "wrangling lawyers" that would have his prerogative "tossed like tennis balls in the House".¹⁰⁸ Whitelocke's close friend Humphrey May, who as groom of the Privy Chamber could be expected to know James's mind,¹⁰⁹ told him after the session had ended that "the king had taken offence of my actions in parliament in maintaining the cause of impositions so stifly", warning him that in political terms "I had done good no way by it, but had hurt myself very much".¹¹⁰ Despite a

¹⁰⁴See ch. 5.

¹⁰⁵Biographical sketches of Ellesmere are found in Jones, W.J., 'Ellesmere and Politics, 1603-1617' in Reinmuth (ed.), *Early Stuart Studies*, pp. 11-63 and Knafla (ed.), *Law and Politics in Jacobean England*.

¹⁰⁶Egerton, T., 'Special Observations Touching all the Sessions of the Last Parliament' (1611); *Ellesmere M.S. 2599, Proceedings in Parliament 1610*, vol. 1, Appendix II, pp. 279-280; cf. Knafla (ed.), *Law and Politics in Jacobean England*, pp. 254-262.

¹⁰⁷*ibid.*

¹⁰⁸PRO SP 14/8/93. 'James to the Council, December 7, 1610'.

¹⁰⁹*Liber Famelicus*, p. 21.

¹¹⁰*Liber Famelicus*, pp. 32-33. While the forthcoming History of Parliament Trust biography suggests that a single comment, made by Whitelocke during the fifth session against the thirty members closeted by the King, led to James's displeasure. In light of the king's move to suppress

revisionist emphasis on the consensual nature early Stuart politics before the 1640, May's warning stressed the somewhat precarious place for political dissent in the confined world of Jacobean law and politics.

The parliament of 1614:

As King James summoned his second parliament in February 1614, James Whitelocke found a number of patrons willing to support his election to the House of Commons. When Sir Phillip Herbert, steward of Woodstock manor, pressed for another candidate for the borough, Sir Edward Coke's wife Lady Hatton used her considerable influence in the borough of Corfe Castle (Isle of Purbeck, Dorset) to secure and offer Whitelocke a place. Her decision was undoubtedly influenced by his earlier parliamentary performance, and was made (Whitelocke tells us) "without my privity, for I was absent in the circuit when she sent my name, and when I came to her to take notice of it, and to thank her, she tolde me she did it least an honest man sholde be left out".¹¹¹ Another powerful supporter was Sir Robert Killigrew, who controlled both parliamentary seats at Helston in Cornwall. Although Whitelocke declined his offer, he used his good relations with Killigrew to nominate his brother-in-law Henry Bulstrode for the place while negotiating with the corporation to retain his seat in Woodstock.¹¹²

As parliament opened on April 5, Whitelocke demonstrated a concern for consensus in a sitting in which more volatile tempers flared. From the outset he was one of the more prominent members of the lower House; named to nine committees, he is recorded as making ten speeches over parliament's short duration.¹¹³ Appointed to a committee on 11 April to examine the precedents for admitting

all record of the case prepared by Whitelocke against impositions in 1614 (see below), I would place far greater emphasis on May's exact words.

¹¹¹*Liber Famelicus*, pp. 40-41.

¹¹²*ibid.*; Moir, T., *The Addled Parliament of 1614* (Oxford 1958), pp. 50-51; Williams, *Parliamentary History of Oxford*, p. 199.

¹¹³*Commons' Journals*, pp. 456b, 458a, 460a, 463a, 465a, 467a, 468b, 470a, 472b, 473a, 474a, 489a, 494b, 495b, 498a; *Proceedings in Parliament 1614*, pp. 37, 55-56, 67, 95, 114, 148, 157, 161-2, 213, 245.

Attorney-General Bacon, he took the moderate line that Bacon should be admitted, but that henceforth the attorney be barred from parliament in the traditional manner.¹¹⁴ On April 12 he supported Secretary Winwood's motion for immediate supply "that it may be disposed to the end for which given", the "desire of justice for grievances".¹¹⁵ On 20 April Whitelocke supported the merchants of Exeter and Bristol in their condemnation of the London-based French Company's patent,¹¹⁶ noting speeches "cast abroad that, sitting the parliament, we may dissolve what monopolies we will; after the parliament they shall all up again".¹¹⁷ Increasingly thereafter, Whitelocke found himself with a familiar role to play in the lower House. For him and many others, the session was an opportunity to voice continued concern over issues which had been dismissed, rather than resolved, by the dissolution of parliament four years earlier. From the outset, the question of impositions threatened to sour proceedings;¹¹⁸ by April 19 John Chamberlain observed that the Commons "is now altogether occupied in crying down impositions, and searching records for that purpose".¹¹⁹ In a brief and often disorderly session in which neither bills nor supply were passed, Whitelocke's experience was recognized as he again took a leading role in voicing opposition to the Crown's continued exaction of extra-parliamentary duties.

Pressing for a revision of the Crown's policy on impositions on 5 May, Whitelocke held that the king could be persuaded to change his views by reconsidering the lesson shown by custom. Recalling an example from the reign of Edward III, Whitelocke argued that by "joining with the Lords in this great business", a "petition to the King by both houses" could persuade James "whereby

¹¹⁴*Proceedings in Parliament 1614*, pp. 55-56.

¹¹⁵*Proceedings in Parliament 1614*, p. 67.

¹¹⁶See Jansson's comments in the notes to pp. 112-114, *Proceedings in Parliament 1614*.

¹¹⁷*Proceedings in Parliament 1614*, p. 114.

¹¹⁸Cf. Roberts, C., & O. Duncan, 'The Parliamentary Undertaking of 1614', *English Historical Review* 93 (1978), pp. 481-498; Jansson's introduction to *Proceedings in Parliament 1614*, pp. xix-xxii.

¹¹⁹McClure, N.E. (ed.), *The Letters of John Chamberlain*, 2 vols. (Philadelphia 1939), vol. 1, p. 531.

he is misinformed".¹²⁰ Restating many of the more pertinent arguments he had used four years earlier, Whitelocke was confident that through such a conference parliament could show that impositions were "no flower of the crown", quipping "if a flower, a long winter, not budding in 160 year[s]". His concluding remarks urged the House "not to proceed as with a duel with the King", but to "proceed in our own business with true hearts; in the King's with loyal and loving affections, and so to make it a parliament of love".¹²¹

In 1614, the reliance on sub-committees for the handling of business which gained momentum in the parliament of 1610 would be maintained and refined.¹²² On 12 May, anticipating a conference with the Lords after the Easter break, members of the lower House landed Whitelocke and a number of colleagues who had distinguished themselves in 1610 with the task of preparing a case against impositions.¹²³ For those nominated to the task, this exercise involved refining rather than constructing a case. Of the group Sir Edwin Sandys, Sir Roger Owen, Thomas Crew, Nicholas Hyde, Thomas Wentworth, John Hoskins and William Hakewill had all worked with Whitelocke in 1610 - only Charles Chibborne and Dudley Digges were new faces. Judging by Whitelocke's notes in the *Liber Famelicus*, they quickly organized a comprehensive argument to present to the Lords.¹²⁴ The level of cooperation achieved among them is suggested by his account:

Sir Edwyn Sandes was to shew that the king's imposing without assent of parliament was contrarye to the naturall fram and constitution... as that it was a righte of majesty and soveraigne power whiche the kings of England could not exercise but in parliament, as that of law making, naturalising... and the like.

Mr Thomas Crew was to shew the reason and judgement of the common law of

¹²⁰*Proceedings in Parliament 1614*, pp. 148-149.

¹²¹*ibid.*

¹²²*Proceedings in Parliament 1614*, pp. xiii-xxxvi.

¹²³'Parliamentary Diary for 1614' in W. Notestein, F.H. Relf and H. Simpson (eds.), *Commons Debates in 1621*, 7 vols. (New Haven 1935), vol. 7, p. 638; hence *Commons Debates in 1621*.

¹²⁴Cf. *Proceedings in Parliament 1614*, pp. 213-214.

the land, that whiche is *jus privatum* or *contentiosum* to be the same.

I was appoynted to begin to shew the practise of the state in the verye poynt, as being the best evidence to shew whether it wear a sovereignty belonging to the king in parliament or out of parliament, and to me was assigned the raignes of Edward I, Edward II, and Edward III, the heat of all the busnesse.¹²⁵

Following Whitelocke, Wentworth and Hoskyns would continue his argument from the fiftieth year of Edward III's reign until the third and fourth years of Phillip and Mary, Nicholas Hyde would follow it from this time into the present, while Jones, Chibborn and Hakewill answered objections raised by the House. Owen, Digges and Sandys would conclude with a general consideration of the English political system, and of impositions' "inconvenience to the common profit of the kingdom".¹²⁶

From the brief notes that survive, Whitelocke's attitude seems to have hardened against impositions between 1610 and 1614, in the face of an increase in duties from two or three items at James's accession to more than 1,000 commodities.¹²⁷ Unfortunately we will never be able to assess fully the quality of Whitelocke's case, or that of his associates. As in 1610, the ideological potential of the document on which he prepared his argument, which ran to twenty-four hand-written sides,¹²⁸ is suggested by its physical history. Indeed, the fate of his notes on impositions parallel in many ways that of Whitelocke's hopes for a parliamentary solution to the issue itself.

In 1614, Whitelocke's calls for moderation went unheeded. As April turned to May, and a somewhat factious upper House debated the Commons' request for a meeting on impositions, all appearance of political harmony began to disintegrate. Whitelocke's friend and supporter Bishop Richard Neile's comments against

¹²⁵*Liber Famelicus*, p. 42.

¹²⁶*ibid.*

¹²⁷*Proceedings in Parliament 1614*, p. 95.

¹²⁸*Liber Famelicus*, p. 43; Moir, *The Addled Parliament of 1614*, p. 146.

"seditious" speeches in the lower House were met with outrage;¹²⁹ Whitelocke kept silent while serving on a committee which considered prosecuting Neile,¹³⁰ but in the increasingly heated environment there was no longer any question of a moderate line holding sway. With no prospect of supply being granted without another politically damaging debate on impositions, James brought this "addled" parliament to a rapid and unsatisfactory conclusion. It ended two months after it had begun, having achieved nothing other than to reopen political sores that had festered in the years since 1610.¹³¹ The *Liber Famelicus* leaves a strong impression of Whitelocke's feelings on the outcome of events:

On Tuesday the 7 June, 1614, the parliament was dissolved, in that manner that all good people wear verye sorye for it; I think it not fit to play the part of a historiographer about it, but I pray God we never see the like.¹³²

In the morning of June 8, James Whitelocke noted, all those who had been assigned a role in the conference on impositions were summoned to the Council Chamber at Whitehall, where they "wear all commanded to burn our notes, arguments, and collections we had made for the preparing of ourselves to the conference".¹³³ Whitelocke's provides a graphic account of this affair, in which he saw his own notes burned before the Council as the king watched secretly from behind a hanging in the clerk's chamber.¹³⁴ Whitelocke looked on as the Council punished several of his close associates who had voiced their opinions too loudly in the session. In a nervous account in which Whitelocke repeated himself on several matters, the *Liber Famelicus* noted that four "parliament men" - Sir Walter Shute, Christopher Nevill, Thomas Wentworth, and John Hoskins - were all sent to the Tower. Sir John Savill, Sir Edward Giles, Sir Edwyn Sandys, and Sir Roger Owen

¹²⁹*Proceedings in Parliament 1614*, pp. xxxi-xxxii.

¹³⁰*Proceedings in Parliament 1614*, p. 346.

¹³¹Although dated, the standard narrative of events is still Moir's *The Addled Parliament of 1614*; cf. Jansson's introduction to *Proceedings in Parliament 1614*, pp. xiii-xxxvi, and Roberts & Duncan, 'The Parliamentary Undertaking of 1614', pp. 481-498.

¹³²*Liber Famelicus*, p. 41.

¹³³*ibid.*

¹³⁴*Liber Famelicus*, pp. 41-42.

were among "divers others" who were questioned by the Council and released upon bonds of assurance, while Owen, Savill, Sir Edward Phelips and Nicholas Hyde and "divers other" gentlemen were struck off the commissions of the peace.¹³⁵ Over the following days, noted Whitelocke, Sir Charles Cornwallis and Doctor Sharp, the archdeacon of Berkshire, were also sent to the Tower for their part in a conference with Hoskins.¹³⁶

Obviously Whitelocke must have felt himself lucky to avoid a second spell in prison, leaving his readers to guess his opinion on matters he "wold not meddle witheall".¹³⁷ He was probably saved from harsher treatment in 1614 by the conciliatory tone of his speeches, which left him free to reflect on the price of political dissent from a distance. Here it seems that a degree of pragmatism accompanied disappointment. Assessing the rumour that his friend Sir Edward Phelips's had died through an illness exacerbated by the king's displeasure with his son's parliamentary activities, he wrote: "I cannot think a man can be sutche a mope."¹³⁸ It seems that with a resilient disposition to accompany his strong views, Whitelocke returned his attention to the business of the bar.

The parliament of 1621:

In December 1620, as King James summoned his third parliament in strained domestic and foreign circumstances,¹³⁹ James Whitelocke was elected to represent Woodstock for the final time.¹⁴⁰ He was by this time approaching his fifties, and a man of considerable standing in county and professional circles. It is mildly surprising, given his active involvement in the first two parliaments of the reign, to find that beyond this point Whitelocke drops almost entirely out of parliamentary view - until one considers that by this time Whitelocke was serving as Chief Justice

¹³⁵*Liber Famelicus*, p. 43.

¹³⁶*ibid.*

¹³⁷*Liber Famelicus*, p. 43.

¹³⁸*ibid.*

¹³⁹For a discussion of the parliament of 1621 cf. Russell, *Parliaments and English Politics*; Zaller, R., *The Parliament of 1621: A Study in Constitutional Conflict* (London 1971).

¹⁴⁰Williams, *Parliamentary History of Oxford*, p. 199.

of Chester.¹⁴¹ Although Whitelocke's office as Justice of Chester did not preclude him from sitting in parliament,¹⁴² the *Liber Famelicus* suggests that routine judicial business at Ludlow between January and March,¹⁴³ and then circuit work in Chester beginning in April,¹⁴⁴ kept Whitelocke away from parliament until early in May. On 5 May he relegated his continuing legal duties at Bewdley to his puisne, Sir Henry Townshend, staying only one day as he "went up and sat in Parliament".¹⁴⁵ It may be that Whitelocke knew that pressure was being mounted in the Commons to declare his election null and void; on 22 March it was asked in the House: "For Woodstock, whither Whitlocke, Justice of Chester, not coming, being elected, whither a new choise shalbe made."¹⁴⁶

We can be confident that Whitelocke was in the House between 16 and 29 May, during which time he was named to two committees to consider legal bills and one for a bill on Lichfield parish, and was ordered to assist Sir Julius Caesar in reporting the adjournment conference of 29 May.¹⁴⁷ On 4 June the House of Commons ordered that two bailiffs who had violated parliamentary privilege by arresting one of Whitelocke's servants "shall aske forgiveness at the barr upon ther knees of the howse and Sir James Whitlock",¹⁴⁸ but of Whitelocke himself, who was keeping term at Bewdley again by 18 June,¹⁴⁹ we hear nothing more. One can hardly criticize Whitelocke for failing to appear throughout the parliament while important administrative duties awaited in Chester and Wales. As the administration of the border shires became, for yet another of James's parliaments, a contentious issue,¹⁵⁰ Whitelocke may have felt increasingly uncomfortable about a prolonged

¹⁴¹*Liber Famelicus*, p. 84.

¹⁴²*History of Parliament Trust*.

¹⁴³*Liber Famelicus*, p. 88.

¹⁴⁴*ibid.*

¹⁴⁵*Liber Famelicus*, p. 89.

¹⁴⁶*Commons Debates in 1621*, vol. 6, p. 81.

¹⁴⁷*Commons' Journals*, pp. 569aa, 629b, 631a, 638a.

¹⁴⁸*Commons Debates in 1621*, vol. 5, p. 197; cf. vol. 3, p. 335, vol. 2, p. 426.

¹⁴⁹*Liber Famelicus*, p. 89.

¹⁵⁰Roberts, P., 'Wales and England after the Tudor 'union': Crown, principality and parliament, 1543-1624' in C. Cross, D. Loades & J.J. Scarisbrick (eds.), *Law and government under the Tudors* (Cambridge, 1988), pp. 111-138.

stay in the Commons - but as he makes no mention of the events of a dramatic parliament which saw the return of Sir Edward Coke to prominence and the downfall of Sir Francis Bacon, there is no way to be sure.¹⁵¹

It is perhaps not entirely unfitting to conclude an investigation of James Whitelocke's parliamentary career on this note. The issue of impositions was the one on which he had risen to prominence in the Commons, and with its retreat from parliamentary consciousness, his impact on events also diminished. By 1621 Whitelocke's attentions were focussed on other matters connected with his office in Chester. Parliament, which had at one time served as an important vehicle for an increased public profile, had become of lesser relevance. In his next parliament, Whitelocke would sit not in the Commons with those who would contest issues of policy with the Crown, but in the Lords as a judge and an advisor to the upper House. His elevation into the upper branch of the law took him further and further from the concerns of the younger man who had spoken with such vigour against Crown policy eleven years earlier. We would do well to follow Whitelocke's progress towards the ranks of the judiciary, to consider the effects of this change upon Whitelocke, and Whitelocke's effect on the conduct of the bench in the latter stages of his career.

¹⁵¹See ch 8.

CHAPTER FIVE

Politics out of Parliaments, 1608 - 1620

Thirty years ago Wallace MacCaffrey, commenting on patronage and politics under Elizabeth I, established a framework from which all subsequent studies of social exchange in the early modern period to some extent descend.¹ MacCaffrey suggested that an intimate political society existed in which the patronage dispensed by the king and the most influential of his courtiers became critical for men of ambition in the ranks of titled and untitled gentry. Patronage served as the link between "local" and "national" politics, as one's ability to secure patronage at court became almost the exclusive means to "lasting family fortune and consequence".² In recent years, revisionism of early Stuart political history has continued to shift attention away from parliament to the royal court, where the day-to-day business of central government was carried out amid tangled webs of political intrigue.³ This chapter explores James Whitelocke's relations with the complex and shifting world of the Jacobean court, as it seeks to understand his experience of extra-parliamentary politics from 1608 until his preferment as a judge in 1620.

Although removed from its direct affairs, throughout his career James Whitelocke stood at the edge of court politics. As he cultivated friendships and professional associations with influential figures of state such as Sir Edward Coke, Sir Robert Mansel and Sir John Harrington, Whitelocke formed strong opinions on many notable courtiers. Whitelocke's forthright political commentary is best evidenced in the idiosyncratic epitaphs which are scattered through the *Liber Famelicus*.⁴ The earl of Salisbury, for example, who as Treasurer introduced the unpopular fiscal

¹MacCaffrey, W., 'Place and Patronage in Elizabethan Politics' in S.T. Bindoff, J. Hurstfield & C.H. Williams (eds.), *Elizabethan Government and Society* (London 1961), pp. 95-126; cf. MacCaffrey's more recent comments in Peck (ed.), *Mental World of the Jacobean Court*, pp. 21-35.

²MacCaffrey, 'Place and Patronage in Elizabethan Politics', p. 19.

³Cf., for example, Sharpe, 'Parliamentary History in Perspective?', p. 25; 'Crown, Parliament and Locality', pp. 78-87.

⁴See, for example, pp. 39, 47, 48, 49, 56, 61.

innovation of impositions, was denounced as one who had "rotted above ground".⁵ Sir Ralph Winwood, Secretary of State from 1614 until his death in 1617, whom Whitelocke had known since his student days at Oxford, mixed socially with Whitelocke throughout his career and was praised as a "worthye frende".⁶ Tinged with hubris, his account suggests that to have supporters at court was almost certainly to have enemies. Always wary of openly criticizing the living, Whitelocke wrote a separate account of the most controversial incidents in his career, to be inserted into the *Liber Famelicus* "as those do fail who I know will be ready to take advantages against me".⁷ Unfortunately, this important document may well have perished with the dispersal and partial destruction of his papers during the English Civil War.⁸

James Whitelocke's comments on court politics for the period 1608-1620 fall on a recognized watershed in the history of court politics, as they trace the rise to prominence of George Villiers, Duke of Buckingham. They are also of particular interest because Whitelocke was participant as well as observer in many factional intrigues of this period, at least one of which (his disagreement with the Privy Council in 1613 over the jurisdictional rights of the Earl Marshal's Court) threatened to derail his emerging legal career. Whitelocke's involvement in extra-parliamentary political controversy raises difficult questions. It forces us to consider the relationship between Whitelocke's parliamentary conduct and his political reputation at the court. It further suggests the need to consider the impact of the language of debate, employed by lawyers such as Whitelocke, in early Stuart politics.

⁵*Liber Famelicus*, p. 47.

⁶*Liber Famelicus*, pp. 32.

⁷*Liber Famelicus*, p. 39. Spedding originally noted the loss of this document in the 1860s (*Works*, vol. 11, p. 356), and despite helpful suggestions from Wilfrid Prest, I have been unable to locate it.

⁸Whitlocke, *Memorials of the English Affairs*, p. 65.

Faction, law and politics, 1608-1616:

In order to understand the complex interaction of legal and political issues in Whitelocke's life during the 1610s we must recognize the paper-thin boundaries in place between the judiciary and the government at this time. As W.J. Jones has argued:

Litigants directed their suits towards institutions of government which were animated and influenced by political struggles, departments which were served by judges and lawyers who had an unavoidable political role and often political careers to make.⁹

While "most major officials were judges, and most judges were administrators",¹⁰ many lawyers were politicians: James Whitelocke and numerous other practicing common lawyers served in the House of Commons throughout the reign.¹¹ McCaffrey has shown that early Stuart England sustained "a political society of which most members knew one another directly or indirectly and were almost all known personally to the leading ministers",¹² and without doubt, the wearing of several hats by MPs and Crown officials, judicial, administrative and political, could and did lead to conflicts of interest.

But the relation of law to politics in Jacobean England extended to a deeper, ideological level. Any question of how the King's prerogative was constrained by law affected equally the government, the courts and the quasi-judicial councils and commissions through which the law was administered.¹³ Unlike the common law courts, the conciliar courts (such as Chancery) and irregular commissions established in the Tudor reign (such as the Earl Marshal's Court in its revised form) were bodies whose expansion was tied to legal innovation, and could not be readily

⁹Jones, W.J., *Politics and the Bench: The Judges and the Origins of the English Civil War* (London 1971), p. 19.

¹⁰Jones, *Politics and the Bench*, p. 16.

¹¹See the biographical list appended to Clendenin, 'The Common Lawyers in Parliament and Society'.

¹²MacCaffrey, 'Place and Patronage in Elizabethan Politics', p. 99; cf. Cooper, 'Promotion and Politics', p. 15.

¹³The complex implications of legal theory for the practice of the courts and government is discussed in Thomas, 'James I, Equity and Lord Keeper John Williams', pp. 506-528.

justified by recourse to precedent.¹⁴ Furthermore, as they drew their legal authority directly from the Crown, the extent to which the royal prerogative was either plenary, or constrained by common-law precedent, had a bearing on the justification of their own jurisdictional rights. Comparing his parliamentary actions in 1610 and 1614 with his challenge to the Earl Marshal's Court and the naval commission in 1609 and 1613, Linda Levy Peck has suggested that Whitelocke was motivated by a desire to set limits on the royal prerogative.¹⁵ Following Peck's suggestion at greater length, it can be seen that Whitelocke's "opposition" came more from his dogmatic assertion of common-law rights, on several occasions at odds with the interests of the Crown, than from any conscious desire to contest the issue of legislative sovereignty.

In 1608 Henry earl of Northampton began a campaign of reform at the royal court, in which he paid particular attention to allegations of corruption in the Department of the Navy, headed by the ageing Admiral Sir Charles Howard and his deputy Sir Robert Mansell.¹⁶ Employing the help of Sir Robert Cotton, Northampton prepared a report which argued that "Favor is distributed by faction" in the Department of the Navy, and suggested (without naming Mansel or Howard) that "two of the chief officers have conveyed all or most of the chiefest offices of trust and profit either by possession or reversion to the hands of their own followers".¹⁷ Under pressure from Northampton, James established a royal commission of enquiry to investigate these charges in 1608.¹⁸ In 1609 Sir Robert

¹⁴Attempts were made to trace the antiquity of these courts back to a date comparable with the courts of English law; see Edward Hake's claim for the jurisdictional history of Chancery in his *Epiekia* (ed. D.E.C. Yale, New Haven 1956) and L.M. Hill's introduction to Sir Julius Caesar's *The Ancient State, Authoritie and Proceedings of the Court of Requests* (Cambridge 1975), pp. xiii-xviii.

¹⁵Peck, 'Corruption at the Court of King James' in B.C. Malament (ed.), *After the Reformation: essays in honour of J.H. Hexter* (Manchester 1980), p. 89.

¹⁶Peck, 'Court Patronage and Government Policy', pp. 34; 36-37.

¹⁷CUL Trinity College MS R.7.22, fol. 4v; PRO SP 14, XLI, 1, fol. 8, quoted in Peck, 'Court Patronage and Government Policy', p. 37.

¹⁸McGowan, A.P. (ed.), *The Jacobean Commissions of Enquiry, 1608 and 1616, Navy Record Society* 116 (1971); Peck, 'Court Patronage and Government Policy', pp. 36-37. It is unfortunate that no copy of this brief appears to have survived, although brief notes among the family papers may have been used in its preparation. See Longleat Papers, vol. 1, fol. 52.

Mansel, with the support of Sir Henry Nevill and "far greater men" at court whose identities are not known,¹⁹ drew upon Whitelocke's legal expertise to stop the enquiry.

Unfortunately, details of Whitelocke's involvement with Mansell are scarce, as Whitelocke was careful to protect himself from attacks over his involvement in this politically sensitive issue. Furthermore, Whitelocke's legal challenge to the 1608 commission of enquiry does not appear to have survived, destroyed either under threat of action by the Crown or at its direct instigation.²⁰ What we know of this document comes from the record of its inspection by the Privy Council in 1613, which reports that as he questioned the jurisdictional propriety of this commission, Whitelocke termed it "irregular", "of a new mould", and "such as he hoped should never have place in this Commonwealth".²¹ Considering the emphasis placed on Whitelocke's naval brief by the Privy Council, it can be seen that as custom was invoked to defend political positions, forthright "legal" advice became politically sensitive.

In 1609, James Whitelocke was undoubtedly involved in the affairs of court for matters of profit, as well as out of loyalty to his clients. In July 1612 Whitelocke was promoted by the Harrington family, strong family friends and regular clients, in a complex set of political maneuvering which aimed to secure reversion of the lucrative Clerkship of Enrolments in King's Bench (so long in the hands of the Roper family that it had become known as "Roper's Office") upon Sir John Roper's death.²² This sinecure, with yearly profits estimated by Aylmer at between £3500

¹⁹Winwood, R., *Memorials of affairs of state*, 3 vols. (London 1725), vol. 3, p. 462; *Liber Famelicus*, pp. 46-47.

²⁰Thanks to Conrad Russell and John Baker for advice on this matter.

²¹What can be established about the tract comes from comments taken from it, and quoted in Whitelocke's subsequent charge by the Privy Council; BL Lansdowne MS 160, fol. 83, printed as an appendix to Bruce's edition of the *Liber Famelicus*, pp. 114-118. Another copy of the charge is preserved in BL Additional MS 4149, fol. 173, printed in *Works*, vol. 11, pp. 348-353 and in the *Acts of the Privy Council 1613/14*, pp. 211-217.

²²Stone, *Crisis of the Aristocracy*, p. 444. For the history of the Clerkship see Baker, 'The English Legal Profession, 1450-1550' in *The Legal Profession and the Common Law*, pp. 83-84.

and £4000 for a slightly later period,²³ had come to the attention of Robert Carr, earl of Somerset, James's principal favourite in the early years of his reign and now at the height of his influence. Along with Robert Heath, who transferred his allegiance from Lord Balmerino (with whom he held a half share in the sinecure) to Somerset, Whitelocke served as an agent for the other patentee, the younger Sir John Harrington.²⁴ Whitelocke's financial gains as Harrington's agent in the contest for Roper's Office were a welcome addition to his income. He accepted eight percent of the proceedings for his involvement.²⁵ Just as importantly, his actions were a demonstration of support towards Harrington, whose reciprocal support Whitelocke relied upon to further his own public cause.

Unfortunately for Whitelocke, John Harrington died in August 1613 and his son John Harrington the younger, who had continued to extend his patronage to Whitelocke upon his father's death, died only six months later in February 1613/1614.²⁶ The Harrington's moiety passed to Lady Harrington who transferred the entire estate to her daughter Lucy, Countess of Bedford.²⁷ At this point the earl of Somerset moved to tighten his grip on Roper's Office through renewed negotiations with the Harrington family, pressuring the Countess of Bedford to relinquish control of the patent.²⁸ Without the support of a patron, Whitelocke was forced to enter into direct negotiations with Somerset. Arguing that there was no need for both Heath and Whitelocke to execute the office, he pressured Whitelocke to relinquish his eight percent share in the proceeds.²⁹ Although he retained his title

²³Aylmer, G.E., *The King's Servants: The Civil Service of Charles I 1625-1642* (2nd ed., London 1974), p. 214.

²⁴Stone, *Crisis of the Aristocracy*, p. 444; *Liber Famelicus*, p. 27.

²⁵PRO C 66/1956; *Liber Famelicus*, p. 46.

²⁶*Liber Famelicus*, pp. 31, 39.

²⁷*Liber Famelicus*, p. 46.

²⁸*ibid.*

²⁹*ibid.* Although I am reluctant to quote extensively from the text, my interpretation of this difficult passage warrants verification: "The erl required to have it discharged, by the countesse, of the dividit of a twelf part, whiche I was to have by covenant for the execution of it, for that he was to give a twelf to Mr. Heathe for execution, and conceived thear wold not need two to execute; whearfore to get my goodwill to consent to this, and to have from me that whiche my lord Harrington had given me, I had from the countesse 800l. in readye monye, and the alteration was this: I made new covenants withe the erl, by whiche I did covenant to surrender up the office at his request, and not execute it but by warrant under his hand and seal."

with provision "to surrender up the office" at Somerset's request, Whitelocke was required to forgo an active role in the management of the Clerkship in return for a one-off payment of £800.³⁰ By promoting himself as an agent in court politics, Whitelocke to some extent bound his success to that of his patrons. After 1612, he was to find that taking sides in factional disputes came at a cost, as his own political conduct came under scrutiny at the highest ranks of government.

James Whitelocke's troubles with the Crown began in 1613, as a reputation enhanced by his forthright parliamentary speeches led to his employment in a controversial legal challenge to the Court of Earl Marshal. This challenge, mounted during the case of 'St George v. Brooke', was sketched briefly in chapter three; the essence of Whitelocke's case was that in the absence of a High Constable, the Earl Marshal's Court, whose commissioners maintained "in a formal quasi-judicial manner their domestic jurisdiction over the College of Arms and the heralds" following the accession of James I,³¹ had no right to this jurisdiction.³²

Perhaps unwittingly, Whitelocke by his actions in this case set himself firmly on a collision course with the powerful Howard family, as Henry Howard, earl of Northampton, and his cousin Thomas, earl of Suffolk, were the principal commissioners of the Earl Marshal's Court. The Howards enlisted the help of Lord Ellesmere, who may have already been aggravated by Whitelocke's vocal opposition to Crown policies in 1610, to bring Whitelocke to heel.³³ In the *Liber Famelicus*, Whitelocke recounted events as he met the Chancellor face to face in court. As he cited legal precedents in support of his position, a characteristically acerbic Ellesmere

began openly and sharply to inveigh against those lawyers that studied prerogative,
and by name condemned Mr. Whitelocke for one of them, and taxed him in this case

³⁰*ibid.*

³¹Squibb, *The High Court of Chivalry*, p. 39. Whitelocke obviously appraised the king's commission to the officers of the Court of Earl Marshal, which is preserved in the Longleat Papers, vol. 1, fol. 42.

³²Plott, 'A defence of the jurisdiction of the Earl Marshal's Court', p. 260.

³³*Liber Famelicus*, p. 35.

that he had denied the king's power to give authority to the commissioners to keep a court.³⁴

Realizing at this point that he was in trouble, Whitelocke attempted to turn their disagreement back to legal technicalities, but Ellesmere declared that he would "appeal to the king in this particular, and would acquaint him with this great affront made to his regal power".³⁵

In Whitelocke's account of events, Chancellor Ellesmere's desire to "give him an item for olde desertes" had intensified in a previous cause before Chancery, in which Whitelocke had prepared a defence for the College of Westminster (of which he was steward) against the Bishop of London. Whitelocke implies in the *Liber Famelicus* that Ellesmere had done everything in his power to favour the Bishop in this case, redirecting the cause three times and leaving the legal counsel for Westminster almost no time to prepare their argument.³⁶ This is but one instance which suggests that Ellesmere was seen by Whitelocke and many other common lawyers to have overstepped his mark as one who "might be more bold with the Common Law than any of his Peers",³⁷ to assume an increasingly arbitrary and antagonistic stance towards its courts and practitioners.³⁸ Unfortunately for the embattled Whitelocke, his prior actions as legal counsel for Sir Robert Mansell, treasurer of the Navy, provided Ellesmere with the ammunition he needed to pursue the matter. This brief was known to Ellesmere, who now used it to convince the king of Whitelocke's repeated intransigence towards royal authority, requesting the lawyer's censure.³⁹ Swayed by Ellesmere and the Howards, James agreed for Whitelocke to be summoned before the Privy Council.⁴⁰ Brought before them for questioning on

³⁴*Liber Famelicus*, p. 36.

³⁵*ibid.*

³⁶BL Additional MS 53725, fols. 55-58; *Liber Famelicus*, pp. 33-35.

³⁷Bacon, N., *An Historical and Political Discourse of the Laws and Government of England* (4th ed., London, 1688), p. 95.

³⁸Prest, *Rise of the Barristers*, p. 303; Baker, J.H., 'The Common Lawyers and the Chancery: 1616' in *The Legal Profession and the Common Law* (London, 1986), pp. 205-229. In the light of widespread contemporary criticism, Louis Knafla's sympathetic discussion of Ellesmere in *Law and Politics in Jacobean England* should be read with caution.

³⁹*Liber Famelicus*, pp. 31-32.

⁴⁰*ibid*; *Acts of the Privy Council 1613/14*, p. 28.

Tuesday 18 May 1613, he testified and was sentenced on the same day to imprisonment at his majesty's pleasure.⁴¹

If Whitelocke was using a legal ploy reminiscent of his earlier defence of the department of the Navy in 1609 specifically to place a thorn in Northampton's side in 1613, he certainly had no shortage of backers in the faction-ridden court. In a cryptic letter from Sir Henry Nevill to Sir Ralph Winwood dated 18 June 1613, Nevill noted that he had been cleared of an allegation "that I had some hand in the matter wherewith Sir Robert Mansell and Mr. Whitlock were charged".⁴² Upon Nevill's death in July 1615, Whitelocke reflected that he:

was a most faithful friend to me, *tam in adversis quam secundis*, and I dealt as well with him, for at the time I was committed to the Fleet, he was hunted after by the earl of Northampton, as the author of the opposition against that irregular commission... but, although he was an actor in it with the far greater men, yet his good lordship could never find it out, notwithstanding he caused me to be kept close prisoner and examined by the lords of the counsel; the truth is, he durst not name him plainly, although he aimed at him, and I had reason enough to conceal him.⁴³

Given that Whitelocke himself points to faction as a major issue in the 1613 affair,⁴⁴ it is unfortunate that his more detailed account of events has not been found. It is certain that the Crown, and in particular Chancellor Ellesmere, took steps to establish beyond doubt the legitimacy of its position, publicly refuting Whitelocke's assertions against the Earl Marshal's Court in the Chancery decree and order books,

⁴¹*Liber Famelicus*, p. 32; *Calendar of State Papers Domestic James I 1611-1618*, p. 186 (13 June, 1613); *Acts of the Privy Council 1613/14*, p. 41.

⁴²Winwood, *Memorials of affairs of state*, vol. 3, p. 462; cf. HMC Downshire IV, p. 133 (Downshire Misc. MS V, fol. 83); William Norton to William Trumbull, London, 10 June 1613: "Sir Robert Mansfield has been three weeks in Marshalsea. His cause is heard today before his Majesty and the Privy Council, together with a Mr. Whitelocke, a counsellor of his, now prisoner in the Fleet. The cause of his imprisonment is not certainly known."

⁴³*Liber Famelicus*, pp. 46-47

⁴⁴For the status of the Earl Marshal's position among courtiers see Sharpe, K., 'The Earl of Arundel, His Circle, and Opposition to the Duke of Buckingham, 1618-1628' in Sharpe (ed.), *Faction and Parliament*, pp. 215-218.

and recording his retraction of his arguments against the naval commission in the acts of the Privy Council.⁴⁵

Looking back on events, Bulstrode Whitelocke argued that his father had been a "stout assertor of the rights and liberties of the free-born subjects of the Kingdom, for which he had been in many ways a sufferer". Referring to 1613, he added that James Whitelocke had suffered "particularly by a straight and close imprisonment for what he did as a member of this house in a former parliament".⁴⁶ Delivered in political debate to defend his father's reputation, the younger Whitelocke's comments are hardly free of bias.⁴⁷ Even so, Bulstrode's suggestion of a link between his father's parliamentary conduct and his subsequent troubles is at least interesting, in light of James Whitelocke's own observations in the *Liber Famelicus*.

I noted earlier that following the parliament of 1610, James Whitelocke was warned by his lifelong friend Sir Humphrey May that:

the king had taken offence of my actions in parliament in maynteyning the cause of impositions so stifly, and that I had doon good no way by it, but had hurt myself very mutche, and... that sum ill mighte befalle me in that respect...⁴⁸

It is interesting to note that Whitelocke recalled May's comments three years after the parliament had ended, as he reflected on events in 1613. To appreciate the links between James Whitelocke's earlier parliamentary conduct and his imprisonment three years later, one must see (as did May and Whitelocke) that the theoretical connections between the law and the state in early modern political theory made legal arguments particularly receptive to political controversy.

In his study of civil lawyers in early Stuart England, Brian Levack distinguished the kind of argument that civilians employed in defence of the so-called "prerogative" courts from those employed by their common-law associates.

⁴⁵PRO C33/126, fols. 122v-123, reinforced in letters patent issued to the Earl Marshal's Court by James I in 1622; College of Arms MS SML 3, fol. 228 reprinted in Ashman, 'Heraldry and the Law of Arms', pp. 70-71; *Acts of the Privy Council 1613/14*, pp. 218-219.

⁴⁶Whitelock, *Memorials*, p. 38.

⁴⁷Cf. Worden, B., 'The 'Diary' of Bulstrode Whitelocke', *English Historical Review* 153 (1993), pp. 122-134.

⁴⁸*Liber Famelicus*, pp. 32-33.

Civilians articulated, he suggested, "constitutional theories which exaggerated the power of the Crown and minimized that of Parliament and of the common law judges", asserting:

that since the King was the fountain of justice who had delegated his personal jurisdiction to the judges of his various courts, he was empowered to continue to regulate that distribution of legal authority. If a dispute should arise as to where the exact boundary between two jurisdictions lay, the monarch alone was entitled to solve the problem.⁴⁹

It is important to appreciate that as Whitelocke justified his opposition to the policies of the Crown in parliament or in the courts of law, he fell back upon a *particular line of argument*, placing emphasis on certain elements of the widely venerated (but imperfectly defined) English constitution. The arguments levelled against him, in turn, selectively drew upon other elements of that same constitution. To get to the heart of the differences which set Whitelocke and other common lawyers at odds with Crown officials such as Chancellor Ellesmere during the reign of James I, one has to explore the lines of argument by which their views on the constitution were substantiated.

The 1613 charges laid by the Privy Council against James Whitelocke state that "emboldened by that which ought reallie to have refrayned him (which was his science and profession in the lawe)"⁵⁰ he had presumed "in a very strange and unfit manner to make an excursion into a general censure and defining [of] his Majesty's power and prerogative".⁵¹ As in 1610, Whitelocke appears to have argued that the king's legal rights were constrained by accepted and historically demonstrated practice. The second charge against him explicitly makes this point:

And, for the second contempt... the said Whitlocke had affirmed and mayntained by the said writing, that the kinge cannot, neither by comission nor in his owne person, medle with the bodyes, goods, or landes of his subjects, but onlie by

⁴⁹Levack, *The Civil Lawyers in England*, pp. 82-83.

⁵⁰*Liber Famelicus*, pp. 113-114.

⁵¹*Liber Famelicus*, p. 114.

indictment, arraignment, and tryall, or by legal proceedinge in his ordinarie courts of justice...⁵²

The Council attacked this "presumption" on several grounds. Whitelocke's pedantic insistence on point of law, they argued, challenged the government's right to act in affairs of state which could not be corrected by "the remedies of justice".⁵³ Such a position was "not onlie grossely erroneous... but dangerous, and tending to the dissolving of governmente".⁵⁴ In the instance before them, they argued, the naval commission was acting for the king in a matter touching the defence of the realm, and inquiring into a government department in which:

the shippes and vessells, with all their furniture and the materials thereof, are the kings owne, and the persons whom the said commission did concerne are his officers and servants... so that his Majestie... hath a power of examinacione and correctione, not onlie as a kinge, but as a master and owner.⁵⁵

Thus, alleged the council prosecutors, by a misconstruction of general legal principles Whitelocke threatened to undermine the whole system by which sovereignty was maintained.⁵⁶

The kind of arguments used by the Council against Whitelocke in 1613, linking a specific challenge to jurisdictional rights with a broad assault on the foundations of government, had been well rehearsed over the first decade of James's rule.⁵⁷ Attorney-general Bacon, who later assisted Whitelocke in obtaining his pardon and release, employed almost identical arguments in the 1613 hearing as he had during a debate on the jurisdiction of the Council of the Marches in Wales seven years earlier.⁵⁸ In incomplete notes prepared for Whitelocke's 1613 censure which

⁵²*ibid.*

⁵³*ibid.*

⁵⁴*ibid.*

⁵⁵*Liber Famelicus*, p. 116.

⁵⁶This argument essentially parallels Flemming's 1606 judgment that there was necessity for an unrestrained "prerogative" subordinate only to the dictates of statecraft.

⁵⁷Cf. Sommerville, *Politics & Ideology, passim*; Burgess, *The Politics of the Ancient Constitution*, pp. 129-178, Roberts, 'Wales and England after the Tudor 'union'', pp. 111-138.

⁵⁸'A View of the Differences in Question betwixt the King's Bench and the Council in the Marches', reprinted in *Works*, vol. 10, pp. 368-380.

survive in the Lambeth Palace Library,⁵⁹ Bacon attacked his "presumptuous and licentious censure and defying of his majesty's prerogative" and "slander and traducement of one act or emanation thereof" (the naval commission).⁶⁰ Elaborating in typically florid style, Bacon found Whitelocke's offence against the king in three degrees:

First, that he presumed to censure the king's prerogative at all. Secondly, that he runneth into the generality of it more than was pertinent to the present question. And lastly, that he hath erroneously and falsely, and dangerously given opinion in derogation of it.⁶¹

In 1606 Bacon had warned that if a commission was "established by the King's prerogative... it ought to be subject to no controlement but his".⁶² "For if", Bacon remarked,

the King's prerogative, the ancient and main foundation upon which this jurisdiction was built, be questioned and shaken, then of necessity the Council of York must fall... and the Court of Request must follow... and what further may be opened to Parliament or lawyers to dispute more liberties, may rather be feared than discovered...⁶³

While some historians seem disinclined to view the articulation of conflicting political theory in Jacobean England with much interest, events in 1613 suggest that the government was troubled at least as much by the theoretical challenge made by Whitelocke to the exercise of sovereignty, as by any practical impediment he may have been creating to the exercise of government. Indeed, the real threat to naval reform in 1610 and 1614 was to come not from Whitelocke's legal defence of the department of the Navy but from the king himself, who showed no desire until much later in his reign to take serious steps for reform, allowing Northampton's recommendations to lapse.⁶⁴ Whitelocke's opposition to government policy, and his challenge to the principles by which the Crown exercised sovereignty, lay in a

⁵⁹Lambeth Palace Library, Gibson MS 936, no. 249 (2 fols.), reprinted in *State Trials*, vol. 2, cols. 766-768; *Works*, vol. 11, pp. 353-356.

⁶⁰LPL Gibson MS 936, no. 249.

⁶¹*ibid.*

⁶²*Works*, vol. 10, p. 374.

⁶³*Works*, vol. 10, p. 380.

⁶⁴Lockyer, *The Early Stuarts*, p. 88; Peck, 'Court Patronage and Government Policy', p. 37.

continuum. On 10 June 1613, John Chamberlain noted in a letter to Sir Ralph Winwood that "Whitlock the lawyer is in the Fleet for two causes; first, for speaking too boldly against the authority of the Earl Marshall's Court, and then for giving his opinion that this commission was not according to law".⁶⁵ In the Privy Council's charge against Whitelocke and Sir Robert Mansel, the treasurer of the Navy was sharply censured for his endorsement of Whitelocke's views on the prerogative.⁶⁶ Reminded that "Mr. Whitelocke had not undertaken this worke but at his importunity", Mansel was condemned as "the meanes to divulge those daungerous positions tending so much to the diminution of his Majesties royal power".⁶⁷ Quick to see the Crown's concern, Mansel attempted to divorce himself from the views of Whitelocke as much as he could. Writing to Sir John Holles from the Fleet prison, Mansel informed his patron of the despatch of a "humble petition" to the king for his release, noting that he "would have gained their lordships better opinion of me and my cause then they or the heavens could guess at considering the way I gave to extenuate Mr. Whitlock's offence".⁶⁸

The publicly expressed views of prominent lawyers such as Sir Francis Bacon and Sir Thomas Ellesmere, and of less prominent members of the profession such as James Whitelocke, show that different types of argument were employed for and against courts of different historical origins, and often competing jurisdiction, in the second decade of James's English rule. Whitelocke's concern about a royal prerogative "unbridled" by the law, his concern with "innovation" in government, and his recourse to custom to defend his viewpoint - all these link his views in and out of parliament over the period 1608-1613. His views obviously antagonized men such as Ellesmere who may have sought to loosen such restraints on the powers of the Crown, and whose own arguments rested on a personal appeal to the power of the king. Importantly, these legal viewpoints flowed from notions of sovereignty

⁶⁵Winwood, *Memorials of affairs of state*, vol. 3, p. 466.

⁶⁶Peck, 'Court Patronage and Government Policy', p. 37.

⁶⁷*Liber Famelicus*, p. 117.

⁶⁸HMC Portland IX, p. 40.

emphasizing or de-emphasizing the restraining force of customary law upon the Crown. Beyond their expression of factional or legal rivalry, they articulated two notions of good government. When imprecisely voiced in a consensual language shared by all Jacobeans, these views could run alongside each other without controversy. When publicly articulated under the pressure of events, as in 1613, they acquired a controversial dimension.

The price of dissent, 1613-1616:

If Whitelocke's opinions, and not the reform of the navy, were at the heart of affairs in 1613, one might reasonably ask what the consequences of this kind of political dissent could be. The most obvious and immediate effect of his run-in with the Privy Council was his incarceration.⁶⁹ Whitelocke spent twenty-seven days in the Fleet prison from 18 May to 13 June, and was released only after a suitably contrite letter of submission had been favourably received by the king.⁷⁰ Despite the gravity of the event from his viewpoint,⁷¹ it appears that the Privy Council sought nothing more than compliance from Whitelocke, whose views they considered antagonistic and ill-informed.⁷² Professing that his "rash and unadvised... opinion" against the naval commission was "a matter too high and wayghtie... to intermeddle withall" by way of petition to King James, Whitelocke was allowed to return to his legal practice, seemingly without prejudice.

⁶⁹The warrants for Whitelocke's imprisonment and release are preserved in the Longleat Papers, vol. 1, fols. 46, 47, and were copied by Whitelocke into the *Liber Famelicus*, pp. 39-40.

⁷⁰*Liber Famelicus*, p. 40; *Acts of the Privy Council 1613/14*, p. 41.

⁷¹There was probably a hint of truth in Whitelocke's exaggerated confession that "hee hath most worthily drawne your Majestie's heavie displeasure upon him, and thereby is more afflicted in his own soule and conscience then hee can be by anie other calamitie of this worlde"; *Acts of the Privy Council 1613/14*, pp. 218-219.

⁷²Randomly placed among family papers is a peculiar document, of uncertain provenance, in Whitelocke's hand. Under numbered headings, Whitelocke wrote that "The absolute prerogative of the crowne is no subject for the tongue of a lawyer", "It is presumption and treason in a subject to dispute what a king may doe", "Presume not to meddle with kings against the king's prerogative or power" and so on, in a list of the king's favourite aphorisms about lawyers. Most of these sayings seem to be taken from James's remarks in the Case of Commendams, and may have served for Whitelocke as a reminder to avoid contesting, or even defining, the nature of political sovereignty; Longleat Papers, vol. 24, fols. 393-394

Whitelocke's attempts to gain pardon and release by appealing to James's "naturall goodness, clemencie, and princely disposicion"⁷³ were, one suspects, entirely pragmatic. At the instigation of Sir Francis Bacon (who seems to have made a pet project of gaining the compliance of recalcitrant lawyers),⁷⁴ he added quotations from Tacitus to curry James's favour; Chancellor Ellesmere informed Whitelocke the king was indeed well pleased with this passage.⁷⁵ Whitelocke's desire to put the matter behind him, despite his wounded pride, is reflected in the personal motto, *nec beneficio, nec metu*, by which he concluded his account of the business.⁷⁶ As Whitelocke was at the head of a second challenge to impositions during the 1614 parliament, after which he saw his undelivered speech publicly burned by the king's order,⁷⁷ he seems to have taken this motto seriously.

Tracing the long-term consequences of the incident on Whitelocke's career is more difficult. The issue of professional advancement and political dissent under the early Stuarts has received, I think, inadequate attention from historians, and any attempt to weigh up Whitelocke's prosecution with an eye to later political disagreements runs the risk of jumping to conclusions which are politically naive. In his biographical dictionary of the judges of England, Foss concluded that Whitelocke's promotion to Chief Justice of Chester in 1620 showed that his earlier "political offences had been atoned for or overlooked".⁷⁸ Revisionist historians would undoubtedly concur,⁷⁹ or perhaps dismiss altogether the need for a *rapprochement* between Whitelocke and the Crown.⁸⁰ Clendenin has touted the

⁷³Acts of the Privy Council 1613/14, p. 218.

⁷⁴Cf. Prestwich, M., *Cranfield: Politics and Profits under the Early Stuarts* (Oxford, 1966), p. 140.

⁷⁵Acts of the Privy Council 1613/14, p. 218; *Liber Famelicus* p. 40. Quoted as *Tibi summum rerum imperium Dii dederunt, nobis obedientiae gloria relicta est* by Whitelocke, the passage reads "*tibi summum rerum iudicium di dedere, nobis obsequii gloria relicta est*"; *Annals*, vol. 4, ch. 8, line 7, or in translation: "The gods have given the greatest command to you, for us the glory of obedience has been bequeathed".

⁷⁶*Liber Famelicus*, p. 39.

⁷⁷*Liber Famelicus*, p. 41.

⁷⁸Foss, F.S.A., *Biographia Juridica: A Biographical Dictionary of the Judges of England From the Conquest to the Present Time 1066-1870* (London, 1870), p. 722.

⁷⁹Greaves, L. & R. Zaller (eds.) *Biographical Dictionary of British Radicals*, 3 vols. (Brighton, 1982), vol. 3, p. 318.

⁸⁰Russell, *Parliaments and English Politics 1621-1629* (Oxford, 1979), p. 364.

possibility that Sir Francis Bacon sought to "buy off" recalcitrant lawyers like Whitelocke, as Crown appointment silenced dissenting voices on government policy - and his theory, perhaps, is not as far-fetched as it might at first appear.⁸¹ Following the 1610 parliament Sir Francis Bacon had advised the king on what "is fit to be done for the winning or bridling of the lawyers...that they may further the King's causes, or at least fear to oppose them".⁸² In this light Bacon's 1614 recommendation of Whitelocke as legal reporter in a proposed restructuring of the legal system could be interpreted as a kind of bribe, although the scheme was never enacted.⁸³ Putting the views of Sir Francis Bacon to one side, other evidence suggests that Whitelocke's career was indeed affected by the events of 1613 in a number of ways.

Wilfrid Prest has shown that a lawyer's ability to gain an audience in the central courts at Westminster depended to a large extent on the personal favour of the presiding judge or judges.⁸⁴ James Whitelocke worked in several of the Westminster courts in the years before 1613, pleading regularly in the Court of King's Bench, Exchequer and Chancery.⁸⁵ Given relations between Whitelocke and Chancellor Ellesmere, one might reasonably conclude that the lawyer's chances of gaining an audience in the Court of Chancery after 1613 were non-existent. Yet in Prest's analysis of Chancery returns, we find Whitelocke mentioned in motions moved before that court four times in Easter term 1615 and four times again in 1616, providing comparable totals to the ones Clendenin has furnished for the period

⁸¹Clendenin, 'The Common Lawyers in Parliament and Society', pp. 170-171.

⁸²BL Cottonian MS Titus F. IV, fol. 335, cited in *ibid.*, p. 171.

⁸³'A Memoriall touching the Review of Penal Lawes and Amendment of the Common Law', BL Lansdowne MS 486, fols. 15-16; BL Cottonian MS Titus F. IV, fol. 12, printed in *Works*, vol. 12, p. 86. Other "leading critics of the royal position" on impositions (Sharpe, *Sir Robert Cotton*, p. 158) in Bacon's list of six suitable candidates were 'Mr Hackwell' (William Hakewill) and 'Mr Hedley' (Thomas Hedley).

⁸⁴Prest, *Rise of the Barristers*, p. 27.

⁸⁵*Liber Famelicus*, pp. 27, 30, 76-77; Haywarde, J., *Les Reportes del Cases in Camera Stellata*, pp. 338-341; Bodl. MS Smith 71, fol. 59; BL MS Cott. Jul. C.3, fol. 54; CUL MS Gg. 2.23, fol. 90. Tracing Whitelocke's business through the voluminous decree and order books, Clendenin has suggested that he was heard in at least five causes each term in either King's Bench, Chancery, Exchequer or Requests in the years between 1600 and 1612; 'The Common Lawyers in Parliament and Society', p. 47.

before 1613.⁸⁶ Thus, at first glance, the evidence would seem to suggest no real change in Whitelocke's pattern of pleading before and after 1613.

Looking at the evidence a little more closely, there are several clues which hint that Whitelocke was professionally affected by events in 1613. The three presents he gave at Christmas 1614 (which one can reasonably interpret as seeking to enlist patronage) went to Sir Edward Coke, newly appointed Chief Justice of the King's Bench, Sir John Croke, Whitelocke's uncle and another judge of that court, and Sir Julius Caesar, newly appointed Master of the Rolls in the Court of Chancery, who as a member of the Privy Council had taken notes at Whitelocke's 1613 hearing.⁸⁷ Caesar gained the Chancery appointment following the death of Sir Edward Phellips in September 1614,⁸⁸ and it is interesting to note that upon Phellip's death Whitelocke had lamented the loss of his "verye good frend",⁸⁹ where "friendship" must be thought of more as an active disposition to lend support than an emotional bond.⁹⁰ Relations between Whitelocke and Phellips seem doubly significant in light of Whitelocke's attempts to gain Caesar's favour, because the new Master of the Rolls was commissioned "to hear and determine all causes in Chancery, whether the Lord Chancellor was present or not",⁹¹ and routinely held a second court away from Westminster Hall in the Rolls Chapel in Chancery Lane.⁹² It thus seems reasonable to conjecture that Ellesmere's animosity did not entirely shut off Whitelocke's options in the Court of Chancery, and that support from the Master of the Rolls may explain his continued presence in the records of that court after 1613.

⁸⁶I am grateful to Professor Prest for providing me with this information.

⁸⁷BL Lansdowne MS 160, fol. 83; *Liber Famelicus*, p. 45.

⁸⁸Hill, L.M., *Bench and Bureaucracy: The Public Career of Sir Julius Caesar, 1580-1636* (Stanford, 1988), pp. 195-197.

⁸⁹*Liber Famelicus*, p. 43.

⁹⁰James, M., *Society, Politics & Culture: Studies in early modern England* (Cambridge, 1986), pp. 330-331.

⁹¹Hill, *Bench and Bureaucracy*, p. 200.

⁹²Hill, *Bench and Bureaucracy*, p. 203. In Hill's words, "The Master of the Rolls... had become 'chief of staff' in Chancery. The Lord Chancellor's political duties did not permit him to spend much time in Chancery; thus, routine supervision was left to his principal assistant."; *Bench and Bureaucracy*, p. 201.

Of course, Chancellor Ellesmere's hand extended further than the courts of law, and it is interesting to note that Whitelocke obtained no royal office of any kind until after the Chancellor's death in 1616. Whitelocke's experience demonstrates that the joint holding of legal and administrative posts in the centre and the localities, by Crown officials such as Ellesmere, could extend the ramifications of political dissent into "the country". In his home county, Buckinghamshire, Whitelocke was extremely well connected with local figures of influence such as the Bishop of Lincoln, who acted as a mediator between the county and the court,⁹³ and the Justices of Assize.⁹⁴ The lord lieutenant of the county from 1607 to 1616, however, was none other than Ellesmere himself.⁹⁵ Whitelocke's appointment to the local magistracy in 1617 obviously did not arise merely from Ellesmere's passing; it also reflected his emerging status in the county community in the second decade of the seventeenth century. Yet given that Ellesmere had total control over the nomination and appointment procedures for the county until his death in March 1616, Whitelocke was unlikely to secure any office over which Ellesmere's could exercise a veto before that time.⁹⁶

Where the earl of Northampton was involved, Whitelocke also seems to have met with professional resistance in the time between his prosecution and Northampton's death. An undated letter (discussed above) from Whitelocke to his antiquarian associate Sir Robert Cotton provides important clues about the practical effect of Whitelocke's poor relations with Lord Northampton upon his legal practice. In this letter, Whitelocke asked Cotton (who had long been Northampton's most trusted legal advisor)⁹⁷ to defend his right to plead before the Earl Marshal's Court,⁹⁸ in which it appears Northampton had attempted to bar him from practice.⁹⁹ While the connection between this letter and events in 1613 hardly needs restating, it is

⁹³*Diary*, p. 64; Peck, *Court Patronage and Corruption*, p. 82.

⁹⁴*Liber Famelicus*, p. 54; Cockburn, *A History of English Assizes*, p. 142.

⁹⁵Peck, *Court Patronage and Corruption*, p. 82.

⁹⁶See ch 7.

⁹⁷Sharpe, *Sir Robert Cotton*, pp. 41-42; Peck, 'Corruption at the Court of King James', pp. 34-35.

⁹⁸Cf. the interpretation in Sharpe, *Sir Robert Cotton*, pp. 40, 147.

⁹⁹Bodleian MS Smith 71, fol. 59; BL Cottonian MS Julius C. III, fol. 89.

interesting to note that Whitelocke once again sought to justify his position on the strength of the common law, by pleading that the issue did "much concern our whole order and other gentlemen of England, that naturallie desire to submitt all their fortunes to the rule of homeborn law".¹⁰⁰ The outcome of Whitelocke's solicitation is uncertain, but in all likelihood the death of his "ill affected friend the Earl of Northampton" on 15 June 1614 quickly proved his concerns irrelevant.¹⁰¹

A thorough appraisal of the legal arguments which engaged the courts in the early decades of the seventeenth century is beyond the concerns of this thesis.¹⁰² As James Whitelocke's own involvement in legal controversy draws us into the parameters of this debate, a few points are offered as background. It is clear that arguments about legal jurisdiction, which found expression in a range of petitions and polemical broadsides asserting the rights of the various courts between 1603 and 1624, had already begun to surface during the last decade of Elizabeth's reign. Yet there is a particular heat to the engagement between those who favoured the courts of conciliar jurisdiction such as Chancery, the Church courts and the Admiralty, and those who asserted the "customary" jurisdictional primacy of the courts of common law. Championed by Sir Edward Coke, whose sheer force of personality must have been at least as important an ingredient in his political fortunes as his legal doctrine, common-law challenges to courts of newer jurisdiction culminated in the famous showdown between the Lord Chief Justice and Chancellor Ellesmere in 1616.¹⁰³ Although commentators have tried unsuccessfully to draw the line separating legal principle and political conflict between these protagonists, Whitelocke's own perception of the event suggests a need to frame it in terms of both.¹⁰⁴

¹⁰⁰*ibid.*

¹⁰¹*Liber Famelicus*, p. 39.

¹⁰²Cf. Knafla, *Law and Politics in Jacobean England*; Levack, *The Civil Lawyers in England* and Thomas, 'James I, Equity and Lord Keeper John Williams'.

¹⁰³Thorne, S.E., 'Praemunire and Sir Edward Coke' in *Essays in English Legal History* (London 1985), pp. 239-242.

¹⁰⁴Compare J.H. Baker's comments in 'The Common Lawyers and Chancery: 1616' with those in 'The Dark Age of English Legal History', pp. 205-230 and 438 respectively in *The Legal Profession and the Common Law*; see also Dawson, J.P., *The Oracles of the Law* (Ann Arbor, 1968), p. 162, *idem*, 'Coke and Ellesmere Disinterred: The Attack on Chancery in 1616', *Illinois*

A range of associations that Whitelocke built up over his early years of practice meant that he was always closely attuned to changes affecting the composition of the legal profession. In 1614, Whitelocke condemned a request by the Crown for £600 in return for acceptance of the position of serjeant-at-law, which "sum of them were not worthe the money, and sum never likely to see it halfe againe in their practise".¹⁰⁵ It was a payment which his friend and relative George Croke refused to make on matter of principle, "bycaus he sayd he thought it was not for the king".¹⁰⁶ From 1616 his comments about problems besetting the legal profession became more numerous and more pointed. Whitelocke's high regard for Coke and obvious animosity towards Ellesmere make his reflection upon their famous showdown in 1616 highly partial, and while Whitelocke refrained from directly criticizing the king's removal of Coke from office, he could not help but remark that in his opinion Coke was "the most just, honest, and incorrupt judge that ever sate on benche".¹⁰⁷ While Ellesmere's "bitter invective" against Coke at the new Chief Justice's inauguration was remembered by Whitelocke with scorn, he did not have long to wait before he could note, with relief, the passing of the Chancellor.¹⁰⁸ Characteristically, Whitelocke wasted no sentiment on a man who had in recent years caused him considerable personal and professional grief:

Thomas Lord Ellesmere Viscount Brackley, and chancellor of England, dyed in the beginning of March, 1616. It had been good for this commonwealth if he had been out of the world 20 years before, for he was the greatest enemy to the common law that did ever bear office of state in this kingdom; he was thereupon termed viscount Breaklaw for viscount Brakely.¹⁰⁹

Lemar Hill has noted a "new political landscape" emerging in Jacobean politics after 1614 with the decline of the earl of Somerset, so that by 1616 "the way of the

Law Review 36 (1941), pp. 127-152; Jones, W.J., *The Elizabethan Court of Chancery* (Oxford 1967), p. 22; Russell, *The Causes of the English Civil War*, p. 149.

¹⁰⁵*Liber Famelicus*, p. 44.

¹⁰⁶*ibid.*

¹⁰⁷*Liber Famelicus*, p. 51.

¹⁰⁸*ibid.*

¹⁰⁹*Liber Famelicus*, p. 53.

future" was fully mapped out.¹¹⁰ From its record of Ellesmere's death, the *Liber Famelicus* maps out this new landscape, in which Whitelocke noted one man's growing influence over almost every office that drew upon royal patronage.¹¹¹

The rise of Buckingham, 1616-1620:

During and after 1616, it seems to have been particularly distressing to Whitelocke that the Duke of Buckingham's growing political power was fully demonstrated in judicial appointments. In 1616 Whitelocke noted the fortunes of three of his longtime associates from the Oxford circuit, John Walter, Thomas Coventry and Sir Henry Yelverton, with concern. While Coventry's appointment to solicitor-general in the place of Yelverton was not openly condemned, it was widely suspected at the time that Coventry's rise to power was due entirely to the influence of the Duke of Buckingham,¹¹² and Whitelocke inferred that something was amiss in his assessment of the situation:

Thomas Coventree... a green reader, being newly chosen recorder of London, came to be sollicitor and knighted... how and *quibus gradibus ascendit ad haed culmina, quare*. Mr. John Walter, the prince's attorney, the fittest man in England for it, and ancient to Mr. Coventree a dozen years or more, was omitted, whome all the world had destined to the place.¹¹³

The promotion of Sir Henry Yelverton, nominated Attorney-general at the king's recommendation, led Whitelocke to discuss more openly his concern at the ways in which Buckingham was asserting his influence over legal appointments. Recounting at length a conversation with Yelverton, Whitelocke described in the *Liber Famelicus* how, after King James had advised the Privy Council of his determination to have Yelverton advance to that office, some of its members were

¹¹⁰Hill, *Bench and Bureaucracy*, p. 196.

¹¹¹Lockyer, R., *Buckingham: The Life and Political Career of George Villiers, First Duke of Buckingham 1592-1628* (London 1989), pp. 53-88.

¹¹²Lockyer, *Buckingham*, p. 40. It should be noted that Whitelocke had private business dealings with Walter that may have biased his view, see *infra*, p. 240.

¹¹³*Liber Famelicus*, p. 54.

made aware that Buckingham had extended his patronage elsewhere.¹¹⁴ The extent to which Buckingham's shadow now fell on royal appointments is reflected by the subsequent pains that were taken to convince Yelverton to placate the Duke. After the second Duke of Lenox, Archbishop Abbot and Secretary Winwood, among others, had all urged Yelverton unsuccessfully to seek a reconciliation with Buckingham,¹¹⁵ Sir Robert Pye, one of Buckingham's more trusted "creatures", approached an unyielding Yelverton early one morning with an abrupt *volte-face*. Informing Yelverton that Buckingham was happy to sign his warrant and end the impasse, he sought his attendance at Buckingham's chambers. In the meeting that followed, the Duke's sought acknowledgment from Yelverton that his appointment as solicitor depended upon Buckingham's favour, which he was happy to provide "notwithstanding Sir James Lea had offered 10,000l. to have the place".¹¹⁶ Reminding Yelverton that he should be "carefull" to "be his frend", he was instructed to seek the king's signature for his warrant of office before presenting it for Buckingham's inspection.¹¹⁷ Although Yelverton professed to Whitelocke "that he nether gave to the erl nor to any other subject in the kingdom on farthing to cum into the place, nor contracted anything, nor promised anything", although he "freely... of his dutye" gave the King £4000,¹¹⁸ Whitelocke could hardly fail to see the pyrrhic nature of Yelverton's victory over Buckingham.

As the year progressed, so did Whitelocke's concern with the growing influence of the Duke of Buckingham in major legal promotions. Buckingham's patronage, Whitelocke implied, threatened not just the integrity but the actual competence of the judicial hierarchy. In a series of notes set down "for posteritye to know the course of things in our profession", Whitelocke detailed a string of controversial legal appointments made through Buckingham's influence.¹¹⁹ In 1616 Anthony Ben, a

¹¹⁴*Liber Famelicus*, p. 55.

¹¹⁵*Liber Famelicus*, p. 55-56.

¹¹⁶*Liber Famelicus*, p. 56.

¹¹⁷*Liber Famelicus*, p. 57.

¹¹⁸*Liber Famelicus*, p. 57.

¹¹⁹*Liber Famelicus*, p. 55.

Middle Temple bencher, was made recorder of London. He was in Whitelocke's estimation "well enough spoken", but without doubt his promotion had been "procured by a great one about him, to wit, the erl of Buckingham".¹²⁰ Walter Pye, also a Middle Templar but in this case only an utter-barrister, was promoted to a Welsh circuit from which Sir George Snigg had been displaced "by the meanes of the erl of Buckingham";¹²¹ Sir Robert Naunton was made Surveyor of the Court of Wards through the patronage of Lady Compton (Buckingham's mother), and Whitelocke noted that in this instance an appointment "ever held by men lerned in the law" had gone to "a scholler, but meer stranger to the law".¹²² The spectacular rise of Lionel Cranfield, whom Whitelocke belittled as an apprentice boy "thrust into the acquaintance of great men", was one of parliament's major charges against Buckingham in the proceedings launched against him in 1626,¹²³ and there is no doubt that Whitelocke felt him poorly qualified to hold the position of Master of Requests, to which he ascended in 1616 "by the erl of Buckingham's meanes".¹²⁴ The Mastership, Whitelocke lamented in light of Cranfield's appointment, was "a place requiring a man lerned, ether in the civill or common lawes, and so they have allwayes been".¹²⁵

The central role of the Duke in court affairs is nowhere better evidenced than in the renewed flurry of interest in Roper's Office which led to Whitelocke's removal as joint-patentee in November of 1616.¹²⁶ With Somerset's fall from royal favour in 1616 Buckingham took an interest in the sinecure, employing Sir Francis Bacon as his broker to negotiate control of the patent. In Whitelocke's version of events, he was subsequently "blowen out of the office of the Kinges Benche" as Buckingham's inordinate power at the royal court was quickly brought to bear.¹²⁷

¹²⁰*Liber Famelicus*, p. 54.

¹²¹*ibid.*

¹²²*ibid.*

¹²³Prest, *Rise of the Barristers*, p. 141.

¹²⁴*Liber Famelicus*, pp. 54.

¹²⁵*Liber Famelicus*, pp. 54-55.

¹²⁶Lockyer's analysis of events (*Buckingham*, pp. 31-32) is to be read in preference Kopperman's account (*Sir Robert Heath*, pp. 15-16) in which Harrington's death is wrongly recorded as 1616.

¹²⁷*Liber Famelicus*, p. 57.

While Sir John Roper, who was technically still in control of the patent, appears to have backed Whitelocke to keep his place as a joint-patentee in the office, Buckingham was keen to see one of his agents, Robert Shute, gain control of the rights. Whitelocke condemned Shute in private as Buckingham's "hangby and petifogger",¹²⁸ but there was little he could do to stop Shute from taking his place, short of begging the Duke to accept his own allegiance. On November 18, under pressure from the king, Bacon despatched Whitelocke a writ under the privy seal, ordering him to relinquish control of the patent into the hands of the newly appointed Chief Justice Montagu, by whose discretion the office had always technically been controlled (and whom Whitelocke claimed was paid £500 for his compliance).¹²⁹ Whitelocke was clearly disappointed to see the patent passed on to Shute, but he was even less happy to find that Heath had managed to retain his position of patentee, remarking that "Heathe dealt suspiciously in this matter, and I doubt he will never have any great katche by it".¹³⁰ In fact, Heath retained his patent (and his share of the proceeds) as Buckingham became the sole patron of the office following Sir John Roper's death in October 1618.¹³¹ Whitelocke scoffed that the new patentees "will be but bankers, or cashemen, at the erl of Buckingham's command", but there may have been a whiff of desperation in his conclusion that "I am a freeman, and hope so to continue".¹³² The price of this freedom was brought home once and for all in his failed attempt, two years later, to gain the office of recorder of London.¹³³

While Gruenfelder and Kishlansky have disputed the nature of elections in early Stuart England, both would agree that when elections were contested, it was often at great cost to social harmony.¹³⁴ In the period 1603-1642 the city of London and the

¹²⁸*Liber Famelicus*, p. 58.

¹²⁹*Liber Famelicus*, pp. 58-59.

¹³⁰*Liber Famelicus*, p. 59.

¹³¹Kopperman, *Sir Robert Heath*, p. 16.

¹³²*Liber Famelicus*, p. 59.

¹³³For the rewards and responsibilities of the recordership cf. Kopperman, *Sir Robert Heath*, p. 20; Cumberlege, G., *The Corporation of London: Its Origin, Constitution, Powers and Duties* (London 1950), pp. 58-60; Foster, F.F., 'Merchants and Bureaucrats in Elizabethan London', *Guildhall Miscellany* 4 no. 3 (1972), pp. 152-153.

¹³⁴Kishlansky, M.A., *Parliamentary Selection: Social and Political Choice in Early Modern England* (Cambridge 1986); Gruenfelder, J.K., *Influence in early Stuart elections, 1604-1640*

royal court several times vied for influence over civic appointments,¹³⁵ and the complex political machinations that ensued at election time is nowhere better evidenced than in the 1618 election. A comparison of the biased but highly detailed account provided in the *Liber Famelicus*,¹³⁶ and the more detached observations of John Chamberlain,¹³⁷ paints a fascinating picture of this election. In November 1618 Richard Martin, who claimed the office of recorder of London less than two months earlier from Anthony Benn,¹³⁸ died of smallpox. Whitelocke claimed that Martin had gained office through "the sollicitation" of Sir Lionel Cranfield, and even suggested that Martin's illness was exacerbated by his inability to meet Cranfield's demand for £1500 in gratitude for the appointment.¹³⁹ Cranfield sought this money to repay Sir Edward Zouche, and Martin's death on November 7 left him £1500 out of pocket, and eager to gain some advantage from his trouble.¹⁴⁰ He sent for Whitelocke the morning after, who was "advised to cum in as a peeser up" of the "bracke" between Zouche and Cranfield.¹⁴¹

As Whitelocke accepted Cranfield's offer, one can see the shifting sands upon which his own political fortunes increasingly were built. Writing in the *Liber Famelicus* in 1616, Whitelocke criticized Cranfield as "an apprentice boy... thrust into the acquaintance of great men".¹⁴² Three years later in the same book, Cranfield received kinder assessment as the "sun of a citizen...free of the mercers [who]... came into the notice of the king by shewing diligence and circumspection in

(Columbus 1981); cf. Cust, R., 'Politics and the Electorate in the 1620s' in Cust & Hughes (eds.), *Conflict in Early Stuart England*, pp. 134-167.

¹³⁵Pearl, V., *London and the Outbreak of the Puritan Revolution: City Government and National Politics, 1625-1643* (Oxford 1961), *passim*.

¹³⁶*Liber Famelicus*, pp. 63-68.

¹³⁷'Chamberlain to Carelton, London, November 7, 1618', reprinted in McClure (ed.), *The Letters of John Chamberlain*, vol. 2, pp. 180-182 and Birch (ed.), *Court and Times of James I*, vol. 2, pp. 104-105. Chamberlain's report of events appears to be a distillation of the events described by Whitelocke; there is no contradiction between their accounts.

¹³⁸Guildhall Corporation Record Office, *Report of the Court of Aldermen* 33, fol. 403.

¹³⁹*Liber Famelicus*, p. 63.

¹⁴⁰*Calendar of State Papers Domestic James I 1611-1618*, p. 591: November 7, 'John Pory to Carleton', 'John Chamberlain to Carleton'.

¹⁴¹*Liber Famelicus*, pp. 63-64.

¹⁴²*Liber Famelicus*, p. 54.

the case of profit".¹⁴³ By 1618 Cranfield's prominence at court was an established fact,¹⁴⁴ and Whitelocke was reluctant to turn down his patronage, canvassing support for his nomination to the recordership among the aldermen and common council.¹⁴⁵ Unfortunately for Whitelocke, the Duke of Buckingham now moved to secure the election of his own candidate, Robert Shute.

Such was the Crown's interest in the 1618 election that written endorsements of Shute by the Chancellor Bacon, Chief Justice Montagu and the king himself were sent to the aldermen "so soone as Mr. Martin's breathe was out of his bodye".¹⁴⁶ Buckingham's desire to see Shute put in was such, Whitelocke recalled with disdain, that Montagu solicited the support of aldermen "withe mutche gesture and importunitye" at a church service on the very day of Martin's death.¹⁴⁷ Deciding to challenge Shute (with whom we must remember he had a score to settle over Roper's Office), Whitelocke and his allies among the aldermen, including Sir William Cockayne and Sir Thomas Bennet, began canvassing their own support.¹⁴⁸ On the day of the election, All Souls' Day 1618, Shute appeared at the Guildhall "withe manye of his frends accompanying him" and presented himself as a candidate, Whitelocke remarked, "in great braverie".¹⁴⁹ Upon the public reading of four candidates Whitelocke's supporters publicly began to protest that the king, in pressing them to elect Shute, had broken an earlier promise not to interfere in the election process.¹⁵⁰ They also argued that Shute had been outlawed for bankruptcy, and moved to block his nomination as "a man knowen to be unworthye and unfit for the place".¹⁵¹ As the "altercation grew warm" between Shute's men and

¹⁴³*Liber Famelicus*, p. 76.

¹⁴⁴See Lockyer, *The Early Stuarts*, pp. 87-93.

¹⁴⁵*Liber Famelicus*, pp. 63-64.

¹⁴⁶*Liber Famelicus*, p. 64; cf. 'Chamberlain to Carleton, 7 November 1618' in Birch (ed.), *Court and Times of James I*, vol. 2, p. 104; McClure (ed.), *Letters of John Chamberlain*, vol. 2, p. 180.

¹⁴⁷*ibid.*

¹⁴⁸*ibid.*

¹⁴⁹*ibid.*

¹⁵⁰Four were to be nominated to observe correct procedure, but only Whitelocke and Shute were genuine contenders.

¹⁵¹*ibid.*

Whitelocke's supporters, the election disintegrated into a rowdy shouting match, and was abandoned by both parties.¹⁵²

As the election broke up, several aldermen were immediately summoned by the Chancellor to explain their actions.¹⁵³ Under pressure from an irritated King James to know why Shute was unacceptable to the city, Bacon could hardly reply that Buckingham's unpopularity and the king's own interference were at issue; after protracted, and ultimately fruitless, discussion with the aldermen, he directed them to present themselves to the king.¹⁵⁴ A delegation of aldermen then met with James and Buckingham to request that "they mighte, according to their charters, have a free election, without being pressed by letters".¹⁵⁵ Shute, they argued, was not eligible to stand as a candidate anyway.¹⁵⁶ After Buckingham had unsuccessfully attempted to play down the offences that barred him from office, he decided to press another of his clients upon the aldermen. On the Duke's advice, Robert Heath was henceforth endorsed by James as his preferred choice for the office.¹⁵⁷

If Shute was unlikely to gain Whitelocke's respect, Robert Heath, "the marqueses creature... well acquaynted with the Scotts in the bedchamber... and a great agent in new suites and projects for greedy courteurs",¹⁵⁸ was in his eyes hardly a more popular choice. The aldermen, he contended, "distasted him";¹⁵⁹ Chamberlain's account suggests that the aldermen found little to choose between Shute and Heath, who as joint-patentees to Roper's office were equally subservient to Buckingham.¹⁶⁰ Whitelocke felt that in the new election it "was perceaved that the king's commendation wold not prevail", but on the day of the election Whitelocke's

¹⁵²*Liber Famelicus*, p. 65.

¹⁵³*ibid.*

¹⁵⁴*ibid.*

¹⁵⁵*ibid.*

¹⁵⁶*Liber Famelicus*, pp. 65-66; Chamberlain (*ibid.*) recounted that "the Aldermen took great exception to him as well of yeares, gravitie, learning in the law and that he had ben divers times out-lawed upon record, and ben bound to the goode behaviour, so that he was altogether incapable and insufficient for such an office".

¹⁵⁷*Liber Famelicus*, p. 66.

¹⁵⁸*ibid.*

¹⁵⁹*ibid.*

¹⁶⁰Birch (ed.), *Court and Times of James I*, vol. 2, p. 105.

original patron, Sir Lionel Cranfield, arrived at the Guildhall to announce that if Heath was not to be elected "they shold forbear to proceed until they had given his majestie reasons for their refusall".¹⁶¹ As in the earlier aborted attempt, Whitelocke recounted, the election immediately "brake up" at this point.¹⁶²

In the face of continuing royal pressure, and now without the support of his original patron at court, Whitelocke showed typical obstinacy and continued to assert his right to contest the recordership. As his own position deteriorated from this point, his account is coloured by characteristic hubris. Chamberlain recounted that the aldermen now presented the king with four names (John Walter, Thomas Crew, William Jones and James Whitelocke) from which he might select a recorder, but that James asked them "how they could like of one Heath? Whereto they saide nothing for the present".¹⁶³ All of the aldermens' nominees were prominent lawyers with whom Whitelocke would deal extensive throughout his career, and the king's refusal to forgo Heath for a more capable candidate tells us much about Buckingham's effect on the principle of promotion by merit in the later years of James I. Whitelocke himself felt that the parliamentary conduct of himself and Crew was at issue; he noted that the king named Crew as a man "he wold bar from the place",¹⁶⁴ and later expressly named Heath as his choice for recorder over Whitelocke himself "as if ther had been a remembrance of my not pleasing the king in parliament".¹⁶⁵ It was this remark that would lead Whitelocke to reflect that in his failure to secure the recordership:

I was barred from that by [a] highe hand which by the liberty of a subject was lawful for me to ask, and I was sure by a fair course to have obtained, and this as a revenge for doing my duty in parliament.¹⁶⁶

In fact, while the king may have used the parliamentary reputation of Whitelocke and Crew to justify his opposition to their election, his firm support for Heath

¹⁶¹*Liber Famelicus*, p. 66.

¹⁶²*ibid.*

¹⁶³Birch (ed.), *Court and Times of James I*, vol. 2, p. 105.

¹⁶⁴*Liber Famelicus*, p. 67.

¹⁶⁵*Liber Famelicus*, p. 67.

¹⁶⁶*Liber Famelicus*, p. 69.

probably reflected, more fundamentally, an increasingly irrational desire on his part to support Buckingham. As Whitelocke was known to be the main contender, it was no surprise that as the aldermen refused to endorse Heath, the king now objected "in particuler against Master Whitlocke by name" when he was proposed as a suitable candidate.¹⁶⁷ Whitelocke suggests that as negotiations continued, "false brethren" among the aldermen moved to placate the king. Under direct pressure to resign from the contest, Whitelocke grudgingly took the advice of his supporters and formally advised Sir William Cockayne, his principal sponsor, of his intention to withdraw, but his "frendes" now hatched a new plot to thwart Heath's election. They now moved to nominate Whitelocke's old friend and associate Sir John Walter as recorder, "who was so famous and worthye that the voyces wear likely to go for him, if it mighte appear he wold accept of it", and Whitelocke assured his friends among the court that if nominated Walter would stand.¹⁶⁸

"This plot being layd", the final stage of this long and complicated tussle between the aldermen and the Crown began with a third attempt to elect the recorder of London on 14 November 1618 "in full court of the lord maior and twenty-four aldermen".¹⁶⁹ Confusion quickly followed as Whitelocke (to everyone's surprise including his own) was nominated as the first candidate, by a member unaware of his new position.¹⁷⁰ As supporters expected to endorse him remained silent, Cockayne informed those present that while "verye mutche beholding to them for thear loves", Whitelocke had now decided not to contest the position.¹⁷¹ With his usual candour, Whitelocke went on to assure future readers of his journal that "Mutche was spoken on my behalf, and more muttered of the course taken against me, and so an end of my businesse".¹⁷² The outcome of the election, which had seen such intense maneuvering on the part of both parties, was a tight result. Of the

¹⁶⁷'Chamberlain to Carleton, 14 November 1618' in McClure (ed.) *Letters of John Chamberlain*, vol. 2, p. 182; Birch (ed.), *Court and Times of James I*, vol. 2, p. 107.

¹⁶⁸*Liber Famelicus*, p. 68.

¹⁶⁹*ibid.*

¹⁷⁰*ibid.*

¹⁷¹*ibid.*

¹⁷²*ibid.*

two real candidates (Whitelocke suggests that Sir Thomas Ireland and Thomas Hedley of Gray's Inn were both "cyphers"), eleven of the twenty-five "voyces" went for Walter, and one (Sir John Garrett) abstained from voting, declaring that in the normal course of events he would happily have voted for Whitelocke.¹⁷³ This left Heath with a majority of one, in Whitelocke's eyes an empty victory.¹⁷⁴ While Whitelocke (possibly inaccurately) noted that the new recorder was now required to pay £1500 for the office,¹⁷⁵ in a continuation of the complicated financial dealings started between Sir Lionel Cranfield and Richard Martin,¹⁷⁶ Whitelocke was consoled by friends, among them several of the central court judges, who jokingly told him that he was "*Reminiscor* though not recorder, and that Mr. Thomas Crew was *Memini*".¹⁷⁷

The price of promotion, 1618-1620:

Any tendency to discuss the Crown's initial opposition to and later endorsement of James Whitelocke between 1608 and 1620 in a continuum is essentially misleading. We would do better to consider the influence of two powerful courtiers, Sir Thomas Ellesmere, and Sir George Villiers, and to divide Whitelocke's career into two relatively separate periods, the first from 1608-1616 and the second from 1616-1620. In the first period, Whitelocke found that opposition to the interests of the Crown in or out of parliament threatened his advancement. By the time he began to censor his own comments in the *Liber Famelicus* in 1613,¹⁷⁸ he may have begun to see that his arguments were condemned as much for their theoretical challenge to the Crown's exercise of sovereignty as anything else. After the parliament of 1614, Whitelocke was quieter in public about the "rights of the subject", but he did not find

¹⁷³*ibid.*

¹⁷⁴Guildhall CRO, *Report of the Court of Aldermen* 34, fol. 4v.

¹⁷⁵Chamberlain stated that Heath disclaimed "all such contracts wherfore he [Cranfield] must find some other way to be restored"; Birch (ed.), *Court and Times of James I*, vol. 2, p. 107; cf. Kopperman, *Sir Robert Heath*, p. 19.

¹⁷⁶*ibid.*

¹⁷⁷*Liber Famelicus*, p. 69.

¹⁷⁸*Liber Famelicus*, p. 39.

favour at court until the death of the Lord Ellesmere. After this time it was not Whitelocke's open criticism of the Crown, but his refusal to show political deference to the Duke of Buckingham, that jeopardized any chance of success. While he condemned Buckingham's influence over a string of legal appointments made after 1616, Whitelocke was slow to see that after the demise of Somerset *all* alliances in the court flowed back, in one way or another, to Buckingham. While his unceremonious dumping from Roper's office may have shaken him, Cranfield's *volte-face* during his attempts to gain election as recorder of London must have brought this point home once and for all. What remains to be seen is the price that was demanded of Whitelocke as he abandoned his "freedom" and sought Buckingham's patronage.

In his attempts to gain promotion as a legal officer of the Crown after 1618, James Whitelocke was fortunate that despite his obvious misgivings about the increasingly arbitrary influence of Buckingham on royal appointments after 1616, he had never dared to criticize the Duke publicly. Given his earlier scorn towards the Duke's "creatures", Whitelocke was hardly likely to stress his dependence upon Buckingham in later years, and what clues he does furnish about the Duke's importance in his promotions after 1618 are oblique. However, it is obvious that Buckingham was critical to his success. With Ellesmere's passing, Buckingham had gained the office of Lord Lieutenant of Buckinghamshire,¹⁷⁹ and Whitelocke was appointed to commissions of the peace in Buckinghamshire in November 1617, and then Oxfordshire in May 1618.¹⁸⁰ While the strong position of Whitelocke in these counties undoubtedly pressed his claim to office, it is notable that Buckingham specifically requested Whitelocke's appointment to a special commission for the city of Westminster, established at the Duke's instigation in December 1618.¹⁸¹ Did Whitelocke pay for Buckingham's endorsement? David Lemmings has commented upon the "galaxy of grandees" who assembled for Whitelocke's reader's feast in

¹⁷⁹Peck, *Court Patronage and Corruption*, p. 83.

¹⁸⁰*Liber Famelicus*, pp. 60, 62.

¹⁸¹*Liber Famelicus*, pp. 69-70.

1619, and suggests a strong political motivation behind his lavish display of hospitality.¹⁸² In fact, the reciprocal nature of this hospitality should be stressed, as guests provided gifts for the feast to the value of around £130, more than a third of Whitelocke's total expense of around £370.¹⁸³ Yet Lemmings is right to stress a political motivation behind Whitelocke's guest list, which included influential courtiers such as Sir Lionel Cranfield, Sir John Davies, and Sir Robert Heath - all proteges of Buckingham, and the latter two poorly regarded by Whitelocke in private.¹⁸⁴

More oblique evidence of Whitelocke's dependence on Buckingham is found from the time of his appointment as a serjeant-at-law; the signet ring, which in time-honoured tradition celebrated his call as a serjeant, was publicly dedicated to Buckingham, along with William earl of Northampton who was to serve as Whitelocke's nominal superior in Chester.¹⁸⁵ Whether this tacit admission of the realities of power at the royal court equates with any form of political subservience is questionable. In light of Buckingham's stranglehold on royal offices, it was widely suspected by his contemporaries that Whitelocke's rapid promotion from serjeant to Chief Justice of Chester in 1620 could only have been achieved with some form of payment to Buckingham. Writing to Sir Dudley Carleton on 9 November 1620, John Chamberlain remarked:

Sir James Whitelocke is gone to be judge of Wales and Chester, which place came not to him gratis, though perhaps his knightship was cast into the bargain.¹⁸⁶

¹⁸²Lemings, D., 'Ritual and the Law in Early Modern England' in S. Corcoran (ed), *Law and History in Australia: A Collection of Papers presented at the 1989 Law and History Conference, Adelaide* (Adelaide 1991), p. 7; cf. Prest, *Inns of Court*, pp. 226-227.

¹⁸³*Liber Famelicus*, pp. 70-73.

¹⁸⁴*Liber Famelicus*, p. 75. See Whitelocke's comments on Heath and Davis, and his initial comments on Cranfield, *Liber Famelicus*, pp. 54-55, 59, 105. Whitelocke's list, which Prest has suggested is "the most complete surviving guest list for any reader's feast before the Civil War" (Prest, *Inns of Court*, p. 226), shows that invited guests also included friends such as Sir Henry Yelverton and Bishop Buckeridge, and patrons such as Sir Julius Caesar.

¹⁸⁵Lincoln's Inn MS Misc. 586 (3), unfoliated, in Baker (ed.), *The Order of Serjeants at Law*, p. 437.

¹⁸⁶Birch (ed.), *Court and Times of James I*, vol. 2, p. 105.

Again, we are not likely to find evidence to support this allegation in Whitelocke's account of events. The *Liber Famelicus* notes only the official correspondence that informed him of his promotion as serjeant-at-law on 18 June 1620, as well as a second warrant received on the same day in which Buckingham instructed him that he was to be promoted to Chief Justice of Chester.¹⁸⁷ Whitelocke's list of expenses arising from his appointment to serjeant suggests that the customary requirements of office - his need for new apparel, the cost of a feast, and small fees given to the officers executing the ceremony - contributed heavily to his total outlay of £207. ds. 11d.¹⁸⁸ The only additional gifts he mentions were the two signets rings mentioned above, valued at £45 14s. 8d., and a gift of plate valued at £19 3s. 5d. given to Sir Francis Bacon (lending some support to Spedding's claim that Bacon's patronage ensured Whitelocke's promotion).¹⁸⁹ Whitelocke recounted that after he was knighted in the king's bedchamber in the presence of Buckingham, Prince Charles and the earl of Northampton on 29 October 1620, he received a bill "for fees for knighthood", which came to £44 17s.¹⁹⁰ This fee, most likely in payment to the heralds and the servants of the bedchamber, was hardly comparable to the £4000 given to James I by Yelverton for the solicitor-general's place or the £600 demanded of the serjeants in 1614. And in 1626 a parliamentary committee, moving to indict Buckingham, could find no evidence to support the view that Whitelocke paid for his appointment. Replying on behalf of a select committee which had examined "what Sir James Whitelocke gave for his place of Chester to the Lord Duke", John Glanville replied unequivocally that while "such a thing was infered at the committee... there was no color or ground of proof for it".¹⁹¹ Above all, James Whitelocke's progression to the higher ranks of the judiciary reflected his undoubted ability in law, an ability which may have been hampered by political concerns before the demise of Chancellor Ellesmere and the ascent of George Villiers. In the country

¹⁸⁷*Liber Famelicus*, p. 78.

¹⁸⁸*Liber Famelicus*, p. 84.

¹⁸⁹*Works*, vol. 14, pp. 100-102.

¹⁹⁰*Liber Famelicus*, p. 84.

¹⁹¹*History of Parliament Trust*.

as in the courts of law, James Whitelocke obtained royal office with the emergence of the new, all-powerful patron; his ascendancy in local and national politics as JP and judge after 1618 reflect a new political landscape in which old enemies no longer existed.

CHAPTER SIX

Politics and the Bench, 1624-1632

While dissatisfaction with the Duke of Buckingham's influence over judicial appointments led to charges of corruption against James Whitelocke in the parliament of 1626, it was not Buckingham's actions, but those of the king himself, that threatened to destroy Whitelocke's judicial reputation on the eve of the civil war. In 1640, as the political nation moved towards internal paralysis, members of the Long Parliament moved to impeach James Whitelocke posthumously (along with Sir Nicholas Hyde and Sir William Jones).¹ Whitelocke's conduct as a Justice of the King's Bench remained a cause for public concern and public debate fully seven years after his death. Members of the Commons sought to recoup the legal fees from Eliot's case, arguing that Hyde, Jones and Whitelocke had failed to uphold the law by refusing to grant bail without sureties of good behaviour (although Croke was excused "as differing in opinion from the rest").² This accusation mirrored the general bitterness felt about the role of the judges since the accession of Charles I.³

Guided by an interest in the causes of civil war, historians have tended to follow the MPs in reaching a verdict on the "collapse" in judicial standards during Charles's reign.⁴ Three decades ago, Judson wrote of a "legal absolutism" promoted by "royalist judges" and employed by a government that openly used the courts of law as an ally.⁵ More recently Prest has concluded that:

After the fiasco of 1626, when both judges and serjeants at law refused to pronounce forced loans legal, Charles I largely succeeded in taming his judiciary, although it took

¹Jones, *Politics and the Bench*, p. 13.

²Whitelock, *Memorials of the English Affairs*, p. 38.

³Jones, *Politics and the Bench*, pp. 13-24.

⁴Reeve, *Charles I and the Road to Personal Rule*, p. 137.

⁵Judson, *The Crisis of the Constitution*, pp. 141, 144, 349, and ch. 4, *passim*.

another sacking (that of Chief Baron Sir John Walter in 1630) to complete the process.⁶

Revisionists have proven more sympathetic to the judges' predicament;⁷ Russell, for example, mentions the judges' "great embarrassment" over the form of legal argument employed by the Crown during the five knights' case.⁸ Yet beyond Jones's important study,⁹ little has been said about the overall relationship between Crown policy and the judiciary. James Whitelocke's experience as Justice of King's Bench suggests that the politics of the period 1625-1632 is best understood by an assessment of Crown policy, because Crown policy stretched political consensus to breaking point over this time. His experience further suggests that criticism of Crown conduct and government officials became synonymous, in the mind of the new king, with criticism of the king himself.¹⁰

This second point is critical, because it underlines the limitations imposed on my conclusions in the absence of Whitelocke's private opinion. If James Whitelocke *had* maintained a consistent level of political commentary throughout the *Liber Famelicus*, his observations on events in the 1620s would be invaluable. As Prest has observed, however, his "vivid account of his life and times becomes quite cryptic soon after his promotion to the judiciary".¹¹ We should reflect upon this change. Early in Charles's reign, Whitelocke reviewed the "passages in term and parliament" in a separate book,¹² but of the benchmark rulings from 1626 to 1630 in which his own opinion played a major role, he made no mention. As these rulings personally involved Charles I, it is hardly surprising that Whitelocke had little desire to commit his thoughts to paper.¹³ While Whitelocke was prepared to criticize

⁶Prest, *Rise of the Barristers*, p. 268.

⁷Sharpe, *The Personal Rule of Charles I*, pp. 659-665; Russell, *Parliaments and English Politics*, p. 334.

⁸*ibid.*

⁹Jones, *Politics and the Bench*, *passim*.

¹⁰Cf. Reeve, *Charles I and the Road to Personal Rule*, pp. 175-177.

¹¹Prest, 'Politics and Profession in Early Stuart England' p. 163.

¹²*Liber Famelicus*, p. 104. I have been unable to locate this source; see my comments on the dispersal of Whitelocke's papers in the introduction.

¹³Cf. Cust, *The Forced Loan and English Politics*, p. 187; Reeve, *Charles I and the Road to Personal Rule*, p. 91; Hirst, D., 'The Privy Council and Problems of Enforcement in the 1620s',

Crown actions and government officials in the reign of James I, he had always shied away from criticism of the king.¹⁴ Called by the Crown in 1628 to rule whether a remark that Charles was "as unwise a king as ever was" constituted treason, he knew only too well that criticism was a delicate business where the person of the king was involved.¹⁵

This absence of commentary adds to a feeling, reinforced by his son's testimony,¹⁶ that James Whitelocke felt himself to be the victim of unfortunate circumstances. Defending his father in the House of Commons against the "mistaken" allegations made against him, Bulstrode Whitelocke argued "that Judge Whitelocke had been a faithful, able and stout asserter of the rights and liberties of the free-born subjects of this Kingdom, for which he had been in many ways a sufferer". He asserted to "those noble gentlemen, who cannot but remember these passages", that Whitelocke's judgement on *habeas corpus* had been "the same with that of Judge Croke", appealing "to the honourable Gentlemen, who were concerned with it; and others, who were present then in Court".¹⁷ The maintenance of family pride (and wealth) was undoubtedly behind this defence of his father's conduct.¹⁸ Nonetheless, his arguments had the support of several other parliamentarians (including John Hampden); as one who can be expected to know his father's mind, Bulstrode's account suggests that tensions existed between James Whitelocke's personal opinions and public actions in the highly charged political atmosphere of the late 1620s.¹⁹ By tracing Whitelocke's involvement in politics from the time of his promotion as Justice of the King's Bench, this chapter considers

Journal of British Studies 18 no. 1 (1978), pp. 50-51; Hibbard, C., *Charles I and the Popish Plot* (Chapel Hill 1983), pp. 89, 232.

¹⁴This point needs stressing, because Charles repeatedly emphasised the relationship between his own will and government policy; cf. Cust, *The Forced Loan and English Politics*, pp. 224-228; Reeve, *Charles I and the Road to Personal Rule*, p. 15.

¹⁵Hugh Pine's case in *State Trials*, vol. 3, cols. 359-368. The judges ruled that Pine's remarks, "wicked as they were", did not constitute treason.

¹⁶See Worden's comments in 'The 'Diary' of Bulstrode Whitelocke', pp. 122-134; cf. Spalding's comments in the *Diary*, pp. xix-xx.

¹⁷Whitelock, *Memorials of the English Affairs*, p. 39.

¹⁸Bulstrode stood to lose financially, as it was proposed that the prisoners' legal fees from 1629 be paid out of the three judges' estates; Whitelock, *Memorials of the English Affairs*, p. 38.

¹⁹Whitelock, *Memorials of the English Affairs*, p. 39; *Liber Famelicus*, p. xv.

these tensions, and asks to what extent James Whitelocke's political principles shifted to accommodate the politics of the new reign.

"Unknowen paths": the judges and provincial administration, 1625-1632:

James Whitelocke was made a puisne judge of the Court of King's Bench on 18 October 1624.²⁰ Recalling his four years of service in Chester, Whitelocke reflected that while he "was not willing to put a hazard upon myself in leaving knowen paths to runn into unknowen", he was "no stranger" to the forms and procedures of the King's Bench", having worked in the court as a lawyer "for the space of twenty-three years and above".²¹ Cooper has suggested that an inevitable change in attitude accompanied the progression from lawyer to judge.²² Henceforth, Whitelocke would feel less affinity with the outspoken lawyers who, in John Selden's words

are very fit in Parliament to second any complaint against both Church and King, and all his servants, with their customs, antiquities, records, statutes, presidents, and stories.²³

As Whitelocke took up residence at Serjeants' Inn, Fleet Street,²⁴ and familiarized himself with the customs and the rewards associated with his new office,²⁵ he noted the men with whom he would live and work in the central courts. Serving as Chief Justice of his own court was Sir James Ley of Lincoln's Inn and Wiltshire, like Whitelocke a member of the Society of Antiquaries in his younger days.²⁶ Ley was promoted to the office of royal treasurer shortly thereafter,²⁷ when he was replaced as Chief Justice by Sir Randal Crew;²⁸ he would later earn Whitelocke's wrath over

²⁰PRO C 66/2324; *Liber Famelicus*, p. 97.

²¹*Liber Famelicus*, p. 99.

²²Cooper, 'Politics and Promotion', p. 87.

²³Rushworth, J., *Historical collections of private passages of state, weighty matters in law, remarkable proceedings in five Parliaments*, 8 vols. (London 1659-1701), vol. 1, p. 356.

²⁴Whitelocke noted that 6 judges and 14 serjeants were living at the Fleet Street address in Michaelmas term 1624 (*Liber Famelicus*, p. 100); he is noted among the 9 judges, 4 king's serjeants and 11 serjeants-at-law holding a lease in 1627; King, H.C., *Records and Documents concerning Serjeants' Inn, Fleet Street* (London 1922), pp. 118-120.

²⁵*Liber Famelicus*, p. 100.

²⁶*ibid.*

²⁷*Liber Famelicus*, p. 101.

²⁸*Liber Famelicus*, p. 102.

dubious financial dealings with the bench. The other judges in King's Bench were Sir John Dodderidge of Surrey, like Whitelocke a Middle Templar, known also to him from the Society of Antiquaries,²⁹ and Sir William Jones of Lincoln's Inn, who was familiar to Whitelocke through his work on commissions in Oxfordshire and Buckinghamshire and their joint service on parliamentary committees.³⁰ Whitelocke had worked with Sir Henry Hobart (Chief Justice of Common Pleas) while Hobart was king's attorney.³¹ Sir Lawrence Tanfield (Chief Baron of Exchequer) was a prominent figure in Oxfordshire, who had served as member for Woodstock before Whitelocke's own appointment to that office.³² Among the king's serjeants, Whitelocke was obviously well acquainted with his uncle Sir George Croke,³³ promoted to the Common Pleas in Hilary term 1624,³⁴ and with Sir John Davies, a Middle Templar held by Whitelocke in low esteem.³⁵ Sir Thomas Coventry, Whitelocke's old partner on the Oxford assize circuit, was now attorney-general.³⁶ Sir Robert Heath, who had done little to endear himself to Whitelocke during their dealings with Roper's Office and the recordership of London, had by 1624 reached the position of solicitor-general.³⁷

The "unknown" path Whitelocke expressed reluctance to face loomed ahead with the death of James I on 27 March 1625.³⁸ The accession of Charles I ushered in a new relationship between the Crown and the judges, at a time when significant changes were emerging on the English political landscape. The correspondence that testifies to James Whitelocke's role in provincial administration for the period 1625-1632 hints at a number of interesting developments between the Crown, the judges and the political nation, as the influence of Charles's approach began to make itself

²⁹*Liber Famelicus*, p. 100.

³⁰*ibid.*

³¹*Liber Famelicus*, pp. 33, 100.

³²*Liber Famelicus*, p. 100.

³³*ibid.*

³⁴*Liber Famelicus*, p. 102.

³⁵*Liber Famelicus*, p. 100.

³⁶*Liber Famelicus*, p. 101.

³⁷*Liber Famelicus*, p. 100.

³⁸*Liber Famelicus*, p. 103.

felt. Shortly after Charles's coronation, Whitelocke noted three new appointments to the bench, two of which would have met with his strong approval. In Easter term 1625, two of his associates from the Oxford assize were promoted to the bench, Sir John Walter as Chief Baron of the Exchequer,³⁹ and Sir Henry Yelverton as a fifth judge of the Court of Common Pleas.⁴⁰ It is hard to say how Whitelocke felt about the promotion of Sir Thomas Trevor, who had formerly served as prince's solicitor, was made a fourth Baron of Exchequer,⁴¹ but he would have been less pleased the promotion of Sir Robert Heath, would take Coventry's place as attorney-general in 1625 with Buckingham's patronage.⁴² Buckingham's influence over the judiciary, which Whitelocke had first noted in 1616, would finally draw open criticism in the parliament of 1626.

Several commentators have noted the strenuous efforts made by the new king and his Privy Council to increase the efficiency of the judicial apparatus in the counties.⁴³ As we shall see from events at Westminster, the Crown's need for judicial support went hand in hand with attempts to gain new sources of revenue, which in turn necessitated tighter administrative control of the provinces. Early in the reign, one of the judges' more important roles in provincial administration was to enforce the recusancy laws. Reeve has noted that despite Charles's leniency towards Catholics, Sir Robert Heath's appointment as attorney-general was "in fact marked by a more stringent application of the laws against recusants".⁴⁴ Despite strong parliamentary pressure, and the need for revenue, this policy was clearly tempered by Charles's personal requests. On 20 December 1625, Heath instructed the

³⁹*ibid.*

⁴⁰*ibid.*

⁴¹*ibid.*

⁴²Kopperman, *Sir Robert Heath*, pp. 38, 50.

⁴³Cockburn, *A History of English Assizes*, pp. 231-234; Hill, L.M., 'County Government in Caroline England' in Russell, C. (ed.), *The Origins of the English Civil War* (London 1973), p. 77; Sharpe, *The Personal Rule of Charles I*, pp. 412-448; and cf. Hirst, 'The Privy Council and the Problems of Enforcement in the 1620s', pp. 46-66.

⁴⁴Reeve, L.J., 'Sir Robert Heath's Advice for Charles I in 1629', *Bulletin of the Institute of Historical Research* 59 no. 2, p. 217. See also Whitelocke's record of the House of Commons' 1628 petition against recusants, vol. 3, fol. 181 (reprinted in Rushworth (ed.), *Historical Collections*, vol. 1, p. 516).

Justices for Buckinghamshire to proceed against local recusants, urging that "neither Lord nor Lady nor any other be spared or winked at".⁴⁵ Yet in July 1626, Heath instructed Whitelocke to allow an indictment against Sir Francis Smith for recusancy to lapse until the following year,⁴⁶ writing to the justices of assize in Lincolnshire in the same month to order that Lord Dunbar, personally cited by the Commons in their petition on the stronger enforcement of recusancy laws,⁴⁷ be spared from prosecution for recusancy at Charles's insistence.⁴⁸ While this uneven enforcement of the recusancy laws was to provide an ongoing source of contention in Charles's parliaments, it was his first major financial innovation, the forced loan, that led to open challenge of his authority.

As the policies of Charles I began to stretch existing perceptions of "customary" government rights, the importance of the judges to the government's political programme increased.⁴⁹ By 1627, as the government found conventional sources of revenue inadequate under the strained circumstances of war, Whitelocke was asked to help implement more controversial government directives. After the judges had revealed their limited support for Crown policy by refusing to endorse the legality of the forced loan, members of the Privy Council took the unusual step of riding the circuit as "lords itinerant" for the first time.⁵⁰ Thereafter, the Council sought closer supervision of the judges' conduct. One way to employ the judges effectively was to appoint them to joint-commissions along with counselors and clerical dignitaries. On 1 June 1627, Whitelocke was appointed to one such commission, to consider the "manning and maintayning of six sufficient shippes of warr for the guardings... of the coasts of this realme from the Thames mouth to the farthest Northeast point of the same", by raising funds from recusant fines extracted from the northern counties

⁴⁵Longleat Papers, vol. 2, fol. 199.

⁴⁶Longleat Papers, vol. 3, fol. 47.

⁴⁷Rushworth (ed.), *Historical Collections*, vol. 1, pp. 391-396.

⁴⁸Longleat Papers, vol. 3, fol. 52.

⁴⁹Reeve, 'Sir Robert Heath's Advice for Charles I in 1629', p. 217.

⁵⁰Hirst, 'The Privy Council and the Problems of Enforcement in the 1620s', p. 59.

and a "voluntary composition" upon all coal shipments leaving Newcastle or Sunderland.⁵¹

While Whitelocke was prepared publicly to challenge the extension of extra-parliamentary taxation in 1626, there was little he could do but comply with Charles's personal requests for money, such as a loan of £20 which he was asked to furnish on 13 February 1627/8 with promise of repayment within one year.⁵² Attempts to reduce payment of the judges' wages met with a more determined response. Noting that official salaries were "sometimes in arrears", W.J. Jones has suggested that a dispute between the judges and the Crown in 1627 over non-payment of their wages stands "as striking indication of bad blood and dubious practices in high quarters".⁵³ Whitelocke's comments in the *Liber Famelicus* on this matter appear, at first glance, to suggest that events in 1627 were a financial aberration.⁵⁴ An inspection of his financial records shows that the reduction of judicial salaries was a recurrent feature of Caroline financial policy, which may well have had a bearing on the judges' attitude towards the Crown over the years 1625-1632.

After he had totalled his profits for Easter term 1625, Whitelocke noted that the daily wage of 8s. 5 ³/₄ d. provided for a Justice of King's Bench furnished a yearly total of £154. 19s. 8d.. In King's Bench and Common Pleas, judges received a further £94. 3s. 2d. for each assize circuit in twice-yearly installments "payd... *the day after Easter term and the day after Michaelmas term*".⁵⁵ Whitelocke's stated yearly profit of £771. 12s. 1d. for 1625 was in fact a projected figure, as it included the sum of £94. 3s. 2d. "Due to me of my last yeares wages at Mich. 1625 where is payable the day after Mich. term".⁵⁶ Subsequent lists of profits show that from 1625 to 1628 this circuit fee, which comprised more than half of the Crown's yearly

⁵¹*Acts of the Privy Council, January to August 1626*, p. 313.

⁵²Longleat Papers, vol. 3, fol. 173.

⁵³Jones, *Politics and the Bench*, p. 37.

⁵⁴*Liber Famelicus*, pp. 108-109.

⁵⁵Whitelocke's italics are omitted from Bruce's edition; BL Additional MS 53725, fol. 164; *Liber Famelicus*, p. 104.

⁵⁶BL Additional MS 53725, fol. 165.

payment to Whitelocke, was thereafter halved. In Easter term 1626, Whitelocke stated that he had received no installment of the circuit wage,⁵⁷ which was eventually paid during his Autumn assize circuit.⁵⁸ He did not receive a second payment in 1626, and while he was paid following Easter term 1627,⁵⁹ the delayed payment of his fee at Michaelmas term 1627 was long enough for him to note that the fee was "not payd", a note he subsequently crossed out.⁶⁰ Even with this £188. 6s. 4d. Crown fee for both circuits in 1627, Whitelocke was making less as Justice of King's Bench than he had done during his time in Chester.⁶¹ As we shall see, stalled payment of his wages in the following year would draw both private and public protest.

Undoubtedly, the Crown's attempts to present a united front with the judges was jeopardized by an ongoing dispute about the judges' salaries, which spilled over into open confrontation in 1627. In the *Liber Famelicus*, Whitelocke again noted that the Crown fee he would normally receive from assize work, "whiche for memory of man had been alwayes payd the last day of Ester term and Michaelmas term, or the day after at the farthest, was unpayd the end of this Michaelmas term, 1627".⁶² Along with Justices Jones, Croke and Serjeant Harvey, Whitelocke demanded an explanation from Lord Treasurer Marlborough, who, Whitelocke recounted, "gave sleeveless and cunning answeares, but craftely and deceitfully, underhand, did abuse the judges withe delays".⁶³ The judges then reminded the treasurer of statutory requirements which bound him to pay them even in times of civil war, by recourse to funds derived from duties on London, Bristol and Kingston-on-Hull.⁶⁴ Whitelocke recounted that Marlborough's response was to offer payment to those judges to

⁵⁷BL Additional MS 53725, fol. 169.

⁵⁸BL Additional MS 53725, fol. 170.

⁵⁹BL Additional MS 53725, fol. 173.

⁶⁰BL Additional MS 53725, fol. 175.

⁶¹See ch 8. It should be noted, however, that Sir Thomas Chamberlain was now having trouble forcing the Crown to pay the wages that Whitelocke assured him were his due as Chief Justice of Chester; *CSPD 1625-1626*, p. 60.

⁶²*Liber Famelicus*, p. 108.

⁶³BL Additional MS 53725, fol. 176. Bruce has read "cumming" for "cunning" in *ibid.*

⁶⁴*ibid.*

whom he was personally in debt from his time as Chief Justice of King's Bench. Whitelocke was not among this group, and seemed particularly pleased that Sir Robert Pye had refused the offer, "that none ought to be preferred or singled out from ther fellowes".⁶⁵ If Marlborough expected a man as fiercely conscious of his rights as Whitelocke to accept this state of affairs, he was badly mistaken. Along with Jones and Dodderidge, he drew up a writ of *liberate* based upon the statute of 18 H. 6 to force the treasury to pay his fee.⁶⁶ Whitelocke condemned Marlborough as an "old dissembler, that had been on of our owne company, [but] used us worse than any man before him".⁶⁷

The Lord Keeper's intervention put a stay to proceedings,⁶⁸ but it did not assure the judges of their circuit fee, which was again missing from Whitelocke's income for Hilary term.⁶⁹ In 1628, according to Whitelocke, things went from bad worse. In a "wonder" arising from the 1628 circuit, he noted that, for the first time ever, to the best of his knowledge, all Crown circuit wages were suspended, forcing the judges "ether to deceave the whole kingdom, whome by their summons they had called togeather [i.e., abandon the assizes], or spend their owne money in the king's service".⁷⁰ Whitelocke went on to detail the exact allowances provided for the "Justice of Assize in their circuits", which comprised a daily fee of £3. 1s. per judge primarily to pay for his legal entourage.⁷¹ Over the twenty-eight days of the Oxford circuit, Whitelocke estimated, the Crown allowance came to a total of £170. 16s., from which the clerk of assize took £9. 6d. 8d. for horsemeat, allowing the judges to pocket slightly over £100 each.⁷² In 1628, as Whitelocke rode the shorter Northern circuit, he did not receive the king's fee of £67. 2s.,⁷³ although the Bishop

⁶⁵*ibid.*

⁶⁶*Liber Famelicus*, pp. 108-109.

⁶⁷*Liber Famelicus*, p. 108.

⁶⁸*Liber Famelicus*, p. 109.

⁶⁹BL Additional MS 53725, fol. 178.

⁷⁰*Liber Famelicus*, p. 109.

⁷¹*Liber Famelicus*, p. 110.

⁷²*ibid.*

⁷³Estimated from the previous year; BL Additional MS 53725, fol. 175.

of Durham provided £40 in "compensation",⁷⁴ £28 more than he had in the previous year,⁷⁵ providing Whitelocke with a profit of £128. 9s. 8d. after he had met expenses of £42. 17s. 10d.⁷⁶ This was not a significant loss in profits from those of the previous assize, but events in 1628 disturbed Whitelocke for more than financial reasons. Blaming "these monstrous enormities in the state" upon the "crooked dealing" of the treasurer,⁷⁷ Whitelocke showed that pragmatic self-interest could flow into "principled" dissent, as the unpopular financial measures of the Crown forced him to question the government's morality. After 1628, both components of the Crown's wages would be paid on time.⁷⁸ One might speculate as to whether the Crown's need for judicial support in the wake of the 1628 parliament caused this change of policy. Like many of his peers, Whitelocke was at a loss in 1628 to understand the changes that the pressures of war had forced upon government policy, or the refusal of many of the king's closest advisors (or the king himself) to consider the damage that such changes might cause to the Crown's reputation.

Council attempts to monitor judicial administration in the provinces crystallized in an order of 31 January 1631. This order appointed six counselors to each of six regions drawn along assize boundaries, and required the local justices "to give an accompt monthly" to the judges, "so that they may, in the beginning of every Tearme, give up the same to the Lords and other Commissioners".⁷⁹ Counselors were assigned to "take accompt" of the judges, and if necessary to "call unto them... for better assistance".⁸⁰ James Whitelocke, along with Justice Jones, was required to administer the Oxford circuit under the guiding hand of the Lord Keeper, the earl of Bridgewater, the earl of Carlisle, the earl of Banbury, Vicount Dorchester and

⁷⁴BL Additional MS 53725, fol. 179. This "compensation" may have been influenced by Whitelocke's support of the Bishop in the local assizes; see *infra*, pp. 292-293.

⁷⁵BL Additional MS 53725, fol. 175.

⁷⁶*ibid.*

⁷⁷*Liber Famelicus*, p. 109.

⁷⁸See BL Additional MS 53725, fols. 182 ff.

⁷⁹*Acts of the Privy Council 1630/31*, p. 215.

⁸⁰*ibid.*

Viscount Falkland.⁸¹ Correspondence from the sheriffs of Berkshire, Stafford, Gloucester, Shropshire, and Worcester to Justices Jones and Whitelocke between 1631 and 1633 suggests how this system worked in practice. Certificates were requested from the local Justices of the Peace and the Mayors on such matters as poor relief,⁸² the regulation of corn prices,⁸³ and market regulations,⁸⁴ endorsed by the county sheriffs and passed on for the inspection of the judges, who presented an overall report for the circuit to the Privy Councillors. The success of this plan is not certain; a letter of 23 June 1631 from Sir Ralph Dutton to Justices Jones and Whitelocke enclosed "the only certificate received" for the month, a report on the regulation of market prices prepared by the Justices of Gloucester.⁸⁵ More than anything, this 1631 order demonstrated the Council's intention to instruct and supervise the judges in their role as auxiliaries in the pursuit of Crown policy. It was an intention that was to draw strong resistance from opponents to Crown fiscal policy in parliament, and the courts of law, throughout the 1620s.

"Passages in term and parliament"; the judges and the centre, 1625-1632:

While Whitelocke and the other judges fasted with the king and the peers at Westminster Abby on 2 July 1625, as the Commons fasted in St. Margaret's Church,⁸⁶ the passing of the old reign was met with hopes for a new and prosperous relationship between king and parliament. Whitelocke noted the occasion in the *Liber Famelicus*, but unfortunately, we will probably never know his perception of the parliament itself, which he recorded separately in a "booke of reports".⁸⁷ Whitelocke obviously followed events with interest, acquiring a copy of the Commons' Protestation of 12 August 1625 in reply to Charles's answer touching

⁸¹*ibid.*

⁸²*CSPD 1631-1633*, pp. 37, 45, 47, 50, 53, 69, 74, 88, 91.

⁸³*CSPD 1631-1633*, pp. 31, 47, 53.

⁸⁴*CSPD 1631-1633*, pp. 37, 88.

⁸⁵*CSPD 1631-1633*, p. 88.

⁸⁶*Liber Famelicus*, pp. 103-104.

⁸⁷*Liber Famelicus*, p. 104.

religion,⁸⁸ the Commons' 1626 Declaration against Buckingham,⁸⁹ and later reporting to his wife on the impeachment proceedings launched against Buckingham in June 1626.⁹⁰ It is pertinent that 1625 was the last occasion on which James Whitelocke was prepared to compile a political critique. The early parliaments of Charles I foreshadowed what he saw as two unfortunate trends in the relationship between parliament and the Crown. The first was the questioning by the Commons of the credibility of the judges, as the tarnished reputation of the Crown's principal officers led to doubts about the integrity of the bench. Elaborating on judicial corruption in the impeachment proceedings against Buckingham, John Pym asked how justice could possibly be done when high officials "use their favour about the King to procure places of judicature for money".⁹¹ John Glanville personally cleared Whitelocke of the allegation that he had paid Buckingham for his office, but the reputation of King's Bench was hardly enhanced by Glanville's charge that its former chief justice, Sir James Ley, had procured the office of treasurer through a bribe of £2000 for the Duke's "his owne use".⁹² Whitelocke made no comment of the circumstances surrounding Ley's promotion, but he was obviously aware that dubious practices surrounded many appointments; in 1627 Whitelocke endorsed rumours that that George Vernon had been made serjeant-at-law and then a Baron of Exchequer "for money".⁹³

The Crown's attempts to enlist the judges as political allies in the face of parliamentary hostility further corroded the credibility of the King's Bench in the eyes of many. When the king requested that the earl of Bristol's case be removed from the House of Lords "to proceed by way of indictment in the Kings Bench",⁹⁴ the Upper House replied that "the liberties of the House will be thereby infringed",

⁸⁸Longleat Papers, vol. 2, fol. 189.

⁸⁹Longleat Papers, vol. 3, fol. 37.

⁹⁰Longleat Papers, vol. 3, fol. 46.

⁹¹Rushworth (ed.), *Historical Collections*, vol. 1, p. 338.

⁹²Rushworth (ed.), *Historical Collections*, vol. 1, p. 334.

⁹³*Liber Famelicus*, p. 108; cf. Prest, W.R., 'Judicial Corruption in Early Modern England', *Past & Present* 133 (1991), pp. 80-81.

⁹⁴See Russell, *Parliaments and English Politics*, pp. 309-315.

declining "contrary to the King's pleasure expressly signified by the Lord Keeper".⁹⁵ Oblivious to the spirit of the Lords' reply, some of "Buckingham's partisans" requested that the Clerk of King's Bench be allowed to sit in on the hearings, in order to ensure that the case could be continued in King's Bench if parliament was dissolved.⁹⁶ This request was refused, and the Lords now asked the judges of King's Bench "Whether the King may be a witness in a case of Treasurer",⁹⁷ in response to which, Russell notes, the judges delayed answer for a week and then refused to answer altogether.⁹⁸ Russell does not dwell on the fact that it was not the judges, but Charles, who ensured this outcome. Rushworth records that

before... resolution, this message and command came from the King to the Justices, that in this general question they do not deliver any opinion, but if point come in particular... on mature deliberation, they may give their advice... and there the matter surceased.⁹⁹

It was fortunate for Whitelocke that it did, as for the first time, but certainly not the last, the king's personal intervention had placed him in a politically sensitive position. From Whitelocke's point of view, perhaps the most important development arising from the Westminster and Oxford sessions of 1625 and the parliament of 1626, was (using Munden's term for the initial reaction of James I and his first parliament)¹⁰⁰ the "growth of mutual distrust" between the king and Commons.¹⁰¹ Unlike his father,¹⁰² Charles lacked political pragmatism in the face of a parliament ambivalent about his policies and deeply suspicious of his closest advisers. As this ambivalence derailed his requests for supply he offered no political

⁹⁵Rushworth (ed.), *Historical Collections*, vol. 1, p. 267.

⁹⁶Russell, *Parliaments and English Politics*, p. 317.

⁹⁷Rushworth (ed.), *Historical Collections*, vol. 1, p. 269.

⁹⁸Russell, *Parliaments and English Politics*, p. 317.

⁹⁹Rushworth (ed.), *Historical Collections*, vol. 1, p. 269.

¹⁰⁰Munden, 'James I and 'the growth of mutual distrust': King, Commons and Reform, 1603-1604'.

¹⁰¹Cf. Cust, *The Forced Loan and English Politics*, pp. 13-39.

¹⁰²Cf. Jones, *Politics and the Bench*, p. 30.

concessions and brought parliament to a close.¹⁰³ In the absence of parliamentary supply, new ways to finance his complicated and costly European diplomacy were initiated.¹⁰⁴ Herein lies the origins of the forced loan of 1626.

The forced loan, 1626-1627:

In light of the ongoing historiographical debate on its political effects,¹⁰⁵ the reaction of the judges to the forced loan is of interest.¹⁰⁶ Charles was naturally anxious to secure support for the measure among the more influential of his subjects, and hoped to achieve this with a declaration circulated among the judges and peers towards the end of October 1626. While Whitelocke has left no account of events, the reflections of Sir Richard Hutton, Justice of the Common Pleas, provides a vivid sense of the exchanges to follow as the king sought compliance from men increasingly dubious as to the legality of his requests. On 13 October, Hutton recalled, the judges were summoned to Whitehall, where the king "asked what we did about the letters in our circuits and how we found the people affected".¹⁰⁷ Replying for the judges, Chief Justice Hyde assured him of their "speciall care" in instructing the local Justices with their duties. Following a speech on the necessity of the loan for matters of safety and religion, Charles asked the judges to contribute "as much as we are assessed in the subsidy", enlisting them to "acquaint" the readers and benchers of the inns of court with a request for similar payment "and give good example".¹⁰⁸

¹⁰³See Cogswell, T.E., 'A low road to extinction? Supply and redress of grievances in the parliaments of the 1620s', *Historical Journal* 33 no. 2 (1990), pp. 283-303.

¹⁰⁴Jones, *Politics and the Bench*, pp. 84-85.

¹⁰⁵For this historiography see Cust, *The Forced Loan and English Politics*, pp. 6, 150. For Russell the Loan "threatened a co-operation between the King and county gentry for which no substitute existed, and for which no substitute was desired." In his view this co-operation was strained, but ultimately held intact through a desire for political harmony; Russell, *Parliaments and English Politics*, p. 334. For Cust, the extent to which this financial innovation created political tension has been underestimated by Russell who, by taking an absence of overt opposition as evidence of consensus, has downplayed the need for self-censorship in a charged political environment; Cust, *The Forced Loan and English Politics*, pp. 184-185; p. 328, and see also Russell's reply in *Unrevolutionary England*, pp. xxvi-xxx.

¹⁰⁶For the nature of the Loan see Lockyer, *The Early Stuarts*, p. 223; Cust, *The Forced Loan and English Politics*, *passim*, esp. p. 185; *idem*, 'Charles I, the Privy Council and the Forced Loan' pp. 208-209; Reeve, *Charles I and the Road to Personal Rule*, pp. 2, 14.

¹⁰⁷Prest (ed.), *The Diary of Sir Richard Hutton*, p. 64.

¹⁰⁸*ibid.*

On 26 October, Hutton continued,

it was moved that we should subscribe in a roll under our hands, that we had lent every one [of us] in proportion 5 subsidies, and we conceyved that the end of this was that this might be shewed to drawe and move others to pay or to gayne therby by seacret implication, that we consented or allowed of this course of lone... and we knowe not wilbe the issue or end of this, and we have taken tyme to advise.¹⁰⁹

Hutton gives an idea of feelings in the judges' camp in the simple prayer by which he concludes the thought: "And God of his mercy grant us the grace to do that which is legal and honest."¹¹⁰

After several conferences to clarify their position (Hutton continued):

it was agreed that we would present to the King a humble request that he should not seek to press us to any subscription, and that our subscription in so far as we had paid and lent was to no purpose and we could conceive that if we were to be drawn into obloquoy with the people, we would not then be able to perform our duties to the king nor to the people.¹¹¹

This request, forwarded to the king by Lord Keeper Williams, drew a quick reply that it was "grand insolencye" on the part of the judges "to knowe to what end our subscription was required"; in the face of Charles's open anger, they retreated to Serjeants' Inn to discuss their options.¹¹² Convinced after some debate that the king's request was "against their oath", the judges now faced the delicate task of seeking a compromise, sending Charles this declaration:

¹⁰⁹*ibid.*

¹¹⁰*ibid.* (Law French); thanks to Wilfrid Prest for help with this and the following translation.

¹¹¹Prest (ed.), *The Diary of Sir Richard Hutton*, p. 65: "Et apres plusors conferences fuit agree que nous presentera al Roy un humble request que il ne voile presser nous al ascun subscription, et que nostre subscription intant que nous avomous pay et lent fuit al nul purpose et nous poimous conceyve que si nous seremous trahe in obloquie ove le people nous ne poimous in apres performe nostre dewties al Roy *neque* al people."

¹¹²*ibid.*

We whose names are underwritten have lent to his Majestie severall sumes of mony this Michaelmas terme 1626 as by his Majestie we were required, which we have done in our duties to his Majestie, and not for example to others.¹¹³

After a tense month in which several attempts were made to cajole the judges into providing less equivocal support, the king sent for Whitelocke's senior, Chief Justice Sir Randal Crew, dismissing him from office on 10 November in an action "heavy et sudden et unexpected",¹¹⁴ and warning Chief Baron Walter that his fate also hung in the balance.¹¹⁵ Four days later Edward Palmer wrote to Lord Montagu that "the rest of the judges daily expect to tread the same path";¹¹⁶ Hutton grimly concluded that "this cloud and storm reached out to all of us".¹¹⁷ Despite their fears, Whitelocke and all the other judges, summoned individually in a final attempt to persuade them into removing the damaging admission that accompanied their subscription to the Loan,¹¹⁸ stood fast.

In the face of parliament's displeasure with Ley's promotion, and Charles's displeasure with the judges, appointments to the bench in 1626 must have sharpened Whitelocke's apprehension about the way relations with the Crown were moving. It seems that only the unexpected death of Sir John Davies in early December prevented him from serving alongside Whitelocke in King's Bench. Davies had recently written *Jus imponendi Vectigalia; or the Learning touching the Customs, Tonnage, Poundage, and Impositions on Merchandizes &c., asserted*, supporting the King's right to levy the Loan and other extra-parliamentary forms of taxation, and it was widely suspected that this endorsement would lead to his promotion.¹¹⁹ Typically, Whitelocke reserved comment for an epitaph on Davies in the *Liber Famelicus*: "He was in communication to have been made chief justice of the King's

¹¹³Prest (ed.), *The Diary of Sir Richard Hutton*, pp. 65-66; cf. Birch (ed.), *The Court and Times of Charles I*, vol. 1, p. 164.

¹¹⁴Prest (ed.), *The Diary of Sir Richard Hutton*, p. 66.

¹¹⁵Gardiner, *History of England*, vol. 6, p. 14.

¹¹⁶HMC Buccleuch vol. 3, p. 313 (Montague papers).

¹¹⁷Prest (ed.), *The Diary of Sir Richard Hutton*, p. 66.

¹¹⁸*ibid.*

¹¹⁹Birch, T. (ed.), *The Court and Times of Charles I*, 2 vols. (London 1848), vol. 1, pp. 172, 174, 181; Prest (ed.), *The Diary of Sir Richard Hutton*, p. 69.

Benche, in the place of Sir Randle Crew. But God prevented so inconvenient an intention to the common wealthe."¹²⁰ As Whitelocke only felt safe about condemning dignitaries after their deaths, he offered no comment about the appointment of Sir Nicholas Hyde as the new Chief Justice in Hilary Term, or the appointment of Sir Thomas Richardson to be Chief Justice of the Common Pleas in place of the deceased Sir Henry Hobart in February 1628.¹²¹ Knowing Whitelocke's low regard for Buckingham's "creatures",¹²² he must have been frustrated by this outcome: Hyde had drafted the Duke's defence in the last parliament,¹²³ while Richardson showed his allegiance with his marriage to one of the Duke's kinswoman shortly before his appointment, and made a hefty contribution to the Crown upon receiving the office.¹²⁴

Hutton's account underlines the slightly confused blend of principle and pragmatism brought about by the unforeseen circumstances of the Loan. By subscribing, Whitelocke and the other judges suggested, not surprisingly, their desire to keep the king's favour. Failure to give in to Charles completely on the issue, despite his obvious displeasure, suggests however that concerns about the legality of this form of taxation were deeply felt. In the absence of his personal comment, it seems reasonable to conclude that Whitelocke's thoughts on "unparliamentary" forms of taxation in 1610, which Cust employs to trace "the roots of hostility aroused by the Loan",¹²⁵ are unlikely to have undergone any radical revision by 1627. What had changed, in the face of Crew's sacking and Charles's professed readiness to end opposition in the courts and "sweep all their benches",¹²⁶ was the the price of open dissent. Placed in an invidious position, his agreement (in collaboration with the other judges) to sign the subscripton with a proviso that this

¹²⁰*Liber Famelicus*, p. 105.

¹²¹Whitelocke notes the appointment without comment in law-French; *Liber Famelicus*, p. 105.

¹²²*Liber Famelicus*, p. 59.

¹²³Gardiner, *History of England*, vol. 7, p. 149; Rushworth (ed.), *Historical Collections*, vol. 3, p. 240.

¹²⁴Prest (ed.), *The Diary of Sir Richard Hutton*, pp. 66-69.

¹²⁵Cust, *The Forced Loan and English Politics*, p. 152.

¹²⁶H.M.C. *Bucleuch* 6, Montague papers p. 313.

was "not to set an example to the people" was the first of a series of unhappy compromises James Whitelocke was to make over the following years.¹²⁷

The five knights' case and parliament, 1627-1628:

The judges' refusal to ratify the forced loan, raising serious doubts about its legality, threatened to have a major impact on its reception at all levels of society.¹²⁸ It may also have helped to spark hopes among many prominent lawyers that the courts held the key to an organized campaign of resistance to the loan and other arbitrary actions of the Crown. This group, which included John Selden, Edward Littleton and Sir Edward Coke, moved in 1627 to use the courts of law as a forum to achieve their goals.¹²⁹ In October 1627, on behalf of five refusers held in London (Sir Thomas Darnel, Sir John Corbet, Sir Walter Erle, Sir John Heveningham and Sir Edmund Hampden), a formal legal challenge to the Council was initiated with the request "that counsel might be assigned them to plead for their relief out of prison".¹³⁰ After consulting with the king, Chief Justice Hyde set a date for a hearing by which their imprisonment could be challenged.¹³¹ In a pattern of events which was to be repeated several times over the following years, measures employed by the Privy Council in order to gag opposition to the Crown's policies had moved their opponents onto a legal footing. This in turn publicised and politicized legal proceedings and left the judges standing squarely in the middle. Thereafter, James

¹²⁷"The king sent for the head judge whom, having refused to sign, he dismissed from his employ immediately, and then presented the said book to the other judges, who had inserted a clause to the effect that they signed not to set an example to the people nor to invite them to do the same but, having been pressured they signed to avoid angering his Majesty"; Bassompierre, Neg. 263 in Gardiner, *History of England*, vol. 6, p. 14 (thanks to Jenny Jones for help with this translation).

¹²⁸Cf. Gardiner, *History of England*, vol. 6, pp. 149-150; Cust, *The Forced Loan and English Politics*, pp. 3, 112; *idem*, 'Charles I, the Privy Council and the Forced Loan', pp. 224-228. Writing to Joseph Mead on 1 December, one commentator suggested that popular feeling against the Loan was "at its highest" largely because "refusal of the judges to subscribe to the legality of it... doth much prejudice the current thereof"; Birch (ed.), *The Court and Times of Charles I*, vol. 1, p. 176.

¹²⁹Cust, *The Forced Loan and English Politics*, *passim*.

¹³⁰Birch, *Court and Times of James I*, vol. 1, p. 280.

¹³¹*ibid.*; Prest (ed.), *The Diary of Sir Richard Hutton*, p. 72; Cust, *The Forced Loan and English Politics*, p. 61. The writ for Heveningham to appear in court, dated 15 November 1627, along with Whitelocke's notes of the precedents used in the case, survive in the Longleat Papers, vol. 3, fol. 152v.

Whitelocke and his fellow judges now found themselves (in the words of W.J. Jones) serving as both "participants and ammunition" in ongoing political controversy.¹³²

James Whitelocke's comments on the five knights' case came in a defence of his actions presented to the House of Lords on 14 April 1628,¹³³ after dubious dealings by Sir Robert Heath led parliament to question the legality of the court's ruling.¹³⁴ Whitelocke opened his speech by raising what he saw as the basic issue at hand. "My Lords," he declared,

we are by your appointment here ready to clear any aspersion of the House of Commons in their late presentment upon the *Kings-bench*, that the subject was wounded in this judgement there lately given... I say there was no judgement given whereby either the prerogative might be enlarged, or the [sic] right of the subject entrenched upon.¹³⁵

From the outset his tone was direct and defensive, suggesting not only that the judges had no argument with the Commons, but that the lower House had no grounds for contention with the judges. In a straightforward summary Whitelocke proceeded to outline the details of the case: how the judges had awarded legal counsel at the knights' request, how the case had been allowed to proceed and the Crown's warrant of detainment had been returned "by his majesty's special commandment".¹³⁶ Given this situation, Whitelocke implied, the judges had acted

¹³²Jones, *Politics and the Bench*, p. 48.

¹³³Keeler, M.F., M.J. Cole and W.B. Bidwell (eds.), *Proceedings in Parliament 1628*, 5 vols. (New Haven 1977-83), vol. 5, pp. 219-220; hence *Proceedings in Parliament 1628*. Whitelocke's speech to the Lords, reprinted in *The Sovereigns Prerogative and the Subjects Privilege, comprised in several Speeches, Cases, and Arguments of Law* (London 1658), pp. 147-148, is also found in *State Trials*, vol. 3, cols. 161-162. While there are differences in the wording of the diary and printed accounts, the form and gist of the speech is the same.

¹³⁴The arguments made against the judge's ruling in the 1628 parliament are reprinted in *State Trials*, vol. 3, cols. 59-160.

¹³⁵*The Sovereigns Prerogative and the Subjects Privilege*, p. 147. Cf. *Proceedings in Parliament 1628*, vol. 5, p. 219: "The Commons present a grievance in point of law that the subject is wounded in point of liberty by a judgment given in the King's Bench."

¹³⁶"It is true my Lords, in Michaelmas Term last fower Gentlemen petitioned for a *Habeas Corpus*, which they obtained, and Council was assigned unto them, the return was per *specialem mandatum Domini Regis*, which likewise was made known unto us under the hands of the eighteen Privy Councillours."; *The Sovereigns Prerogative and the Subjects Privilege*, p. 147.

in the only way they could. Here Whitelocke was careful to emphasise the role of due legal process in determining their actions. "Now my Lords", he argued, "if the King did not shew cause, wherein we should have judged the King had done wrong, and this is beyond our knowledge, for he might have committed them for other matters then we could have imagined."¹³⁷ To ignore the principles of legal knowledge and "take notice otherwise" was to break the rules of admissible evidence in a way generally "hurtful to the subject" - even if prejudicial to the detained in this particular instance.¹³⁸

To have bailed the prisoners at the judges' discretion was a second option which had been raised in criticism of the judges. Here Whitelocke was straight to the point: such an action would have "given a blow to the King's act, for then it would have bred a doubt whether the King had done wrong."¹³⁹ And while:

they might say thus, they might have been kept in Prison all their dayes, I answer no, but we did remit them, that we might better advise of the matter, and they the next day might have had a new Writ, if they had pleased, but they say, we ought not to have denied bayl, I answer, if we had done so, it must needs have reflected upon the King that he had unjustly imprisoned them.¹⁴⁰

He reminded the Lords that a "sovereign power rests in all commonwealths", asking rhetorically: "Is there not a trust to be reposed in the sovereign to restrain a prisoner for some convenient time?"¹⁴¹ It was a question bound to draw silence, but as Whitelocke went on to assure them, if no cause *was* forthcoming the judges had not denied the right of those detained to seek legal redress. Answering John Selden's charge that the return of the court roll (which had the decision noted as *remittitur* rather than *remittitur quosque*) attempted to overlook the right of the defendants to seek bail,¹⁴² Whitelocke remarked:

¹³⁷*The Sovereigns Prerogative and the Subjects Privilege*, p. 147.

¹³⁸*Proceedings in Parliament 1628*, vol. 5, p. 219.

¹³⁹*Proceedings in Parliament 1628*, vol. 5, p. 220.

¹⁴⁰*The Sovereigns Prerogative and the Subjects Privilege*, p. 147.

¹⁴¹*Proceedings in Parliament 1628*, vol. 5, p. 220.

¹⁴²*Proceedings in Parliament 1628*, vol. 2, pp. 173-174, 176, 180-181; see also Guy, J.A., 'The Origins of the Petition of Right Reconsidered', *Historical Journal* 25 no. 2 (1982), p. 291, n. 15.

whereas they will have a difference betwixt *remittitur* and *remittitur quosque*... I confess I can find none, but these are new inventions to trouble old Records. And herein my Lords we have dealt with my knowledge and understanding, for had we given a Judgement, the party must have thereupon rested, every Judgment must come to an issue, in matter, in fact, or demur in point of Law, here is neither, therefore no Judgement.¹⁴³

From this point on, Whitelocke knew that he was treading on delicate ground. Agreeing with Whitelocke that the discrepancy had no legal significance, Guy has shown that *remittitur quosque* was the "standard entry used when defendants were returned to gaol *without formal resolution of the question of bail*".¹⁴⁴ It followed, he has suggested, "that, if the terms *remittitur* and *remittitur quosque, etc.*, were interchangeable, it was impossible for the Crown ever to prove in the aftermath of a rule of court that a prisoner's application for bail had been refused" - unless, as Guy has demonstrated, the final entry on the court controlment roll could be changed to show "that the substantive issue of discretionary imprisonment had been adjudged in its favour".¹⁴⁵ And this, concludes Guy, was exactly the "archival perversion" attempted by Heath.¹⁴⁶ This blatant coercion was resisted by the clerk, John Keeling, who sought the judges' advice. In a parliamentary hearing, Keeling testified that despite the judges' refusal to allow the change, Heath had placed constant pressure on him throughout Hilary term, and finally secured the altered entry from him a week before parliament sat.¹⁴⁷ Fully aware that he stood squarely between an agitated parliament and a volatile monarch, Whitelocke now offered his side of the story. Although the judges had been "touched" that they "intended to enter a judgment, and a judgment draw", Whitelocke assured the Lords that "the Chief Justice only spoke as it might be but a rule and no judgment".¹⁴⁸ Sir Robert

¹⁴³*The Sovereigns Prerogative and the Subjects Privilege*, p. 148.

¹⁴⁴Guy, 'The Origins of the Petition of Right Reconsidered', p. 295.

¹⁴⁵Guy, 'The Origins of the Petition of Right Reconsidered', pp. 295-296.

¹⁴⁶*ibid.*

¹⁴⁷Guy, 'The Origins of the Petition of Right Reconsidered', p. 297.

¹⁴⁸*Proceedings in Parliament 1628*, vol. 5, p. 220.

Heath's subsequent activities, "pressed...for his Master's service", were treated with caution.¹⁴⁹ Suggesting that Heath had done "the office of a good servant" for the king, Whitelocke pointed out that the judges commanded Keeling not to remove the original entry, "we being sworn to do right betwixt the King and his subjects".¹⁵⁰ Claiming ignorance of Heath's continued pressure, the judges had never, he stressed, seen the tampered entry before it was read in parliament.¹⁵¹ Whitelocke's defence of the judges' conduct closed in the manner it had begun, and restating his desire to declare the matter of fact, he besought "your Lordships good constructions of what hath been said".¹⁵²

The arguments which Whitelocke presented were essentially repeated in the testimonies of the other judges over this and the following day. They made it clear that the King's Bench had not expressly supported Charles's right of discretionary imprisonment, nor did the court assent to any modification of the existing ruling which would make this possible. The Lords appeared satisfied by this argument, printing a formal declaration in their Journal that the judges "have given no judgment at all, for it was but a rule", since "the next day, or the next term, a new *habeas corpus* might have been demanded by the parties, and they must have done justice".¹⁵³

Endorsing the claims by which the judges defended their actions,¹⁵⁴ John Guy has pronounced the judges "vindicated" on the strength of their reply.¹⁵⁵ Random notes among James Whitelocke's personal papers both add to and detract from Guy's verdict. A single page that survives among his papers tells us a little more about Whitelocke's understanding of the five knights' case.¹⁵⁶ Presumably a draft

¹⁴⁹*ibid.*

¹⁵⁰*ibid.*

¹⁵¹*ibid.*

¹⁵²*The Sovereigns Prerogative and the Subjects Privilege*, p. 148. Cf. *Proceedings in Parliament 1628*, vol. 5, p. 220: "All we did was to return him and to advise, and the party might have had a new writ. We have only declared the matter of fact. You expected no more".

¹⁵³*Lords Journals* [15 April], p. 740.

¹⁵⁴Guy, 'The Origins of the Petition of Right Reconsidered', pp. 292-296.

¹⁵⁵Guy, 'The Origins of the Petition of Right Reconsidered', p. 301; cf. Russell, *Parliaments and English Politics 1621-1629*, p. 364.

¹⁵⁶Longleat Papers, vol. 24, fol. 231.

of his speech to the Lords,¹⁵⁷ Whitelocke noted in it that upon the return of writs of habeas corpus, the judges:

herd the counsell of the parties at large & thereupon gave the kings attorney an offer to answer, who being also herd they toke time to consider. And after they had revised the views of those reasons and precedents cited by the counsell of either party, they did examine them with the records themselves. And also saw and examined thereafter partes of the records of the comments and causes of discharge of suche prisoners as were alledged to have been bailed or discharged, who wear not found or alleged by any of the counsell of the prisoners, to the end they mighte know the true causes thereof, whence being done they found this cause to be of exceeding consequence as on the one side concerning the power of the king and on the other side the liberty of the subject.¹⁵⁸

Whitelocke continued:

Whereupon they did refuse to give no definitive judgement but to remand them that they mighte be further advised, & left it to the clerk to enter the rule in like manner as had ben used in like cases by ther predecisors. And being presently after Michalemas term informed by the clerk that he had recieved direction to draw a formal judgement in an extraordinary manner he was forbidden by everye of them to make any other entry than was usuall at his perill.¹⁵⁹

This account endorses Guy's point that the judges had clearly not given a binding judgement. It suggests also that they vigorously opposed Heath's subterfuge. What Guy has not shown however, and what undated notes among Whitelocke's papers strongly suggest, is that the Crown had ascertained its right to imprison the five knights, by shifting "the arguments on to the far stronger ground of Charles's prerogative",¹⁶⁰ in advance of the trial itself.¹⁶¹ The first of two questions in

¹⁵⁷It is entitled: "That the Judges of the kings benche being directed by your Lordships to inform them what judgement they had given in their court upon the late Hab: Corp: & the ground thereof".

¹⁵⁸*ibid.*

¹⁵⁹*ibid.*

¹⁶⁰Guy, *The Origins of the Petition of Right Reconsidered*, p. 291.

¹⁶¹Obviously the provenance of this document is of the greatest importance. Unfortunately, it bears no official identification, no date, and cannot be correlated with an official record that I am

Whitelocke's hand asked whether "there be any law that in expresse words takes away the Councill's power to imprison upon reason of state without declaring the cause".¹⁶² The second asked whether the words "*per legem*" in Magna Carta "be only understood to mean the common law presented in Westminster Halle", or extended to the "law of State" exercised under the royal prerogative.¹⁶³ In reply to the first question, Whitelocke could only answer that he and the other judges could find no:

law or statute that in expresse word either taketh away the kings or Counsell's power to imprison upon reasons of state without declaring the causes or that mentions *in expresse words* any power of the king or Counsell to imprison upon reason of State.¹⁶⁴

To the second question, Whitelocke instructed the Crown:

that the words *per legem* found in Magna Charta be not only understood to mean the common law practised in Westminster halle[,] but all other lawes we use under his Majesties law & ar lawfully and judicially exercised within this kingdom. And that under these lawes ar comprehended *Consuetudines Regni Angliae* & especially his Majesties eminent and just prerogative. *But for the law of state we neither know what is intended thereby nor the extent or latitude thereof it being a matter not falling properly in our cognizance.*¹⁶⁵

In light of these questions and Whitelocke's answers, the five knights' case, which contested the king's right to imprison "by his majesty's special commandment" without further cause, appears in a new light. No matter how skillfully the counsel for the defence protested that such a cause of detainment subverted the "infallible maxims" of legal reason,¹⁶⁶ the Crown, represented in this

aware of. It must be compared with other questions sent to the judges before Charles's assent to the Petition of Right (see below, pp. 191-192), Sir Robert Heath's questions to the judges on Eliot's case, and with Charles's own questions to the judges on his right to prosecute the prisoners (see below, pp. 194-195).

¹⁶²Longleat Papers, vol. 24, fol. 232.

¹⁶³*ibid.*

¹⁶⁴Longleat Papers, vol. 24, fol. 233.

¹⁶⁵*ibid.*

¹⁶⁶*State Trials*, vol. 3, col. 27.

instance by Sir Robert Heath, was assured of victory by pedantically insisting that "they on the other side cannot cite one Book, Statute, or any other thing, to prove, that they who have been committed "*per speciale mandatum domini regis*", are bailable".¹⁶⁷ Accordingly, the King's Bench remanded the prisoners in custody, declaring in public that which Whitelocke had already told the Crown in private, that "if no cause of the committment be expressed, it is presumed to be for matters of state, which we cannot take notice of".¹⁶⁸

Whitelocke was undoubtedly speaking in all honesty as he told members of the upper House that as he had spent "all my studies in the King's Bench... upon my soul he never saw nor knew any thing which did contrary to what we have done" in the case of the five knights.¹⁶⁹ He must have been equally aware of the judges' complete failure to provide any solution to a significant constitution problem. If the attorney-general threatened the Crown's credibility by sidestepping the basic issues raised in the five knights' case, he scorned the law in his attempt to change the judges' legal ruling. Whitelocke, who had noted Heath's suspicious dealings when he was personally threatened by them earlier in his career, stood by silently with the other judges in deference to a king whose officer had clearly overstepped his mark.¹⁷⁰ Kevin Sharpe has suggested that "the common law in early Stuart England was expected to resolve problems, not to support positions".¹⁷¹ Perhaps the most troubling aspect of the judges' conduct in the five knights' case was that by insisting on the legal technicalities that upheld their actions, the judges allowed the law to do neither one nor the other. As Whitelocke and his colleagues were to find out, in failing to address the issue they could not wash their hands of it.

¹⁶⁷*State Trials*, vol. 3, col. 42.

¹⁶⁸*State Trials*, vol. 3, col. 57. Brief notes taken by Whitelocke on *habeas corpus* survive in the *Longleat Papers*, vol. 3, fols. 155v and 176v.

¹⁶⁹*Proceedings in Parliament 1628*, vol. 5, p. 220.

¹⁷⁰*Liber Famelicus*, p. 59.

¹⁷¹Sharpe, 'Parliamentary History 1603-1629: In or Out of Perspective?', p. 31.

Guy has rightly interpreted parliament's investigation of the five knights' case as a critical impetus in the creation of the Petition of Right.¹⁷² The Petition, he says, "cast invention out of necessity" as Commons, Lords and Crown searched for some kind of agreement over issues highlighted by the case.¹⁷³ It had more serious undertones, for as Sir Dudley Digges put it to members of his house: "We are now upon this question whether the king may be above the law, or the law above the king. It is our unhappiness, but it is put upon us."¹⁷⁴ In political terms the document - with its reference to unparliamentary taxation, forced billeting, martial law and the 'arbitrary' imprisonment of loan refusers - reflected the uneasy balance of hope and anxiety felt by the 1628 parliament in the face of new royal policies without strong constitutional precedent.¹⁷⁵ Conceived from the onset as a legal document, it attempted to define limits on the royal prerogative already tested without satisfaction in the king's courts.¹⁷⁶ Showing his awareness of this fact, Charles called on his judges to explain the legal implications of the Petition before he gave it formal assent.¹⁷⁷ The three questions which he posed to them aimed to clarify the question of legal constraints on his right of discretionary imprisonment flowing from the Petition. The first asked "whether in no case whatsoever the King may not commit a subject without showing a cause".¹⁷⁸ The second question sought to establish whether the judges were required to consult with the king in a case of *habeus corpus* where no cause had been stated before delivering the prisoner.¹⁷⁹ The third asked frankly "whether the King grant the Commons' petition, he did not

¹⁷²See also Relf, F.H., *The Petition of Right* (Minneapolis 1917); Russell, *Parliaments and English Politics*, pp. 323-389; Flemion, J.S., "'A savings to satisfy all': the House of Lords and the Petition of Right", *Parliamentary History* 10 (1991), pp. 27-44.

¹⁷³Guy argues that "the Crown's actions and subsequent attempt to pervert the legal records had created an explosive situation, because the commons had been galvanised into formulating a political manifesto, namely resolutions which were an absolute denial of Charles's right of discretionary imprisonment *in any circumstances*"; 'The Origins of the Petition of Right Reconsidered', p. 302.

¹⁷⁴Keeler *et al.*, *Proceedings in Parliament 1628*, vol. 2, p. 325.

¹⁷⁵The Petition of Right is reprinted, for example, in Wootton, D. (ed.), *Divine Right and Democracy* (Harmondsworth 1986), pp. 168-171.

¹⁷⁶Reeve, 'The Legal Status of the Petition of Right', *passim*.

¹⁷⁷BL Hargrave MS 27, fol. 97; BL Stowe MS 561, fol. 24; PRO SP 16/105/93.

¹⁷⁸Cited in Gardiner, *History of England*, vol. 6, p. 294.

¹⁷⁹*ibid.*

thereby conclude himself from committing or restraining a subject for any time or cause whatsoever, without showing a cause".¹⁸⁰ Reeve has suggested that the judges emphasised, in their reply, the importance of the king's assent to the Petition on the outcome of any subsequent cases of imprisonment.¹⁸¹ In response to the first question, the judges answered that "some cases may require such secrecy that the King may commit a subject without showing the cause, for a convenient time".¹⁸² To the second question, they informed the king that "the party ought by the general rule of law to be delivered... [but] the Court in discretion may forbear to deliver the prisoner for a convenient time, to the end that the Court may be advertised of the truth thereof".¹⁸³ To the third and most important question, they replied:

Every law after it is made hath *his* [sic] exposition, and so this Petition and answer must have an exposition, as a case of the nature thereof shall require to stand with Justice, which is to be left to the Courts of Justice to determine, which cannot be particularly discerned, untill such case shall happen, and although the Petition be granted, there is no fear of conclusion as is intimated in the question.¹⁸⁴

By emphasising their rights to discern each case on its merits, the judges also left doubts in the king's mind about his chances of persuading them to continue in the same manner as they had in the five knights' case. They cannot be commended for this outcome.

It is significant that the king's eventual agreement to the Petition of Right was largely devoid of the spirit of reconciliation which had underpinned the creation of the document. Charles's first reply to the petition was, in Reeve's words, "an attempt to evade the legal implications of the document" which "bore no meaningful relationship to it."¹⁸⁵ His second reply, "Soit droit fait come est désiré", given five days later under parliamentary pressure, was greeted with relief in both Houses - yet

¹⁸⁰Cited in Gardiner, *History of England*, vol. 6, p. 295.

¹⁸¹Cf. Reeve, 'The Legal Status of the Petition of Right', pp. 259-260.

¹⁸²Cited in Gardiner, *History of England*, vol. 6, p. 294.

¹⁸³*ibid.*

¹⁸⁴SP 16/105/94.

¹⁸⁵Reeve, 'The Legal Status of the Petition of Right', p. 260.

subsequent royal subterfuge made a mockery of this supposed gesture of goodwill.¹⁸⁶ The agreement of the king and the Lords to the Commons' request that the Petition be printed was one of a number of measures insisted upon by the lower House to ensure that the document attained the form and substance of a declaratory act.¹⁸⁷ As revealed by Sir John Eliot when the new session began, Sir Robert Heath had, in the time between the parliaments, substituted a modified version for prepared printing. This version printed the unsatisfactory answer of 2 June, and included two speeches made by Charles discounting the binding force of the Petition on his prerogative.¹⁸⁸ This action, which cracked any veneer of political accord salvaged from events in 1628, set the tone for the new sitting.¹⁸⁹ If the legal ruling in the five knights' case led indirectly to the creation of the Petition of Right, then the Petition, indirectly, led the judges into another controversial legal case. Reeve has discussed the legal events which followed the tumultuous dissolution of the 1629 parliament in some detail;¹⁹⁰ reviewing his analysis, one can see how the judges were drawn yet again into an adjudicating role which tested their basic political loyalties.

Eliot's case, 1629-1630:

There was nothing remarkable about the king entering into direct correspondence with his judges for legal advice in the early modern period.¹⁹¹ As shown above, in the five knights' case the Crown sought to obtain vital information before the trial. Whitelocke may not have been fully aware of the ramifications when he penned his letter of advice to the Crown in 1627, but in 1629 as the Crown moved to punish John Eliot and his co-conspirators in the House of Commons, its manipulation of the

¹⁸⁶*Statutes of the Realm* (London 1963), vol. 5, pp. 23-4; cf. Cust, R., 'Charles I, The Privy Council and the Parliament of 1628', *Transaction of the Royal Historical Society*, 6th series no. 2 (1992), pp. 45-46.

¹⁸⁷Foster, E.R., 'Printing the Petition of Right', *Huntington Library Quarterly* 38 (1974/5), p. 83.

¹⁸⁸Foster, 'Printing the Petition of Right', pp. 81-84; Russell, *Parliaments and English Politics*, p. 401.

¹⁸⁹See Reeve, *Charles I and the Road to Personal Rule*, chs. 4 & 5; Thompson, C., 'The Divided Leadership of the House of Commons in 1629' in Sharpe (ed.), *Faction and Parliament*, pp. 245-284.

¹⁹⁰Reeve, *Charles I and the Road to Personal Rule*, pp. 118-122.

¹⁹¹Jones, *Politics and the Bench*, p. 49; Gardiner, *History of England*, vol. 7, p. 89.

same device was obvious, and met with greater resistance.¹⁹² On 27 April Heath assembled the two chief justices and the chief baron at Serjeants' Inn, asking "Whether a Parliament man offending the King criminally or contemptuously in the Parliament House, and not there punished, may be punished out of Parliament", and "If two or three, or more, of the Parliament shall conspire to defame the King's government, and to deterr his subjects from obeying or assistinge the King, of what nature is this offence?"¹⁹³ The judges can hardly have been ignorant of the import of these "hypothetical" questions. They agreed that in principle a person could be prosecuted out of parliament for actions within the House, but maintained that the nature of the offence would vary from case to case.¹⁹⁴ On April 29 Heath posed an even more specific set of questions which aimed to ascertain the outcome of a Star Chamber prosecution. The Crown's approach is overwhelmingly demonstrated in the tone and form of his questions, one of which asked if:

two or three shall covertly conspire to raise false slanders and rumours against the lords of the council and the judges, not with intent to question them in a legal course, or in a parliamentary way, but to blast them, and to bring them to hatred of the people, and the government in contempt, be punishable in the Star Chamber after the parliament is ended?¹⁹⁵

It was but one of a series of leading questions, obviously referring to the circumstances of the 1629 parliament, and deliberately constructed to condemn the actions of the detained as a conspiracy. Lying well beyond the realm of technical advice, such a question sought both to incriminate the detained MPs in advance of the case, and to solicit the support of the judges by underlining the attack on their

¹⁹²Cf. Jones, *Politics and the Bench*, pp. 50-52; Kopperman, *Sir Robert Heath*, pp 178-179.

¹⁹³The range of questions asked by Heath and then the King in 1629 can lead to some confusion; Heath's questions, noted by John Skreens in Lord Braybrooke (ed.), *The Autobiography of Sir John Brampton of Skreens*, Camden Society Old Series 32 (London 1845), pp. 49-54, are reprinted in Rushworth (ed.), *Historical Collections*, vol. 1, pp. 663-664, and *State Trials*, vol. 3, cols. 237-239. The King's questions, noted in Gardiner, *History of England*, vol. 7, pp. 89-90, are in calendared in SP 16/141/44, and are reprinted in *State Trials*, vol. 3, in the notes to col. 238. None correspond to the two questions in Whitelocke's hand that I have interpreted above as arising from the five knights' case.

¹⁹⁴*State Trials*, vol. 3, col. 237.

¹⁹⁵*State Trials*, vol 3, col. 237.

own position in the events of the last session. In the face of such leading questions, Whitelocke and the other judges stood firm, refusing to provide a pre-trial verdict. In legal hearings from early May until June the judges agreed with the defendants' claim for parliamentary privilege to exempt them from prosecution in Star Chamber, leading the Crown to drop its case in that court.¹⁹⁶ Kopperman has seen this passage of events as a "notable victory" for the prisoners;¹⁹⁷ it was also a victory of sorts for the judges, but it still left Whitelocke and his fellow judges of the Court of King's Bench to weigh the arguments of both parties as the question of bail was argued in Easter and Trinity term of 1629.

As his Star Chamber prosecution lapsed, Charles sought for the last time to secure an outcome before Eliot's case went to trial, posing a series of questions to the three justices, and subsequently all the judges, by which he ascertained his chances of prosecuting the prisoners in King's Bench.¹⁹⁸ Once again the judges stonewalled Charles. To the question "if two or three or more of the parliament shall conspire, to defame the king's government and to deter his subjects from obeyinge and affirming the kinge, of what nature this offence is?", they answered: "The nature and quality of this offence will be greater or less, as the circumstances shall fall out, upon the the truth of the fact".¹⁹⁹ Despite Charles's insistence that he "must know what the nature of this offence is being fully proved",²⁰⁰ they maintained, as they had during Hampden's case, that they could not speculate on information which had not been offered in a court of law: "We in all humblenes are willinge to satisfye your majesty's command, but until the particulars of the fact doe appeare, we cann give no directer answere then before".²⁰¹

The hearings on *habeas corpus* which engaged the attention of Whitelocke throughout 1629 once again saw the law courts serve as a forum of political and

¹⁹⁶Reeve, *Charles I and the Road to Personal Rule*, p. 122.

¹⁹⁷Kopperman, *Sir Robert Heath*, p. 180.

¹⁹⁸PRO SP 16/141/44; *State Trials*, vol. 3, notes to col. 138.

¹⁹⁹*ibid.*

²⁰⁰*ibid.*

²⁰¹*ibid.*

constitutional contest.²⁰² As the Crown's statement of the cause of imprisonment was "notable contempt committed by them against ourself and our government and for stirring up sedition against us",²⁰³ much of the debate was to centre upon the actual words of the commitment and the term "sedition" in particular, "probably the most unspecific, non-capital offence with such treasonable undertones that could be devised by the government".²⁰⁴ The narrower issue at hand - whether or not to grant bail to the detained parliamentarians - was the issue around which each side staked out their broader political agenda. For the officers of the Crown, this agenda had two main features. It sought firstly to assert the king's right to punish those who openly inculcated dissent toward government policy; in the words of Serjeant Berkeley: "It is fit to restrain the prisoners of their liberty, that the common-wealth be not damnified".²⁰⁵ It further sought to extricate this prerogative from attempts to constrain it under the provisions of the Petition of Right; as Heath argued, although the Petition of Right had been "much insisted upon", the law was "not altered by it, but remains as it was before".²⁰⁶ For the defence counsel, obtaining bail was only part of the much broader aim of establishing a legal restraint on the king's right of arbitrary imprisonment. To this end the insufficiencies of the cause shown in the writ of detainment, rather than the circumstances of detainment itself, was to be emphasised and tied back to the requirements of the Petition. As Edward Littleton suggested in defence of John Selden, the warrant for his commitment was "perhaps a good ground of the commitment" but "no ground for the detaining of the prisoner without bail; and this the king himself hath acknowledged as the ancient right of the

²⁰²The arguments employed by counsel for the Crown and the defence are reprinted in *State Trials*, vol. 3, cols. 244-251, and have been thoroughly analysed in Reeve, 'The Arguments in King's Bench in 1629', pp. 271-273.

²⁰³PRO KB29/278; membr. 33, King's Bench controlment roll, Hillary term 1629, quoted in Reeve, *Charles I and the Road to Personal Rule*, p. 124.

²⁰⁴Reeve, 'The Arguments in King's Bench in 1629', p. 271; *ibid.*

²⁰⁵*State Trials*, vol. 3, cols. 244-251; cf. Reeve, 'The Arguments in King's Bench in 1629', pp. 271-273.

²⁰⁶*State Trials*, vol. 3, cols. 244-251; cf. Reeve, 'The Arguments in King's Bench in 1629', pp. 271-273.

subject, in the Petition of Right".²⁰⁷ It is quite clear that as lawyers, the Crown officers were no match for Selden and Littleton, who appear to have collaborated in preparing Selden's defence.²⁰⁸ Despite Heath's vague assurance that the government was moving to prosecute the prisoners "in convenient time", and an open appeal to the judges to side with the Crown,²⁰⁹ the government faced opponents who were quick to press home the legal advantages they had secured through the king's reluctant concessions in parliament during the interim. Convinced by their arguments, the judges now moved to inform Charles of their decision to bail the prisoners.²¹⁰

Bulstrode Whitelocke testified on his father's behalf as he recalled the disappointing sequence of events which followed. The judges, he recounted, had written "an humble and stout letter to the king" advising him that "by their oaths they were to bail the prisoners".²¹¹ Before this document could be presented to the king, Whitelocke was informed that the king required all the judges of King's Bench to meet him at Greenwich. "Accordingly" Bulstrode continued, "the Judges attended the king, who was not pleased with their determination; but commanded them not to deliver any opinion in this case without consulting with the rest of the Judges".²¹² This was little more than a delaying tactic on Charles's part, but it also implied doubts about the adequacy of a ruling handed down by four of his most senior legal officers. It was a move unlikely to be supported by the other judges, who would not offer an opinion on a case they had played no part in, and it pushed the justices of King's Bench to act against the king's will. Having resolved to hand down their ruling, they summoned three of the detained, Hobart, Strode and Long, to appear

²⁰⁷*State Trials*, vol. 3, cols. 281-285; cf. Reeve, 'The Arguments in King's Bench in 1629', pp. 279-281.

²⁰⁸Reeve, *Charles I and the Road to Personal Rule*, p. 127.

²⁰⁹*State Trials*, vol. 3, cols. 253-279; cf. Reeve, 'The Arguments in King's Bench in 1629', pp. 274-278.

²¹⁰Reeve, *Charles I and the Road to Personal Rule*, p. 127.

²¹¹Whitelock, *Memorials of the English Affairs*, p. 14.

²¹²*ibid.*

before the King's Bench on 23 June, before the end of term halted legal process for the summer.²¹³

What followed has rightly been described by John Reeve as a "despicable and 'dirty' trick".²¹⁴ By removing the three prisoners from the custody of the Marshal of the Court and placing them in the Tower, Charles dismissed not only the legal authority he had delegated to his common law judges, but the law itself. If the judges could not be enlisted, then they would be ignored, and there is fair irony in the warrant sent by the king to the judges informing them that Hobart, Strode and Long would remain in the Tower "until by due course of law they... shall be thence delivered."²¹⁵ Given the circumstances of the case, Charles declared in private correspondence which followed, "we could not but resent our honour, and the honour of so great a court of justice". He informed the judges of his intention to retain the prisoners in custody "until we should find their temper and discretions to be such as may deserve it [release]."²¹⁶ In short, the king implied, bail was to be equated with pardon, and pardon was negotiable only on submission to the authority of the Crown. Gardiner declared a century ago that the "Petition of Right had strengthened the hands of the judges as arbitrators between the King and his subjects."²¹⁷ In fact, this was only true if the Crown was prepared to act in the spirit of the Petition's resolutions - or if the judges refused to have their hands bound by the government.

Are Whitelocke and the judges to be blamed for their part in this sequence of events? There is no doubt that they were in a difficult position, as Charles once again made criticism equivalent to a test his personal authority. Short of resigning, it is difficult to see what the Justices of King's Bench could legally have done in these circumstances - but whatever pretences Whitelocke and his associates may still have

²¹³Reeve, *Charles I and the Road to Personal Rule*, p. 127.

²¹⁴*ibid.*

²¹⁵PRO KB 29/278 membrane 45; King's Bench Controlment Roll, Trinity term 1629.

²¹⁶*State Trials*, vol. 3, cols. 286-287; Rushworth (ed.), *Historical Collections*, vol. 1, pp. 679-84.

²¹⁷Gardiner, *History of England*, vol. 7, p. 87.

had about their judicial independence, they had clearly been overrun by events.²¹⁸ Reeve has concluded that up until this point the judges, cast in the role of umpires by constitutional conflict, had sought to uphold the law. Speculating that their reluctance to move against the prisoners may have been partially through fear of parliamentary reprisal, he suggests a changing stance on the part of the judiciary, bringing it more closely into alignment with Crown policy, from this point on.²¹⁹ In fact, there is no need to stress this change. By refusing to criticize the increasingly dubious measures employed by the Crown in pursuit of legal success, the judges forfeited whatever role they might have played as a corrective force on government policy. Cast unwillingly into the role of arbitrators, their pedantic insistence on the letter rather than the spirit of the law was bound to draw a hostile response from those who had employed the courts as a check on royal excesses. For those who had placed much faith in the law as a traditional safeguard against an "unbridled" prerogative, silence on the judges' part could only be viewed as tacit compliance with Charles's new, and in their eyes arbitrary rule. The consequence was loss of faith in the judiciary as a safeguard of individual liberties.²²⁰ During his speech on *habeas corpus*, Edward Littleton recalled the enlistment of the judges by King Richard II to punish as traitors those whom he perceived to be threatening his prerogative. When "accused by the commons, the self-same year", they confessed that they had been threatened to "make no other answer but that what might agree with the king's liking" and feared for their very lives - but this did nothing, Littleton stressed, to temper parliament's condemnation. Declared traitors, their judgements, "given erroneously and deceitfully", were declared "of no force or value, but annulled".²²¹ Littleton's apocryphal tale stresses the increasing alienation of the

²¹⁸Reeve, *Charles I and the Road to Personal Rule*, p. 128: "The authority of the Court was subverted and the prisoners could not be bailed or remanded."

²¹⁹Reeve, *Charles I and the Road to Personal Rule*, p. 137. Cf. Prest, *Rise of the Barristers*, p. 268.

²²⁰Russell, *Parliaments and English Politics 1621-1629*, p. 347; Reeve, *Charles I and the Road to Personal Rule*, p. 137.

²²¹*State Trials*, vol. 3, cols. 279-280.

judges from many of their legal colleagues who were, by 1629, eager to use parliament to override their authority.

Recognizing that the judges would move to bail the prisoners when term resumed, the Crown moved in September 1629 to have them released and removed from "popular applause", but only upon public demonstration of repentance.²²² According to Whitelocke's son, on 30 September "chief-justice Hyde, and my father, were sent for by the king at Hampton Court, who advised with them about the imprisoned Parliament-men; and both these judges did what good offices they could, to bring on the king to heel these breaches".²²³ Unfortunately, there is little to supplement Bulstrode's vague vindication of the judges' actions.²²⁴ Writing to Hyde on the same day, Secretary Dorchester informed him, "notwithstanding that his Majesty understood your mind and Justice Whitelocke's, who was with you, yet because he would as well be satisfied of the rest before he gave order for the prisoners' release, he hath commanded me to dispatch a messenger".²²⁵ Gardiner cites a letter written by Charles to the judges before their gathering, instructing them to offer bail to the prisoners on condition of a bond of good behaviour, and accompanied with a warning that if the king's grace was refused they should "neither have liberty by his letter or by other means till they had acknowledged their fault".²²⁶ In agreeing that the prisoners give security for good behaviour while at liberty, and by allowing bail to be awarded under royal letters patent,²²⁷ Whitelocke must have realized that the Crown could present its actions as an act of clemency

²²²PRO *State Papers* 16/147/74; Reeve, *Charles I and the Road to Personal Rule*, pp. 128-135.

²²³Whitelock, *Memorials of the English Affairs*, p. 14. An order of 24 September 1629 from the Privy Council for Whitelocke and Croke to "be at your lodgings at Serjeant Inn by Twesday next at the farthest" survives in the *Acts of the Privy Council 1629/30*, p. 140.

²²⁴A summons to Hyde and Whitelocke to attend the King "on the morrow morning", dated 29 September 1629 (Longleat Papers, vol. 4, fol. 27), is the only surviving record of the meeting.

²²⁵*CSPD Addenda 1625-1649*, p. 351.

²²⁶Quoted in Gardiner, *History of England*, vol. 7, p. 110, n. 1. See Reeve's comments on the location of this document and the dating of the meeting with the judges in *Charles I and the Road to Personal Rule*, p. 136, n. 84; p. 138, n. 90. His analysis suggests that Charles, in concession to the arguments made by Whitelocke and Hyde on behalf of the court, may have altered his original insistence that the judges make any second offer of bail conditional upon request of pardon for refusing the first; *Charles I and the Road to Personal Rule*, pp. 138-40.

²²⁷Hyde to Dorchester, SP 16/149/110.

under force of the prerogative. If he really expected the defendants, who had fought long and hard to force the government to justify its actions through the routine channels of law, simply to forfeit and agree to these terms, he was naive. Not to insist upon a legal hearing in which these questions could be forced to resolution was, as even the Venetian ambassador could plainly discern, "to accept liberty at the cost of their conscience".²²⁸ On 3 October, just before the legal term opened, the prisoners were brought to Serjeant's Inn by Charles's direction. There they were individually questioned by the judges about their willingness to accept release upon a bond of good behaviour. Apart from Long, who weakened only to later recant and once again seek detention, they stood fast and waited for the courts to re-open to insist upon a decision on bail.²²⁹

Appearing in court on 9 October, John Selden represented the mood of the prisoners when he angrily questioned the propriety of this new condition of bail. He challenged the judges on their right to impose upon the defence issues never before raised in the case. It was, he reminded them, "never the desire of one side or the other, that we should be bound to good behaviour." Selden, in asking for the prisoners to be bailed "in point of right", warned the judges that for them to accept bail upon their conditions would be of "great offence to the Parliament, where these matters which are surmised by return were enacted"; from this point on it would be the aim of the defence to stress parliament's right to determine the fate of the prisoners.²³⁰ To the judges, after thirty weeks of legal jockeying from both the Crown and those detained, their stand was coming to seem like obstinacy. In the face of continued criticism, Whitelocke and his associates in King's Bench would defend their conduct by asserting their right to adjudicate on the case.²³¹

²²⁸*Calendar of State Papers Venetian 1621-1632*, p. 205: 'Soranzo to the Doge and Senate, 2 October 1629'.

²²⁹Gardiner, *History of England*, vol. 7, p. 110; Birch (ed.), *The Court and Times of Charles I*, vol. 2, pp. 30-31.

²³⁰*State Trials*, vol. 3, col. 289.

²³¹Cf. Reeve, *Charles I and the Road to Personal Rule*, p. 142; Gardiner, *History of England*, vol. 7, p. 111.

Reeve has suggested that the suspension of Chief Baron Walter from office during Eliot's trial, almost certainly for failing to lend unequivocal support to the Crown over the prosecution of the prisoners, "could only have had a sobering effect upon his brethren".²³² In 1624, Whitelocke had shown his willingness to accept the place of Chief Baron as "a good preferment" from his office in Chester.²³³ In 1629, despite widespread rumours that Whitelocke was now to be offered the place formerly held by his old and highly regarded colleague,²³⁴ Bulstrode suggests that his father felt reluctance to accept the job:

Whitelocke had no great mind to succeed Walter, because Walter alleged that his patent of that office was *quam diu se bene gesserit*, and that he ought not to be removed but by a *scire facias*.²³⁵

Walter's cry of technical foul, in fact, prevented his dismissal - although he never sat in court again.²³⁶ Despite his reluctance to profit from Walter's disgrace, Whitelocke was clearly not in sympathy with the prisoners who had, apart from their rowdy action in parliament, levelled harsh criticism at the bench. Open criticism of the judges had been a constant theme in the speeches of opponents of Crown policy from 1627 onwards. It was heard in John Selden's assessment of their conduct, in Sir Robert Phelps' criticism of their "fatal judgment against the liberty of the subject" in the five knights' case in 1628, and more forcefully in Sir John Eliot's cry of a conspiracy between the judges and the officers of the Crown to "trample under their feet the liberties of the subjects of this realm, and the liberties of this House" in 1629.²³⁷ Speaking for the court in Eliot's case, Whitelocke warned Selden that "the surety of good behaviour is a preventing medicine of the damage that may fall out to the commonwealth; and it is an act of government and jurisdiction, and not of

²³²Reeve, *Charles I and the Road to Personal Rule*, pp. 146-47, 149; cf. Prest (ed.), *Diary of Sir Richard Hutton*, p. 78.

²³³Longleat Papers, vol. 2, fol. 175.

²³⁴Birch (ed), *Court and times of Charles I*, vol. 2, pp. 33, 35.

²³⁵Whitelock, *Memorials of the English Affairs*, p. 11; Aylmer, *The King's Servants*, p. 112.

²³⁶Whitelock, *Memorials of the English Affairs*, p. 11; Prest (ed.), *Diary of Sir Richard Hutton*, p. 83.

²³⁷*State Trials*, vol. 3, col. 66; col. 79; *The Reports of Sir John Croke in English Reports* 79, pp. 1121-1123.

law".²³⁸ In his eyes the case had been "reduced to a narrow room, for all the Judges are agreed, that an offence committed in parliament against the king or his government, may be punished out of parliament. So now the sole doubt which remains is, whether this court can punish it".²³⁹

Counsel for the defence were now put in an almost entirely untenable position: they had to try and show the illegality of passing a judgement on men who had attacked the Crown and the judges of King's Bench, on the basis of the alleged jurisdictional inferiority of the Court of King's Bench, in a ruling to be handed down *by the judges of the self-same Court of King's Bench*. Their argument, which centred on claims that "the Parliament is a transcendent court, and of transcendent jurisdiction",²⁴⁰ had been used by Whitelocke in 1610 to stress the preeminence of the king-in-parliament. Speaking for the Crown, Heath turned the issue away from broader questions of parliamentary liberties, reminding the judges of the attack by the defendants on the bench as well as the government at the close of the 1629 session. Confident of the judges' refusal to accept this attack on their dignity, he was happy, he indicated, to leave the matter to their discretion.²⁴¹

Heath's instincts were quickly proven right. In a tone suggesting their offended sense of dignity, the judges of the King's Bench now moved to assert that "the court, as the case is, shall have sufficient jurisdiction, although these offences were committed in parliament, and that the imprisoned members ought to answer".²⁴² On this occasion it was James Whitelocke who provided the most revealing speech on the judges' ruling. "The question now", he told the court:

is not between us that are Judges of this Court, and the parliament, or between the king and parliament, but between some private members of the House of Commons

²³⁸*State Trials*, vol. 3, col. 289.

²³⁹*State Trials*, vol. 3, cols. 294-5.

²⁴⁰*State Trials*, vol. 3, cols. 295-304; cf. Reeve, *Charles I and the Road to Personal Rule*, pp. 150-151.

²⁴¹*State Trials*, vol. 3, cols. 304-305.

²⁴²*State Trials*, vol. 3, col. 305.

and the king himself: for here the king himself questions them for those offences, as well he may.²⁴³

Whitelocke had spoken twenty years earlier for the supreme sovereignty of the king-in-parliament; in 1630, by constructing the issue as one of individual dissent and not parliamentary action, he shifted the emphasis away from parliamentary rights and toward the powers of the Crown. "In every commonwealth", he declared, "there is one super-eminent power, which is not subject to be questioned by any other, and that is the king in this commonwealth".²⁴⁴ In his time at Westminster Whitelocke had been scrutinized and penalized out of parliament for his opposition to the Crown during sessions; he had seen his fellow MPs detained and stripped of office for speeches in the House which angered the king. It was not just royalist leanings, but practical experience which led him to his next point:

It is true, that that which is done in parliament by consent of all the house, shall not be questioned elsewhere: but if any private members *exuunt personas judicem, et induunt malefacientum personas, et sunt seditiosi*, is there a sanctimony in the place, that they may not be questioned for it elsewhere?²⁴⁵

Russell concludes that by 1630 "Whitelocke, as in 1610, showed signs of having a concept of sovereignty, but seemed less disposed than he had been in 1610 to repose sovereignty in the King in Parliament."²⁴⁶ In 1610, Whitelocke would never have dreamed to move from a stance placing emphasis on the interdependence of royal and parliamentary rights to (again in Russell's carefully chosen words) a "potentially revolutionary" appeal "over the King's head to the country at large".²⁴⁷ Yet this does not entirely release him from criticism. In 1628 Sir Robert Phelps cited the Exchequer verdict on impositions which Whitelocke had criticized so sharply, Calvin's case, and the King's Bench ruling on the five knights, as rulings

²⁴³*State Trials*, vol. 3, col. 308.

²⁴⁴*ibid.*

²⁴⁵*ibid.*

²⁴⁶Russell, *Parliaments and English Politics*, p. 364.

²⁴⁷Russell, *Parliaments and English Politics*, p. 415.

"exceeding one another in prejudice of the subject".²⁴⁸ If Phelips intended to level indirect criticism at Whitelocke it was probably justified, for the former champion of parliamentary rights now showed no qualms in giving a strong judgement for the Crown. The action of Eliot and his conspirators, Whitelocke assured the prisoners, "though it be not capital... is criminal, for it is sowing of sedition to the destruction of the commonwealth".²⁴⁹ If one could be punished for words in the pulpit which were "scandalous to the state", so:

in this case, when a burgess of parliament becomes mutinous, he shall not have privilege of parliament. In my opinion, the realm cannot consist without parliaments, but the behaviour of parliament-men ought to be parliamentary. No outrageous speeches were ever used against a great minister of state in parliament which have not been punished.²⁵⁰

The outcome of the protracted hearings on Eliot's case was success for the Crown.²⁵¹ In the long term this would prove a pyrrhic victory, as the political damage it caused was extreme. On July 6, 1641 the Long Parliament would condemn the judges' ruling as illegal and move to compensate the prisoners, while the 'Grand Remonstrance' cited the case as an example of the Crown's subversion of fundamental constitutional principles.²⁵² Sir John Eliot was to be canonized, upon his death in prison two years after the trial, as a martyr for the cause of "parliamentary liberty".²⁵³ Like Whitelocke, who departed the world a few months after him, he was spared the painful decisions forced on those who lived on into the turbulent decades to follow.

²⁴⁸*Proceedings in Parliament 1628*, vol. 2, p. 63; *State Trials*, vol. 3, col. 66.

²⁴⁹*State Trials*, vol. 3, col. 308.

²⁵⁰*ibid.*

²⁵¹Imprisoned "at the king's pleasure" for "conspiracy... to slander the state, and raise sedition and discord between the king, his peers, and people", the defendants faced fines ranging from £2000 for the ringleader Eliot to £500 for Valentine, the least affluent; *State Trials*, vol. 3, cols. 307-308; Reeve, *Charles I and the Road to Personal Rule*, pp. 153-154.

²⁵²*State Trials*, vol. 3, cols. 310-315; Reeve, *Charles I and the Road to Personal Rule*, pp. 155-156, 'The Arguments in King's Bench in 1629', pp. 284-285.

²⁵³Jones, *Politics and the Bench*, p. 13.

While Whitelocke's professional career suffered no damage from his participation in Eliot's case, the overall effect of political controversy on his personal and professional makeup is harder to say. Following Bulstrode's impassioned plea in 1640, "Hamden and divers others" in the House had "expressed themselves with great respect and honour to the memory of the deceased Judge, who was thereupon reckoned by the House, in the same degree with Judge Croke, as to their censure, and proceedings."²⁵⁴ In his eloquence, Bulstrode thus removed from his father's memory the stain of a parliamentary conviction that in the case of *habeas corpus* he had participated in a fundamental miscarriage of justice by refusing bail "without sureties of good behaviour", without "just or legal cause".²⁵⁵ In fact, Whitelocke *should* have stood convicted by the letter, if not the spirit of the law. While one might excuse Justice Croke, who disagreed with the other judges that the prisoners' actions constituted a treasonable offence,²⁵⁶ Whitelocke was certainly not of this mind. W.J. Jones concluded that it was his speech which "cut through the political sophistry of the defendants" by pointing out that they were in effect "questioning the supreme authority of the King".²⁵⁷ James Whitelocke went to his death refusing to accept that it was possible, by upholding this authority, to subvert fundamentally the rights of the subject.

A century ago Samuel Rawson Gardiner reflected sympathetically on the position of the Kings' Bench judges after the first five years of the reign of Charles I. "Events", he said, "had conspired to thrust forward the judges into a position which it was impossible for them to hold."²⁵⁸ We can be more specific about the causes of their failure. In 1626, James Whitelocke was prepared to put his career at risk for the last time by opposing the conduct of the Crown over the issue of the forced loan. Thereafter, he was forced to face three facts about the new reign. The first was that any attempt to modify or mitigate Crown policy was generally equated with

²⁵⁴Whitelock, *Memorials of the English Affairs*, p. 39.

²⁵⁵*State Trials*, vol. 3, col. 311.

²⁵⁶*ibid*: "The surety of good behaviour... is an act of government and jurisdiction, and not of law".

²⁵⁷Jones, *Politics and the Bench*, p. 80.

²⁵⁸Gardiner, *History of England*, vol. 7, p. 111.

opposition by the king, and opposition was likely to be taken as an attack on the person of the monarch. The second was that Charles was more than ready to employ the judges for political rather than judicial purposes. The third was that by constant intervention in their affairs, the king had no regard whatsoever for their independence. In his first meeting with the judges after his father's death, Charles encouraged Whitelocke to maintain the common law, "which he was informed was the best and most honourable and profitable for this realm", and assured him of his willingness to assist him "in all honest endeavours in doing justice to the law and the commonwealth".²⁵⁹ By cajoling, ordering, threatening and ultimately dismissing the authority of his judges, Charles made a mockery of his pledge.

Between 1625 and 1632, James Whitelocke learned that unlike his predecessor, Charles I lacked the insight to recognize how damaging the manipulation of his prerogative rights in pursuit of his own political programme would prove for his reputation. In this sense, there is a vital difference between the stance taken by James Whitelocke in the Jacobean and Caroline periods. In 1610 and 1614, Whitelocke was always confident that the policies of James I could be modified through good advice, which it was the duty of the subject to provide. In the 1620s, under continual harassment from the king and his agents, he lost this conviction. Bulstrode argued: "My Father did often and highy complain against this way, of sending to the Judges for their opinions (before the case had gone to trial)".²⁶⁰ He did not add that James Whitelocke kept his complaints private, and furnished the Crown with information which had a bearing on the final outcome. Bulstrode could not admit, as could his friend and associate John Selden, that attempts to seek the king's approval made a farce of Whitelocke's rather pompous arguments about the technicalities of due legal process. Referring back to events in the parliament of 1628, Selden criticized both the king and the judges for this outcome. It may be "a word" he said, "for any king to try the courage of his judges, and to suppose there is

²⁵⁹Prest (ed.), *Diary of Sir Richard Hutton*, pp. 56-57.

²⁶⁰Whitelock, *Memorials of the English Affairs*, p. 13.

a cause of state, when perhaps there is no cause [that] appears to them." But, Selden added equally, for the judges to stand by and accept such a position was equally wrong. To fly in the face of truth on the grounds of a legal technicality was to pervert the law, "which cannot be in a court of justice, where they are sworn to do justice."²⁶¹

Upon his appointment to the King's Bench, James Whitelocke deployed Tacitus to instruct his listeners "that to do well was not always safe, to do ill did most times escape blame, but to do little was least dangerous, bycaus it was lest subject to accoumpt".²⁶² In the face of these realities, he affirmed his commitment to the "true dutye of a judge, *juste persequi quod justum est*, whiche dutye by God's grace, I will ever endeavour to observe".²⁶³ Reflecting on James Whitelocke's passage through the stormy political waters that greeted him thereafter, it is hard to avoid the conclusion that his own opinions were always secondary to the changes that were occurring around him. Reeve has described these changes as "an uncharacteristic and in many ways an unwanted development". "They were" he suggests "the politics of a non-parliamentary England, politics which came about with the breakdown of traditional political and constitutional process".²⁶⁴ As a Justice of King's Bench, James Whitelocke bore the full brunt of these changes. Charles I's conclusion that Whitelocke was "a stout, wise, and learned judge, and one who knew what belongs to uphold magistrates and magistracy in their dignity" was as much as any man in early Stuart society could hope for; yet in 1629, the time at which the comment was made, suspicions about the king himself tinged this assesment with a dark undertone.²⁶⁵ James Whitelocke's high legal office, which brought him great financial and personal reward in the last years of his life, had also become the source of stresses which mirrored larger problems facing the English

²⁶¹*State Trials*, vol. 3, col. 79.

²⁶²*Liber Famelicus*, p. 98.

²⁶³*Liber Famelicus*, p. 99.

²⁶⁴Reeve, *Charles I and the Road to Personal Rule*, p. 2.

²⁶⁵This well-known quotation originally comes from a letter from Sir Humphrey May to Whitelocke on 8 May 1629 which survives in the Longleat Papers, vol. 4, fol. 9. It was originally cited in Bulstrode's *Memorials*, p.13.

nation, problems which by the time of his death were beginning to tear at the fabric of political harmony.

Part Three: County Connections, 1570-1632

Upon his appointment as a judge in 1620, James Whitelocke observed that "the whole course of life of a professor of the law is devided into three passages" - his "time of study", his "time of practise" ("the fruit of his studye"), and

his time of service to his countrye, and that is the discharge of his civill dutye to the commonwealthe in sutche place as he shall be called unto. So he begins *philosophus* in getting knowledge, goethe on *oeconomus* in getting meanes of livelihood, ends *politicus* in serving his countyre.¹

Employing Whitelocke's view of a lawyer's professional passage, we have already considered his time of study. By discussing his means of livelihood as a lawyer and service to his "countreye" as a judge, my final chapters consider his progress in the county community, and his overall achievement in early Stuart society.

Throughout the *Liber Famelicus*, James Whitelocke testified to his own social and professional success by concentrating on familial and social links. Over the last twenty years a series of local studies, driven by the pioneering work of Alan Everitt,² and refined through the scholarship of Morrill,³ Holmes,⁴ and a range of others,⁵ has scrutinized the lines of political power operating in the counties. Debate over "regional" and "national" influences on early modern political thought continues,⁶ but by questioning the connections that existed in the seventeenth

¹*Liber Famelicus*, p. 80.

²Everitt, A., *The Community of Kent and the Great Rebellion 1640-1660* (Leicester 1966); *Change in the Provinces: The Seventeenth Century* (Leicester 1969); *The Local Community and the Great Rebellion* (London 1969).

³Morrill, J.S., *Cheshire, 1630-1660: County Government and Society During the 'English Revolution'* (Oxford 1974); *The Revolt of the Provinces: Conservatives and Radicals in the English Civil War 1630-1650* (London 1976, 2nd ed. 1980)

⁴Holmes, C., 'The County Community in Stuart Historiography', *Journal of British Studies* 19 no. 2 (1980), pp. 54-73; *Seventeenth Century Lincolnshire* (Lincoln 1988).

⁵For example Fletcher, A., *A County Community in Peace and War: Sussex 1600-1660* (London 1975); Underdown, D.E., *Somerset in the Civil War and Interregnum* (Newton Abbot 1973); Clark, P., *English Provincial Society from the Reformation to the Revolution: Religion, Politics and Society in Kent 1500-1640* (Brighton 1977); Hughes, A., *Politics, Society and the Civil War in Warwickshire, 1620-1660* (Cambridge 1987).

⁶Cf. Hill, 'Parliament and people in seventeenth-century England', p. 103; Fletcher, A., 'National and local awareness in the county communities' in Tomlinson (ed.), *Before the English Civil War*, pp. 151-174; Herrup, C.B., 'The counties and the country: some thoughts on seventeenth-century historiography', *Social History* 8 (1983), pp. 162-182; Hughes, A., 'Local History and the Origins of the English Civil War' in Cust & Hughes (eds.), *Conflict in Early Stuart England*, pp. 224-253.

century between regional location, provincial relations and political actions, a sustained interest in local history has permanently altered our perception of "national" government under the early Stuarts. Thus while administrative ties between the centre and the localities have become a central concern in recent studies of early Stuart government,⁷ political historians have increasingly drawn attention to the complex representation of local interests at Westminster.⁸

In light of these historiographical developments, it is interesting to note that little has been said about James Whitelocke's rise in the county community from 1600 to 1620, or his subsequent judicial role in the provinces. In fact, while social historians have increasingly studied the "short-term objectives and long-term ideologies of groups in positions of authority and power" in the counties,⁹ little has been written on individual judges and their work in the shires.¹⁰ Nearly two decades ago, Clendinen questioned the social and familial networks of lawyers who sat in James's first parliament. Important questions, he argued,

such as: who were they? in what courts did they practice? where did they hold land? what offices did they seek and hold? or who were their families and friends? have never been thoroughly investigated.¹¹

James Whitelocke's kinship ties, and his social and professional networks in the counties, are amply attested through the correspondence which survives in the family papers, the Dovaston manuscripts calendared by the Commissioners for

⁷Cf. Hirst, D., 'The Privy Council and the Problems of Enforcement in the 1620s', *Journal of British Studies* 18 no. 1 (1978), pp. 46-66; Sharpe, 'Crown, Parliament and Locality', pp. 75-100; Lake, P.G., 'The Collection of Ship Money in Cheshire during the 1630s: A Case Study of Relations between Central and Local Government', *Northern History* 17 (1981) pp. 52-70; Quintrell, B.W. (ed.), 'Government in Perspective: Lancashire and the Privy Council, 1570-1640', *Transactions of the Historical Society of Lancashire and Cheshire* 131 (1981), pp. 35-62. To date the reign of Charles I has received far more attention than that of his father, but see Fletcher, A., *Reform in the Provinces: The Government of Stuart England* (New Haven 1986).

⁸See Russell, *Parliaments and English Politics*, p. 8; Hirst, 'Court, Country, and Politics before 1629', pp. 105-106; Sharpe, 'Crown, Parliament and Locality', p. 87. A recent example of the integration of local studies and political history is Peck, *Court Patronage and Corruption in Early Stuart England*.

⁹Sharpe, *Crime in Early Modern England*, p. 15.

¹⁰Cf. Prest, 'Politics and Profession in Early Stuart England', p. 164; *The Diary of Sir Richard Hutton*, p. xviii.

¹¹Clendinen, 'The Common Lawyers in Parliament and Society', p. 5.

Historical Manuscripts in their Thirteenth Report,¹² and the *Liber Famelicus*. Fortunately, through the work of Prest, J.A. Sharpe, Herrup, and Fletcher, we now have a more secure framework than was available to Clendenin in which to place his record of life as a provincial lawyer.¹³ Valuable studies on the administration of the Chester region by Williams and Morrill,¹⁴ Cockburn's seminal work on the assizes,¹⁵ and a range of studies on the provincial courts,¹⁶ provide insights from which Whitelocke's judicial role in the counties can be assessed. Finally, it is from the social and professional detail of James Whitelocke's daily life that one gains proper understanding of his personal identity. As Whitelocke's job and his family occupied the bulk of his time and engaged the bulk of his personal resources, to omit them from his biography would be to leave blank a significant corner of our canvas.

¹²These manuscripts are contained in a large volume of administrative letters from the Welsh border region acquired by John Dovaston in 1781, and calendared by the Historical Manuscripts Commission as the Dovaston Manuscripts in the 4th appendix of their thirteenth report; HMC 13th Report IV, p. 247.

¹³Cf. Prest, *Rise of the Barristers*, Cust, R., & P.G. Lake, 'Sir Richard Grovenor and the Rhetoric of Magistracy', *Bulletin of the Institute for Historical Research* 54 (1981), pp. 40-53; Sharpe, J.A., *Crime in Seventeenth-Century England: A County Study* (Cambridge 1983), *Crime in Early Modern England* (London 1984); Herrup, C.B., *The Common Peace: Participation and the criminal law in seventeenth-century England* (Cambridge 1987); Fletcher, A. & J. Stevenson (eds.), *Order and disorder in early modern England* (Cambridge 1985).

¹⁴Williams, P., *The Council in the Marches of Wales under Elizabeth I* (Cardiff 1958), 'The Activity of the Council in the Marches under the early Stuarts', *Welsh History Review* 1 no. 2 (1961), pp. 133-160; Morrill, J.S., *The Cheshire Grand Jury 1625-1659: A Social and Administrative Study* (Leicester 1976), *Cheshire, 1630-1660*. While the administrative history of Chester is comparatively rich, no study has concentrated upon the period from 1620 to 1624 in which James Whitelocke was Chief Justice of Chester.

¹⁵Cockburn, *A History of English Assizes* (Cambridge 1972).

¹⁶See the collected articles in Baker (ed.), *Legal Records and the Historian* and Cockburn (ed.), *Crime in England 1550-1800*.

CHAPTER SEVEN

Oeconomus: "Getting meanes of livelihood", 1602 - 1620

Challenging the parochial mentality ascribed to the local gentry by Everitt and Morrill, Clive Holmes has stressed a range of social and professional contacts which extended the consciousness of gentry families across the counties and towards London, the heartland of national culture and politics. "Exogamous marriage," he argued, "participation in a common educational system, and intercourse with London ensured that their horizons were not narrowly local."¹ James Whitelocke's connections with the county communities of Buckinghamshire and Oxfordshire, the area where he would establish lasting family ties and build his estate, neatly aligns with Holmes' viewpoint. In some ways, Whitelocke is almost an archetype of Holmes' thesis, with a university education, a stay at the inns of court in London, frequent contact with the capital as a pleader in the central courts, representation of a local borough in three successive Jacobean parliaments, and professional duties ranging over several counties as a legal counselor.²

Yet it is questionable to what extent Whitelocke's experience may be taken to be typical. As a practicing lawyer, Whitelocke belonged to a social and professional coterie within early modern society whose connections with the state were in many ways distinctive.³ Moreover, Whitelocke did not begin his life as part of the county community but in London, and his connections with the region in which he would acquire property, settle his family and leave the greatest monuments to his success were nominal at birth. Thus Whitelocke's journey, from origins as a merchant's son to final status as a distinguished member of the Buckinghamshire gentry, raises

¹Holmes, 'The County Community in Stuart Historiography', p. 73.

²Whitelocke's thorough knowledge of parliamentary events is suggested by notes surviving in the Longleat Papers, vol. 1, fols. 90, 92, 94v, 98v, 136v, 181; for court matters see vol. 1, fols. 23, 40, 48, 156v, 172; for government orders on county administration see vol. 1, fols. 10, 32, 34.

³MacCaffrey, 'Place and Patronage in Elizabethan Politics', p. 107; cf. Prest, *Rise of the Barristers*, ch. 8, *passim*.

questions not always addressed by the stereotyped picture of a "country gent" making his way down from the counties to London. By a study of Whitelocke's connections with the county community, this chapter seeks to establish how he organized his time and resources and established his family among the ranks of the local gentry.

"Country" connections: family identity and family life, 1602-1620:

James Whitelocke's first remarks about Elizabeth Bulstrode, his partner in marriage for thirty years, simply noted that she "was born at Hugley Bulstrodes, in the countye of Buckingham, the last of July 1575; so she was 27 year olde, and I within two monethe of 32, when we wear maryed."⁴ Whitelocke's marriage to Elizabeth Bulstrode, negotiated by the widowed mothers Cecilia Bulstrode and Joan Whitelocke and consummated on 9 September 1602, was of undoubted benefit to his career.⁵ Their marriage, two years after his call to the bar, came at a stage in life when Whitelocke had established his professional credentials but had little in the way of material resources. The most immediate financial benefit to Whitelocke was £500 and eighteen months free board in Cecilia Bulstrode's Fleet Street mansion.⁶

Bulstrode remembered his mother as:

a most fitt and loving companion to her husband... so expert in business, that whilest her husband was imployed in publique affayres, he wholly trusted her with the management of his private affayres, contracts with tenants[,] receipts and disbursements.⁷

As well as supervising her children and overseeing the Whitelocke household in her husband's frequent absences, Elizabeth instructed Bulstrode (and presumably his sisters) in religion, grammar and languages, being "well furnished with learning" in

⁴*Liber Famelicus*, p. 15.

⁵Cf. Prest, *Rise of the Barristers*, pp. 115-122. The great success of his marriage probably contributed to Whitelocke's scorn towards matches made "without consent of frendes", such as his sister-in-law Dorothy's marriage to Sir John Eyre; *Liber Famelicus*, pp. 25-26.

⁶The articles of marriage, slightly damaged, are preserved in the Longleat Papers, vol. 1, fol. 37.

⁷*Diary*, p. 63. Financial records in the family papers testify to her active role in household administration; Longleat Papers, vol. 3, fol. 180, vol. 4, fol. 137.

divinity and history, and expert in French.⁸ Elizabeth's constant support of her family, in light of James Whitelocke's frequent professional absence, was undoubtedly significant to his success. In her epitaph, Whitelocke would write movingly of his affection for Elizabeth. The grief that he expressed at her passing suggests the strength of the bond that grew between them over thirty years of married life.⁹

Social historians have argued that an early modern fascination with ancestry arose partly from the social and political benefits that could be accrued through kin relations.¹⁰ While of declining economic status, the Bulstrodes, "born [to] the best and most worshipfull offices in the countye",¹¹ had significant prestige in Buckinghamshire, as one of perhaps forty families who dominated local officeholding among 200 or so local gentry families.¹² Connections with the royal household noted by James Whitelocke ranged from immediate cases such as Whitelocke's sister-in-law Dorothy, who was a gentlewoman of Queen Anne of Denmark's bedchamber, to very distant figures like Cecilia Bowstread, related through the Croke family, who had been maid of honour to Catherine of Aragon.¹³ For Whitelocke, establishing kin relations with the Crokes (Elizabeth Whitelocke's family on her maternal side) was doubly advantageous as this family, of distinction in Buckinghamshire since the sixteenth century, were prominent in the legal profession.¹⁴ Prest has observed that the "judge's favourite, often son, brother,

⁸*Diary*, p. 44, 63.

⁹*infra*, pp. 306-307.

¹⁰Cf. Cliffe, J.T., *The Yorkshire Gentry from the Reformation to the Civil War* (London 1969), p. 10; Clark, P., *English Provincial Society from the Reformation to the Revolution: Religion, Politics and Society in Kent, 1500-1640* (Cranbury 1977), p. 124, Cressy, 'Kinship and Kin Interaction in Early Modern England', p. 49.

¹¹*Liber Famelicus*, p. 15. While Bulstrode Whitelocke's later claim that his family "did more affect hospitality and generous living at home then Court preferments or bought titles" smacks of rationalization, his compensatory boast that "severall of them were knights, matched into good families and were of esteem in their Countrey" was substantially correct; *Diary*, p. 43.

¹²Johnson, A.M., 'Buckinghamshire, 1640-1660' (1963 University of Swansea MA thesis), pp. 1-7, quoted in Peck, *Court Patronage and Corruption*, p. 78.

¹³*Liber Famelicus*, pp. 17; 20.

¹⁴Whitelocke's uncle George Croke was a successful lawyer with major landholdings in Buckinghamshire and Oxfordshire while Sir John Croke, his other uncle, was speaker of the House of Commons in 1601 and Justice of King's Bench from 1608 until his death in 1619; Croke, *The genealogical history of the Croke family*, vol. 2, pp. 409-484.

nephew, cousin, or relative by marriage, was a familiar figure in the courts of Elizabethan and Stuart England".¹⁵ Although Whitelocke never admitted to relying upon the professional patronage of the Crokes, in a personal obituary in 1619 he praised Sir John Croke, from 1608 Justice of the King's Bench, as "very kind" to the lawyers who practised before him; it can hardly have been disadvantageous to Whitelocke that such an eminent figure of the law was "my wife's unckle by her mother".¹⁶

In his study of seventeenth-century Durham society, Mervyn James pointed to the extended family as "the circle within which what was most deeply felt in the active life of the time was played out" in the upper classes of English society.¹⁷ James Whitelocke's detailed record in the *Liber Famelicus* of family baptisms, marriages and funerals suggests that a fluid, extended reliance on kinship ties flowed naturally out of the union of Whitelocke and Bulstrode. Births are a recurrent theme: over the first decade of her marriage to Whitelocke, Elizabeth was almost always in one stage or another of pregnancy. In all, she gave birth to seven children in under ten years. The first, Elizabeth, was born on 6 October 1603 at the Bulstrode family estate; the last, James, was born on 17 May 1612 at the family's London address in Fleet Street.¹⁸ Four of the children - Mary, Joan, Dorothy and James - died in infancy, leaving Elizabeth and Cecilia to extend the family line, and Bulstrode to carry the family name.¹⁹

Although the exact role of godparents in the early modern period is open to question,²⁰ there is every reason to think that the godparents of James Whitelocke's

¹⁵Prest, *Rise of the Barristers*, p. 27.

¹⁶*Liber Famelicus*, p. 76.

¹⁷James, M., *Family, Lineage and Civil Society: A Study of Society, Politics, and Mentality in the Durham Region 1500-1640* (Oxford 1974), p. 19.

¹⁸Nichols, J.G. (ed.), *Collectanea Topographica and Genealogica*, 8 vols. (London 1834-1843), vol. 5, p. 369; *Liber Famelicus*, pp. 15, 26. Bulstrode was born at the Fleet Street address on 6 August 1605, Mary in Buckinghamshire on 6 October 1606, Cecilia in London on 10 March 1607, Joan on 6 August 1609 at Hedgely Bulstrode in Buckinghamshire, Dorothy on 15 September 1610 in Fleet Street; *Liber Famelicus*, pp. 16, 17, 18, 19, 20, 25.

¹⁹The family tree is in Spalding, *The Improbable Puritan*, pp. 20-21.

²⁰Bossy, J., 'Godparenthood: The Fortunes of a Social Institution in Early Modern Christianity' in K. Van Greyerz (ed.), *Religion and Society in Early Modern Europe, 1500-1800* (London 1984), pp. 194-201.

children were expected to be a source of guidance and support, especially in the event of their parents' premature death.²¹ As Whitelocke's mother Joan and his brother Richard were the only surviving members of his immediate family, his wife's family figured prominently in this role. Of twenty-three people appointed or deputized by Whitelocke for the baptism ceremonies, six were drawn from outside the family ranks, while fifteen were his wife's relatives, ranging from Sir William Bulstrode (her father's uncle) to John Searl, her sister Anne's husband.²² Friendship, rather than patronage, was the essential criterion for the honour.²³ Yet this did not, in itself, preclude professional connections; John Buckeridge, whom Whitelocke had known since student days at Oxford, was godparent to Mary,²⁴ while John Harington, with whom he had extensive personal and professional dealings, was Cecilia's godfather.²⁵ Harington's example stresses the nebulous character of kinship ties. He had become acquainted with James Whitelocke through his father Lord John Harington, whose close friendship:

grew by the consanguinitye between his wife and mine, for the olde ladye Harington was the sole daughter and hier of Robert Kelyway... and of Cecilie his wife, daughter of Edward Bulstrode of Hedgely Bulstrode and widow of Sir Alexander Unton of Barkshire, and mother to Elizabeth wife of olde Sir John Croke, my wife's grandfather.²⁶

In effect, the younger John Harington was Whitelocke's distant cousin via Elizabeth Unton neé Bulstrode, kinship serving in this instance as an introductory lever to a lasting family friendship.

The importance of godparents in the family link is suggested by the procedure taken by Whitelocke during the hurried christening of his daughter Dorothy.

²¹Fitzhugh, *The Dictionary of Genealogy*, p. 127.

²²*Liber Famelicus*, pp. 15-26.

²³One sees this clearly in the case of Lady Dorothy Wright, highly regarded by Whitelocke, and in the case of Elizabeth Waller of Beaconsfield, whose connections with the Whitelocke family are unclear; *Liber Famelicus*, pp. 15, 20, 26.

²⁴*Liber Famelicus*, p. 16.

²⁵*Liber Famelicus*, p. 17.

²⁶*Liber Famelicus*, p. 31.

Whitelocke originally invited Humfrey May, his longstanding friend from St John's and the Middle Temple, and Lady Dorothy Wright to be godparents at a ceremony scheduled for early October 1610.²⁷ As his daughter succumbed to illness, Whitelocke was forced to employ deputies at a premature christening toward the end of September.²⁸ While one of his appointed godparents (his sister-in-law Mary Croke) was present, Whitelocke was careful to name May and Lady Wright as godparents at the birth of his next child James, noting in his journal that they had already "bespoken sutche an office" through the previous arrangement.²⁹

Peck has observed that by naming their children, parents and godparents "celebrated family and friendship connections in the past, present and in the future".³⁰ In the Whitelocke family, there seems to have been little false modesty in such celebrations. The right to name Whitelocke's eldest daughter was reserved by his wife's grandmother Elizabeth Croke, who "gave her her owne name".³¹ It seems likely that Mary was named after Mary Croke who served as Dorothy's godparent; Cecilia also linked the Bulstrodes and the Whitelockes by using the name of Elizabeth's mother. One need not look hard for the inspiration to name Whitelocke's second son James; as godfather to Edward Nevill's son in 1615, Whitelocke similarly called the boy James.³² In the case of Joan Whitelocke, whose godmothers came from outside the family, James Whitelocke appears to have had the final say. "I was desirous to have her named Joan, in memorye of my good and kinde mother", he wrote, obviously getting his wish.³³ Showing that he could look beyond family, Whitelocke named Dorothy "for the respect I had of her godmother the Lady Wrighte".³⁴ The peculiar name given to his surviving son, which Whitelocke avoided discussing, came from his brother Richard. Bulstrode later

²⁷*Liber Famelicus*, p. 20.

²⁸*Liber Famelicus*, p. 26.

²⁹*ibid.*

³⁰Peck, *Court Patronage and Corruption*, p. 77.

³¹*Liber Famelicus*, p. 15.

³²*Liber Famelicus*, p. 46.

³³*Liber Famelicus*, p. 18.

³⁴*Liber Famelicus*, p. 20.

recounted that at the christening, "being asked if he would not give it another name", Richard insisted that the child bear one or the other of his mother's maiden names, leaving James Whitelocke with Elizabeth for a second choice!³⁵

Given the high rate of infant mortality and the ever present threat of disease, death was for James Whitelocke a ready fact of life. Death had taken a heavy toll on his family even before his birth; the loss of friends and kin would continue to provide occasion for sadness over the years. I have suggested that Whitelocke's close relations with his wife's side of the family were due in part to the early deaths of two of his own brothers, a situation compounded by the absence of his twin Richard from England, who died abroad in December 1624.³⁶ Of course Elizabeth's larger family were not immune to death, and between 1608 and 1614 she and James grieved the loss of her grandfather Sir John Croke and Lady Croke, her uncle Henry Croke, sister Anne Bulstrode and sister-in-law Mary Reed.³⁷ In these years, Whitelocke had to don blacks for the funeral of Lord John Harington and his son, who died within a year of each other in August 1613 and February 1613/14; he remembered their "religion, learning, and curteous behaviour."³⁸

The death of his mother, and four of his children over his first ten years of marriage were obviously occasions of great sadness in the life of James Whitelocke. When his mother Joan, who "went away even with olde age even as a candle goethe out", departed this world on 21 February 1606/7, Whitelocke comforted himself that:

She had her senses and her memorye to the last gasp, and was full of spirit and comfort among her children, and she did often remember herself on the deathe bed to my wife and children, whome she loved most deedly.³⁹

³⁵*Diary*, p. 43. In fact, once Bulstrode had added fame to the name, Whitelocke boys would continue to take it over the generations.

³⁶*Liber Famelicus*, p. 102.

³⁷*Liber Famelicus*, p. 17; 25; 45.

³⁸*Liber Famelicus*, p. 31; 39.

³⁹*Liber Famelicus*, p. 16.

Over the next five years he went on to record the death of three of his children: Dorothy, who died on 8 May 1610, less than a year after her birth; Joan who similarly succumbed to respiratory problems in her first year of life, and Mary who died of a respiratory illness on 3 June 1611, four years after her birth.⁴⁰ Of James, who also died in infancy, he has left no record. Whether this was the result of grief we cannot be sure, but his thoughts on the loss of Dorothy hint at Whitelocke's understanding of the links between life in this world and an afterlife:

God toke her to his immediate provision, that if she had lived in this worlde mighte after many yeares have been farther from the assurednesse of eternall happinesse.⁴¹

In such times of reflection, but also on more happy occasions, kin were a ready source of comfort and provided Whitelocke with some respite from his driven professional life. The *Liber Famelicus* records one such occasion, a visit made by James and Elizabeth to their brother Henry Bulstrode's estate at Parlant Park in August 1612, from where they proceeded to Essex to visit their mother Cecilia, returning to Buckinghamshire via Sir John Tyrell's Essex estate.⁴² Such visits reflect a purely social dimension in family interactions which should not be forgotten among questions of social advancement.⁴³

A man of professional expertise and growing social influence, Whitelocke actively supervised the affairs of family members. Negotiating the marriages of his surviving children would occupy a good deal of his attention in the 1620s, but in their younger years he was mostly concerned with their education. While the girls were educated at home, Bulstrode boarded at Eton from the age of seven and then lived in his father's Fleet Street address while attending Merchant Taylors' School.⁴⁴ Although he expected much of his son, Whitelocke also used every advantage at his disposal to help him progress, having fourteen-year-old Bulstrode

⁴⁰*Liber Famelicus*, p. 19, 20, 25.

⁴¹*Liber Famelicus*, p. 20.

⁴²*Liber Famelicus*, p. 29.

⁴³One could add an example from the summer of 1616, when Whitelocke was "royally enterteined" at the house of Richard Moore, an associate from the Middle Temple, bound through the kinship of their wives; *Liber Famelicus*, pp. 49-50.

⁴⁴*Diary*, p. 45.

admitted to the Middle Temple as a favour at his 1619 reading, and enlisting the help of William Laud, president of his old college in Oxford, to ensure that his son was well supervised in his studies from 1620.⁴⁵ In that year Richard Whitelocke put his son James into his brother's care, and Whitelocke had the younger man placed at Magdalen College, Oxford.⁴⁶ Through these and other demands that marked the passage of time, the Whitelocke family reinforced and reiterated an ordered, intimate set of social relations which bound friends and kin. The ways in which business and pleasure were often subtly intertwined has been suggested throughout my discussion of these relations. It remains to be seen what the professional advantages of "country" connections were in Whitelocke's emerging career.

Building a practice:

Attempts to establish a picture of Whitelocke's legal practice are aided by his record of financial expenditure and profit in the *Liber Famelicus*, which lists the total amounts received and spent by term from the time of his call to the bar in 1600.⁴⁷ In his first five terms at the bar, Whitelocke collected £39. 3s. 7d.,⁴⁸ while his first full legal year (1603)⁴⁹ yielded £82. 14s. 4d.⁵⁰ In 1604 his total income over four terms was £188. 6s. 8d. while his expenses ran to £162. 1s. 11d., leaving a profit of £26. 4s. 9d..⁵¹ In 1607, one of his most profitable years of practice, he raised £452. 15s. 8d. from fees and expended £209. 5s. 10d., leaving a substantial profit of £243. 10s. 2d..⁵² Whitelocke's profits between this time and 1616 varied from £41. 15s. 3d. in 1608,⁵³ to the substantial figure of £180. 1s. 7d. in 1614.⁵⁴ While

⁴⁵*Diary*, pp. 47-48.

⁴⁶*Liber Famelicus*, p. 88.

⁴⁷Largely omitted from Bruce's edition, but preserved in BL Additional MS 53725 at numerous folio numbers throughout the text; unfortunately only the totals are provided and no detail of clients or the cause of his expenses are given.

⁴⁸BL Additional MS 53725, fol. 31.

⁴⁹New style; Whitelocke's first term of practice was Michaelmas 1600, which he included in his profits for 1600, thereafter listing his totals from Hilary term of the previous year with those from Easter, Trinity and Michaelmas of the next year.

⁵⁰BL Additional MS 53725, fol. 31.

⁵¹BL Additional MS 53725, fol. 36.

⁵²BL Additional MS 53725, fol. 38.

⁵³*ibid.*

Whitelocke's yearly expenses as a proportion of total outlay were generally high, averaging between seventy and ninety percent, he surmounted new income barriers on almost a yearly basis. After 1605, the first year in which his legal fees generated over £200 in income, he increased the total to over £300 in 1607, £400 in 1608, £500 in 1612 and £600 by 1615. The next great jump in fees would come with his appointment as a judge, which would push his income to a new threshold of about £1,000 per annum.⁵⁵

From March 1606 to August 1610, the yearly totals provided in the *Liber Famelicus* are supplemented by an additional lists of fees in Whitelocke's notes of assize work.⁵⁶ In 1607, Whitelocke's assize profits of £32 16s. 8d. in Lent Vacation and £67. 3s. 6d. in Trinity,⁵⁷ made up slightly less than half of his total profit of £243. 10s. 2d. for that year. In 1609, total assize fees of £101. 3s. made up about a quarter of his total yearly income of £401. 17s. 10d., while his expenses on assize, totalling £36. 1s. 11d., contributed only slightly to his total expenditure of £345. 6s. 11d. for the year.⁵⁸ The following year, Whitelocke recorded a profit of £57. 13s. 14d. from assize work,⁵⁹ which represented more than half of final profit for the year of £99 7s. 8d.. His total assize fees for that year of £96. 6s. 6d., however, represented less than a quarter of his total income for the year, which came to £432. 19s. 8d. before expenses.⁶⁰ Comparing the totals from 1608, 1609 and 1610, it appears that Whitelocke's fees from assize work had an upper threshold of about £100, representing a significant proportion of Whitelocke's income in his early years at the bar, but a constantly diminishing proportion thereafter. Between 1610 and 1619 other forms of income, such as retainers from established clients and fees from work in the central courts, played a greater role. Yet it is important to note

⁵⁴BL Additional MS 53725, fol. 70.

⁵⁵Cf. Bruce's introduction to the *Liber Famelicus*, p. xiv.

⁵⁶Longleat Papers, miscellaneous parcels box 9, assize book; (hence assize book).

⁵⁷As the assize book is unfoliated, I have numbered each folio (2 pages) from 1 to 182; his totals for March 1607 are in fols. 64 and 91.

⁵⁸Assize book, fols. 134, 150; BL Additional MS 53725, fol. 39.

⁵⁹Assize book, fols. 163, 181.

⁶⁰BL Additional MS 53725, fol. 40.

that the reputation Whitelocke gained from assize work promoted him both to his patrons and to the courts.

Prest has suggested that while many lawyers took retainers from town corporations, ecclesiastical bodies, university colleges as well as from knights and peers, the bulk of their earnings were generated from casual fees paid by "a multitude of individual clients."⁶¹ In Whitelocke's case this can be comfortably demonstrated. Over his first decade of practice, Whitelocke counted on annual fees received from his duties as steward of St John's, Westminster, Eton, the dean and canons of Windsor and his additional fee as recorder of Woodstock. Whitelocke took a yearly fee of £3. 6s. 8d. from the Woodstock town corporation, Eton College provided a £4 annuity for counsel (with the provision of a gown usually commuted to an additional fee of 26s. 8d.), Westminster provided £10 per annum and his work for the dean and canons of Windsor yielded an additional 40s. a year.⁶² In his second decade of practice he came into the permanent employ of numerous high ranking churchmen, in many cases old associates from St. John's. In 1617 Richard Neile granted Whitelocke a pension of £4 per annum with additional payment of £5. 10s. "for seisin" (seisin).⁶³ In the following year John Buckeridge, who replaced Neile as Bishop of Rochester, granted the lawyer another life pension for counsel totalling 40s. per annum with 20s. for seisin; an additional payment of 40s. was provided by his old tutor Roland Searchfield, now Bishop of Bristol.⁶⁴ In 1620 Whitelocke gained another lifetime annuity of 40s., this time from John Howson, Bishop of Oxford.⁶⁵

⁶¹Prest, *Rise of the Barristers*, pp. 24-25.

⁶²Ballard, A., *Chronicles of the royal borough of Woodstock, compiled from borough records and other original documents* (Oxford 1896), p. 35; Eton College Records 27/267; *Liber Famelicus*, pp. 18; 19; 29.

⁶³*OED*; seisin was a feudal retainer, originally offered as land by ecclesiastical patrons for services rendered, which by the seventeenth century was generally replaced by a fee; cf. Gray, C.M., 'Parliament, Liberty, and the Law' in Hexter (ed.), *Parliament and Liberty*, p. 177.

⁶⁴*Liber Famelicus*, pp. 59; 60; 76.

⁶⁵*Liber Famelicus*, p. 77.

Prest's suggestion that lawyers worked for a variety of clients is amply demonstrated in Whitelocke's assize book.⁶⁶ While Sir Henry Lee (who promoted Whitelocke for parliamentary representation in 1610)⁶⁷ and Sir George Hambly were two knights whose cases found their way into his record,⁶⁸ work for less distinguished figures such as William Harwell, Thomas West, Thomas Davies, Thomas Cook and a vast array of others suggests that Whitelocke readily accepted the business of those who were able to pay for his services. While a few names, such as "Thomas Mostin" and one "Williams" represented at the Monmouth assizes of 14 March 1607 are familiar from Whitelocke's time as Chief Justice of Chester,⁶⁹ there is no way to be sure that he is referring to the same men who would build up extensive connections with him between 1620 and 1624. However, by working extensively in the border shires at a time when their jurisdiction was hotly contested by the Council in the Marches of Wales and the common-law courts at Westminster,⁷⁰ Whitelocke may have enhanced his eligibility for this office.

Totalling the £46 Whitelocke could expect from legal retainers and the £100 he could expect from assize work, it becomes obvious that in the later stages of his career the bulk of his income came from his work in the central courts, or from other means. Between July 1612 and August 1613, Whitelocke would have received around £300 from his share in the clerkship of enrollments in the Court of King's Bench, in which he acted as the agent of Sir John Harrington in return for a sixth of Harrington's moiety.⁷¹ By this stage of his career, additional income would have come increasingly from other wealthy lay patrons of whom the *Liber Famelicus* records but two, Thomas Read of Barton and Robert Witney, knight of the shire for

⁶⁶The badly perished front page of the book lists many of the clients represented by Whitelocke on the assizes, including St John's College and Thomas Mostin, as well as the towns or sometimes the counties in which their cases were heard. In his case notes, Whitelocke adds "pro" before either plaintiff or defendant in the cases in which he was personally involved.

⁶⁷*Liber Famelicus*, p. 16.

⁶⁸Assize book, fols. 65, 95.

⁶⁹Assize book, fols. 104, 105.

⁷⁰Cockburn, *A History of English Assizes*, pp. 36-37.

⁷¹*Liber Famelicus*, p. 46. This is working on Aylmer's assumption that the office yielded around £4000 a year.

the county of Hereford.⁷² Whitelocke's income of around £600 per annum after 1616 is put into some perspective by comparing it with the £800 and £4000 per annum estimated by Aylmer as the average income of knights and peers respectively in 1630s.⁷³ By covering the massive expenditure needed to pay for the acquisition of Fawley Court, his readership at the Middle Temple, and the cost of a knighthood, Whitelocke cemented his professional and social status. The ability to meet such costs was a sure sign of Whitelocke's financial health;⁷⁴ by any contemporary standard he had established a very successful practice.⁷⁵

James Whitelocke's career, it has been shown, falls into a period of expanding litigation across English society and rapid growth in the size of the English bar.⁷⁶ The vast majority of litigation in the early modern period can be traced back to one form or another of property dispute, and it was mostly in the area of property law that Whitelocke plied his trade. Wilfrid Prest, noting an array of overlapping national, regional, and local, occasional and permanent, and ecclesiastical and secular courts, has remarked that it "is straining language to speak of an early modern English legal system."⁷⁷ Similarly, at the time there was nothing like the degree of specialization that exists in legal practice today. In fact like Whitelocke, the most successful lawyers of the day roamed wherever their legal competence and reputation allowed them to go, attracting clients as much by their ability to gain an audience in the courts as their technical prowess.⁷⁸ In the course of his duties as

⁷²*Liber Famelicus*, pp. 29; 30.

⁷³Aylmer, *The King's Servants*, p. 331. But cf. Jones, *Politics and the Bench*, where it is suggested that the attorney-general could expect to earn £6,000 per annum in the same period.

⁷⁴But see my comments below, and cf. Jones, *Politics and the Bench*, p. 37, which also suggests Whitelocke's "financial anxiety".

⁷⁵Cf. Prest, W.R., 'Counsellors' Fees and Earnings in the Age of Sir Edward Coke' in Baker (ed.), *Legal Records and the Historian*, pp. 171-174, *Rise of the Barristers*, pp. 146-155, 'Judicial Corruption in Early Modern England', p. 77; Brooks, C.W., 'The Common Lawyers in England, c. 1558-1642' in W.R. Prest (ed.), *Lawyers in Early Modern Europe and America* (London 1981), pp. 56-57.

⁷⁶Barnes, 'Star Chamber Litigants and their Counsel', p. 8; Brooks, C.W., 'Litigants and Attorneys in the King's Bench and Common Pleas, 1560-1640' in Baker (ed.), *Legal Records*, p. 43; Prest, *Rise of the Barristers*, pp. 49-79; *idem*, 'Lawyers' in W.R. Prest (ed.), *The Professions in Early Modern England* (New York 1987), p. 74.

⁷⁷Prest, 'Lawyers', pp. 64-65.

⁷⁸Cf. Brooks, 'The Common Lawyers in England, c. 1558-1642' in Prest (ed.), *Lawyers in Early Modern Europe and America*, pp. 56-57; Prest, *Rise of the Barristers*, p. 27.

Steward of St John's College, Eton and Westminster School, Whitelocke was required to account for college lands held by donation or lease, and for the income generated from the rent of college property.⁷⁹ He recorded "progresses" made at the conclusion of circuit work in the summers of 1614, 1615, 1616 and 1617, with the provost and bursars of Eton College and the subwarden of Merton College, to inspect college properties and preside over manorial courts in Surrey, Kent, Suffolk, Norfolk, Cambridge, Bedford and Hertford.⁸⁰ As well as ensuring the legality of college contracts and "keeping court" for the colleges, Whitelocke would have routinely given legal advice to the administrators of the colleges in the course of his duties, and maintained close relations with them throughout his career.⁸¹

On occasion these colleges did become involved in legal disputes, as in a 1613 cause in Chancery between John King, Bishop of London, and the College of Westminster.⁸² With his intimate knowledge of college business Whitelocke played a key role as Westminster's legal adviser, preparing the bulk of the defence. He boasted that Chancellor Ellesmere, probably to help his fellow privy councillor, granted the defence insufficient time to prepare a case, "yet by my extraordinarye paines [we] wear ready at the heering".⁸³ Ironically, the kind of counsel the plaintiff would have received in this instance would have been familiar to Whitelocke through his own work as a legal advisor to numerous clerics, among them the Bishops of Rochester, Oxford and Bristol.

The kind of legal advice Whitelocke extended as a steward would also have been a function of his duties as recorder of Woodstock. In this office he acted as the salaried justice of the borough, presiding with the mayor and aldermen over local

⁷⁹Details of Whitelocke's role are scarce. Eton College has a record of his appointment as Steward of Manors (Eton College Records 60/300, p. 101) which gives an idea of the perquisites of his office, such as provision of food and horses while on college business. Bodleian MS Wood F 28, fol. 214 lists St John's College lands, mostly manors and parsonages, held in Oxfordshire, while Bodleian MS Tanner 338 notes donations and endowments in a financial audit carried out by St John's in 1611.

⁸⁰*Liber Famelicus*, pp. 43-44, 47, 49-50, 59. See also Hainsworth, D.R., 'The Estate Steward' in Prest (ed.), *The Professions in Early Modern England*, pp. 155-156.

⁸¹*Liber Famelicus* p. 57.

⁸²*Liber Famelicus*, p. 33.

⁸³*ibid.*

sessions of the peace.⁸⁴ Preserving the rights and privileges of the borough was his foremost consideration, and as recorder Whitelocke was expected to represent its interests nationally as an elected member of parliament.⁸⁵ The kind of steps he might take in this business is shown in correspondence to the borough of Leicester, which asked his advice on a trade matter in 1601. Replying to a protest lodged against an influx of "foreign" traders, Whitelocke advised the mayor and aldermen that he had been in correspondence with the Attorney General of the Duchy who, as a judge in the court in which their protest was lodged, could not "give a resolution of successe in our cause" - but had suggested the best way to ensure that their protest was successful. Whitelocke advised that the right of the borough to prosecute traders from other towns was best defended by recourse to a statute of Phillip and Mary "out of the preamble of which I mean to derive matter for our purpose". He further offered his opinion on a number of points raised by the borough in a petition to Queen Elizabeth, such as increasing the toll on "those who passed beside your towne", asking for further information on these issues.⁸⁶ If this letter is any indication, an ability to lobby successfully in the courts as well as a thorough grounding in the *minutiae* of local customary law was the mark of a successful borough lawyer.

Whitelocke's work as a steward and recorder of Woodstock was secondary to his role on the assize circuit and in the courts of Westminster Hall, a barrister's "largest and most lucrative sphere of employment".⁸⁷ Like many other barristers, Whitelocke followed the machinery of royal justice between London and the provinces, concentrating upon those courts where he was likely to find the favour of a presiding judge. As his own practice grew he was constantly moving between clients and duties, dealing with a wide range of property related, criminal and semi-

⁸⁴Woodstock Town Hall, MS B79/1, fol. 60; Baker, J.S., 'Criminal Courts and Procedure at Common Law 1550-1800' in Cockburn (ed.), *Crime in England 1500-1800*, p. 30.

⁸⁵*Liber Famelicus*, p. 19.

⁸⁶Hall Papers, vol. 3, no. 162, 'James Whitelocke to John Clark, 7 December 1601'; reprinted in Bateson, M. (ed.), *Records of the Borough of Leicester* (Cambridge 1905), pp. 440-441.

⁸⁷Prest, *Rise of the Barristers*, p. 50.

criminal causes. Sir John Dodderidge suggested in *The English Lawyer* (1632) that a lawyer's professional duties could be divided between private counsel, drawing of assurances and conveyances, and advocacy, or pleading his client's cause in a court of law.⁸⁸ Among Whitelocke's papers, one finds a number of bonds for drawing up conveyances,⁸⁹ while his work in private counsel is amply testified to by the range of retainers he received from lay and clerical patrons. Probably the most difficult of Whitelocke's tasks was advocacy, or advancing his client's cause either on assize or at Westminster.

Considering Whitelocke's progress on the Oxford assize circuit for one year (1608) through his note book, we find him in the city of Oxford on 23 February 1607/8, from where he followed Justices David Williams and Sir Christopher Yelverton around the Oxford assize at sessions in Abingdon (25 February), Gloucester (29 February), Monmouth (3 March), Hereford (7 March), "Wigorn" (Worcester) (10 March), Bridgnorth (14 March) and Stafford (17 March).⁹⁰ Whitelocke listed 20 "records" as arising from the Oxford hearings, noting eight cases, 11 records at Abingdon with descriptions of 6 cases, 38 records at Gloucester noting 10 cases, 32 records at Monmouth of which none were noted, 32 records at Hereford of which 8 were noted, 27 records at Wigorn of which he noted 12, 31 records at Bridgnorth of which 21 were noted, and 22 records at Stafford of which 7 were noted. Figures from the August assizes provide comparable totals; Whitelocke moved from Oxford (5 July; 28 records, 11 reports) to Abingdon (7 July; 19 records, 4 reports), Gloucester (11 July; 31 records, 10 reports), Monmouth (14 July; 18 records, 1 report), Hereford (18 July; 71 records, 14 reports), Worcester (21 July; 36 records, 15 reports), Bridgnorth (25 July; 59 records, 13 reports) and Stafford (28 July; 22 records, 7 reports).⁹¹ It appears that Whitelocke was involved either as assisting counsel (where he notes his "help" next to the name of the plaintiff

⁸⁸Quoted in Prest, *Rise of the Barristers*, p. 14.

⁸⁹Longleat Papers, vol. 1, fols. 190, 194.

⁹⁰Assize book, fols. 92, 93, 95, 97, 99, 102, 105.

⁹¹Assize book, fols. 108, 111, 112, 113, 114, 117, 119, 120.

or defendant), or more often as primary counsel in between a quarter and a half of the cases arising in these sessions. The cases listed in his notebook suggests that during the circuit he prepared defences for a range of cases including false imprisonment, assault and battery, breach of contract, and forfeiture on payment of bonds. Cases of debt, and litigations arising from a variety of property disputes were particularly common. While most cases received only a short summary, the more interesting cases, such as a complex financial dispute in "Lance v. Philips" at the Monmoth assizes in 1607,⁹² received a lengthy record which included the precedents used to argue the case in court as well as details of the final ruling.

One must question why Whitelocke went to such lengths to record cases from the assize hearings. The answer may be that given the ongoing nature of much of the litigation pursued in the courts, he required a thorough knowledge of the progress of his clients' interests from year to year. Barnes has argued that the role of a barrister went beyond pleading. The more successful lawyers, he suggests, possessed a tactical appreciation of methods of legal attrition, following their clients' interests in a range of collateral actions launched across the courts.⁹³ It might be added that while Whitelocke's fluid movement between Westminster courts adds credence to Barnes' claim, his success revolved around not only a thorough grasp of the law, but an appreciation of the idiosyncrasies of those judges whose favour he had to win. The scoring and marking, and cross-referencing of particular cases in his assize book suggest how both of these aims were achieved.⁹⁴ By noting the records used to support various arguments in court and considering the final outcome, Whitelocke built up a handy reference source. Allowing him to consider the likely outcome of a particular line of appeal well before a courtroom hearing, his assize book helped him to provide competent legal advice to a range of clients.

⁹²Assize book, fol. 97.

⁹³Barnes, 'Star Chamber Litigants and their Counsel, 1596-1641', pp. 15, 22-23; cf. Jones, *Politics and the Bench*, p. 37.

⁹⁴For example, fol. 92, Edwin Kendall v. William Treling: "*vide infra* for instructions Oxon assizes last"; fol. 121, George Craddock v. John Wakering: "*supra* March 1607".

We have considered Whitelocke's financial success, and examined his work on the Oxford assizes through the record provided in his notebook. In a legal arena where counsel regularly appeared before a single judge in writs of *nisi prius*, the support of that judge was critical to any real success in circuit work.⁹⁵ Here James Whitelocke was lucky to have the long-standing patronage of David Williams, who regularly rode the Oxford circuit from his appointment as Justice of King's Bench on 4 February 1603/4 until his death on 22 January 1612/13.⁹⁶ Whitelocke tells us that after familiarizing himself with the circuit Williams "toke me into his favour, and caryed me the circuit with him, in whiche, by his favour, I fell into practice, and the like favour he did me in the King's Bench."⁹⁷ The judge's favour on a circuit which he missed only twice in his career, in summer 1610 and winter 1611 when he was moved to the Norfolk circuit, was obviously critical.⁹⁸ In the *Liber Famelicus* Whitelocke noted the removal of his "verye good frend" to Norfolk from Oxford "where I had followed him sithence his first cumming into it"; he was undoubtedly relieved to note just underneath that Williams returned to Oxford in 1611.⁹⁹ During this brief hiatus, ironically, Whitelocke had the opportunity to appear before his uncle Sir John Croke, a man he found "very kind and affable to all lawyers that practised before him, and all suitors that had to do withe him."¹⁰⁰

At Westminster, Whitelocke moved between those courts in which he could gain the right of audience, and at various stages of his career he practised in the Court of King's Bench, Chancery, Requests, Star Chamber and Constable.¹⁰¹ In light of the extreme difficulties that one faces in attempting to trace this work through the

⁹⁵Prest, *Rise of the Barristers*, p. 28.

⁹⁶Cockburn, *A History of English Assizes*, p. 293.

⁹⁷*Liber Famelicus*, p. 30.

⁹⁸Cockburn, *A History of English Assizes*, pp. 268-269.

⁹⁹*Liber Famelicus*, p. 19.

¹⁰⁰*Liber Famelicus*, p. 76.

¹⁰¹*Liber Famelicus*, pp. 27, 30, 76-77; Haywarde, J., *Les Reportes del Cases in Camera Stellata*, pp. 338-341; Bodl. MS Smith 71, fol. 59; BL MS Cott. Jul. C.3, fol. 54; CUL MS Gg. 2.23, fol. 90. Clendenin ('The Common Lawyers in Parliament and Society', p. 47) has shown that Whitelocke appeared in at least five causes each term in the central courts between 1600 and 1612.

records of court business,¹⁰² what can be said about this work remains impressionistic. David Williams's "favour" in King's Bench was obviously vital to Whitelocke during his early years at the bar. By 1613, the year of Williams's death, Whitelocke was well entrenched in the court and could count on the continued support of Chief Justice Coke and the other judges (among them Whitelocke's uncle Sir John Croke). The sixteen percent Whitelocke took from the proceeds of Sir John Harrington's share in "Roper's Office" from 1612 to 1616 was only part of the attraction, as the job guaranteed Whitelocke a permanent presence in the court.

For a barrister who had not attained the rank of serjeant-at-law, the second great centre of litigation and profit at Westminster was the Court of Chancery. Whitelocke was certainly active in this court early in his career, and with the support of Sir Julius Caesar, Master of the Rolls, he continued to plead there after his falling out with Sir Thomas Egerton. Where the influence of Northampton and Ellesmere was less easily sidestepped Whitelocke probably encountered more difficulty. John Haywarde notes him appearing as counsel in a Star Chamber case of 12 November 1607 for Sir Richard Champerdowne,¹⁰³ before his activities antagonized the two privy councillors. After 1616, judicial patrons such as Francis Bacon, Ellesmere's successor in Chancery, and Lionel Cranfield, Master of the Court of Requests from 1616 and the Court of Wards from 1618, were more than ready to let bygones be bygones. Initially promoting, and then withdrawing support for Whitelocke under royal pressure in the contested election for the Recordership of London in 1618, Cranfield had afterwards shown himself Whitelocke's "verye honourable and worthy frend" in the Court of Wards "in heering me in court before others."¹⁰⁴ On

¹⁰²The courts of Exchequer, King's Bench, and Chancery required no formal association with lawyers, who pleaded in one court, or more frequently moved between courts, as the dictates of business demanded. Before the Restoration, these courts kept no official records of the counsellors pleading before them, who were only infrequently indented alongside the cases in which they pleaded. It is thus a haphazard business at best to trace the activities of one lawyer in the voluminous (and not always complete) court records; in a brief search I found only one record of Whitelocke appearing as counsel in the central courts, noted in ch. 2.

¹⁰³*Les Reportes del Cases in Camera Stellata*, pp. 338.

¹⁰⁴*Liber Famelicus*, pp. 76-77.

the verge of royal appointment, familiarity with a range of figures who doubled as government officials and judges in the courts of law ensured Whitelocke's success.

The produce of patronage:

In a succinct analysis of Whitelocke's earnings, Prest has noted that while the lawyer's accumulated expenses between 1616 and 1620 amounted to £4,313, his stated income came to only £2,466. Questioning Whitelocke's ability to pay for Fawley Court (the Buckinghamshire property he acquired from Sir William Alford in 1616) he has posited three possible sources of extra income: gains from the sale of wood, money made from loans at interest, and compensation received from the surrender of a reversion to a share in Sir John Roper's King's Bench office.¹⁰⁵ It is worth pursuing these possibilities at greater length. Fawley was purchased for a total of £9,000, £3,000 of which Whitelocke paid immediately, with further repayments of £2,000 to follow in November 1617, £2,000 in May 1618, and a final payment of £2,000 to be delivered in November of that year.¹⁰⁶ Upon purchase of Fawley, one can reasonably assume that Whitelocke would have derived about £500 per annum in rents from the property,¹⁰⁷ allowing him to amass around £1500 in the years between his purchase of the property and his promotion to judge.

The wood to which Prest refers could have come from Whitelocke's property near Witney in Oxfordshire, or from Fawley itself. Whitelocke quotes in one instance 1,200 "trees of olde growthe" which he had cut down on his Oxfordshire property in the course of a protracted property dispute with Sir William Pope,¹⁰⁸ and the proceeds of his eventual sale of the wood to Pope are undisclosed in Whitelocke's routine accounts for the term.¹⁰⁹ While no other details of this transaction survive, records of later purchases and sales made by Whitelocke suggests that this was a

¹⁰⁵Prest, 'Counsellors' Fees and Earnings in the Age of Sir Edward Coke', p. 174.

¹⁰⁶*Liber Famelicus*, p. 53.

¹⁰⁷I am working on the assumption that the sale price of the manor would have been about twenty times its annual value, the standard convention of the time (I am grateful to John Morrill for advice on this matter).

¹⁰⁸*Liber Famelicus*, p. 22.

¹⁰⁹*Liber Famelicus*, p. 23.

potentially lucrative source of income. In 1626 Whitelocke paid John East £90 for six acres of wooded land adjoining his property at Fawley Court.¹¹⁰ He received bonds of £27. 10s for an undisclosed amount of wood in 1630, and another £16 for thirty-two cart-loads of faggots in 1631.¹¹¹ For guaranteeing the earl of Somerset control of his share in Roper's Office, Whitelocke received £800 "in ready money" from the countess of Bedford in 1615, again kept separate from his accounts.¹¹²

Totalling these figures, one gains some idea of how Whitelocke could have mustered another £2,500 or so on top of his legal income over this period. The remainder, it seems likely, came from loans made from family and friends. In meeting their financial commitments, the gentry borrowed heavily from one another, and the ability to lend and to repay considerable sums of money was a matter of some social prestige. In 1612 Whitelocke extended £3000 to Lord Harington to help him make payments for a property which stood to be lost by defaulting on a loan to Robert Carr. Whitelocke stressed that the loan was made without a "halfpenny worthe of reward" but had been given in return for the favour Harrington's son had shown him in securing Sir John Roper's office.¹¹³ Whitelocke's loan was in turn supported by £1000 he himself borrowed from Thomas Read, a client of his from Barton who extended the money for six months *gratis* and had his legal fees annulled by Whitelocke in return for this favour.¹¹⁴ In 1614, Whitelocke records: "Sir Henry Dymock of Erdington in the countye of Warwick, knighte, did grant me unto an annuities of 4l. per annum for life." He was not slow to add his justification for this reward, having waived £260 of a £1400 loan scheduled to be repaid over four years, which allowed Dymock to hold on to the property of Erdington.¹¹⁵

These transactions give the impression that it was customary among the landed gentry to lend a good deal of mutual financial support, and that as one's economic

¹¹⁰*Liber Famelicus*, p. 105.

¹¹¹Longleat Papers, vol. 5, fol. 170; *Liber Famelicus*, p. 23.

¹¹²*Liber Famelicus*, p. 46.

¹¹³*Liber Famelicus*, pp. 29-30.

¹¹⁴*ibid.*

¹¹⁵*Liber Famelicus*, p. 44.

fortunes could fluctuate, it was prudent to retain cordial relations with men whose financial position might become stronger than one's own. James Whitelocke's loans in the period 1616-1620 are not known, but bonds from a slightly later date show that he was prepared to borrow heavily if occasion demanded. Two cancelled bonds surviving in the family papers show that the Bulstrode family, probably on his behalf, sought first £2,000 and then £1,300 from Sir Roger Mostyn in May of 1622; Mostyn would shortly become kin with the marriage of his son to Whitelocke's eldest daughter in 1623.¹¹⁶ With the match still under negotiation, it appears that Whitelocke decided to keep his debts in the family, borrowing £600 from Edmund Bulstrode in August of that year.¹¹⁷ In such an environment, Whitelocke was obviously able to secure the funds he needed to meet his repayments to Alford and settle his family in the Buckinghamshire gentry community. What is certain is that his income was stretched to the limit between 1616 and 1620. Totalling his expenses for 1620, Whitelocke noted that over the previous two years he had spent £3040 10s. 2d., mainly as a result of his reading and his call to the office of serjeant-at-law, while he had earned only £2931. 7d. 4d. in the same period.¹¹⁸ Adding with alarm that he had also acquired £9000 in land over the last four years, he vowed to keep a careful record of his financial transactions thereafter, and if "the profits of my office and my expenses together matches thereafter it will be well".¹¹⁹ Fortunately, Whitelocke's expenses were never again to outstrip the profits of his office.

James Whitelocke's professional duties led him to employ a number of clerks and other servants to facilitate the despatch of messages, and the drafting and processing of paperwork arising from his work as a legal counselor. His first clerk, Gaven Champineys, was employed three years before Whitelocke's call to the bar, most likely to assist him in his work for St John's.¹²⁰ Whitelocke employed Anthony

¹¹⁶Longleat Papers, vol. 2, fol. 88; fol. 89v.

¹¹⁷Longleat Papers, vol. 2, fol. 103.

¹¹⁸BL Additional MS 53725, fol. 134.

¹¹⁹*ibid.*

¹²⁰*Liber Famelicus*, p. 21.

Ball as a second clerk in 1602,¹²¹ and took on John Griffin in 1606 to look after the horses required in his peripatetic practice.¹²² Richard Oakely was employed as a third clerk from 1609.¹²³ Conditions in Whitelocke's employ seems to have been favourable. Griffin left his master's house briefly at the time of his marriage but returned shortly after.¹²⁴ Through study pursued in his spare time, Richard Oakely gained admission to the Middle Temple and was called to the bar in 1621. Whitelocke was delighted when Oakely, originally a "postmaster" (scholar) of Merton College, was appointed secretary to the newly promoted Lord Keeper Williams through his patronage.¹²⁵ Whitelocke's employment of legal assistants reflected not only increased business but increased prosperity; the small entourage was yet another element of the "baggage" acquired by the barrister as he began his ascent into the ranks of the county gentry.

Gift-giving has been primarily examined by historians of early modern society as an expression of power relations between patrons and clients.¹²⁶ Then as now, the giving of presents was prompted by a mixture of motives: the desire to express thanks for services rendered, the need to affirm and maintain bonds of kinship and friendship, the tactful expression of goodwill towards people who would best be kept allies if not close friends for personal, professional or social reasons. James Whitelocke's first mention of gifts he had received was noted, he wrote, for his son to "see these frendly kindnesses doon to me, which ar not so usual to those that ly in London as to those in the countrye, and that he may endeavour to live worthye of the like".¹²⁷ Gifts given to Whitelocke (mostly at Christmas) ranged from spoons to

¹²¹*ibid.*

¹²²*ibid.*

¹²³*Liber Famelicus*, p. 31.

¹²⁴*ibid.* Whitelocke briefly replaced Griffin with John Hethrington, but subsequently reappointed Griffin and dismissed his new clerk.

¹²⁵*Liber Famelicus*, p. 90.

¹²⁶Peck, *Court Patronage and Corruption*, p. 19; Heal, F., 'The Idea of Hospitality in Early Modern England', *Past and Present* 102 (1984), pp. 66-93; Eisenstadt, S.N. & L. Roniger, 'Patron-Client Relations as a Model of Structuring Social Exchange' in *Comparative Studies in Society and History* 22 (1980), pp. 42-77.

¹²⁷*Liber Famelicus*, p. 32.

geese, from a whole doe sent by a client to a jar of olives given by a cousin.¹²⁸ Clients and associates such as Sir Francis Leigh, Richard Martin and Richard Vaux regularly sent presents to Whitelocke at Christmas.¹²⁹ Stressing the varied lines of contact in the barrister's life, St John's College sent Whitelocke a pair of gloves in 1615.¹³⁰ In 1613, Whitelocke received venison from several patrons, including Sir Edward Zouche, Sir Henry Nevill and Sir Francis Leigh, the size and form of the gifts deliberately impressing the status of the giver upon the recipient. Richard Jones, Whitelocke's landlord at Clewer House, and Richard Martin, a friend from the Middle Temple, sent smaller gifts of geese and pork while family members such as Richard Whitelocke and cousins William, Thomas and John sent gifts ranging from a "fat turkeye" to a "keg of sturgeon".¹³¹ In that year, Whitelocke's mother-in-law Cecilia, always generous to her son, sent him geese, rabbits, a turkey pie and no less than eighteen puddings.¹³²

Gifts given by James Whitelocke suggest that his interests in this form of exchange centred upon patronage. In 1614, he sent three Christmas presents. The first, a portion of sturgeon, went to Sir Julius Caesar, whose importance to Whitelocke has already been discussed.¹³³ Sir John Croke, whose patronage had probably become of greater importance to Whitelocke since the death of David Williams two years earlier, received a sugar loaf and a turkey.¹³⁴ A swan and two turkeys went to Sir Edward Coke, Chief Justice of the King's Bench, together with Chancery the court to which Whitelocke's professional interests were most strongly attached.¹³⁵ While Croke might be taken as "family", Whitelocke obviously had professional interests in mind as he considered his allocation of presents that winter.

¹²⁸Bruce's edition of the manuscript notes the gifts given at Christmas for 1613, 1614, 1615, and after Whitelocke's appointment as Chief Justice of Chester. The original manuscript makes no mention of Christmas presents for other years.

¹²⁹*Liber Famelicus*, pp. 32, 45, 49.

¹³⁰*Liber Famelicus*, p. 49.

¹³¹*Liber Famelicus*, p. 32.

¹³²*ibid.*

¹³³*Liber Famelicus*, p. 45.

¹³⁴*ibid.*

¹³⁵*ibid.*

Nevertheless, there is always the danger of oversimplifying transactions such as this one as "client-patron" relations, ignoring a complex dynamic of mutual association and benefit. Here one example will serve to illustrate the point. Returning from circuit work for Eton and Merton Colleges in August 1615, Whitelocke dispatched a salmon to Sir Edward Coke, who stressed his social superiority with the larger gift of half a buck,¹³⁶ and invited Whitelocke to dine with him and other gentlemen of the county at Coke's Stoke Park estate.¹³⁷ Whitelocke had already experienced some favour at the hands of Lady Coke, when she offered him a place for the parliament of 1614.¹³⁸ Now, as Whitelocke dined with leading figures in the county community,¹³⁹ he increased his public profile and continued the process of acceptance into the ranks of a social élite he served professionally while his wealth and influence continued to grow. Coke would subsequently ask Whitelocke to defend his legal interests, in a case involving copyholds, while the Chief Justice locked horns with Sir Thomas Egerton at Westminster.¹⁴⁰ Thus while tacitly acknowledged lines of social deference permeated the fabric of early modern society, patronage, acquaintance and friendship could and did become blurred in the tightly-knit ranks of the gentry class.¹⁴¹

Throughout his career, James Whitelocke maintained residences both in London and the localities. Over time, his acquisitions would project his increasing wealth and status both in the capital and in the country. In London, Whitelocke lived for many years in the Fleet Street mansion of his mother-in-law Cecilia Croke, an arrangement he had originally been invited into in the marriage covenant with his wife.¹⁴² At the birth of his daughter Dorothy in September 1610, Whitelocke refers in the *Liber Famelicus* to "my house in Fleet Street", distinctly different to earlier

¹³⁶I owe this point to Professor Russell.

¹³⁷*Liber Famelicus*, p. 47.

¹³⁸*Liber Famelicus*, pp. 44-45.

¹³⁹Other guests included Henry Lord Danvers, later early of Danby, Sir Henry Drewry, Sir William Boyer and Sir William Clark, the son of Sir William Clark of Hitcham.

¹⁴⁰*Liber Famelicus*, p. 50.

¹⁴¹Cf. Prest, *Rise of the Barristers*, p. 25.

¹⁴²*Liber Famelicus*, p. 32

references to "the Fleet Street house"; it seems possible that management of the property had been handed over to him by his mother-in-law with her marriage to Sir John Brown, an Essex gentleman, in 1608.¹⁴³ At some stage the house was rented to Sir John Walter until Whitelocke took up possession himself again in 1613;¹⁴⁴ Bulstrode recalled setting up a study for himself "under a payre of stayres in his fathers house in Fleetstreet" as he studied at Merchant Taylors' during this time.¹⁴⁵ As an active member of his inn of court, James Whitelocke also maintained professional chambers at the Middle Temple which he could use alternately as an office or for private use during his stays in the capital.

Away from London, and in the counties to which he was most attached, Oxfordshire and Buckinghamshire, Whitelocke developed his major landholdings. His country properties, spread across a region divided by the Chiltern hills, centred upon towns with which he had life-long professional associations: Oxford, Windsor and Woodstock. They stretched from just north of Oxford to the Buckinghamshire/Berkshire borderlands in the south. As his children's birthplaces indicate, early in his career Whitelocke employed the extensive Bulstrode family properties as a base in the country and in London. Whitelocke first acquired land near Whitchurch, to the north-east of Oxford, from his cousin William Whitelocke for an undisclosed sum; the land had been in the family's hands for generations.¹⁴⁶ In 1607, Whitelocke purchased a farm near Witney, a few miles north-west of Oxford and within easy reach of Woodstock where he had recently been appointed recorder.¹⁴⁷ From 1610 until his acquisition of Fawley Court in 1616, pretensions to a gentry lifestyle led Whitelocke to settle his family in the manor of Clewer House just beyond Windsor. Rented from Andrew Windsor, who leased the property from the Crown, Clewer established Whitelocke further south, along the River Thames and about halfway between his usual business destinations of Oxford and

¹⁴³*Liber Famelicus*, p. 17.

¹⁴⁴*Liber Famelicus*, p. 33.

¹⁴⁵*Diary*, p. 45.

¹⁴⁶*Liber Famelicus*, p. 2.

¹⁴⁷*Liber Famelicus*, p. 21.

London.¹⁴⁸ It was in this region, with Woodstock thirty miles to the west and London forty to the east, that Whitelocke made his greatest property acquisition.

The manor house of Fawley, located at the southern extremity of Desborough hundred along the banks of the Thames, can still be seen today, lying in ruins between Sir Christopher Wren's magnificent new manor and the river. It remains a powerful symbol of James Whitelocke's country connections. Fawley Court, acquired by financial gains built up by exploitation of kinship and patronage ties, formed a point of contact with London, Oxford's colleges, the Oxford assize circuit and the Buckinghamshire gentry community. Standing a mile or so from the parish church where Whitelocke lies today in effigy, Fawley provides an invisible boundary line between the counties of Buckinghamshire and Oxfordshire to which Whitelocke's "country" loyalties were evenly distributed.¹⁴⁹ As James and Elizabeth Whitelocke spent the summer of 1617 "mending and reparying the house", they must have felt some satisfaction at this significant symbol of the prosperity that had followed their marriage.¹⁵⁰ Through hard work, and the support of friends and kin, they could look upon tangible evidence that they had provided an inheritance for their children, and established their family as people of note in the county.

In completing my sketch of Whitelocke's professional life, the division of his time and resources between the various components of his professional life as recorder, circuit barrister, steward, pleader, and legal counsellor, is of interest. The life of a seventeenth-century barrister was by nature peregrinatory; J.S. Cockburn has created the evocative image of roads flooded with lawyers, travelling back to London following their twice yearly stint on the assize circuit.¹⁵¹ For James Whitelocke's children, the sight of their father gathering his papers as the horses were saddled for an excursion into the counties, or down to London, must have been a frequent one.

¹⁴⁸*Liber Famelicus*, p. 25; *Diary*, p. 45.

¹⁴⁹Lipscomb, G., *The Histories and Antiquities of the County of Buckingham*, 4 vols. (London 1847), vol. 3, p. 559; Langley, T., *The History and Antiquities of the Hundred of Desborough* (London 1797), p. 194. In fact, the boundary line between the two counties runs through the grounds.

¹⁵⁰*Liber Famelicus*, p. 59.

¹⁵¹Cockburn, *A History of English Assizes*, p. xi.

Whitelocke's years were regulated by the assizes, held during Lent Vacation from late February to early March and Trinity Vacation from late July to early August, and by the four legal terms of Easter, Trinity, Michaelmas, and Hilary.¹⁵² The ebb and flow of these annual events, and separate circuits for the colleges of Eton, Merton, Westminster and St John's promoted an enforced migration for Whitelocke, but his role as legal counsel for far-flung gentry and ecclesiastics would have made for a transitory lifestyle anyway. It appears that sometimes the demands of assize or term work, coupled with his requirements to travel and hear causes in the steward's courts, combined to keep Whitelocke away from his family for weeks or even months at a stretch; Whitelocke observed that business kept him away from home for almost the entire summer in 1614.¹⁵³ There were of course times to catch up with his wife and family and to oversee the handling of the family estate, treated with a good deal of ability in his absence by Elizabeth. Yet one cannot help but feel a little sympathy for a man whose professional success must have led him, over time, to know the changing moods of his horse as well as those of his own children. It is pleasing to note his son's observation that despite a "grave" concern for his family's progress, James Whitelocke found time to "sport" with his children, to sing with them, and to love them.¹⁵⁴

Politics:

As many tasks at the level of local administration were customarily delegated to men with active legal experience, and because such offices carried with them a degree of social distinction, Whitelocke's professional abilities placed him from the outset in a relatively advantageous position. As well as its financial benefit, appointment to local office conferred social honour upon its incumbent, reinforcing the prestige of

¹⁵²The Oxford assizes lasted an average of twenty-eight days. Easter term ran for seventeen days after Easter, Trinity for nineteen days after Whitsunday, Michaelmas ran from October 17 to November 28, and Hilary from January 23 to February 20.

¹⁵³*Liber Famelicus*, p. 44.

¹⁵⁴*Diary*, pp. 44, 45, 51.

the position in a society preoccupied with questions of position and place.¹⁵⁵ Prest has observed that: "Well-placed patrons and extensive family connections were probably the job-seeking lawyer's best assets, if perhaps not absolutely indispensable."¹⁵⁶ James Whitelocke's professional connections with the county community were wide-ranging, and developed in tandem with his rising social position in Oxfordshire and Buckinghamshire. His professional standing in the region developed from two points of influence: practice on the Oxford assize circuit, and associations with the University of Oxford. First as a student and then a lawyer, Whitelocke built up an acquaintance with a clerical and judicial élite who controlled many offices in the two counties. His work on assize, and for institutions linked with the university, reinforced his professional standing in the community, in turn promoting him as a candidate for further office. The relationship between provincial officials, local administrators (among whom lawyers like Whitelocke figured heavily), and county government has often been explained by use of the term "patronage".¹⁵⁷ Unfortunately, detailed exploration of the dialectic occurring between office and power in this instance has not always followed.¹⁵⁸ Patron-client associations, shrouded as they are by intricacies of convention, possess interpretative difficulties J.S. Cockburn has characterized as "exceptionally acute".¹⁵⁹ James Whitelocke's experience of county government offers no definitive answers on the relationship between patronage and officeholding, or the relationship between "national" and "local" politics, but a few observations can be made about the political landscape in which he moved.

As Whitelocke increased his profile in Oxford through his work on the assize circuit, a number of administrative positions reinforced his local standing.

¹⁵⁵Kishlansky, *Parliamentary Selection*, pp. 41-42.

¹⁵⁶Prest, *Rise of the Barristers*, p. 144.

¹⁵⁷Cf. Peck, *Court Patronage and Corruption*, p. 3; Prest, *Rise of the Barristers*, pp. 25-27.

¹⁵⁸Taking Whitelocke's work for clerical patrons as an example, one can easily see the distortions that are possible by too rigid an interpretation of the terms "patron" and "client". All of Whitelocke's patrons/clients supported his practice in order to receive expert legal advice. In some ways, the word "friend", used in the contemporary sense, is the most accurate term to describe their interaction.

¹⁵⁹Cockburn, *A History of English Assizes*, p. 188.

Whitelocke plainly noted the role that "friends" had played in these appointments, although the term "friendship" held for Whitelocke dual connotations of emotional commitment and a practical vote of support.¹⁶⁰ From 1601, when Whitelocke received the stewardship of his old college, contacts made as a student proved indispensable.¹⁶¹ His appointment as recorder of Woodstock in 1606, for example, was probably due to the influence of the high steward, Sir Henry Lee, who was a tenant of St John's.¹⁶² In December 1609 Whitelocke noted that Sir Henry Nevill, provost of Eton College (who had probably known him as warden of Merton College in the 1590s), secured him the office of steward and counsel for Eton.¹⁶³ Nevill undoubtedly kept the office for Whitelocke, despite many other contestants, because of Whitelocke's support in the factional tussle with the earl of Northampton.¹⁶⁴ His continued support helped Whitelocke again in October 1612, when he was appointed counsellor to the Dean of Windsor on the basis of a verbal recommendation from Nevill and Sir Robert Naunton, an oddity among his supporters as a Cambridge and not an Oxford man.¹⁶⁵ Whitelocke was no less popular among the university clerics, particularly in the ranks of St John's alumni. On 7 May 1610 he was made joint steward of Westminster College by the "favour and friendship" of Richard Neile, dean of the college and at that time Bishop of Westminster.¹⁶⁶ In January 1616 with the death of Lewis Proud, he became the sole steward of the college, gaining also the understewardship of the court of St Martin's-le-grand in London.¹⁶⁷ Appointment to Westminster came with the help of another of Whitelocke's clerical friends, his "good and ancient acquaintance" Giles Thompson, Bishop of Gloucester from 1611.¹⁶⁸ Support for his increased role in

¹⁶⁰The *Oxford English Dictionary* provides examples of both uses of the word from the sixteenth and seventeenth centuries; see also James, *Society, Politics & Culture*, pp. 330-331.

¹⁶¹*Liber Famelicus*, p. 15.

¹⁶²*History of Parliament Trust; Liber Famelicus*, p. 19.

¹⁶³*Liber Famelicus*, p. 18.

¹⁶⁴See ch 5.

¹⁶⁵*Liber Famelicus*, p. 29.

¹⁶⁶*Liber Famelicus*, p. 19.

¹⁶⁷*Liber Famelicus*, pp. 53, 60.

¹⁶⁸*Liber Famelicus*, pp. 26, 29.

1616 came from the clerical body, who preferred Whitelocke over the Dean's recommendation for joint stewardship with Richard Dover of Gray's Inn.¹⁶⁹ Familiarity with Oxford University's conservative enclaves, supported by the practical experience afforded by the St John's stewardship, made Whitelocke an attractive candidate for promotion across a range of offices in the possession of the church.

A second base for Whitelocke's progress in the counties came through legal contacts developed on assize. The kind of role his influence could be expected to play is suggested in a letter from William Brampton to Richard Whitelocke in 1607, asking him to persuade his brother to move Sir John Croke to accept common bail for George Cely, arrested for debt.¹⁷⁰ The success of Brampton's plea is unknown; his letter survives as a testament to the kind of exchange which marked James Whitelocke's role in the Oxfordshire community. As the Crown's foremost legal representatives in the localities, the Justices of Assize thus became, during their twice-yearly visits to the shires, key players in county politics.¹⁷¹ Cockburn has shown that James I relied increasingly upon his judges to provide political information and to impose discipline among the local gentry.¹⁷² While Fletcher has questioned the extent to which judges were committed to this governmental brief,¹⁷³ the enduring presence of David Williams and Christopher Yelverton on the Oxford assize made them figures to be reckoned with, and James Whitelocke counted on their support as he built up his local political stature.

A clash with the local landowner Sir William Pope aptly demonstrates the point. Whitelocke's own account of events makes an engaging story: after buying a farm in 1607 near Witney in Oxfordshire, he was drawn into dispute over the property rights of some woodlands formerly in the hands of the Pope family. Attempts to

¹⁶⁹*Liber Famelicus*, p. 60.

¹⁷⁰Longleat Papers, vol. 1, fol. 50.

¹⁷¹I would argue that Linda Levy Peck's recent analysis of Buckinghamshire politics in *Court Patronage and Corruption* greatly underestimates the role of the assize judges.

¹⁷²Cockburn, *A History of English Assizes*, p. 158.

¹⁷³Fletcher, *Reform in the Provinces*, p. 164.

settle the issue by selling the lands back to Sir William Pope were met, Whitelocke suggests, with "skorne" by the magnate, leading Whitelocke (in a calculated assertion of his property rights) to chop down over a thousand trees for sale.¹⁷⁴ This he "had no sooner doon but Sir William Pope took possession of the wood by force, entrenched up the gates, kept thear a garrison, and committed many outrages, as by the proceedings in court dothe appeer".¹⁷⁵ At the Oxford assizes in 1608 Pope initiated a string of suits against Whitelocke, but must have perceived his weakness against Whitelocke in this forum and brought none of his suits to trial. For his part, Whitelocke testified to Justices Williams and Yelverton of "the outrages" perpetrated by Pope, emphasizing his scant regard for public order and the authority of law. The judges obviously listened with a sympathetic ear; Pope was stripped of local office and put into the custody of the sheriff, in a stage-managed demonstration of their authority. Whitelocke recounted:

I remember when he arose up in his place upon the benche, making account to answer the accusation, thear as he stood, he was commanded by the court to go to the bar, and justice Yelverton told him he was fitter to leade the rebels in Northampton... then to sit thear as a justice of the peace.¹⁷⁶

Levelled in the presence of the county's élite, one can imagine the effect of Pope's public castigation on the local community. Pope retired to lick his wounds, and his retainers handed back possession of the woods - but only until the assize justices had vacated the county. At this point the magnate sought to reassert himself by "new mischeefs", assembling two hundred carts to take away Whitelocke's wood, while a formal complaint was made to the Crown about his disgrace at the hands of the socially inferior assize justices.¹⁷⁷

The petition Pope presented in Star Chamber is typical of the theatrical accounts constructed by the early modern gentry as they sought redress at the hands of the

¹⁷⁴*Liber Famelicus*, pp. 22-23.

¹⁷⁵*ibid.*

¹⁷⁶*ibid.* Fletcher, *Reform in the Provinces*, pp. 50-51, confuses Whitelocke with Williams in this instance.

¹⁷⁷Cockburn, *A History of English Assizes*, p. 164.

king.¹⁷⁸ As Pope's story unfolds across a broad vellum canvas, it paints an implausible picture of a giant conspiracy to destroy his position in the county society. The preamble explains Pope's claim to the contested land, originally acquired by Sir Thomas Pope following Henry VIII's dissolution of the monasteries. In his version, Richard Brian's sale of the lease to Whitelocke flew in the face of an agreement already made between Pope and Brian's deceased father. Employing devious legal fictions, the usurper Whitelocke now tried to intimidate Pope with a gang of hired thugs "assembled, arrayed and weaponed in most warlike manner".¹⁷⁹ A Machiavellian figure of some ability by Pope's reckoning, Whitelocke then put out a range of bribes to defame him as a string of false suits were brought against him at the Oxfordshire assizes. Despite its colourful and indignant tone, the entire petition obviously held little water. As Whitelocke was quick to point out, if Pope had a solid case against him he would have pushed his claim at the assizes,¹⁸⁰ and by forcing the Crown to choose between his personal honour and the authority of its delegated representatives, he did himself little service. Whitelocke was heartened to note that the Council "upon hearing committed the knight with great disgrace to the Fleet, and acquitted [i.e., exonerated] the judge to his great honor, as by thear order entred in the counsell book dothe appeer".¹⁸¹

Mark Kishlansky has recently stressed the essential homogeneity of county society, pointing to shared "notions of honor, standing and deference" which helped to "regulate and absorb conflict between and within loosely defined status groups."¹⁸² Sir William Pope's falling out with James Whitelocke suggests some of the problems that could arise when ambiguities did exist. Stone's analysis of disputes within the gentry classes in *The Crisis of the Aristocracy* concludes that:

¹⁷⁸PRO STAC 8/281/24.

¹⁷⁹*ibid.*

¹⁸⁰*Liber Famelicus*, p. 23.

¹⁸¹*ibid.* This order, and another assuring Williams that the case would not be prejudicial to his judicial status, are preserved in the Longleat Papers, vol. 1, fols. 51, 52.

¹⁸²Kishlansky, *Parliamentary Selection*, p. 12.

The issues men fought over were prestige and property, in that order. What might ostensibly appear as a quarrel over a piece of land or an office, in fact was at bottom a struggle for position and authority within the county society.¹⁸³

Whitelocke's argument with Pope seems to fulfil these criteria. As political protagonists, Pope personified the old gentry values,¹⁸⁴ while Whitelocke represented newer ways and means emerging in county society over the Elizabethan period.¹⁸⁵ In 1607 Whitelocke had prepared a legal memorandum in support of Samuel West, an attorney-at-law who made the mistake of suing one of Pope's servants. According to Whitelocke, Pope sent for West to settle the issue. Upon his arrival at Pope's estate West was locked in a room and severely beaten by the enraged magnate.¹⁸⁶ While Pope's stature in the county promoted a feeling of social superiority which led him to be dismissive of the law, James Whitelocke, on the other hand, relied upon the law for his stature in the county. Unfortunately for Sir William Pope, Whitelocke's attitudes and legal attributes were neatly aligned with the wishes of a monarchy anxious to assert greater control over county affairs.¹⁸⁷ By challenging Justice Williams, Sir William Pope implied an *a priori* right to overturn the actions of the government, and quickly ran foul of the Privy Council. Doubtless chastened by the experience, he turned to negotiation, and his dispute with Whitelocke was finally settled in 1609 with his legal acquisition of the contested lands, as Whitelocke's property interests shifted to Buckinghamshire.¹⁸⁸

It is clear that Whitelocke's influence in the local community grew hand-in-hand with his influence before the assize judges. Whitelocke's standing, along with that of the men he called his "special frends" on the circuit - Henry Yelverton, Thomas Coventry and John Walter - grew out of judges' favour, and these four appear to

¹⁸³Stone, *The Crisis of the Aristocracy*, p. 223; cf. Brooks, 'Litigants and Attorneys in the King's Bench and Common Pleas, 1560-1640', pp. 49-50.

¹⁸⁴Stone, *The Crisis of the Aristocracy*, pp. 223-234.

¹⁸⁵Stone, *The Crisis of the Aristocracy*, p. 241.

¹⁸⁶Longleat Papers, vol. 1, fol. 50v.

¹⁸⁷Cf. Stone, *The Crisis of the Aristocracy*, pp. 234-242; Cockburn, *A History of English Assizes*, pp. 153-170.

¹⁸⁸*Liber Famelicus*, p. 23.

have dominated legal work on the Oxford assize circuit for over a decade. All four had exceptional success as lawyers, and Whitelocke's service as one prop of this legal quartet could only have added to his reputation.¹⁸⁹ With the death of Williams and Sir Christopher Yelverton, the other regular figure on the Oxford circuit until 1613, Whitelocke probably depended more heavily on Croke for support, although by this stage his reputation was probably big enough to ensure his continued success.¹⁹⁰ His continuing good relations with the assize judges was shown when Justices Warberton and Croke recommended him as a Justice of the peace for Oxfordshire and Buckinghamshire in May 1618.¹⁹¹

In the absence of a paid bureaucracy, local government turned on the voluntary support of leading figures in the counties. In such a *laissez faire* system there was little that the Crown could do but monitor its appointments, and try to promote the more honest and capable as well as most powerful among its local justices. As we have seen, Whitelocke kept a constant eye on the affairs of court where his own interests were concerned. When government initiatives did reach into the counties during his years as a lawyer, he identified primarily with the county. In 1614, for example, Whitelocke described his omission from a list provided to the Crown by local JPs of potential contributors to a "voluntary" loan or benevolence levied across the counties:

For the benevolences I was left out in the countrey, for when my name was proposed before the justices, they bad let me alone... so I was altogether omitted, yet in Michaelmas term I got the rolle into my hands and put myself 40s., whiche I did to avoyd the danger of giving more singlye.¹⁹²

¹⁸⁹Yelverton became Attorney-General in 1617 and a judge of the Common Pleas in 1625, Coventry Recorder of London (1616), Solicitor-General (1617), Attorney-General (1621) and Lord Keeper (1625-40), while Walter was eventually appointed Chief Baron of the Exchequer; Cockburn, *A History of English Assizes*, p. 142.

¹⁹⁰Croke served continuously on the circuit until his death in 1619; Cockburn, *A History of English Assizes*, pp. 269-270.

¹⁹¹*Liber Famelicus*, p. 62.

¹⁹²*Liber Famelicus*, p. 45.

Whitelocke's tact in adding a minimal contribution may or may not be admired; his attitude stressed the problems faced by the government when it employed extra-parliamentary methods of taxation to improve Crown revenue. While Whitelocke considered it a "great pitye" that the government was resorting to such methods to increase its solvency, he must have gained some satisfaction through the kind treatment given to him by men who ostensibly upheld the interests of the Crown in the localities.

From 1607 until shortly before his death in 1616, the Lord Lieutenant of Buckinghamshire was Thomas Ellesmere, Lord Chancellor of England.¹⁹³ After revising recommendations for county government furnished by the local bishops, judges and leading gentry, Ellesmere had the final say on appointments by virtue of his office as Chancellor.¹⁹⁴ It comes as no surprise, then, that Whitelocke's appointment to local government came only after the Chancellor's replacement as Lord Lieutenant in 1616 by the Duke of Buckingham.¹⁹⁵ Yet by 1617 James Whitelocke's appointment to county office was probably overdue. Selection as MP for the borough of Woodstock in 1610, 1614 and 1621 was undoubtedly a feather in his cap, affirming his position in the local community. Good relations with the judiciary and with Richard Neile, who acted as a Crown intermediary while serving as Bishop of Lincoln from 1614 to 1617,¹⁹⁶ reinforced a strong claim to the local commission of the peace. On 27 November 1617 Sir Henry Montagu, "being justice of assise in Bukinghamshire", along with "sum of the principall gentlemen of the countrye", recommended Whitelocke to the new Lord Keeper, Sir Francis Bacon, as a suitable candidate for the local commission of the peace.¹⁹⁷ With Bacon's support Whitelocke gained the appointment and was placed "fourth esquire"

¹⁹³Peck, *Court Patronage and Corruption*, p. 83.

¹⁹⁴*Works*, vol. 6, p. 211; Cockburn, *A History of English Assizes*, pp. 153-157.

¹⁹⁵Peck, *Court Patronage and Corruption*, p. 83.

¹⁹⁶Peck, *Court Patronage and Corruption*, p. 82.

¹⁹⁷*Liber Famelicus*, p. 60.

in the county.¹⁹⁸ In May 1618, he gained a joint position on the commissions of the peace for Buckinghamshire and Oxfordshire.¹⁹⁹

By acting as an intermediary in local disputes such as one between Francis More and Sir Henry Stonor,²⁰⁰ and through public duties such as the quarter session charges he delivered in Buckinghamshire at Michaelmas 1618,²⁰¹ Whitelocke rehearsed for the day when he would gain high legal office. Obviously Bacon's help was important after 1616, but in this respect the patronage of the new Lord Lieutenant of the county, George Villiers, Duke of Buckingham, was critical. In 1618, with Villiers's patronage, Whitelocke acted as recorder for a special commission granted to the Dean of Westminster at the Duke's instigation.²⁰² With Buckingham's continued favour, Whitelocke would gain permanent crown employment as a judge in 1620. His promotion testifies to the strength of his local political base, his ability, and a new political world in which Buckingham was pre-eminent.

Anthony Fletcher has rightly argued that for "newer men [in the counties] there was no quicker way of achieving identification with the gentry community of the county than by an energetic role in government".²⁰³ In his charge to the justices of assize in Star Chamber in 1602, Chancellor Ellesmere noted in sharper fashion the importance of county office for men with the "ambitious humour of gaining reputation amongst their neighbours".²⁰⁴ This chapter has argued that James Whitelocke's rise in the county community is best understood by exploring this interdependence of professional expertise and social position. Over his first decade of legal practice, Whitelocke was quick to seize upon those natural advantages offered by his training as a lawyer. Acquisition of local administrative positions was

¹⁹⁸*ibid.*

¹⁹⁹*Liber Famelicus*, pp. 60, 62.

²⁰⁰*Liber Famelicus*, p. 62.

²⁰¹*Liber Famelicus*, p. 63.

²⁰²*Liber Famelicus*, pp. 69-70.

²⁰³Fletcher, *Reform in the Provinces*, p. 42.

²⁰⁴*Folger MS X.d. 337* (unfol.), Star Chamber Charge, 14 Feb. 1602, quoted in Cockburn, *A History of English Assizes*, p. 156.

achieved through conventional exploitation of familial and friendship ties, supported by demonstrated legal ability. There can be no doubt that in his quest to gain respectability among the ranks of the county gentry, Whitelocke had a number of fortunate "breaks". The voluntary patronage of David Williams and numerous high ranking clerics, the continuing support of St John's College, and a successful marriage into an established county family were all of invaluable assistance while his career was still in its infancy. Yet much credit for his rise to prominence still goes to James Whitelocke. His sheer determination is hard to dismiss; presents, honours, and eventually titles came with increasing social deference towards a man who sought patronage mainly so that he would be in a position to dispense it. It is worth remembering, in light of his success, that Whitelocke was not born to succeed any more than the hundreds of other young untitled Elizabethans who clamoured for status and wealth. Whitelocke's legacy to his children of the manor and lands at Fawley, acquired before his elevation to high office under the Crown, was more than just the achievement of a driving personal dream for it was probably never conceived as such. Placing the Whitelockes into the highest ranks of the county community, it was the most notable "memorial for posterity" James Whitelocke could leave his family as a basis for future prospects and future generations.

CHAPTER EIGHT

Politicus "Service to my countrye", 1620 - 1632

Although James Whitelocke's appointment as Chief Justice of Chester on 29 October 1620 has often been noted,¹ little has been written about his four years in office.² Over these years, Whitelocke had a pivotal role in the royal administration of the Welsh-English borderlands.³ To him fell the delicate task (in Wrightson's words) of "balancing out the needs and requirements of both provincial society and the royal government".⁴ Whitelocke's life in Chester provides a glimpse of the intricacies of local government, as he and his staff juggled the demands of the Privy Council, the infrequent political interventions of Parliament, and the lobbying of factions at court and in the county community.

Recently, as social historians have placed law enforcement within a broader social and political context, the rulings of provincial administrators have been re-examined beyond their narrower legal significance as expressions of social power and control.⁵ The precise impact of the judges on the regulation of social order in and beyond the county courtroom, however, is open to question.⁶ In fact, the extent of the judges' influence in the counties, their sense of responsibility to their judicial and political briefs, and the effectiveness of their response to the dictates of the centre,

¹*Liber Famelicus*, p. 84; Ormerod, G., *The History of the County Palatine and City of Chester*, 3 vols. (2nd ed. rev. T. Helsby, London 1875-82), vol. 1, p. 65; Birch (ed.), *Court and Times of Charles I*, vol. 2, p. 105; Baker (ed.), *The Order of Serjeants at Law*, p. 330.

²J.M. Rigg's *DNB* entry, for example, notes his advancement to "the then important position of the chief justice of the court of session of the county palatine of Chester" without elaboration (the *Dictionary of Welsh Biography* makes no mention of Whitelocke).

³Cf. Williams, P., 'The Welsh Borderlands under Queen Elizabeth', *Welsh History Review* 1 no. 1 (1960), p. 22; Cockburn, *A History of English Assizes*, p. 38.

⁴Wrightson, K., 'Two concepts of order: justices, constables and jurymen in seventeenth-century England' in J. Brewer and J. Styles (eds.), *An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries* (London 1980), p. 26.

⁵Cf. for example Cust & Lake, 'Sir Richard Grovenor and the Rhetoric of Magistracy'; Herrup, 'Law and Morality in Seventeenth-Century England', *Past & Present* 106 (1985) pp. 102-123.

⁶Cockburn, *A History of English Assizes*, pp. 122-124, *idem*, 'Trial by the Book? Fact and Theory in Criminal Process, 1558-1625', pp. 71-75; Sharpe, *Crime in Early Modern England*, p. 23, 153; Fletcher & Stevenson (eds.), *Order and disorder in early modern England*, p. 17.

are all areas of historical debate.⁷ As a judge (and from 1620 to 1624 a prominent member of the Council in the Marches of Wales), Whitelocke promoted, and in many ways personified, the ideals of the "rule of law", which encouraged social cohesion in the highly litigious, and often factious county communities of Stuart England.⁸ It remains to be seen what qualities he brought to bear in that office, and the implications of his approach for the community which he served.

The administrative role of the Chief Justice of Chester, 1620-1624:

James Whitelocke's duties as Chief Justice of Chester reflected the complex administrative history of the region he served. The County Palatine of Chester, lying on the north-eastern boundary of the Kingdom of Wales, had served since the Conquest as a buffer from Welsh hostility and a base for the projection of English power across the border.⁹ Its status as a county palatine set its legal officers apart from those of the other English counties; they held exclusive jurisdiction over all legal causes arising in the county, except in matters of treason, error, and foreign plea.¹⁰ Responsibility for the administration of justice in Chester was shared between the Chamberlain of Chester, who presided over the the Exchequer of Chester (a court of equity similar in structure to the Court of Chancery in London), and the Chief Justice of Chester, a royal nominee who held jurisdiction to hear and determine Crown and civil pleas within the county.¹¹

By virtue of his commission, James Whitelocke was to administer justice in Crown and common pleas throughout the county palatine, and ride the shire with his puisne (until 22 April 1622 Sir Henry Townshend and thereafter Sir Marmaduke

⁷Cf. Fletcher, *Reform in the Provinces*, pp. 51-52; Sharpe, *The Personal Rule of Charles I*, pp. 425-430.

⁸Cf. Brewer and Styles (eds.), *An Ungovernable People*, pp. 13-14.

⁹Barraclough, G., 'The earldom and county palatine of Chester', *Historical Society of Lancaster and Cheshire Transactions* 103 (1951/2), p. 26.

¹⁰Harris, B.E., 'Palatine Institutions and County Government 1547-1680' in *VCH Cheshire*, vol. 2, p. 36.

¹¹Coke, E., *The Fourth Part of the Institutes of the Laws of England concerning the Jurisdiction of Courts* (London 1767, first published 1628), p. 211. For the workings of the Exchequer court see Jones, 'The Exchequer of Chester in the Last Years of Elizabeth I', pp. 123-170; as in all other courts of the time there was obviously some overlap between their jurisdictions.

Lloyd)¹² in the twice-yearly visitations of the Court of Great Sessions, which had taken over the functions of the Chester county court in Tudor times.¹³ His jurisdiction, however, extended beyond Chester as the result of a "complementary" role in the Council in the Marches of Wales.¹⁴ Under the king's 1617 instructions, the Chief Justice of Chester was given a broad mandate to administer justice "in all causes concerning his Majesty's subjects" within the area under council jurisdiction.¹⁵ As the senior judge on the council, Whitelocke was required to hear causes in the Welsh counties of Denbigh, Flint and Montgomery. He was further empowered to administer justice in four English counties - Shropshire, Worcestershire, Gloucestershire and Herefordshire - which, with Chester, formed the region adjoining (or contributing to) the Welsh marches.¹⁶

James Whitelocke's role in the Council in the Marches and semi-permanent residence in Chester made his importance in provincial administration unique among the common-law judges, whose formal interaction with the shires was usually limited to the twice-yearly visitations of the assizes.¹⁷ Yet while one may emphasize the overlap of "judicial" and "administrative" functions in his duties, any clear division between the two (as historians have increasingly realized)¹⁸ distorts the nature of the arrangements by which government was facilitated within and across the counties, a task in which the judges played an important role. Cockburn, Morrill, Fletcher and more recently Kevin Sharpe have questioned the effectiveness of communication between the Stuart judiciary and the centre.¹⁹ Given our

¹²HMC 13th Report IV, pp. 268 (Dovaston MS fol. 122); Ormerod, *History of the County Palatine*, vol. 1 p. 65.

¹³Cockburn, *A History of English Assizes*, p. 38; Morrill, *Cheshire Grand Jury*, p. 7; Harris, 'Palatine Institutions and County Government 1547-1680', p. 36.

¹⁴Harris, 'Palatine Institutions and County Government 1547-1680', p. 36.

¹⁵Rymer, T., *Foedera Conventiones, Literae et cujuscumque generis Acta Publica, inter Reges Angliae*, 10 vols. (London 1745), vol. 7, p. 30.

¹⁶*PRO Current Guide* (1991) 324.2.4; Williams, *The Council in the Marches of Wales*, pp. 25-26; *Liber Famelicus*, p. 84. Whitelocke held two separate commissions, one for Chester and Flint, the other for Denbigh and Montgomery.

¹⁷Morrill, *Cheshire Grand Jury*, p. 7.

¹⁸Cf., for example, Sharpe, *Crime in Early Modern England*, p. 23; Brewer & Styles (eds.), *An Ungovernable People*, p. 13; Wrightson, 'Two concepts of order', p. 26.

¹⁹Cockburn, *A History of English Assizes*, p. 151 ff.; Morrill, *Cheshire Grand Jury*, p. 7; Fletcher, *Reform in the Provinces*; p. 50; Sharpe, *Personal Rule of Charles I*, p. 424.

imperfect understanding of the relationship between the judges, the Crown and the provinces in the Jacobean period, James Whitelocke's correspondences with the centre and with local administrators are equally significant.

A firm and free hand? The centre and local administration:

Traditionally, the Chief Justice of Chester had strong links with the region in which he was to serve. Morrill has suggested that:

no judges tied closely to the central government ever visited Cheshire; the palatine judges frequently served for long periods and were clearly more closely bound to local interests than to national ones.²⁰

While Whitelocke would have gained some familiarity with Chester during his assize work in border shires, his connections with the region were not strong by Morrill's standards. Thus the Crown's directions to him are of particular interest. Whitelocke received his official call to the office of Chief Justice of Chester from the Lord Keeper, Sir Francis Bacon, on 29 June 1620.²¹ Having outlined the "generall duties of a judge", Bacon stressed the particular responsibilities "that concern the proprieties of your place... on[e] as judge of Chester, an other as having a principall place in matters of advice in counsell of state". Bacon advised Whitelocke to "keep good quarter withe Westminster Halle", to "look to suppress the powr of sutche gentlemen in the cuntrye that seek to oprise and suppress ther poor neighbours", and to "keep a good correspondencye with the lord president, under whome, in a manner, yow serve".²²

Bacon's charge stressed the broad aims of the Jacobean privy council for all of its judicial representatives in the provinces: to impose a stout and impartial judicial presence in the region in which they worked, to keep watch on "overmighty" subjects among the local gentry in that region, and conscientiously to pass on any information arising from their dealings with the provinces, which might assist in

²⁰Morrill, *Cheshire Grand Jury*, p. 7.

²¹BL Harl. MS 1575, fol. 206 in *Works*, vol. 14, pp. 102-104; *Liber Famelicus*, pp. 79-80.

²²*Liber Famelicus*, p. 80.

national administration.²³ More specific instructions from the Crown came in a private meeting held with King James, Prince Charles, and the Duke of Buckingham on 29 October, in which Whitelocke "toke his [the king's] directions and charge concerning my places I was to go to" before departing for Chester;²⁴ unfortunately the *Liber Famelicus* gives only this unspecific account of what transpired. Whitelocke mentions a second meeting with Buckingham, the earls of Worcester, Pembroke, Arundel, Montgomery, Secretary Calvert and all the judges at Prince Charles's council chamber before his departure for Chester, but again, he furnishes no information about their advice (if any).²⁵

Whatever the Crown's brief for Whitelocke, lack of local contacts must have proved important in his initial approach to office. By his own admission a "stranger to the mysteries of government",²⁶ Whitelocke's need to show respect for the concerns of the Crown were compounded by two additional factors which tied him to the approach of the previous administration: his obligation to satisfy the president of the council, and his reliance, in the absence of any prior contact with the region, upon the information of well-entrenched local administrators.²⁷ Whitelocke's relations with President Northampton are discussed below. What can be said about the impact of the local gentry upon Whitelocke's administration in Chester is more impressionistic,²⁸ but in light of the long-standing influence of certain families in the local commissions of the peace,²⁹ one is struck by his recollection of a procession of "gentlemen of Shropshire and Cheshire", who came out to meet him upon his arrival in Chester.³⁰ The great hospitality displayed by local officials throughout his progress would not have come without a vested interest; one cannot doubt that his

²³Cf. Fletcher, *Reform in the Provinces*, p. 48.

²⁴*Liber Famelicus*, p. 84.

²⁵*Liber Famelicus*, p. 85.

²⁶*Liber Famelicus*, p. 81.

²⁷*Liber Famelicus*, p. 81.

²⁸But see Higgins, P., 'County Government and Society in Cheshire' (1973 University of Liverpool MA thesis), pp. 62-67, 104.

²⁹Higgins, 'County Government and Society in Cheshire', p. 104; Harris, 'Palatine Institutions and County Government', pp. 40-43.

³⁰*Liber Famelicus*, pp. 88-89.

appreciation of local affairs was heavily informed, in this initial stage, by their perspectives.³¹

Penry Williams has demonstrated that in the Tudor period the Privy Council "supervised the administration of justice in Wales by direct methods", and regularly sent instructions to the judges of the Court of Great Sessions relating to court business.³² Whatever the shortcomings of the Jacobean Privy Council as an administrative unit,³³ Bacon's 1620 instructions urged Whitelocke to "keep good quarter with Westminster Hall", and during his time in Chester the new Lord Keeper, Bishop John Williams, kept a watch on legal and administrative procedure in the region, visiting the judge on his appointment as Lord Keeper and writing to Whitelocke thereafter.³⁴ In turn, Whitelocke wrote to inform Williams of local events such as the death of Sir John Price, the Sheriff of Montgomery in April 1622.³⁵ Surviving documents seem to suggest a relatively effective flow of information: in November 1621 for example, Whitelocke received a request from the Privy Council to investigate, at the next assizes, allegedly treasonable comments made by "one Whitbie", and promptly drafted a subpoena for witnesses to appear before the court of Great Sessions.³⁶ In June 1622 the Council ordered Whitelocke and Northampton to reinstate old arrangements for the sale of cloth in Shropshire, following the poor results of a new market at Oswestry.³⁷ Whitelocke and Northampton's delayed reply of September 13 suggests that their attempts to enforce the Council directive had met with predictable local resistance; begging patience from the Council over this matter, they also asked that the drapers of Shrewsbury be

³¹Cf. Fletcher, *Reform in the Provinces*, p. 164: "A judge who moved into controversial areas of policy-making at the behest of a particular faction of a county bench played a dangerous game that could end in his humiliation."

³²Williams, *The Council in the Marches*, p. 206-207; cf. Coward, B., 'The Lieutenancy of Lancashire and Cheshire in the Sixteenth and Early Seventeenth Centuries', *Transactions of the Historic Society of Lancashire and Cheshire*, 119 (Liverpool 1968), pp. 39-64.

³³Peck, *Northampton*, p. 88; Fletcher, *Reform in the Provinces*, p. 44.

³⁴Fletcher, *Reform in the Provinces*, p. 44; *Liber Famelicus*, p. 89; Longleat Papers, vol. 2, fols. 65, 85, 97, 137, 150.

³⁵HMC 13th Report IV, p. 268 (Dovaston MS fol. 122v).

³⁶Longleat Papers, vol. 2, fols. 27, 52v. The haste in Whitelocke's response is suggested by his failure to secure the first name of the culprit in his drafted subpoena.

³⁷Longleat Papers, vol. 2, fol. 59.

allowed to sell their existing stocks before the Council order took effect.³⁸ Difficult as many Council directives must have been to carry out, other correspondence suggests that further pressure was brought to bear on Whitelocke from the centre when the interests of the king or his son were at stake.

In 1616, in accordance with tradition, James I had his son Charles created Prince of Wales and Earl of Chester.³⁹ Roberts has seen the investiture as a purely "honorific affair"; in fact the Prince's council kept a close eye on local politics, attempting (unsuccessfully) to influence parliamentary elections for the city of Chester in 1621 and again in 1624.⁴⁰ Furthermore, while the Prince never presided over the council at Ludlow, he did receive an assigned income from properties in Chester and Wales, and correspondence with Whitelocke demonstrates a keen interest in these lands.⁴¹ Briefed by the Prince's council before leaving for Chester, it appears that in Charles's absence Whitelocke was required to oversee royal landholdings in the region.⁴² Detailed instructions from the Prince's council requested Whitelocke's assistance in overseeing the collection of rents, and prosecution of those who abused royal property rights.⁴³ Other orders from Charles's council suggests a more than passing interest in local affairs. A letter of 11 March 1621/2 to the justices of Chester asked "that justice may be done" in a cause, pending in the Exchequer court, over which they might have some influence,⁴⁴ while a letter from the following year requested the names of jury members who had ruled "contrary to the evidence and the direction" given by the presiding judge.⁴⁵ Where Crown interests were at stake, royal influence in local affairs was to be expected. On 7 September 1622 the king wrote to the Chief

³⁸Longleat Papers, vol. 2, fol. 70.

³⁹Skeel, *The Council in the Marches of Wales*, pp. 188-191.

⁴⁰Gruenfelder, J.K., 'The Parliamentary Election at Chester, 1621', *Transactions of the Historic Society of Lancashire and Cheshire* 120 (1968), pp. 37-38; Morrill, J.S., 'Parliamentary Representation 1543-1660' in *VCH Cheshire*, vol. 2, p. 112.

⁴¹Roberts, 'Wales and England after the Tudor 'union'', p. 133.

⁴²*Liber Famelicus*, p. 85.

⁴³Longleat Papers, vol. 2, fols. 3, 44, 61, 82.

⁴⁴Longleat Papers, vol. 2, fol. 46.

⁴⁵Longleat Papers, vol. 2, fol. 80.

Justice, asking that he put a speedy end to a suit pending in the Chester assizes between the local dignitaries Sir John Davenport and Thomas Sweetenham over a contested property title,⁴⁶ which may have threatened to exacerbate an already charged political atmosphere.⁴⁷ There is no reason to think that Whitelocke would have been surprised by such a request; it reflected the routine level of influence he could expect from the Crown.

A sense of continuity in the priorities of the Chief Justice of Chester in 1620 is suggested by Whitelocke's notes in the Chester Crown book. This large folio was passed on by successive judges in Chester, and served as a ready reference source, listing fines and punishments arising from the Court of Great Sessions, detailing charges and presentments delivered on the circuit, and generally taking note of matters under review in the counties.⁴⁸ Whitelocke's hand first appears in the Crown Book adding a date to a list compiled by the previous Chief Justice, Sir Thomas Chamberlain, of "such persons as have put in pledges for their times at this Sessions",⁴⁹ which suggests that he took some notice of the work of his predecessor. Comparing Whitelocke's notes in the Crown Book with the orders delivered by the Chester judges to the Court of Great Sessions in 1616 and 1617, attempting to guide local justices of the peace in their approaches to the poor law, alehouses, the upkeep of bridges, and the oversight of recusants,⁵⁰ one finds a broad similarity between Whitelocke's concerns in Chester and those of the previous administration. From 1620 to 1624, Whitelocke also sought to ensure ale house regulation, the upkeep of bridges and the oversight of recusants through private and public instructions to local officials, such as a speech he delivered against recusants at Knutsfield on 25 April 1621.⁵¹ Given J.A. Sharpe's observation that moral

⁴⁶Longleat Papers, vol. 2, fol. 67.

⁴⁷Cf. Gruenfelder, 'The Parliamentary Election at Chester, 1621', pp. 35-44; Hirst, D., *The Representative of the People? Voters and Voting under the Early Stuarts* (Cambridge 1975), pp. 94-95, 198-199; Morrill, 'Parliamentary Representation 1543-1660', p. 112.

⁴⁸PRO CHES 21/3 (I am thankful to John Morrill for pointing out the importance of this source). Whitelocke's hand first appears on folio 31 and his last record is made on folio 107.

⁴⁹PRO CHES 21/3, fol. 31.

⁵⁰Morrill, *Cheshire 1630-1660*, p. 10; Fletcher, *Reform in the Provinces*, p. 54.

⁵¹PRO CHES 21/3, fol. 49.

offences were "having a dramatic impact" on the Cheshire court records of Cheshire during the middle years of Jacobean administration,⁵² it is interesting to note that Whitelocke regularly handed out fines for transgressions such as "begetting bastards".⁵³ The regulation of alehouses appears to have been one of his major concerns, with "catalogues" in the Crown Book directing Justices of the Peace vigorously to seek out and prosecute unlicensed proprietors, and listing fines meted out to such unfortunate characters as Edward Gibson of Lower Witsymten "for keeping ale in an unfit place near a bowlinge alley".⁵⁴

While it is obvious that a range of national and local influences were brought to bear on James Whitelocke in Chester, his authority in many areas of local government should not be overlooked. As the effectiveness of provincial government depended as much upon the diligence of local officials as the prompting of the Crown, considerable discretion was placed in Whitelocke's hands from the moment of his arrival in Chester. His commitment to his duties belies Fletcher's picture of a generally passive and poorly motivated judiciary in the 1620s,⁵⁵ suggesting a vigorous response to local affairs with an eye to government objectives. Indeed, while Fletcher has argued that the judges increasingly forfeited responsibility for the upkeep of roads and bridges in Chester between 1606 and 1652,⁵⁶ the undated draft of one letter from Whitelocke to local Justices, urging them to heed a Statute of 22 Henry VIII and make repairs to a bridge in Aberbecham in Montgomery,⁵⁷ suggests the need also to consider the widespread inertia of local administrators in the face of official prompting. On occasion, Whitelocke's role extended to the supervision of local government; in November 1622, for example, he was present at Ludlow to arbitrate between officials of Denbigh over a dispute concerning their local charter of incorporation.⁵⁸ Whitelocke's main role in Chester,

⁵²Sharpe, *Crime in Early Modern England*, p. 153.

⁵³PRO CHES 21/3, fol. 58v.

⁵⁴PRO CHES 21/3, fols. 58v, 65.

⁵⁵Fletcher, *Reform in the Provinces*, pp. 49-52, 119, 164.

⁵⁶Fletcher, *Reform in the Provinces*, p. 52.

⁵⁷Longleat Papers, vol. 24, fols. 233-234.

⁵⁸HMC 13th Report IV, pp. 269 (Dovaston MS fol. 128).

however, was judicial, and he took an interest in a wide range of matters affecting the governance of Chester, Wales and the border shires. Thus on 16 March 1621 Whitelocke wrote to the sheriffs and constables of Montgomery to apprehend Richard Owen of Dyffrin Llanfair who had been charged with murder, while the Justices of the Peace of the county were instructed to apprehend men suspected of harbouring Owen.⁵⁹ Early in 1624 Northampton and Whitelocke ordered Justices of the Peace and sheriffs to be vigilant in their supervision of the Carnarvon quarter sessions,⁶⁰ since it was feared that trouble arising from a contested parliamentary election might spill over into bloodshed "if factious persons be suffered to carry weapons in the town".⁶¹ Less serious matters were also the subject of Whitelocke's attention; in 1620, for example, Whitelocke issued instructions to the Justices of the Peace of the county to apprehend and punish "certain idle people who track hares in the snow, and kill hares, partridges and other kind of game".⁶² As well as directing his subordinates in the county legal system, Whitelocke had considerable say in their appointment, drafting lists of suitable candidates for local office for the President's inspection, and on occasion ordering Justices of the Peace to take informations against corrupt local officers complained of through petition and private conversation.⁶³

Recent studies have pointed to the "participatory" nature of the arrangements which facilitated law enforcement in early modern England.⁶⁴ Although I have stressed Whitelocke's involvement with many levels of county government, local magistrates were generally allowed great discretion in their dealings with the shires.

⁵⁹Longleat Papers vol. 2, fols. 52, 52v, 53; for similar writs see vol. 1, fols. 280, 283.

⁶⁰HMC 13th Report IV, pp. 260 (Dovaston MS fol. 104). The date given in the HMC Report is 5 December, 23 Jac, which is too late for Whitelocke. Kishlansky has interpreted this document as relating to the 1624 parliament, the most likely possibility; Kishlansky, *Parliamentary Selection*, pp. 58-59.

⁶¹*ibid.* Cf. Kishlansky, *Parliamentary Selection*, pp. 58-59; Gruenfelder, *Influence in Early Stuart Elections*, pp. 9, 13, 17, 19, 20, 105.

⁶²Longleat Papers, vol. 1, fol. 282.

⁶³PRO CHES 21/3; Longleat Papers, vol. 2, fols. 54, 64v; HMC 13th Report IV, pp. 264, 270 (Dovaston MS fols. 109, 130).

⁶⁴Sharpe, *Crime in Early Modern England*, p. 7; Wrightson, *English Society 1580-1680* (London 1982), pp. 155-173; Herrup, *The Common Peace; passim*.

In 1620 for instance Whitelocke wrote to the Justices of the Peace for Chester "to examine certain charges against Griffith Edwards", asking them "if they find cause, to bind him to appear at the next Great Sessions".⁶⁵ In 1622 the Chester judges gave local magistrates considerable influence over the flow of information through the courts, ordering that because so many petitions "of no moment" were reaching the quarter sessions, all such petitions be submitted to local magistrates for approval before their acceptance in court.⁶⁶ Standing at the apex of the county legal system, Whitelocke had considerable influence over its workings - but relied extensively upon information which filtered up from the parish to the county level through the urgings of the JPs, constables, sheriffs, constables and private individuals of the shire. In one instance, which highlights the receptivity of the Chief Justice to pressures from below as well as above, it was information provided by the bailiffs of Shrewsbury, and not the prompting of the Council, that moved Whitelocke to investigate charges of sedition by directing the Justices of the Peace of Shropshire to bring the matter before the assizes.⁶⁷ In an undated petition from the constable of Bedworth and other representatives of the town, Whitelocke was asked to protect his petitioners, who had apprehended some locals for stealing cattle, but feared that a string of suits would be launched against them by the culprits at quarter sessions.⁶⁸ Dependent as he was upon this kind of information, Whitelocke moved to protect informers from local hostility and punish those who threatened them.⁶⁹

John Morrill has emphasized the role of Grand Jury presentments and private petitions in expressing the concerns of the Cheshire county community.⁷⁰ Through a range of petitions presented to Whitelocke, one can see the mediating role played by the Chief Justice of Chester at the shire, hundred and village level. Personal petitions received by Whitelocke usually asked for his intercession or clemency in

⁶⁵Longleat Papers, vol. 1 fol. 284; cf. vol. 2, fols. 74, 82, 84.

⁶⁶Harris, 'Palatine Institutions and County Government 1547-1680', p. 50.

⁶⁷HMC 13th Report IV, pp. 261 (Dovaston MS fol. 105v).

⁶⁸Longleat Papers, vol. 24, fols. 201-204.

⁶⁹Longleat Papers, vol. 2, fol. 53; cf. vol. 1, fols. 283, 284.

⁷⁰Morrill, *Grand Jury*, pp. 24-28, 45; cf. Sharpe, *Crime in Early Modern England*, p. 23.

legal cases already underway - early release from the county prison in a minor offence, re-direction of a stalled case for settlement at the next assizes, reduction of sentence on the promise of good behaviour.⁷¹ One suitor, Elizabeth Slavery, urged Whitelocke to release eleven-year-old Richard Radson, held in the Gloucester county jail for perjury, as he had been intimidated into making a false confession.⁷² Other petitions showed a concern for the wider community, frequently complaining of the reluctance of local administrators and villagers to enforce parliamentary statutes promulgated by Westminster; here Whitelocke could only admonish his subordinates to carry out their duties, under the threat of removal from office, and possible prosecution. In response to a petition sent from a village in Denbigh, which urged for direction from local Justices of the Peace to assist the repair of a dilapidated bridge, Whitelocke ordered the Justices to certify at the Court of Great Sessions what steps they had taken to repair the bridge in question.⁷³ If the Cheshire Grand Jury was, as Morrill suggests, the eyes and ears of the county community,⁷⁴ then the Chester judges were equally important in allowing the community to appeal to an impartial figure of authority.⁷⁵ A petition that survives from somewhat later in Whitelocke's life gives colourful evidence of this kind of work. Certified by Whitelocke on 6 May 1631, it lists the complaint of Tobias Ewbancke against Robert Brandling, high sheriff of Northumberland, who, Ewbancke claimed, "persecuteth many unjust and vexatious suits against the petitioner and terifies and threatens his servants", through "uncivill and unchristian speeches (as will appeare by Affadavits hereunto annexed)".⁷⁶ In petitions such as this, urging "that a warrant be issued to bring Brandling before the Court", Whitelocke's importance as a source of

⁷¹For surviving petitions, see Longleat Papers, vol. 1, fols. 279, 285, 286, vol. 5, fols. 5, 204v.

⁷²Longleat Papers, vol. 1, fol. 286.

⁷³Longleat Papers, vol. 2 fol. 72v; cf. PRO CHES 21/3, fol. 60.

⁷⁴Morrill, *Cheshire Grand Jury*, p. 45.

⁷⁵Cf. Morrill, *Cheshire Grand Jury*, p. 28; Curtis, 'Quarter Sessions appearances and their Background', pp. 144-147, 154.

⁷⁶Earl Marshal's Papers (fols. 33, 34) at Arundel Castle, reproduced in Steer, F. W. (ed.), *A Catalogue of the Earl Marshal's Papers at Arundel Castle* (London 1964).

mediation and arbitration was emphasized by the authority he held over the whole system.

Keeping court:

While correspondence with the various levels of local administration was an ongoing concern for Whitelocke throughout the year, his chief public duty as Chief Justice of Chester was to administer justice at Ludlow and the assizes. Although theoretically appointed to act in quorum with the president and vice-president, Whitelocke was the "chief working member" among the council's legal staff.⁷⁷ Whitelocke explained his judicial role within the council as the "cognizance of starchamber and chancery causes, and of civil pleas of 50l. and under".⁷⁸ At Ludlow, Whitelocke handled about a thousand cases per year during his time as Chief Justice of Chester.⁷⁹ Although this was less than a quarter of the business handled by the King's Bench in a similar period,⁸⁰ it was enough to earn him a comparable fee to what he would later earn at Westminster, where four judges sat at each hearing.⁸¹

In April and September each year James Whitelocke, his puisne and their staff rode the circuit for the Court of Great Sessions in Chester, before proceeding on to the Welsh counties of Flint, Denbigh and Montgomery.⁸² As a gathering point for the leading figures of the county, the assizes were also, for Whitelocke, a time to impress his delegated authority upon provincial society.⁸³ Jones has suggested that Whitelocke "considered going on circuit as a progress whereby the whole kingdom was called together",⁸⁴ and many historians have commented upon the social,

⁷⁷Skeel, *The Council in the Marches of Wales*, p. 277; Cockburn, *A History of English Assizes*, p. 38.

⁷⁸Rymer (ed.), *Foedera*, vol. 7, p. 30; *Liber Famelicus*, p. 98.

⁷⁹*Liber Famelicus*, pp. 87-92.

⁸⁰Brooks, 'Litigants and Attorneys in the King's Bench and Common Pleas, 1560-1640', pp. 41-59.

⁸¹See below.

⁸²*Liber Famelicus*, pp. 88-89.

⁸³For the social dimension of the assizes, cf. Fletcher and Stevenson (eds.), *Order and Disorder in Early Modern England*, p. 21, Sharpe, *Crime in Early Modern England*, p. 49; Sharpe, *The Personal Rule of Charles I*, pp. 422-423.

⁸⁴Jones, *Politics and the Bench*, p. 129.

economic and religious dimension of assize charges.⁸⁵ Reminding his jury in one instance that they were "the representative body of the whole shire", Whitelocke asked them to take notice of the "mixture of government in this kingdom both in the higher and lower ministreyes of it", pointing to representative bodies such as parliament to remind them, it seems, of the particular kinds of relationships, mixing "Aristocracy" and "Democracy", which characterized English government.⁸⁶ Whitelocke reminded his listeners of the proper ordering of their own social relationships, as public responsibilities, he suggested, bound national and local politics. He emphasized to his juries that it was only through attention to their own responsibilities that the good of the whole commonwealth was advanced; a concern for their role in the execution of justice, he said, promoted at once the business "of God", "of the king", and "of yourselves".⁸⁷

Morrill has pointed out that whatever its propagandistic element, the basic rationale of the assize charge was the mundane task of instructing juries on those areas of law that would concern them during trial.⁸⁸ Comments made by Whitelocke in the preamble to his instructions suggest that his emphasis upon courtroom procedure flowed naturally from his perception of the law's role in the regulation of provincial society. Seeking a competent jury in order to achieve justice, Whitelocke's assize speeches involved long discussions of the hierarchy of crime, beginning with crimes against the state such as high treason, moving to a range of moral crimes and crimes against property, and ending with petty crimes such as minor theft. Whitelocke employed an equally long list of examples drawn from statutes and years books to suggest a proper response from the jury to these crimes. Emphasizing that crime was a violation of social order, Whitelocke urged his juries to forego their own prejudices, avoiding equally "hatred" and "malice" in

⁸⁵Cf. Cust & Lake, 'Sir Richard Grovener and the Rhetoric of Magistracy', p. 45; Fletcher, *Reform in the Provinces*, p. 47.

⁸⁶Longleat Papers, vol. 21, fol. 110; cf. Ashton, *The English Civil War*, pp. 13-14.

⁸⁷Longleat Papers, vol. 21, fol. 102; cf. for a slightly later period, Lamoine, G., *Charges to the Grand Jury 1689-1803* (London 1992).

⁸⁸Morrill, *Cheshire Grand Jury*, p. 22; cf. Sharpe, *Crime in Early Modern England*, p. 158.

presenting cases for trial, and "feare", "favour" and "affection" in not presenting where circumstances warranted.⁸⁹ In short, Whitelocke's assize charges reminded his listeners that they were bound to uphold the law if they were to safeguard order in the county. By his professed conviction, it was through a diligent approach to their legal duties that his audience could achieve a social harmony derived "from God", "from the King" and "from the Law".⁹⁰

Technically, the role of Whitelocke and his assistant on assize was to hear the more serious causes arising from quarter sessions, and from writs of *nisi prius* redirecting causes from Westminster to the counties.⁹¹ Whitelocke's notes in the Crown Book detailed a range of minor offences against property as well as less frequent cases of assault, arson and murder.⁹² While the severity of Whitelocke's punishments is suggested below, most offenders were handed a fine, and there were many occasions on which Whitelocke penned "bayld de bene" alongside less serious offences. This suggests that his tough stance was tempered by a practical sense of what kind of criminal deterrence was possible through the courts of law, in a system which gave the judges some scope for discretion in non-capital offences.⁹³

Cockburn and Sharpe have speculated on the extent to which assize judges directed trial juries toward a verdict.⁹⁴ Even if one assumes a fairly thorough understanding of the law, it would have been an exceptionally acute jury that could have digested the instructions provided in Whitelocke's long and involved charges. One is left suspecting that the judge did direct them towards a verdict in doubtful cases.⁹⁵ Such a view is supported by one piece of evidence surviving among

⁸⁹Longleat Papers, vol. 21, fol. 110.

⁹⁰Longleat Papers, vol. 21, fol. 103.

⁹¹Cockburn, *History of English Assizes*, p. 111; Fletcher, *Reform in the Provinces*, pp. 92-93; Baker, J.H., 'Criminal Courts and Procedure 1550-1800' in *The Legal Profession and the Common Law*, p. 273.

⁹²PRO CHES 21/3, fols. 31-107, *passim*.

⁹³Curtis, 'Quarter Sessions Appearances and their Background', p. 152; Baker, 'Criminal Courts and Procedure at Common Law', p. 43.

⁹⁴Sharpe, *Crime in Early Modern England*, p. 23; Cockburn, *History of English Assizes*, p. 12, 'Trial by the Book?', pp. 71-74.

⁹⁵While Morrill suggests that the Cheshire grand jury was drawn primarily from the yeomen of the shire, the extent of popular legal knowledge is something of a mystery.

Whitelocke's private correspondence, which makes it clear that his treatment of a jury could be severe if his directions were ignored.⁹⁶ This letter recounts that members of a trial jury, which ignored the "evidence and the direction given" by Whitelocke in an assize hearing on a charge of murder, were "severally fined" by the judge for finding the defendant, Richard Patrick, guilty only of manslaughter.⁹⁷ As Whitelocke himself reviewed selection to the Grand Jury, they may well have also been barred from further jury work.

A lack of clear jurisdictional boundaries, and freedom to file suits in a variety of courts over one dispute meant that, in the early modern period, almost every court was apt to be used as a court of appeal.⁹⁸ Small wonder then that there was need for judges such as James Whitelocke to clarify, and at times contest the jurisdiction of other courts while asserting the authority of their own verdicts. Two letters survive from Whitelocke's Chester correspondence, both to Sir James Ley who served as Chief Justice of the King's Bench and subsequently Common Pleas, asking Ley to return prisoners within Chester's cognizance, or to state his causes for their removal.⁹⁹ While no record exists of Ley's response to Whitelocke's requests, other evidence suggests that causes could be peaceably transferred from one court to another as suits left the jurisdiction of Chester and Wales.¹⁰⁰ Correspondence between the Council and the Bishop of St. David's in 1620 shows a commitment to the exchange of information on legal matters.¹⁰¹ A letter from Northampton asking the Welsh Council to consider and respond to a statement forwarded by the Archbishop of Canterbury, arguing for the rights of ecclesiastical jurisdiction "which

⁹⁶It is clear that juries could be fined for "what officials took to be an outright nullification of the law"; Green, T.A., *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200-1800* (Chicago 1985), pp. 231, 211-212.

⁹⁷Longleat Papers, vol. 2, fol. 80.

⁹⁸Cf. Barnes, 'Star Chamber Litigants and Their Counsel, 1596-1641', p. 7. For an example of this kind of claim see Longleat Papers, vol. 2, fol. 78.

⁹⁹Longleat Papers, vol. 2, fols. 43, 63.

¹⁰⁰HMC 13th Report IV, p. 269 (Dovaston MS fol. 129). See also Fletcher, *Reform in the Provinces*, p. 93.

¹⁰¹HMC 13th Report IV, pp. 262, 263 (Dovaston MS fols. 106v, 107).

the Council of the Marches of Wales have lately taken to themselves", demonstrates that court boundaries were always contentious in the period.¹⁰²

The political profile of the Chief Justice of Chester, 1620-1624:

Although geographically removed from the centre, the impact of court politics upon the Council in the Marches was obviously great, and it was ultimately an expression of concern from the centre than ended Whitelocke's stay in Chester.¹⁰³ Sir Francis Bacon's 1620 instructions to James Whitelocke included a warning to "make no clashes of renewing old sores" in the course of his duties as Chief Justice of Chester.¹⁰⁴ While the precise intent of Bacon's warning is open to question, it clearly does not allude to Whitelocke's controversial actions in the past, but to legal arguments over the jurisdiction of the Welsh council in the border shires,¹⁰⁵ or possibility to the almost traditional disharmony which existed between the Chief Justice and the Lord President. In either case, Bacon's warning stressed the delicate position of the incoming Chief Justice.

Under James's 1617 instructions to the Council in the Marches, no distinction was made between the Welsh and English border counties in terms of jurisdiction.¹⁰⁶ Ongoing debate over the judicial independence of the border shires between 1620 and 1625 left Whitelocke, with dual responsibilities to uphold the Crown and the common law, standing squarely in the middle.¹⁰⁷ Among Whitelocke's private papers is a copy of an undated petition sent to the King by the

¹⁰²Longleat Papers, vol. 2, fols. 132, 133.

¹⁰³For contemporary perceptions of the conditions surrounding Whitelocke's appointment and dismissal from Chester cf. 'John Chamberlain to Sir Dudley Carleton, Nov. 9, 1620' in Birch (ed.), *Court and Times of James I*, vol. 2, p. 105; 'William Denny to Lady Katherine Paston', letter no. 47 in Hughey, R. (ed.), *The Correspondence of Lady Katherine Paston 1603-1627* (Norfolk Record Society 14, 1941), p. 76; HMC Cowper I, p. 172 (Coke MS) 1 October 1624 'John Coke to Lord Brooke'; CUL MS Additional 6862 (Hutton's diary), vol. 1, pp. 153-154, reprinted in Baker (ed.), *The Order of Serjeants at Law*, p. 330.

¹⁰⁴*Works*, vol. 14, p. 103; *Liber Famelicus*, pp. 81, 86-87.

¹⁰⁵Bacon was well aware of these "old sores", having drafted an compromise proposal for the King in 1608; *Works*, vol. 7, pp. 569-611.

¹⁰⁶The instructions are reprinted in Rymer (ed.), *Foedera*, vol. 7, pp. 21-22; and have been partially reprinted in HMC 13th Report IV, pp. 264-267 (Dovaston MS fols. 110-121v).

¹⁰⁷Skeel, C.A.J., *The Council in the Marches of Wales: A Study in Local Government during the Sixteenth and Seventeenth Centuries* (London 1904), p. 139.

inhabitants of Gloucester, Hereford, Shropshire and Worcester, probably during renewed parliamentary efforts in 1621 to pressure James on the issue of the border shires. Challenging the legality of the Council in the Marches to deliver justice in English counties, "Counties of Justice at Westminster accordinge to the Anciente fundametall lawes of Englande", it requested that the border shires "may be excepted out of the Jurisdiction of the President of the Council of Wales".¹⁰⁸ Notes in Whitelocke's possession analyzed the strengths and weaknesses of this petition, "cited by the House of Commons as desiring a redresse of a Grievance concerning four Counties".¹⁰⁹ Pointing out that it was claimed "in the name of all the Commons as well of other Counties as those four" that the "authority of the Welsh Councell extended over the those four Counties is *thought* [sic] not to bee warranted by law", they suggested two points "that (it is thought) will bee used in argument against the petition". These set out to demonstrate the ongoing jurisdiction of the Welsh council over the border shires since the reign of Henry VIII, to then propound that any "alteration from the government" under James I was "a noveltie and therefore dangerous".¹¹⁰ Another undated paper in Whitelocke's possession provided observations on prohibitions granted in suits before the Council in Wales.¹¹¹ Cockburn has suggested that "in the face of strong opposition to the Council both locally and in parliament, a compromise arrangement seems to have been reached" in which "the Chief Justice of Chester, invariably a member of the Bench, joined the Council to determine causes within all five English shires".¹¹² In fact, his position appears to have been less satisfactory.

Writing to Whitelocke on the last day of February 1620/21, Lord Northampton, President of the Council in the Marches of Wales, informed his second-in-command that the "chief and only business" concerning them in parliament was a "general desire" to repeal a clause in the 1543 act which gave the king exclusive power to

¹⁰⁸Longleat Papers vol. 24, fols. 73-76.

¹⁰⁹Longleat Papers vol. 24, fols. 81-84.

¹¹⁰*ibid.*

¹¹¹Longleat Papers vol. 24, fols. 89-92.

¹¹²Cockburn, *A History of English Assizes*, p. 38.

appoint judges to the Court of Great Sessions by commission.¹¹³ As Northampton was unsure what the ramifications might be for the validity of their commissions, he sought advice from Whitelocke and other members of the council.¹¹⁴ Whitelocke replied on 8 March that while he himself, Sir Henry Townshend and Sir Francis Eure had all been present during parliamentary debates on the matter, they could see no reason for the king to relinquish power over judicial arrangements in the Welsh council. They argued that if the clause was repealed "there must be special saving and provision for the full upholding and maintaining of the King's power of altering, adding, and administering the Instructions for this Court".¹¹⁵ If the obvious vested interest in such a stance is put aside, one can appreciate the tensions in Whitelocke's position. As a common-law judge he could be expected to uphold the cries of his fellow common-lawyers that the English shires be exempt from council "incursions". As the senior common-law judge in Chester he would also be expected to defend the 1569 ruling affirming the independence of the county palatine from council jurisdiction. Yet he was a duly appointed representative of the Crown, whose stance on behalf of the Welsh council had hardened considerably over the course of his reign, and a senior official of the Council in the Marches in Wales.¹¹⁶ While duties at Ludlow largely kept him away from the 1621 parliament, there is every reason to believe that, as the lower House continued its campaign to curtail the powers of the council along its borders, Whitelocke would have greeted this absence with a sense of relief.¹¹⁷

In Chester, arguments over the legal rights of the Welsh council in the border shires had spilled over, in the last decades of the sixteenth century, into an

¹¹³HMC 13th Report IV, pp. 260-261 (Dovaston MS fols. 104v). Jacobean debate over the legal implications of this act (34&35 Henry VIII c. 26, reprinted in *Statutes of the Realm* vol. 3 pp. 926-937) has been extensively discussed in Roberts, 'Wales and England after the Tudor 'union'', *passim*.

¹¹⁴HMC 13th Report IV, pp. 260-261 (Dovaston MS fol. 104v).

¹¹⁵HMC 13th Report IV, p. 261 (Dovaston MS fol. 104v).

¹¹⁶For the protracted debate between the common lawyers and the council cf. Ham, R.E., 'The Four Shire Controversy', *Welsh History Review* 8 no. 4 (1977), pp. 386-399; Williams, P., 'The attack on the council in the Marches, 1603-42', *Transactions of the Honourable Society of Cymmrodorion* (1961), pt. 1, pp. 1-22.

¹¹⁷*Liber Famelicus*, pp. 88-89; Roberts, 'Wales and England after the Tudor 'union'', p. 135.

acrimonious jurisdictional contest between the Chief Justice and the Chamberlain of Chester.¹¹⁸ Among Whitelocke's own papers is a copy of a statement made by Sir George Bromley (Chief Justice of Chester in the 1580s) of his judicial authority - almost certainly in reply to the counter-claims of the Chamberlain.¹¹⁹ Throughout the 1580s and the 1590s, the strength of the Chamberlain's position appears to have steadily eroded, partly as the result of Exchequer infighting and partly due to pressure from the centre, so that by the 1580s the Chief Justice was being asked to sit in on Exchequer cases.¹²⁰ Correspondence between Prince Charles's council and Whitelocke over a cause pending in the Exchequer Court between Thomas Birchley, and the Mayor and Aldermen of Chester, suggests the extent of Whitelocke's influence over this court in the 1620s.

Responding to a letter from the Prince's council of 11 March 1621 urging that "justice be done" in this suit,¹²¹ Whitelocke appears to have been unsuccessful in his attempts to pressure the Chamberlain to reach a verdict. On 27 July 1622 he sent a petition to the Privy Council "presented unto us by one Thomas Birchley concerning a difference between him and the mayor and aldermen of the cittie of Chester touching his freedome and the exercise of his trade there".¹²² Stressing the long-standing nature of the dispute, Whitelocke remarked that "after soe many hearinges... if by your favour hee doe not obtaine a tryall at the next assizes, hee shalbe forced through want and povertie to quitt his tittle", and asked the Council to remove the cause from the Exchequer Court "not doubting but that, his suite being

¹¹⁸In the 1560s a particularly furious row broke out between Chief Justice Sir John Thockmorton and the vice-chamberlain of the Exchequer Court of Chester following the city of Chester's successful petition against judicial interference from the Welsh Council. Ormerod, G., *History of the County Palatine and City of Chester*, 3 vols. (London 1882), vol. 1, pp. 127-129; Yates, J.B. (ed.), 'The Rights and Jurisdiction of the County Palatine of Chester', *Chetham Miscellany* 37 (1856) pp. 14-34; Jones, 'The Exchequer of Chester' p. 150; Williams, *The Council in the Marches of Wales*, pp. 198-200.

¹¹⁹Longleat Papers vol. 24 fols. 109-112.

¹²⁰Jones, 'The Exchequer of Chester', p. 130.

¹²¹Longleat Papers, vol. 2, fol. 46. Whitelocke's influence in the city of Chester is suggested in the city's Council Minutes, which defers judgement in a case on trade rights to a legal ruling made by Whitelocke and Lloyd at assize; Groombridge, M.J. (ed), *Calendar of Chester City Council Minutes 1603-1642* (Blackpool 1956) p. 121.

¹²²*Acts of the Privy Council 1621-1623*, p. 296.

only for expedition of justice in a cause that hath soe long depended, you will take such order therein as wee bee noe further trobled with his complaints in this kind".¹²³

In the face of this external controversy, the official standing of the Chief Justice of Chester within the Welsh council was, during Whitelocke's period of tenure, also the subject of controversy.¹²⁴ In 1621 Whitelocke professed his desire to maintain harmonious relations with the President, "under whome," Bacon instructed him on his appointment, "in a manner, you serve".¹²⁵ From the 1580s the Chief Justice had tended to assume control of the council in the absence of the president, and while Prince Charles's council went so far as to refer to Whitelocke as "Chief Justice of the Marches of Wales",¹²⁶ such recognition did not always sit well with council members more accustomed to ranking by social pedigree. Upon his arrival in Bewdley in Trinity term 1621, Whitelocke was challenged by Lord Compton for precedence in the council, "and all the reason he gave", Whitelocke noted in the *Liber Famelicus*, was "bycause my predecessor gave it to him".¹²⁷ Reflecting upon the unhappy relations which had existed between former Chief Justices Richard Shuttleworth and Richard Lewkenor, and the Presidents Henry Earl of Pembroke and Lord Zouch between 1586 and 1607, he declared his determination to avoid the slights handed down to his predecessors by assuming a place beside the president at the council table.¹²⁸ The difficulty in Whitelocke's position arose from the king's 1617 instructions, which listed the Chief Justice above the other legal officials of the council, but *after* the noblemen and bishops, with an ambiguous rubric "saveing to the Chief Justice of Chester his place as anciently be used".¹²⁹ It was an ambiguity

¹²³*ibid.*

¹²⁴Skeel, *The Council in the Marches of Wales*, p. 277; Cockburn, *A History of English Assizes*, p. 38.

¹²⁵*Liber Famelicus*, p. 80: "Lastly, my advice is that yow keep a good correspondencye with the lord president, under whome, in a manner, yow serve, for whiche I will say to yow...'Be not to servile nor to severe.'"

¹²⁶Longleat Papers, vol. 2, fol. 44.

¹²⁷*Liber Famelicus*, p. 91.

¹²⁸*Liber Famelicus*, pp. 91-92.

¹²⁹Rymer (ed.), *Foedera*, vol. 7, pp. 21-22.

Whitelocke was obviously keen to clarify, seeking a report "by twelve of the most credible men at the counsell" in Trinity term 1621 which supported his claim that "the Chief Justice of Chester hath alwaies had place and precedence... next to the Lord President".¹³⁰ Whitelocke was pleased to note that thereafter the President placed him at his side, and had the report registered with the council "that posterity may have evidence to settle the question, if it sholde ever be stirred againe".¹³¹

Unfortunately, relations with the President of the Council in the Marches of Wales appear to have deteriorated after this point, and ultimately hastened Whitelocke's departure from Chester. The reasons for this falling out are not clear. John Gruenfelder has speculated, without strong evidence, that Whitelocke's and Northampton's opposing interests in a local political feud between the Wynn and Griffin families may have contributed to their troubles.¹³² Whatever the case, by April 1623 Northampton was actively lobbying the Duke of Buckingham for Whitelocke's removal.¹³³ Towards the end of his tenure, Whitelocke privately noted that Northampton was:

verye desirous to be quit of me at the counsell; his reason was, I did not give way unto him and his servants, nether in the court nor in the king's house, in bothe whiche I conceived things to be caryed out contrarye to the king's instructions and myne othe.¹³⁴

Hanft has used this statement to argue that Whitelocke's "independence and opposition to the abuse of the royal prerogative prompted a dispute with Lord Northampton which resulted in his transfer from Chester to the Court of King's Bench in October 1624".¹³⁵ The possibility that difficulties between the two

¹³⁰*Liber Famelicus*, p. 91; Longleat Papers, vol. 2, fol. 7; HMC 13th Report IV, p. 258 (Dovaston MS fol. 99).

¹³¹*Liber Famelicus*, pp. 91-92.

¹³²Gruenfelder, *Influence in Early Stuart Elections*, p. 105. The letter Gruenfelder uses in support of his claim is examined below.

¹³³*Liber Famelicus*, p. 95.

¹³⁴*Liber Famelicus*, p. 95. The "court" and "king's house" Whitelocke refers to were the two regular meeting places of the council, Ludlow Castle and Ticknell Manor in Bewdley; Skeel, *The Council in the Marches of Wales*, pp. 180-199.

¹³⁵Greaves & Zaller (eds.), *Biography of British Radicals*, vol. 3, p. 318.

revolved as much around personal friction as professional disagreement is not to be discounted.

That tension between the Chief Justice and the President had a long history by 1620 is understandable, given the clashing social and professional parameters of their power in the council. Whitelocke's remark about things done "contrarye to the king's instructions and myne owne", in light of an earlier comment that these "instructions do lift the cheef justice of Chester before the judges... being a privie counselor",¹³⁶ may simply refer to a disregard of his own perquisites.¹³⁷ Whatever the case, the smooth functioning of the council was obviously hampered by their poor relations and in 1624 the Duke of Buckingham moved to replace Whitelocke by reappointing Sir Thomas Chamberlain, his predecessor in the post. Whitelocke was obviously anxious that no stigma be attached to his removal from office, and resisted pressure to vacate it until he had ridden (and collected the profits of) the Chester circuit.¹³⁸ Whitelocke returned home to Fawley on 13 October 1624 to find instructions from Lord Keeper Williams that "upon unkindnesses between your chief and yow" and with the "high favour and good opinion" of the King assured, he had been recommended to a place in the central courts. Considering himself "verye wearye of the life I led at the counsell", he consulted with Williams in London on October 15, and assented to his removal from the office of Chief Justice of Chester.¹³⁹

As a springboard to his final appointment as Justice of the King's Bench, the Chester judgeship brought Whitelocke a share of lasting local influence in the region as it enhanced his national reputation. In this sense, Chester was a stepping stone to greater national influence. The year after his removal from Chester to the King's Bench, Whitelocke used his influence to secure his son a parliamentary seat for Stafford, which Bulstrode accepted while politely declining a seat for

¹³⁶*Liber Famelicus*, p. 91.

¹³⁷*ibid.*

¹³⁸*Liber Famelicus*, p. 96.

¹³⁹*Liber Famelicus*, pp. 96-97. The original letter from Williams, which Whitelocke copied into the *Liber Famelicus*, survives in the Longleat Papers, vol. 2, fol. 172.

Boroughbridge offered by his father's old friend Sir Humfrey May.¹⁴⁰ Following his dismissal from Chester, Whitelocke's profile in the region diminished as he took up the office of Justice of the King's Bench.¹⁴¹ Nonetheless, he continued to administer justice in the provinces, riding the assize courts until the year of his death. In 1625 Whitelocke rode the Oxford circuit with Justice Jones; he rode the Midland circuit with Baron Bromley the following year, the North with Justice Yelverton in 1627 and 1628, and returned to Jones and the Oxford circuit from 1629 until the end of his career.¹⁴² While the politically charged cases of this period have engaged my own attention, they were of course for Whitelocke a distraction from the routine business of the bench, in which he continued to hear, redirect and rule on causes in the central courts, and to promote Crown directives for the maintenance of local government through the assizes.¹⁴³

The "burthen" of office: rewards and responsibilities:

As Chief Justice of Chester, James Whitelocke's influence reached beyond the courtroom, touching the highest and lowest of the region in which he served. As a patron and a source of possible judicial favour, a range of benefits flowed naturally to him from the time of his appointment. Fletcher has argued that the judges "saw themselves as dignitaries who deserved to be feasted and expected gifts" as they rode to administer justice in the counties,¹⁴⁴ and it is clear that the assizes were anticipated by Whitelocke as a source of income and prestige. Arriving in Chester to begin his circuit in April 1621, Whitelocke and his puisne were greeted by "a great number of gentlemen of worthe"; the hospitality of local officials such as Sir Thomas Brereton, was such, he recounted, that although they had spent twice their

¹⁴⁰*Diary*, p. 53.

¹⁴¹*Liber Famelicus*, p. 101.

¹⁴²Cockburn, *History of English Assizes*, Appendix 1, pp. 270-271.

¹⁴³For this business (mostly dealing with court work, but including charges against recusants and correspondence with the centre) see HMC 5th Report Appendix, p. 312; HMC 8th Report Appendix, pt 1, no. 630 a; HMC 11th Report VII, p. 213; HMC Cowper II, p. 68; Longleat Papers, vol. 2, fols. 181, 182, 199 and vol. 3, *passim*.

¹⁴⁴Fletcher, *Reform in the Provinces*, p. 50.

allocated circuit fee "our presents in Flint and Denbighe... wear so large that we defaced the whole charge of the circuit, and saved the king's allowances".¹⁴⁵ During his circuit, Whitelocke was obviously chuffed at the hospitality extended by the towns of Whitechurch and Ruthin, which had organized dances, a Latin oration, and a banquet in his honour.¹⁴⁶

Provision of food and lodgings, offsetting the cost of the assize, was complemented by the fees which Whitelocke gained on circuit. It appears from Whitelocke's list of profits gained as Chief Justice of Chester that while of lower profile than the central court judgeships, the office could be equally lucrative. The first of Whitelocke's half-yearly lists of profits gained from business in Chester yielded the healthy total of £472. 4s. 6d.. His council fee came to £50, and his fee for circuit work to £120 respectively, while a further £47. 10s. was provided by the Crown for riding charges. The remainder of his income came from fees paid by clients such as Sir Richard Greville, who gave Whitelocke £30 in Michaelmas term for an undisclosed service, retainers from established clients such as the generous sum of £20 provided by Sir Robert Vaughan, and smaller retainers provided by other suitors and the attorneys who worked in his court.¹⁴⁷ Thereafter, the income guaranteed to Whitelocke through council and assize fees, his diet allowance, riding allowance, and the generous fee of £2. 15s. provided each year for wine, which furnished about £200 for the half-year, was increasingly supplemented by retainers and "gifts" from a range of suitors and legal functionaries. Whitelocke's yearly income from Chester, calculated by him at £1175. 3s. 9d. in 1623,¹⁴⁸ compared favourably with his subsequent earnings as Justice of the King's Bench, which Whitelocke assessed at £974. 10s. for the year ending Michaelmas term 1627,¹⁴⁹ or the £1002. 10s. he gained in fees during his last full year on the bench.¹⁵⁰ Given its

¹⁴⁵*Liber Famelicus*, p. 88.

¹⁴⁶*Liber Famelicus*, pp. 89-89.

¹⁴⁷BL Additional MS 53725, fol. 133.

¹⁴⁸BL Additional MS 53725, fol. 148.

¹⁴⁹BL Additional MS 53725, fol. 175.

¹⁵⁰BL Additional MS 53725, fol. 189.

lucrative nature, the reluctance on Whitelocke's part to vacate office in Chester until after he had ridden the circuit in 1624 is entirely understandable; fees from his last two appearances on the Chester circuit, as recorded in the *Liber Famelicus*, yielded £356. 9s. and £336. 5s. 3d. respectively, with a further £100. 7s. gained from work at Ludlow.¹⁵¹ Benefits peculiar to the Chester judgeship suggest other reasons for his reluctance to relinquish his provincial post for a more prestigious position in the King's Bench.

While it was unusual for an English judge to hold a recorder's office in the early modern period,¹⁵² it appears that Welsh judges were not placed under such constraints. As well as retaining the recordership of Woodstock,¹⁵³ Whitelocke's influence on the judicial circuit resulted in his election as recorder for four towns which lay on its path - Bewdley, Ludlow, Bishop's Castle and Welshpool - with retainers totalling £7 per annum as well as hay and horsefeed.¹⁵⁴ Beyond these professional perquisites, a range of informal benefits came to Whitelocke throughout his new office; the account of the bailiff of Bishop's Castle includes 6s. for "wyne bestowed upon Sir James Whitlock" during a visit to the town in 1622.¹⁵⁵ Whitelocke received Christmas presents for 1621 ranging from coal and wood to a small farmyard's worth of poultry, meat and other foodstuffs "easilye valued" at £50 by the recipient.¹⁵⁶ In 1623, when he encouraged Bulstrode to follow the assize circuit, his son was "treated with much kindness and civility, by the Judges,

¹⁵¹BL Additional MS 53725, fols. 151-152.

¹⁵²I owe this point to Wilfrid Prest. Whitelocke suggests that Chief Baron Bromley was recorder of Woodstock "when he was serjeant at law" (*Liber Famelicus*, p. 19), but on Sir Nicholas Hyde's creation as Lord Chief Justice in 1627, Sir Richard Hutton remarked: "Nota que fuit un exception in son oath quant al fees, *scilicet* d' prender nuls mes del Roy, savant come Recorder d' Bristowe... Cest ne fuit usuall, et fuit *in malum exemplum*"; ("Note that there was an exception in his oath as to fees, that is to take none but of the king, except as Recorder of Bristol... that was not usual, and a bad example"); Prest (ed.), *Diary of Sir Richard Hutton*, p. 70 (thanks to Professor Prest for help with this translation).

¹⁵³Williams, *Parliamentary History of Oxford*, p. 199.

¹⁵⁴*Liber Famelicus*, p. 95.

¹⁵⁵HMC 10th Report Appendix IV p. 403 (Corporation of Bishop's Castle MS fol. 132).

¹⁵⁶*Liber Famelicus*, pp. 92-93.

Counsellors[,] officers and others, and by the gentlemen in the severall Countyes".¹⁵⁷

Appointment to the office of Chief Justice of Chester placed James Whitelocke at the centre of royal administration over a wide area reaching south and west from the county palatine of Chester into Wales and the English border shires. Whitelocke moved to secure his influence in the Cheshire region by negotiating the marriage of his daughter Elizabeth to Sir Thomas Mostyn, whose father Sir Roger was a prominent member of the Flintshire gentry. In return for a marriage portion of £2500 (brought down from £3000 by Whitelocke in protracted negotiations) the marriage secured for the Whitelocke family a lasting importance in the region, with the guaranteed inheritance of Mostyn's extensive landholdings in Carnarvon, Flint, Denbigh and Chester to the first male heir from their union.¹⁵⁸

In 1620, Sir Francis Bacon urged the newly appointed Chief Justice Whitelocke to "Fly all bribery and corruption, and preserve your integrity";¹⁵⁹ as Bacon was shortly to find, the line between a gift and a bribe was easily blurred in the early modern period.¹⁶⁰ In the *Liber Famelicus*, Whitelocke implied his understanding of the nature of judicial integrity in his praise of Sir Edward Coke, "the most just, honest, and incorrupt judge that ever sate on benche".¹⁶¹ Whitelocke made a point of suggesting the kinds of influences that Coke resisted, such as "the sollicitation of great men or frendes", the "danger of briberye", and the provision of "money or plate to have his favour".¹⁶² Whitelocke's record of a range of "presents" given to him in Chester, totalled among the yearly profits of his fees in his list of accounts, suggests the difficulties that he faced in establishing a clear line between a "gift" and a "bribe".¹⁶³

¹⁵⁷*Diary*, p. 51.

¹⁵⁸University College of North Wales, Mostyn MS 7294; Clwyd Record Office, Mostyn MS D/M/3608 (cited in *Diary*, p. 50); *Liber Famelicus*, p. 94.

¹⁵⁹*Liber Famelicus*, p. 79.

¹⁶⁰Cf. Prest, *Rise of the Barristers*, p. 304, *idem*, 'Judicial Corruption in Early Modern England', *Past & Present* 133 (1991), p. 70.

¹⁶¹*Liber Famelicus*, p. 51.

¹⁶²*Liber Famelicus*, p. 50.

¹⁶³BL Additional MS 53725, fols. 133, 139.

In light of widespread contemporary criticism of early modern judges for bribery and corruption,¹⁶⁴ Whitelocke's lists of profits arising from his work in Chester are highly interesting, if also difficult to interpret.¹⁶⁵ In November 1623, for example, he received £2. 4s. from "Williams the new attorney", £5 from "Humfrey Aryd the attorney", £5 from [David] "Morris the attorney", and £5 from "Taylor the attorney" (although the sum provided by a "new" attorney was usually greater than that paid by an established one).¹⁶⁶ Prest has questioned the restrictions against corruption (if any) in the oaths taken by judges outside the common-law courts at Westminster;¹⁶⁷ in his oath as Chief Justice of Chester Whitelocke swore that he would avoid corruption, and that justice would be "be duly and indifferently administered",¹⁶⁸ but was exempt from the more specific obligations of the common-law oath not to "take fee nor robe of any man... and... no gift or reward by themselves, nor by other... except meat and drink, and that of small value".¹⁶⁹ The range of "gifts" which Whitelocke gratefully received from clients between 1620 and 1624 suggests that the integrity of the Chester judiciary was less strictly monitored than at Westminster. Whitelocke's detailed record of the way in which he built up a healthy income in Chester suggests that his own mind was at peace on this matter, and one is left to speculate upon the effects on Whitelocke's courtroom conduct, in an area with "formidable difficulties of fact and interpretation".¹⁷⁰ I have noted that while some of his contemporaries suspected that Whitelocke had paid Buckingham for his Chester appointment, he was later cleared of this charge by a parliamentary committee;¹⁷¹ I have found no other suggestions of corruption or bribery to have been laid against him during or after his judicial career.

¹⁶⁴See Prest, 'Judicial Corruption in Early Modern England', pp. 67-95.

¹⁶⁵See Aylmer, *The King's Servants*, pp. 177-179.

¹⁶⁶BL Additional MS 53725, fol. 148.

¹⁶⁷Prest, 'Judicial Corruption in Early Modern England', p. 80.

¹⁶⁸Rymer (ed.), *Foedera*, vol. 7, p. 31.

¹⁶⁹Quoted in Prest, 'Judicial Corruption in Early Modern England', p. 71.

¹⁷⁰Prest, 'Judicial Corruption in Early Modern England', p. 69.

¹⁷¹*History of Parliament Trust*.

However aware Whitelocke may have been of the potential of "gifts" to affect the course of justice, he also faced an equally thin line between petition and solicitation in the many letters that sought to curry his favour for other purposes.¹⁷² In 1624, Sir Roger Mostyn was petitioned by the Wynn family to "procure Sir James Whitelocke's letter to the justice of the peace of their county in the behalf of Jack Mostyn" for election to the county of Anglesey; while Mostyn's son was returned, Whitelocke's response to this request is uncertain.¹⁷³ Throughout Whitelocke's career, other suitors used whatever leverage they could acquire by way of political influence or kinship ties to gain Whitelocke's support. In 1623 the earl of Bridgewater asked that his cousin Piers Holland "may find your courteous acceptance" as the "partaker of your lawful and just favours", qualifying his open solicitation of Whitelocke with the remark that it "never was my breeding... to loose my labour in going about to draw partiality or undue respect from a learned and religious judge".¹⁷⁴ Bridgewater's request stresses the delicacy of Whitelocke's position in an age when even the greatest figures of the law were open to attack for abuse of office. Whitelocke was careful to maintain a stance of judicial independence, while using his judicial stature to pursue family interests. Bulstrode begrudgingly acknowledged the purity of his father's actions when he reflected that James Whitelocke "shewed to him no more countenance or favour then to other practisers [on circuit], to satisfy his own conscience and testefy his impartiality".¹⁷⁵

Kevin Sharpe has recently commented that "From the point of view of the king and Council, the judges provided a rare, indeed unique, occasion of direct contact between the centre and the locality".¹⁷⁶ King James's vague mandate for the Chief Justice of Chester to oversee the execution of justice by "any Sheriffs, Justices of

¹⁷²Such negotiations were not always direct; see for example HMC Cowper I, p. 307, (Coke MS), 19 May 1627, 'Ralph Bormington (senior) to Sir John Coke', in which Bormington asked Coke to help him furnish bail, "Judge Whitlocke willing to accept bail".

¹⁷³Gruenfelder, *Influence in Early Stuart Elections*, p. 105.

¹⁷⁴HHL Ellesmere MS 6472. Draft of Bridgewater to Sir James Whitelocke, 11 April 1621. I owe this reference to Wilfrid Prest.

¹⁷⁵*Diary*, p. 60.

¹⁷⁶Sharpe, *The Personal Rule of Charles I*, p. 424.

the Peace, Mayors, Bayliffs, Constables, Stewards, Escheators, Coroners, Gaolers, Jurors, Cryers, Clerkes, or anie of the Officers or Mynisters of Justice or their Deputies" asked Whitelocke to oversee an administrative chain which stretched across the counties in which he held his commissions.¹⁷⁷ When his need to consider the regular directions coming from the centre is also taken into account, one can appreciate the size of the task before him. Upon accepting office in Chester, Whitelocke professed his ambition to carry out his duties in such a way as to not be placed "behinde the best of those that have gone before me".¹⁷⁸ On balance, he probably achieved his aim.

¹⁷⁷Rymer (ed.), *Foedera*, vol. 7, p. 20.

¹⁷⁸*Liber Famelicus*, p. 81.

CONCLUSION

"Voices of the Mind": James Whitelocke's Mental and Moral Theatre

In his study of political consciousness in early modern England, James Daly has evoked the image of a "mental theatre, in which the human body was the stage for a never-ending drama."¹ By discussing the dominant influences in his professional life, this thesis has attempted to place James Whitelocke upon the physical stage; it remains to outline the parameters and paradigms of his inner, mental world. In recent years, historians have selectively applied the cross-disciplinary insights of the social sciences and literary criticism to investigate the mental and cultural constructs of the early modern age.² Summing up a range of methodological problems faced by the cultural historian, Deborah Shuger has asked how one can best interpret the "content of culture" through the "textual traces of dead people", perceptively noting that while historical texts "remain with their constructions of meaning", the rest of the cultural evidence has, for the most part, "like an 'insubstantial pageant faded.'"³

James Whitelocke's outlook is, at first glance, full of contradiction. Well versed in the claims of civil lawyers, with whom he trained at Oxford between the ages of eighteen and twenty-one, he was in his thirties and forties a particularly outspoken advocate of English common law. A firm supporter of the king throughout his life, he was during his years as an MP a vocal spokesman for parliamentary rights. Thoroughly educated in Continental traditions, Whitelocke nonetheless maintained a

¹Daly, 'Cosmic Harmony and Political Thinking in Early Stuart England', p. 19.

²Cf. Fergusson, *Clio Unbound*; Greenblatt, S., *Shakespearean Negotiations: The Circulation of Social Energy in Renaissance England* (Berkeley 1988); Grafton, A., 'Renaissance Readers and Ancient Texts: Comments on Some Commentaries', *Renaissance Quarterly* 38 no. 4 (1985), pp. 625-649; Ong, W.J., *Interfaces of the Word: Studies in the Evolution of Consciousness and Culture* (Ithaca 1982); Pocock, J.G.A., *Politics, Language and Time: essays on political thought and history* (London 1972); Skinner, *The Foundation of Modern Political Thought* and collected essays in J. Tully (ed.), *Meaning and Context: Quentin Skinner and his Critics* (Princeton 1988); Shuger, D.K., *Habits of Thought in the English Renaissance: Religion, Politics, and the Dominant Culture* (Berkeley 1990) and the collected essays in Shuger & Jardine (eds.), *From Humanism to the Humanities*.

³Shuger, *Habits of Thought in the English Renaissance*, pp. 4-5.

fiercely Anglocentric world view. Perhaps most peculiar of all, of Calvinistic leanings, he maintained lifelong friendships with a range of prominent Arminian clerics including William Laud, the man who, it has long been argued, fractured the delicate religious accord between radical and conservative Protestants almost single-handedly.⁴ That James Whitelocke's own religious and legal stance is difficult to place comfortably within a framework of historiographical generalizations is understandable, given his peculiar, perhaps unique social and professional position. As we have seen, Whitelocke was one of a handful of men qualified to practice both in civil and common law in early Stuart England (legal codes whose jurisdictional disputes in the early decades of the seventeenth century are well attested). More particularly, his BCL was pursued at St John's College Oxford, an undoubted hotbed of Arminian teaching, while his training in common law occurred at the Middle Temple, an institution which was never wholeheartedly receptive to the Arminian design for a reformed clergy.⁵

As a member of the dominant culture of early Stuart England, James Whitelocke was always close to the principal political, religious, and academic institutions of the period: the royal court, parliament, the Inns of Court, and the universities.⁶ Over the preceding chapters, we have followed him through these institutions. One might reasonably ask how possible it is to relate the stimulus of these different environments, long since vanished, to James Whitelocke's mental outlook, which is recoverable only through the historical texts which remain. A good starting point, undoubtedly, is to consider the relationship between his environment and his outlook, before moving to the more difficult question of how his perception of reality informed his written and spoken thoughts. Similar questions have engaged the mind of sociocultural psychologists over recent years; their exploration of the

⁴Cf., for example, Hawkins, M., 'The Government: Its Role and Its Aims' in C. Russell (ed.), *The Origins of the English Civil War* (London 1973), pp. 61-62; Collinson, P., *The Religion of Protestants: The Church in English Society 1559-1625* (Oxford 1982), p. 90; Sharpe, K., 'Archbishop Laud', *History Today* 33/8 (1983), p. 29.

⁵See ch. 2 above, and cf. Prest, *Inns of Court*, pp. 190-219.

⁶Shuger, *Habits of Thought in the English Renaissance*, p. 5.

"voices" at work in the construction and presentation of ideas offer the historical biographer food for thought.⁷

Working from the logical premise that "action is mediated and that it cannot be separated from the milieu in which it is carried out", a sociocultural approach to the mind attempts to define ways to recognize "the essential relationship between these processes and their cultural, historical, and institutional setting".⁸ Recently, J.V. Wertsch has investigated the psychological mechanisms linking speech, thought and public action. Defining the individual as in constant interaction with his or her environment, Wertsch uses the "dramaturgical action" or public presentation of an individual as an entry point into an analysis of the mind.⁹ He thus links an inner or mental construct to a public environment, suggesting that a particular inner voice is "privileged" in a particular setting.¹⁰ Following Bakhtin, he calls for the identification of "speech genres", of which any human being has several in their repertoire, to tie public discourse back to its hidden assumptions and influences. Wertsch concludes:

Because the production of any utterance involves the appropriation of at least one...
speech genre, and because these social speech types are socioculturally situated...
meaning is inextricably linked with historical, cultural, and institutional setting.¹¹

The notion of a repertoire of inner "voices" within the boundaries of a single mindset has much to offer, as an interpretative tool, for the historical biographer. As James Whitelocke's contemporary John Selden himself remarked: "When men comfort themselves with philosophy, 'tis not because they have gott two or three

⁷Price-Williams, D., 'Toward the idea of cultural psychology: A superordinate theme for study', *Journal of cross-cultural psychology* 11 no. 1 (1980), pp. 75-89; Shweder, R.A., 'Cultural psychology-What is it?' in *Thinking Through Cultures: Expeditions in Cultural Psychology* (Harvard Mass. 1991), pp. 73-110. Pioneering attempts at applying psychological perspectives to early modern history include Greenblatt, S., 'Psychoanalysis and Renaissance Culture' in P. Parker & D. Quint (eds.), *Literary Theory/Renaissance Texts* (Baltimore 1986), pp. 210-224 and Taylor, C., *Human agency and language: philosophical papers 1* (New York 1985).

⁸Wertsch, J.V., *Voices of the Mind: A Sociocultural Approach to Mediated Action* (Cambridge Mass. 1991), pp. 15, 6.

⁹Wertsch, *Voices of the Mind*, p. 10.

¹⁰Wertsch, *Voices of the Mind*, p. 14.

¹¹Wertsch, *Voices of the Mind*, p. 66.

sentences, but because they have digested these sentences, and made them their own".¹² What we know of James Whitelocke comes overwhelmingly from his own writings, or from written records of his speech. In advancing the claim that each text he has left us is (in the words of Quentin Skinner) "an object linked to its creator",¹³ it may prove of value to consider the "voices" at work in the construction of these texts; to consider, as it were, the sentences which James Whitelocke "made his own".¹⁴ For if Whitelocke's seemingly inconsistent views are to be accurately interpreted, it is important to see that his outlook was not determined by the *boundaries* of his knowledge, but the psychological assurances which held his world together.

Four "voices", four dimensions; political and religious; public and private:

This thesis began with an investigation of James Whitelocke's educational formation, through which he acquired a voice with which to take the public stage, beginning with an oration performed before the seniors of St John's College and Merchant Taylors' Company. To appreciate the complex relationship between past and present at work in this voice, one must reflect upon an educational process which placed much emphasis on the didactic force of the classical-patristic tradition.¹⁵ Whitelocke's profession also placed great weight on intellectual and rhetorical ability;¹⁶ an important part of life for him was a search for the right words. Here (to use Gerald Cragg's words) a "seemingly incongruous combination of the

¹²Singer, S.W. (ed.), *Table Talk of John Selden* (London 1847), p. 93.

¹³Skinner, 'Motives, Intentions and the Interpretation of Texts', p. 408.

¹⁴See Waswo, R., *Language and Meaning in the Renaissance* (Princeton 1987), p. 305: "Language does not keep us out of the world, it lets us into it, allows us to possess it... And the more kinds of discourse we learn, the more communities of discourse we master, the richer we can make our possession of all the worlds shaped by those discourses." But for the problems inherent in such an approach compare Bolgar, *The Classical Heritage and its Beneficiaries*, pp. 9-10; Sharpe, *Politics & Ideas*, pp. 4-9; and the range of articles in Tully (ed.), *Meaning and Context*.

¹⁵Croll, M.W., *Style, Rhetoric and Rhythm* (Princeton 1966); Momigliano, A., 'Ancient History and the Antiquarian' in *Studies in Historiography* (New York 1966), pp. 1-39. Recent studies that have begun to seriously explore the impact of this education beyond its narrower allegorical and stylistic implications include Grafton, 'Renaissance Readers and Ancient Texts', pp. 615-649; Salmon, J.H.M., 'Stoicism and Roman Example: Seneca and Tacitus in Jacobean England', *Journal of the History of Ideas* 50 no. 2 (1989), pp. 199-225.

¹⁶Baker, 'Learning Exercises in the Medieval Inns of Court and Chancery', p. 22.

ancient and modern" conveyed to his listeners an educational background which marked him within a social élite.¹⁷ In a speech given upon his appointment as Chief Justice of Chester in 1621, Whitelocke quoted in rapid succession from the biblical story of Jacob and Benjamin, Tacitus's *Histories*, Isaiah and Ecclesiastes to express, in a somewhat contorted analogy, his respect for his predecessor and gratitude for the appointment.¹⁸ To the modern reader, Whitelocke's deployment of ancient authorities appears jarring, almost pretentious; his listeners were more accustomed to a style of speech which acknowledged a strong debt to the classical and Judeo-Christian past.¹⁹ In a second speech, made on his appointment to the King's Bench, Whitelocke moved back and forth between Latin and English, quoting from, or alluding to, the homilies of St Gregory, Seneca, Tacitus, and the "notable statute of 34 Henry VIII" (cap. 26) which erected "two armes of justice" treating Crown and civil pleas in the Principality of Wales.²⁰ Towards the end of the speech, Whitelocke quoted "the observation of Christe in St. Matthew "To him that hathe it shall be given'", concluding with the biblical command of Deuteronomy, "*juste persequi quod justum est*, which by God's grace, I will ever endeavour to observe".²¹ Grafton has proposed that early modern readings of classical texts were at once "historical" and "classical", simultaneously treating the past on a literary and an historical plane.²² The public speeches of James Whitelocke suggest that in a world where literary convention was dominated by allegory, the constant intertwining of past and present for rhetorical effect could blur clear definitions between history and myth.

Shuger has remarked upon an "interpretative schizophrenia" pervading humanist methodology, which presupposed the relevance of the past to present concerns.²³

¹⁷Cragg, *Freedom and Authority*, p. 11.

¹⁸*Liber Famelicus*, pp. 86-87.

¹⁹Bolgar, *The Classical Heritage and its Beneficiaries*, pp. 9-10.

²⁰*Liber Famelicus*, pp. 98-99. 34 H. 8 cap. 26: 'An act for certain Ordinances in the King's Dominion and Principality of Wales'.

²¹*ibid.* (Matthew 25:29; Deuteronomy 16:20).

²²Grafton, 'Renaissance Readers and Ancient Texts', p. 631.

²³Shuger, *Habits of Thought in the English Renaissance*, p. 261.

To complement Shuger's remark, one might suggest a second form of "interpretative schizophrenia" operating in James Whitelocke's mind between English and Continental traditions. In his speeches to the Society of Antiquaries, Whitelocke moved fluidly between English and continental sources, making no distinction between Fortescue and Livy if they were relevant to his topic, and probably appreciating the chance to show his breadth of his knowledge. Despite this, I would argue, he maintained a characteristically "English" appreciation of European culture, in which respect for Western literature, to which he laid claim intellectually, was coupled with a basic suspicion of "foreign" ways. As his family's foreign adventures had led to much misery in James Whitelocke's eyes, it is not surprising that when his son asked for permission to travel abroad, he was redirected to visit the antiquities of his own country.²⁴ Psychologically, James Whitelocke was always inclined to feel safer on home soil. Here paranoia about the Church of Rome, whose spokesmen often linked their attacks on the English church to the parochial ignorance of its adherents, cannot be underestimated. When polemicists such as the Jesuit Robert Parsons mocked the "rhetorical exaggerations" of Sir Edward Coke's *Reports* as they came to print,²⁵ Whitelocke and many of his associates were inclined to retreat from foreign gardens into a professional *laager* where common-law propagandists (not the least Coke) made high claims for native custom.²⁶

It is at times easy to forget the importance of God's all-seeing presence in the psyche of those who walked the early modern stage. Without incorporating a narrow, eschatologically-driven view of history as the framing element, James Whitelocke's *mentalité* is unapproachable. By placing the entire weight of human experience between the Fall and the Judgment, Christian faith made life for

²⁴*Diary*, p. 51.

²⁵*An Answer to the Fifth Part of the Reportes Lately set forth by Syr Edward Cooke, knight, the Kinges Attorney generall* (St. Omer 1607), 'Epistle Dedicatory to Sir Edward Coke'.

²⁶Cf. Prest, W.R., 'The Art of Law and the Law of God: Sir Henry Finch (1558-1625)' in D. Pennington & K. Thomas (eds.), *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill* (Oxford 1978), p. 101.

Whitelocke an individual pilgrimage reflecting a greater, divine design to be completed in eternity.²⁷ In all aspects of life, Whitelocke saw a worldly stage which reflected the hand of its creator, from whom all history flowed and from whom it would, at his command, return.²⁸ It was in the analogous patterns of divine order, reflected in the social structures of the Jacobean world, that security was found in an environment where life was often short and social order in delicate balance.²⁹

James Whitelocke's personal reflections upon his spiritual journey through life, most fully recorded in the will he personally prepared in the year of his death,³⁰ suggest a strongly Calvinistic perspective; thanking God for his worldly success, he clung to the hope that his prosperity was a sign that he had been chosen as a member of God's holy elect. In the preamble to his will, Whitelocke, "hoping for eternall rest after my travayle in this restless life", reflected that in his worldly "pilgrimage... I have plentifully tasted of God's blessinge", committed his soul "into the hands of God trusting to be made an inheritor of his heavenly kingdome by the death and passion of my Savyor Jesus Christ".³¹ In public and in private, it is notable that as his life ended, James Whitelocke "expressed fully his assurance of the love of God to him".³² Despite Whitelocke's Calvinistic assurance of his own salvation, it is interesting to note that while Bulstrode twice specifically referred to his mother Elizabeth as a Puritan,³³ he remembered his father simply as "one that truly feared God".³⁴ On a personal level, as Shuger has pointed out, the experiential differences between an Arminian and a Calvinist outlook were not vast; while Arminians held

²⁷Bloch, M., *The Historian's Craft* (trans. P. Putnam, Manchester 1967), pp. 4-5. Cf. below the epitaph Whitelocke wrote for himself at the end of life, his prayer of 1625 and the preamble to his will; VCH Buckinghamshire, p. 563 (translated in the appendix); Longleat Papers vol. 24, fol. 157; PRO PROB 11/162/113.

²⁸Baker, *The Race of Time*, p. 54.

²⁹Bouwsma, 'Anxiety and the Formation of Early Modern Culture', pp. 215-246.

³⁰*Diary*, p. 66.

³¹PRO PROB 11/162/113. See Alsop, J.D., 'Religious Preambles in English Wills as Formulae', *Journal of Ecclesiastical History* 40 no. 1 (1989), pp. 19-27; Marsh, C., 'In the name of God? Will-making and faith in early modern England' in G.H. Martin & P. Spufford (eds.), *The records of the nation: the Public Record Office, 1838-1988* (Woodbridge 1990), pp. 61-66.

³²*Diary*, p. 66.

³³*Diary*, pp. 44, 63.

³⁴*Diary*, p. 66.

that a person could fall from grace, Calvinists could never be entirely sure that they were counted among the elect.³⁵ An undated prayer composed by Whitelocke, possibly during an outbreak of plague in 1625, survives among the family papers.³⁶ Perhaps the only truly "private" voice he has left us, its penitent tone reinforces the sense that for Whitelocke faith was a deeply personal matter.³⁷

Addressed to the "most powerful and mercifull God", Whitelocke wrote reflectively:

I humblye acknowledge that I am an unworthy sinner in thought word and deed for which I am heartily sorry and doe earnestly repent of all my misdoings, and fly to the bosom of my blessed saviour to mediate to thy mercy for me and for his sake beseech the pardon of all my faults past, and give me grace to lead a more godly life everafter.³⁸

Whitelocke thanked his "deare father" for deliverance "from the perils of this last night" and gave thanks "for thy blessings in my wife, my children, my friends, my fortunes". Seeking the continued security of God's hand, he sought guidance "in this ensuing day and my whole life time", asking for blessings "in all the courses of my life thou knowest to be fittest for me. Bestow them uppon me I most humbly beseech thee for his sake who thou taught us to pray: *Our Father...*".³⁹ As so many of the "blessings" he had tasted in life had come from the friendship of high-church clerics who had openly supported his career since his student days, he may well have felt that these men were best left to face God with their own consciences. Sane men will avoid conflict where they can, and Whitelocke's religious tolerance reflects back, in this sense, not merely upon his theological perspective, but also upon his temperament. In this sense, James Whitelocke's unusual religious perspective

³⁵Shuger, *Habits of Thought in the English Renaissance*, p. 8.

³⁶*Diary*, p. 53

³⁷Of course, seventeenth-century religious "toleration" is not to be confused with the modern sense of the word, in which tolerance usually derives from religious indifference.

³⁸Longleat Papers vol. 24, fol. 157.

³⁹*ibid.*

relates back to the effects of his educational environment during his formative years at St Johns.

While Croft and Atherton have recently emphasized the relationship between private places of worship and spiritual beliefs,⁴⁰ Peter Lake has directed attention away from theological issues to consider the visible emphasis of Arminianism on sacramental grace and participation in religious rites as a catalyst for religious disharmony.⁴¹ At the consecration of his private chapel at Fawley Court in 1631, Whitelocke invited not his Arminian friends, but John Williams, Bishop of Lincoln, and Robert Wright, Bishop of Bristol, as he sought to avoid confrontation over the design of the chapel.⁴² Interestingly, in light of Sir Richard Hutton's observation that Whitelocke liked "organs and cathedral anthems",⁴³ Bishop Williams was treated to a display of organ music by John Oakely, Whitelocke's personal chaplain, William Ellis, his organist,⁴⁴ and some of his servants, who were apparently "excellent musitians".⁴⁵ The quality of the music was such that it led Williams to remark that "no subject in Christendom had better musicke then Judge Whitelocke had in his house", apparently without any objection.⁴⁶ The design of the chapel caused greater controversy. Bulstrode recalled that some of those gathered objected to it on three grounds:

1. That the pulpit was placed even with the Communion Table.
2. That the Altar was not rayled in.
3. That there were no Images or Crucifixes in the Walles or windowes...⁴⁷

⁴⁰Croft, P., 'The Religion of Robert Cecil', *Historical Journal* 34 no. 4 (1991), pp. 773-796; Atherton, I.J., 'Viscount Scudamore's Laudianism: The Religious Practices of the First Viscount Scudamore', *Historical Journal* 34 no. 3 (1991), pp. 596-597.

⁴¹Lake, 'Calvinism and the English Church', pp. 74-75.

⁴²Williams was himself a Calvinist, and went on publicly to defend the kind of design used by Whitelocke at Fawley against Arminian criticism; Tyacke, *Anti-Calvinists*, p. 209.

⁴³Prest (ed.), *Diary of Sir Richard Hutton*, p. 91.

⁴⁴BL Additional MS 53726, fol. 69, quoted in *Diary*, p. 67 n. 1.

⁴⁵*Diary*, p. 65.

⁴⁶*ibid.*

⁴⁷*Diary*, p. 65

Whitelocke, characteristically, refused to be drawn on the matter, avoiding questions he "thought not fitt to answer".⁴⁸ As in other, similar incidents, Whitelocke's stance on this occasion raises more questions than it answers. While Ruth Spalding has called his son Bulstrode an "Improbable Puritan",⁴⁹ James Whitelocke was hardly more probable, unless we accept that doctrinal Calvinism did not necessarily equate with anti-Arminianism even in the last decades before the Civil war.⁵⁰ Whatever doubts he may have had about the wisdom of Laud's Arminian zeal towards the end of his life, in public Whitelocke refused to be drawn into dispute.⁵¹ In 1610 he advised "any churchmen" who might "endeavour by application of the text of scripture, to overthrow the antient law and liberties of the kingdom... to be admonished by the ill success of the cardinal [Wolsey]... and the miserable catastrophe of his whole life and fortunes".⁵² Four years later, when called to serve on a parliamentary committee that sought to punish his friend and client Richard Neile for absolutist remarks made in the House of Lords, he remained conspicuously silent.⁵³

Whitelocke's loyalty to his clients and patrons continued throughout his life, as the issue of Arminian influence on the rites of the Church became more controversial. In 1628 Peter Smart, a prebend who had been excluded from Durham cathedral for preaching against Neile and his followers in Durham, brought charges against the chapter at the Durham assizes.⁵⁴ Serving as the senior justice of the August assizes, Whitelocke rejected Smart's indictment, which argued that the communion table was placed the wrong way, and that the Creed was sung and lights

⁴⁸*ibid.*

⁴⁹Spalding, *The Improbable Puritan. A Life of Bulstrode Whitelocke 1605-1675*.

⁵⁰Cf. Tyacke, N., 'Puritanism, Arminianism and Counter-Revolution' in Russell (ed.), *Origins of the English Civil War*, pp. 121-122. Whitelocke's stance appears to best fit the interpretation provided in Morrill, J.S., 'The Religious Context of the English Civil War', *Transactions of the Royal Historical Society*, 5th Series no. 34 (1984), pp. 155-178.

⁵¹I noted above Bulstrode's recollection of his father's view that Laud was "too full of fire, *though a just and good man*" (my italics), but the important point is that this view was never made public.

⁵²*State Trials*, vol. 2, col. 485.

⁵³*Proceedings in Parliament 1614*, p. 346.

⁵⁴James, *Family, Lineage and Civil Society*, p. 119.

and tapers were used during mass. Both Neile and Laud would have been pleased with John Cosin's report that Whitelocke:

rejected the indictments in open court, letting the country know that he knew no law whereupon they should be grounded; and adding, that the man deserved no small punishment who, in this unwonted sort, had gone about to disgrace the Church, and dishonor the solemnity of God's service there where himself had been an eye and ear witness that all things were done in decency and order.⁵⁵

They would have been less happy the comments of Whitelocke's old friend Sir Henry Yelverton, who encouraged an assize jury in the following year to prefer the "indictments... which Judge Whitelock had rejected last year", adding that he "objected to organ playing, which he termed whistling" and that he "had always been accounted a Puritan, and he thanked God for it, and so he would die".⁵⁶ As historians are always likely to pay attention to the more visible Calvinist critics of Arminianism, James Whitelocke's eirenic approach makes an interesting comparison.

A final incident stresses the increasing difficulties Whitelocke faced as he attempted to remain impartial in an increasingly heated political atmosphere. Early in 1629 ten Jesuits were seized at Clerkenwell College, only to be released on bail at a King's Bench hearing held before Chief Justice Hyde.⁵⁷ Charges were quickly laid in parliament that while "plain treason was prov'd" at the trial,⁵⁸ the judges had refused to read papers providing important evidence for the prosecution.⁵⁹ Replying to Sir Thomas Hoby's imputation in the Commons on 16 February 1628/29 that he had announced his personal intention in the trial "to doe right to all" at the trial,⁶⁰ Whitelocke suggested that, although he was present for two days of the trial, "it was

⁵⁵CSPD *Charles I 1628-29*, p. 259, 'Aug 19. Dr John Cosin to Bishop Laud, London'; cf. Ormsby, G. (ed.), *The Correspondence of John Cosin, D.D., Lord Bishop of Durham*, 2 vols., Sturtees Society 52 & 55 (London 1868 & 1870), pp. 145-146.

⁵⁶CSPD *Charles I 1629-31*, p. 15, '19 July 1629 Dr John Cosin to Bishop Laud, London'.

⁵⁷Gardiner, *History of England*, vol. 8, p. 57.

⁵⁸Crew, T., *The proceedings and debates of the House of Commons* (London 1707), p. 104.

⁵⁹Notestein, W. (ed.), *Commons Debates for 1629* (Minneapolis 1921), p. 153.

⁶⁰Notestein, *Commons Debates for 1629*, p. 216.

late before he returned from dinner... and the evidence given before his return".⁶¹ He informed Sir Thomas Barrington that he knew of "no evidence of papers read after his coming to the Sessions".⁶² These answers evaded the real issue: Charles I had personally commanded the judges to grant bail to the priests, by an order sent via the earl of Dorset.⁶³ Clearly, Whitelocke's attempts to avoid confrontation were becoming strained by the changing political landscape that emerged in the reign of Charles I. Whitelocke's death in 1632 allowed him to maintain a compromising stance that would have been almost untenable by the late 1630s, by which time the effect of the Laudian establishment was more powerfully felt. As in secular politics, he saw that storm clouds were gathering but was fortunate enough to avoid the deluge.

Beyond religion, the strongest social celebration of "cosmic harmony" in James Whitelocke's mind came from his own preoccupation with law. If it is fair to talk of a "common-law mind" in early Stuart England, it was surely exemplified within the boundaries of James Whitelocke's mental outlook. As the profession to which he had "ever" aimed from his youth, the common law was to provide a crucible in which Whitelocke's religious, political and social views were fired and refined over his life.⁶⁴ As the *Liber Famelicus* suggests, Whitelocke was no less fond of the professional mystique of the law than he was of its substantive workings in the courts. His careful description of its dress code, public ceremonies and speeches reflected some of the ways in which common lawyers celebrated group solidarity while engendering reverence towards the law.⁶⁵ Shared life usually fosters a sense of shared identity, and for Whitelocke the renewal of communal life, during legal terms at the Middle Temple and then Serjeants' Inn, undoubtedly led to a sense of

⁶¹Notestein, *Commons Debates for 1629*, p. 218.

⁶²Notestein, *Commons Debates for 1629*, p. 154. Cf. p. 82, in which Barrington is reported as saying that: "he had come late on the first day, and therefore understood not the business, and the second day was not there at all".

⁶³Gardiner, *History of England*, vol. 8, p. 57.

⁶⁴*Liber Famelicus*, pp. 13-14.

⁶⁵*Liber Famelicus*, pp. 74-76, 78-86, 95-99. Cf. Prest, *Rise of the Barristers*, pp. 258-260; Dean, J., *Middle Temple Hall: Four Centuries of History* (London 1970), pp. 6-12.

professional identification not easily appreciated in an age when guild *mentalité* has largely disappeared.⁶⁶ Prest has rightly emphasized the role of the inns in creating an *esprit de corps* among practicing common lawyers, which "underlies their continual assertion of the common law's supremacy over all other codes, especially canon and civil law."⁶⁷ Proud of their traditions and overtly sensitive to criticism, the solidarity of common lawyers was reinforced by a collective life at the inns which promoted a subculture full of professional mystique.⁶⁸ Whitelocke's recollection of Sir Edward Coke's request that as "one of his owne coat" he escort the Chief Justice around Windsor after a sermon in 1615 reflects one of the many ways in which lawyers affirmed social and professional ties.⁶⁹

Beyond a professional identity shaped from within, the expectation of a publicly-minded community continually tied James Whitelocke's social identity back to his professional expertise. It was a knowledge of the workings of the law which afforded him status with the merchants who controlled London's court of common council, with the mayor and aldermen of Woodstock, with the jury and judges of the local assize, with the provost and dean of those colleges by which he was employed, and with a range of gentry clients who sought his professional advice. Thus the law had a twofold social effect: serving as the primary source of definition within the ranks of his profession, it was through his legal identity that Whitelocke sought to claim status in the gentry community.⁷⁰ It was as a "lawyer", first and foremost, that Whitelocke became a knighted gentleman, and claimed status among a professional élite.

A range of scholarship over the past thirty years has investigated the links between Calvinism and the common law in early Stuart England.⁷¹ As a Calvinist

⁶⁶See Lemmings, 'Ritual and Law in Early Modern England', pp. 3-20.

⁶⁷Prest, *Rise of the Barristers*, p. 258.

⁶⁸Bouwsmas, 'Lawyers in Early Modern Culture', pp. 309, 315-317; Prest, 'Lawyers', pp. 68-69; Herrup, *The Common Peace*, p. 194.

⁶⁹*Liber Famelicus*, p. 48; cf. Baker, 'The Inns of Court and Legal Doctrine', p. 274.

⁷⁰Cf. Prest, *Rise of the Barristers*, pp. 25, 235-252.

⁷¹Cf. Hill, *Society and Puritanism*, pp. 162, 302-307, 330-342, 349-353; *Intellectual Origins of the English Revolution*, ch. 5; Prest, *Inns of Court*, pp. 209-219; *Rise of the Barristers*, pp. 226-

and a common lawyer, Whitelocke's political outlook bears thinking about. I have already suggested that over a long career James Whitelocke avoided discussing religion in his public speeches, which might lead one to conclude that religion was of little importance in shaping his "political" voice. In fact, nothing could be further from the truth. Whitelocke's reluctance to blend religious language with political discourse, at a time when "a concerted effort was made to 'remystify' church, state, and the social order", reflected a theological perspective in which majesty resided directly with a Creator, "the utterly absolute monarch a Stuart could only dream of being".⁷² While Calvinism in no way undermined the supremacy of the monarch, it did grant Whitelocke the psychological assurance he needed to question the actions of the king when he perceived these actions to be contrary to a political law which, he believed, mirrored the natural law by which God's divine plan was perfectly expressed.⁷³ In Whitelocke's contractual theory of kingship, grounded upon common-law notions of custom, Calvinist theology found a convenient psychological marriage with a medieval "demonstration" of the boundaries of polity, providing alternative constitutional emphasis to a resurgent doctrine of "divine right".⁷⁴

The existence of overlapping, and simultaneously competing bodies of political discourse in the Jacobean period has been convincingly demonstrated in the works of Shuger,⁷⁵ Tierney,⁷⁶ and more recently Burgess.⁷⁷ One tradition, employed by the king, bishops such as Richard Bancroft and Richard Neile and their civil-law theorists such as John Cowell, played selectively upon continental and native theological traditions, drawing parallels between royal and sacred power and

227; Tyacke, 'Puritanism, Arminianism and Counter-Revolution', p. 140; Eusden, *Puritans, Lawyers, and Politics*, *passim*.

⁷²Shuger, *Habits of Thought in the Renaissance*, pp. 124, 169.

⁷³Cf. Little, D., *Religion, Order and Law: A Study in Pre-Revolutionary England* (Oxford 1970), pp. 39-53; Sommerville, *Politics and Ideology*, pp. 105-108.

⁷⁴Cf. Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150-1650* (Cambridge 1982), pp. 106-108.

⁷⁵*ibid.*

⁷⁶*ibid.*

⁷⁷Burgess, *Politics of the Ancient Constitution*, pp. 139-178.

mystifying the king's prerogative. The other, drawing upon secular, medieval legal precepts, desacramentalized kingship somewhat by placing greater emphasis on the contractual obligation between the monarch and their subjects.⁷⁸ Here two points must be stressed. First, whether or not one accepts the rhetorical implications of James I's high claims for his divine right at face value, it was impossible for his subjects to avoid questioning them when they coincided with Crown actions which were perceived as innovations in the form of government. Second, while it is hardly surprising that there was a utilitarian aspect to the arguments of common lawyers such as James Whitelocke, and those of the clerics and civilians who aligned their own interests with a flattering view of the King's prerogative, this in no way undermines the constitutional significance of the debate. If an uncontested "language" of sovereignty had gained precedence it would then have been used to define the parameters of subsequent debate on the actions of the Crown. By framing a debate, language moves to control it - there is no doubt that "absolutist" rhetoric could be employed in the justification of political action less palatable in a "contractual" language of politics.⁷⁹ Anyway, whatever the rhetorical incentives, there is ultimately always a central relationship between the psychological process and political language. As Otto Heinze shrewdly remarked: "Man does not live by bread alone; he wants to have a good conscience when he pursues his vital interests."⁸⁰ In this sense, two styles of constitutional language reflected two contrasting styles of thought. As overlapping bodies of discourse on sovereignty competed for a public voice after 1603, a debate was carried on in the minds of those

⁷⁸Cf. Sommerville, 'James I and the divine right of kings: English politics and continental theory'; 'Richard Hooker, Hadrian Saravia, and the Advent of the Divine Right of Kings', *History of Political Thought* 4 no. 2 (1983), pp. 229-245; Christianson, 'Royal and parliamentary voices on the ancient constitution, c. 1604-1621'; Cragg, *Freedom and Authority*, ch 1, Eccleshall, *Order and Reason in Politics*, ch 3; Lammont, *Godly Rule: Politics and Religion, 1603-60* (London 1969) ch 2; Weston & Greenberg, *Subjects and Sovereigns*, ch 2.

⁷⁹I would acknowledge the pitfalls in generalizations about "absolutist" and "contractual" political theories (cf. Daly, J., 'The Idea of Absolute Monarchy in Seventeenth-Century England', *Historical Journal* 21 no. 2 (1978), pp. 227-229; Christianson, 'Royal and parliamentary voices on the ancient constitution, c. 1604-1621', pp. 72-78). I would add, however, that in assessing the revisionist/counter-revisionist debate on the coherence and relevance of pre-civil war ideology, there is need to reflect upon the *impact of particular claims* in the more controversial speeches of the Jacobean reign, as well as acknowledging the overall content of the speeches.

⁸⁰Quoted in Tierney, *Religion, law, and the growth of constitutional thought*, p. x.

who, like James Whitelocke, talked, listened and thought about the matter. For that reason, the boundaries of discourse operating in his political utterances is a significant issue.

I have argued above that in turning away from a "mystification" of royal powers, Whitelocke employed a competing, secular tradition of political theory. The coherence and currency of this brand of constitutional thought is hard to establish. Recently, Paul Christianson has argued that a "common law" political theory, in which Whitelocke's own thoughts played a significant role, can be traced back to Thomas Hedley's speech on impositions in the parliament of 1610.⁸¹ These shallow, utilitarian roots seem unconvincing. The work of Brian Tierney, demonstrating the intellectual debt of early modern political thought to medieval theorists, provides an important starting point for my own analysis of Whitelocke's understanding of government. By contrast with continental theories which placed majesty firmly in the hands of the prince, Tierney suggests the "fusing" of two highly developed medieval theories, one of corporate rulership and the other of mixed government, in one brand of seventeenth-century English political theory.⁸² In this theory the king as the head of church and state possessed unique powers, but was still required to rule with the counsel and consent of the political nation.⁸³ Ernst Kantorowicz has argued that in English concepts of government, there is "hardly a phrase or metaphor" which cannot be traced back to antecedents in the legal writings of the thirteenth century.⁸⁴ In the course of this thesis, I have tried to demonstrate that the dominant claims of James Whitelocke's parliamentary speeches flowed naturally from his understanding of the legal records of medieval England. Significantly, these records showed that successive monarches found it difficult to

⁸¹Christianson, 'The ancient constitution, c. 1604-1631', pp. 79-85, 94.

⁸²Tierney, *Religion, law, and the growth of constitutional thought*, pp. 81-102.

⁸³Tierney, *Religion, law, and the growth of constitutional thought*, p. 83; cf. Harriss, 'Medieval Doctrines in the Debates on Supply, 1610-1629', pp. 74-76, Roskill, J.S., 'Perspective in English Parliamentary History' in E.B. Fryde & E. Miller (eds.), *Historical Studies of the English Parliament*, 2 vols. (Cambridge 1970), vol. 2, pp. 296-323.

⁸⁴Kantorowicz, E.H., *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton 1957), p. 401.

avoid paying lip-service (if not making substantial political concessions) to their assembled representatives in parliament, "wherein [in the words of the Tudor monarch Henry VIII] we as head and you as members are conjoined and knit together in one bodie politic".⁸⁵

W.E. Klein has written that for members of the early modern political nation, parliament served not merely as a "powerful myth" but "a piece of mental furniture that shaped the outcome of events".⁸⁶ I have argued that belief in the reusable, reapplicable force of custom to guide current political concerns shaped James Whitelocke's political analysis. The precise effect of parliament upon his mental outlook is harder to establish: twenty years after a vocal claim for the supreme sovereignty of the king-in-parliament, he took a lesser view of parliamentary rights to prosecute MPs seeking parliamentary privilege from royal prosecution. We might criticize Whitelocke for failing to maintain a consistent line on the issue of parliamentary sovereignty, a change which could be attributed to a vagaries of age, temperament and experience as well as narrow self-interest. We must, however, acknowledge the fundamental dilemma he faced, along with all other proponents of "mixed monarchy" in the early seventeenth century: the system permitted neither the king, nor his parliamentary representatives, simply to arrogate the rights of the other. As Tierney points out:

If, in case of dispute, any one part of a mixed constitution could claim a higher authority than the rest, that part was ultimately sovereign and the principle of mixture was destroyed.⁸⁷

Bulstrode recalled that as he began his own parliamentary career in 1626, his father "gave him good counsell concerning his demeanour in Parlement", asking him to sit apart from the "mutineers"⁸⁸ and to follow "his own conscience and

⁸⁵Quoted in Tierney, *Religion, law, and the growth of constitutional thought*, p. 83.

⁸⁶Klein, W.E., 'Parliament, Liberty and the Continent in the Early Seventeenth Century: The Perception', *Parliamentary History* 6 no. 2 (1987), p. 210.

⁸⁷Tierney, *Religion, law, and the growth of constitutional thought*, p. 83.

⁸⁸Vocal critics of the Crown who tended to congregate in the gallery; see Spalding's notes in *Diary*, p. 53.

judgement", and "not to be engaged in any party or faction whatsoever".⁸⁹ Always one to seek a remedy rather than a dispute in cases of political friction, a personal attack on the monarch was for Whitelocke unthinkable, as he assumed that the existing system worked to the best interests of all. Mercifully, perhaps, James Whitelocke was never required to take sides in the constitutional breakdown that proved this assumption unfounded. For this reason, attempts to define Whitelocke's views in terms of "royalist" or "anti-absolutist" sentiment are inappropriate, as they force frameworks of definition upon Whitelocke which tell us little about the political assumptions that held his world together. By following Whitelocke's professional journey into its later stages, as he gained royal office as Chief Justice of Chester and then Justice of the King's Bench, one can see how this world was bound, in his mind, by the assurance that order was guaranteed in England by a unique balance which existed between the power of the monarch and the binding force of law.

Godfrey Goodman, Bishop of Gloucester from 1624 to 1640, remarked that to be a lawyer "was indeed to be a governor of one's country".⁹⁰ As an agent of the king's law James Whitelocke occupied, by virtue of his office, an important and relatively independent position in society.⁹¹ Always relating his own judicial authority back to the "king's regall power",⁹² Whitelocke conceived of this authority not in isolation, but in terms of an ordered social structure of which the king was only part, if the most important part.⁹³ Whitelocke's own role in this hierarchy, that of a "godly magistrate", is aptly reflected in two dedications made to him while he served as Chief Justice of Chester. William Hinde, a former fellow of Queen's

⁸⁹*ibid.*

⁹⁰Goodman, G., *The Court of King James I*, 2 vols. (London 1839) vol. 1, p. 294.

⁹¹The particular idiosyncrasies of individual judges will always play some part in the cases over which they preside. Unfortunately, as Cockburn has noted, in the early modern period it is extremely difficult to discern judicial attitudes from the court records; what we know of Whitelocke's judicial stance relies more upon the reflections of his contemporaries; Cockburn, 'Trial by the Book?', p. 75; cf. Prest's comments in *The Diary of Sir Richard Hutton*, p. xviii. Whitelocke's judgement in one King's Bench ruling is preserved in Harvard Law School MS 1083, fol. 50v.

⁹²Longleat Papers, vol. 21, fol. 109 (19). These autograph drafts are undated and often largely incomplete; they are re-numbered sequentially from fol. 100 as (1).

⁹³Cf. Daly, 'Cosmic Harmony', p. 11.

College appointed preacher at Bunbury in Cheshire, exhorted Whitelocke and his associate Marmaduke Lloyd that in:

their employment in the service of God and King... as the Lord hath made you to be of one heart, and one minde, in the profession of the Gospell, so will hee (I hope) move you to joyne heart and hand together, as one man, in the protection of the Law also, so far as you shall find it no Adversarie, but a Friend; no let or hindrance, but a help and furtherance to the Gospell.⁹⁴

Augustine Taylor, preacher at Hawarden in the same county, reminded Whitelocke and Lloyd in a rhyming dedication to *The Epistle of the Lord to his Bride* (London 1623): "The Law without the Gospell is too severe, Without the Law the Gospell is too mild". The theological emphasis of these dedications was for writer and reader alike not mere Puritanical rhetoric, but a serious reflection on the judges' role as "fathers" of the country.⁹⁵ More than a professional or social tool, the law provided James Whitelocke with a glimpse of God's ordained plan for the society in which he lived.

Seeing the law as "an ideological cement which held society together", J.A. Sharpe has suggested that this cement "would only prove effective as long as the masses believed in the rule of law".⁹⁶ In a series of judicial charges drafted over his career, Whitelocke suggested the binding role of law in his understanding of the interrelation of cosmic and social order.⁹⁷ The common law of England was, he assured one jury, "drawne from the law of God, of Nature, of nations".⁹⁸ Working deductively from God's commandment that "thou shalt not covett thy neighbours house, nor his oxen nor his asse nor any thing that is his", Whitelocke instructed another jury that formal definition of this principle in society came from the "lawes

⁹⁴Hinde, W., *The Office and Use of the Morall Law of God in the dayes of the Gospell* (London 1623), 'Epistle dedication'.

⁹⁵Fletcher, *Reform of the Provinces*, p. 79; Cust & Lake, 'Sir Richard Grovenor and the Rhetoric of Magistracy', p. 49.

⁹⁶Sharpe, *Crime in Early Modern England*, p. 12.

⁹⁷*Longleat Papers*, vol. 21, fols. 100-165.

⁹⁸*Longleat Papers*, vol. 21, fol. 116 (31).

of the Kingdom" in courts erected for this purpose.⁹⁹ Crime was, to Whitelocke's way of thinking, a manifestation of sin, and must be met as such with a response appropriate to the demands of a righteous creator.¹⁰⁰ And so, because:

state and commonwealthe shall flourishe where vice and vicious persons are suppressed, this ought to move you with all diligence to find out the secret practices of persons ill affected whoe... give themselves to worke all manner of wronge and oppression to the great contempt both of God and his ordinance.¹⁰¹

It is not surprising to find that as overseer of this social order Whitelocke had his enemies; shortly after his father's death Bulstrode moved to punish members of the local community who criticized Whitelocke for his severity during his time as a judge.¹⁰² Despite this, Whitelocke's emphasis on the rights of property and the need for order accurately reflected "the common ground between the values of the legal élite, the gentry and the local men of middling status" by encouraging an obedience to God and state that ensured social peace.¹⁰³ Sir Richard Hutton reflected that Whitelocke's concern "for observing order and regularity" in which he was "held to be more severe than necessary", was "well excused in this loose and insolent age where many offend in a capital fashion with greediness".¹⁰⁴ As a lawyer and a landowner, James Whitelocke employed what Cust and Lake have called the "rhetoric of magistracy" not just to legitimate his own position in society, but to uphold a delicate social order that relied as much upon psychological as physical structures to keep its components in place.¹⁰⁵ The presumed embodiment of natural law, the common law affirmed for Whitelocke an essentially static world order in which every person had their place, even as it afforded him the chance for

⁹⁹*Longleat Papers*, vol. 21, fol. 113 (27).

¹⁰⁰Cf. Herrup, 'Law and Morality in Seventeenth-Century England', p. 111, *The Common Peace*, p. 193.

¹⁰¹*Longleat Papers*, vol. 21, fol. 113 (27).

¹⁰²*Diary*, p. 68.

¹⁰³Herrup, 'Law and Morality in Seventeenth-Century England', p. 108.

¹⁰⁴Prest (ed.), *Diary of Sir Richard Hutton*, p. 91 (Law French). Thanks to Wilfrid Prest for providing me with this translation.

¹⁰⁵Cust & Lake, 'Sir Richard Grovenor and the Rhetoric of Magistracy', p. 40.

personal social mobility. As a rising barrister, James Whitelocke had good reason to encourage its respect.

As my thesis draws to a close, it is fitting that I should return one more time to the *Liber Famelicus*, in which Whitelocke noted his emerging status, and recalled the significant episodes of his public career, over the last two decades of his life. Fairly assessed by its original editor, John Bruce, as "a register of the enlargement of his family, and his professional advancement",¹⁰⁶ one is struck when reading the *Liber Famelicus* by the particular expression it gives to Whitelocke's "private" voice. As Collins has noted:

The sixteenth-century Englishman had no psychological conception of the self as an individual defined by and within itself. Individuality existed, of course, but it was marked by one's specifically arranged place in the degree-oriented society.¹⁰⁷

James Whitelocke's personality had to fit into this scheme, and his sense of his private destiny was always bound to a public role and a public ambition. That he began a journal "for posterity" as a testament to his family's fortunes is the overwhelming evidence he has left of his belief that, by 1609 when he began to compile his 'family book', he would achieve his public-private goals. More than an indication of worldly prosperity, in light of the short and in his eyes wasteful lives of his older brothers, it was a growing sign of God's blessing upon himself, his wife and children.

Cooper has assessed the *Liber Famelicus* as an extraordinarily outspoken commentary upon the events and institutions of the times.¹⁰⁸ He fails to stress the selective and at times highly biased justification it gives of James Whitelocke's professional life. In its selective biases, the *Liber Famelicus* is a telling reminder of the world in which Whitelocke lived. An intimate, highly stratified society where authority was dominantly located in personal relationships, it was also a place where

¹⁰⁶*Liber Famelicus*, p. vi.

¹⁰⁷Collins, *From Divine Cosmos to Sovereign State*, pp. 20-21.

¹⁰⁸Cooper, 'Promotion and Politics', p. 122.

power was constantly tested beneath a facade of deference and courtesy.¹⁰⁹ One might expect a certain amount of duplicity in such a world, but it is hard to feel entirely comfortable with a culture whose more ambitious members struggled for status and power with a gusto better reserved for the school playground. There is no doubt that when his own interests were threatened, James Whitelocke was as ready as any of his contemporaries to defend his "honour" by any means he saw fit.¹¹⁰

What *is* surprising, as Cooper noted, is the honesty with which he was prepared to commit his feelings to paper. The *Liber Famelicus* gives readers a vivid sense of Whitelocke's friends and enemies in pointed character assessments, but it also evinces a deeper concern for changes affecting the law and the state over the course of his professional life. In a society in which so much stock was placed in publicly articulated rituals of order, there was bound to be serious trouble whenever the status quo became ambiguous. We have seen how related tensions arose in every stage of Whitelocke's career: in the Ramist debate at university, in heated arguments over civil and common law at the Inns of Court and in the courts of law, in the desultory history of the Society of Antiquaries, in a delicate debate on the nature of sovereignty in Parliament. The precise significance of these oftentimes overlapping debates, I have said throughout, is open to question - but Whitelocke's own experience offers some food for thought.

Assessing the implications of T.S. Kuhn's theory of science for the study of history, Hollinger has suggested that by proposing paradigm shifts to interpret changes in intellectual consciousness, the "Kuhnian vision" replaces debate over the significance of ideas and events "with a dialogue between traditions and contingent experience, in order that the historian can more freely investigate the functions of cultural forms as organizing devices."¹¹¹ Ideological change is thus seen as a paradigm shift that occurs when belief patterns no longer sustain or define the

¹⁰⁹Cf. Shuger, *Habits of Thought in the English Renaissance*, p. 190.

¹¹⁰*Liber Famelicus*, pp. 32-40, 63-69, 95-96.

¹¹¹Hollinger, 'T.S. Kuhn's Theory of Science and Its Implications for History', p. 377.

political order.¹¹² Archibald MacLeish has written: "A world ends when its metaphor has died."¹¹³ Between 1570 and 1632, an imprecise but widely venerated English political metaphor, which placed the king at the head of a mixed monarchy in which church and state were inextricably bound, was put under inspection by men who did not seek to criticize, but felt they had no other option. James Whitelocke's experience suggests that over thirty years of public life, the sustaining socio-political paradigms of early Stuart England were put under tremendous strain. Struggle to keep the metaphor relevant, by drawing upon seemingly congruent traditions with an eye to contingent experience, encompasses the strengths and failings of James Whitelocke's political life.

Here the *Liber Famelicus* is a telling document not so much in its voices, but in its silences. Long before his journal became (in Prest's words) politically "cryptic" following his appointment as a judge, Whitelocke had shown a strong concern for self-editing where politically contentious issues were at stake.¹¹⁴ While one might accept his statement after the 1610 parliament that "I do not entend to repeat anything doon in the parliament house in this book, whiche I imploy to meaner matters",¹¹⁵ two other statements which followed the 1614 parliamentary débacle stress Whitelocke's discomfort when the rights of the king were called into controversy.¹¹⁶ In this sense, while failure to commit to writing an opinion on the outcome of the parliaments of 1610 and 1614 might be seen merely as self-censorship, it may reflect the deeper psychological difficulties in reconciling a theoretically "perfect" system with a flawed political reality. Malcolm Smuts has argued that in the Caroline period ideological conflict "was frequently fought out

¹¹²Cf. Collins, *From Divine Cosmos to Sovereign State*, pp. 7-9.

¹¹³'The Metaphor', quoted in Berman, H.J., *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge MA 1983), p. v.

¹¹⁴Prest, 'Politics and Profession in Early Stuart England', p. 163.

¹¹⁵*Liber Famelicus*, p. 24.

¹¹⁶"I think it not fit to play the part of a historiographer about it", and "These things I wolde not meddle withcall"; *Liber Famelicus*, pp. 41, 43.

within the minds of individuals";¹¹⁷ James Whitelocke was never at war with himself in this sense, but at times he was led to feel greatly uncomfortable.

I suggested earlier the importance of family in James Whitelocke's social and professional advancement. Beyond this, the *Liber Famelicus* is appropriately named, as family, both nuclear and extended, formed the touchstone of James Whitelocke's private world. Whitelocke, as head of the household personified the social order of the day. Constructed around biblical notions of patriarchy, his family order is the last of many conscious threads I have observed binding the past to the present in a mindset inherently suspicious of innovation. While we should not underestimate the implications of Stone's remark that in the early modern family "husband and father lorded it over his wife and children with the quasi-absolute authority of a despot",¹¹⁸ there is some need to reflect on the reciprocal obligation of the Pauline command that wives should obey their husbands, while husbands love their wives.¹¹⁹ There was gentleness as well as authority in James Whitelocke's household, and his vast sense of loss at the passing of his wife Elizabeth, his closest friend and partner over many years, is movingly recounted by his son Bulstrode:

[Whitelocke] sadly asked, is my wife dead? they answered that it was too true... at which word (though he was a man of extraordinary courage) yett he brake forth into abundance of tears, and sighs and bitter mourning for her death...¹²⁰

James Whitelocke, reflecting upon a marriage which had proved so fortunate, remembered her thus:

Note, that on the 28th day of May, 1631, on the Feast of Pentecost, between the hours of 11 and 12 p.m., died my very dear wife Elizabeth, at Fawley Court in Buckinghamshire, 55 years of age at the feast of St. James just past; a woman most

¹¹⁷Smuts, R.M., *Court Culture and the Origins of a Royalist Tradition in Early Stuart England* (Philadelphia 1987), p. 75.

¹¹⁸Stone, *The Crisis of the Aristocracy*, p. 591; Ephesians 5:22-29; cf. Stone, L., *The Family, Sex, and Marriage in England, 1500-1800* (London 1977), pp. 109-110; Marcus, L.S., *Childhood and Cultural Despair: A Theme and Variations in Seventeenth-Century Literature* (Pittsburgh 1978), p. 29.

¹¹⁹Amussen, S.D., 'Gender, Family and the Social Order, 1560-1725' in Fletcher & Stevenson (eds.), *Order and disorder in early modern England*, pp. 200-203.

¹²⁰*Diary*, p. 63.

dedicated to her husband, most faithful, most careful in the management of her affairs, most long-suffering in adversity, and God-fearing, religious, devoted to God, and charitable to the poor, far beyond all the women whom I know. She was buried in the church of Fawley, where I await a place by her side.¹²¹

It appears that on the death of his wife, having already reached the pinnacle of his profession with appointment to the King's Bench,¹²² James Whitelocke may have lost the inclination if not the will to live.¹²³ Telling his servants "how uncomfortable his condition was without her," he predicted his own passing as they wrapped her body for burial.¹²⁴ The year that followed was, for him, time to finish off business and say goodbye to friends and colleagues.¹²⁵

Retiring to Fawley Court from Serjeants' Inn, Whitelocke settled the details of his estate "with as much composure of mind as att other times", drafting a will which passed on to his family the fruits of his labours.¹²⁶ In the will, which was made in the form of a gift to Bulstrode (to avoid the assessment of his estate by the Ecclesiastical Court), his son took possession of Fawley and a half share in the adjoining manor of Fillet's Court. Bulstrode also received £4500 as well as "plate and household goods".¹²⁷ Bulstrode, as executor of the will, was to keep the other £2500 of Whitelocke's estate aside for his sister Cecilia's marriage portion, with an allowance of £60 per annum for her maintenance until her marriage. £10 a quarter was bequeathed to his other daughter Elizabeth, whose husband Sir Thomas Mostyn received the gift of Whitelocke's signet ring. A final sum of £100 was set aside for the building of a monument to Whitelocke and his wife at Fawley Church.¹²⁸

¹²¹The original Latin inscription, open to inspection in Fawley Church, is found in the *Liber Famelicus*, p. 101 and the *Diary*, p. 63 (thanks to V.V. Reddy and Professor R.G. Usher for help with this translation).

¹²²A judge's place at one of the superior courts of Westminster hall was the profession's "highest prize"; see Prest, *Rise of the Barristers*, p. 135.

¹²³The only account we have of this final stage of Whitelocke's life comes from his son; see *Diary*, pp. 65-67.

¹²⁴*Diary*, p. 65.

¹²⁵*ibid.*

¹²⁶*Diary*, p. 66.

¹²⁷PRO PROB 11/162/113; *Diary*, p. 67.

¹²⁸*ibid.*

In the preface to his *Second Report*, published in the year of Whitelocke's marriage to Elizabeth Bulstrode, Sir Edward Coke advised a generation of young lawyers to "cast their eyes upon the sages of the law", who had achieved "honesty, gravity, and integrity" by virtue of their learning "and by the goodness of God hath obtained a greater blessing and ornament than by any other profession to their family and prosperity".¹²⁹ Thirty years later his self-styled epitaph would ascribe to Whitelocke many of the qualities to which Coke referred, reflecting back on forty years of dedication to the law. For a man who had started his legal education with less than £100 to his name, the wealth that James Whitelocke had amassed by the end of his life lent some credence to Coke's claims.¹³⁰ More importantly for Whitelocke and his family, perhaps, was the psychological assurance this prosperity gave them of God's continuing favour in the world to come.¹³¹ Surveying the trappings of his father's success, Bulstrode proudly declared that James Whitelocke had "by the blessing of God upon his industry raised his own fortune and his family".¹³² His father had been, Bulstrode felt, "a most laborious student all his dayes, of a most just and courteous nature, and of a spirit most invincible and industry indefatigable".¹³³ Anyone who has tried to read what survives of James Whitelocke's legal memoranda would have to agree that his industry was, even in an profession noted for hard work, exceptional. If one can forgive Whitelocke hubris, and the venom he reserved for those who might threaten his path to prosperity in the worldly kingdom of the early Stuarts, his son's judgement seems apt.

At ease with the thought of death (his son Bulstrode later recounted), Whitelocke "expressed fully his assurance of the love of God to him... and so recommending his soul to God... his breath expired on the 22nd day of June 1632".¹³⁴ Among the goods of his estate, Bulstrode received, on his father's death, the key to a cabinet in

¹²⁹Coke, E., *Second Part of the Reports of Sir Edward Coke* (London 1602), 'Preface'.

¹³⁰Whitelocke's landholdings are listed in PRO C142/481/36.

¹³¹*Diary*, p. 66.

¹³²*ibid*

¹³³*Diary*, p. 67; cf. Bulstrode's eulogy in *Memorials of the English Affairs*, pp. 17-18.

¹³⁴*Diary*, p. 66. Notices of Whitelocke's death by fellow judges are found in Prest (ed.), *Diary of Sir Richard Hutton*, p. 91, Jones, W., *Les Reportes de William Jones* (London 1675), p. 299.

which James Whitelocke left a small, private legacy to the world among "divers papers of consequence".¹³⁵ As well as the epithets James Whitelocke had composed for a monument which his son would shortly erect to honour his parents at Fawley Church,¹³⁶ into Bulstrode's care passed "his liber famelicus, a short story of his own life, written by himself".¹³⁷ We opened our investigation as James Whitelocke penned his first words in the *Liber Famelicus* twenty-one years earlier. It seems appropriate, as these words were passed on to his son and from there into history, that I should here close my investigation of a significant life.

FINIS

¹³⁵*Diary*, p. 67.

¹³⁶Longleat Papers, vol. 6, fols. 28, 29.

¹³⁷*Diary*, p. 67.

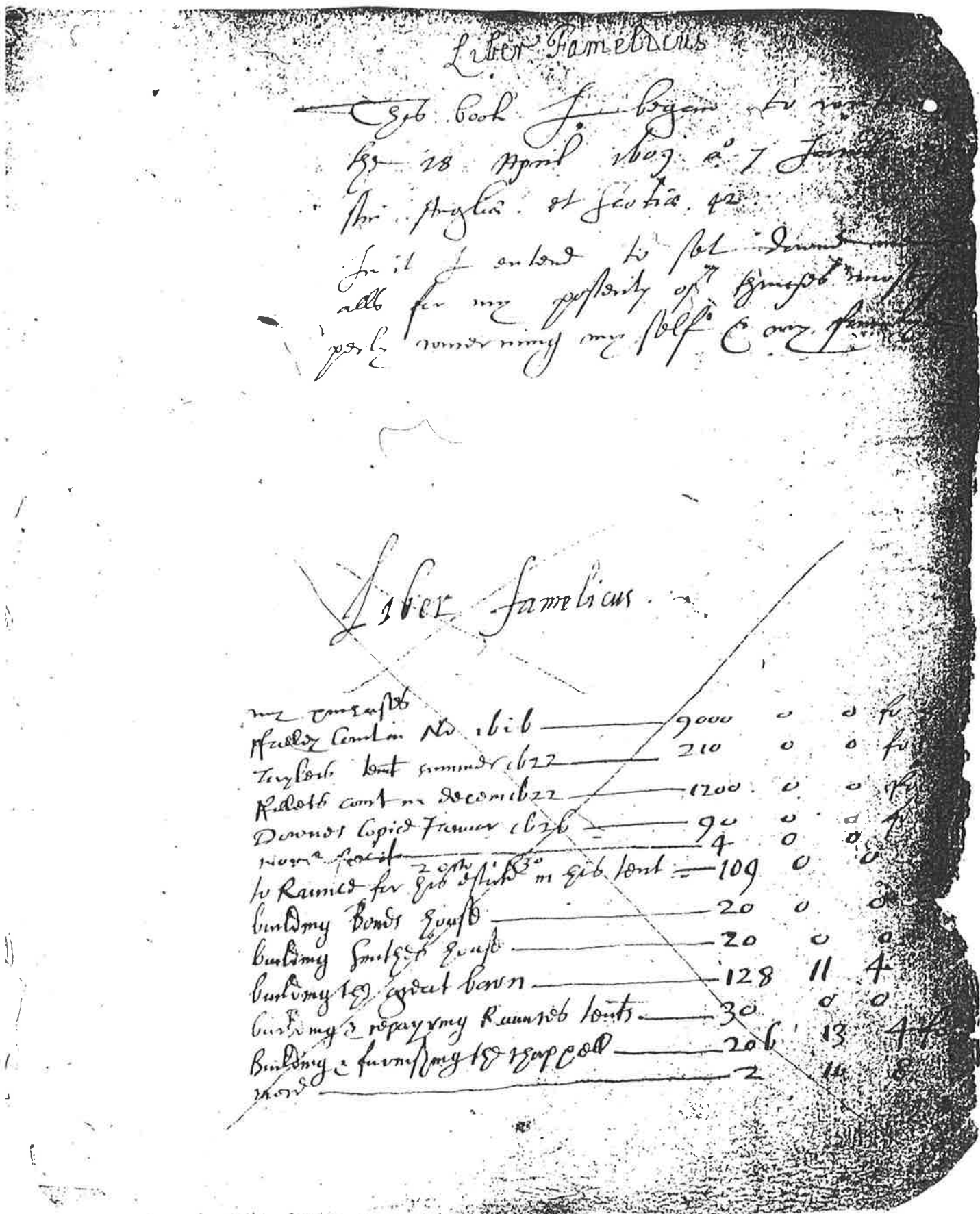
The Effigy on James Whitelocke's Tomb, Fawley Court

Here has been laid the body of the esteemed judge James Whitelocke, knight, Justice of the Court of King's Bench. He was born in London on 28 November 1570. First he studied at Oxford, where he graduated in civil law. Then he gave his attention to common law at the Middle Temple, London, and read there; afterwards as a serjeant-at-law he was appointed Chief Justice of Chester in Michaelmas Term 1620. From there he was transferred to the King's Bench in Michaelmas Term 1624. From his wife Elizabeth he had a son Bulstrode Whitelocke, and two daughters, Elizabeth, married to Thomas Mostyn, knight, and Cecilia, unmarried at the time of his death. He died at Fawley Court on 21 June 1632. A man renowned for scholarship and wisdom, and ever worthy of esteem for his life and character.

Also the body of the most respected wife Elizabeth, wife of the said James, who was born in this region of Buckinghamshire on 25 July 1575. Her father was Edward Bulstrode of the Bulstrodes in Upton, and her mother Cecilia, daughter of John Croke, knight. She was a woman most dedicated to her husband, most faithful, most careful in management of her affairs, most long-suffering in adversity, and God-fearing, religious, devoted to God, and charitable to the poor. She died at Fawley Court on the feast of Pentecost on the 28th day of May, 1631.

The writing to Whitelocke's left notes his position as Justice of the King's Bench, and his motto, "nec beneficio, nec metu". The writing to the right gives his dates of birth and death, and notes that the portrait has been prepared posthumously (probably from a death mask).





BL Additional MS 53725, fol. 1. John Bruce has scored the areas he would omit from his printed edition.

LIBER FAMELICUS.

THIS book I began to write in, the 18 April 1609, anno 7 Jacobi regni sui Angliæ, et Scotiæ 42.

In it I intend to set downe memorialls for my posterity of thinges most properly concerning myself and my familye.

Oculus in solem, alis in cælum. Motto de cognisance.*

Vive diu Whitlocke, tuis sic utere fatis
Ut referent sensus alba nec atra tuos.

JAMES WHITELOCKE.

My father RICHARD WHITELOCK was the fourthe sun of Richard Whitelock, and was born in the ancient seat of the Whitlocks, called Beeches, situate neer Okingham, a market towne in the countye of Barkes, whiche land hath continued in our blud sithence the year of our Lord 1231; for it appeerthe by a deed in my cosen William † Whitlockes hand of Beches that Robert ‡ then bishop of Salisbury, who was lord of the manor of Sunning neer Okingham, did give to William de la Beche, out of his purpres-
ture § of Bear Wood, that verye land my cosen William Whitelock now holdethe by descent from his father, and he hath the originall

* This "motto of cognisance" refers to the arms borne by the Whitelocke family, a chevron between three falcons, or, as they are called in one pedigree, three eagles, and the crest, a like bird rising out of a tower.

† My father's elder brother's son, and heir of the family; William the eldest being ded without issue. *Note by the writer of the MS.*

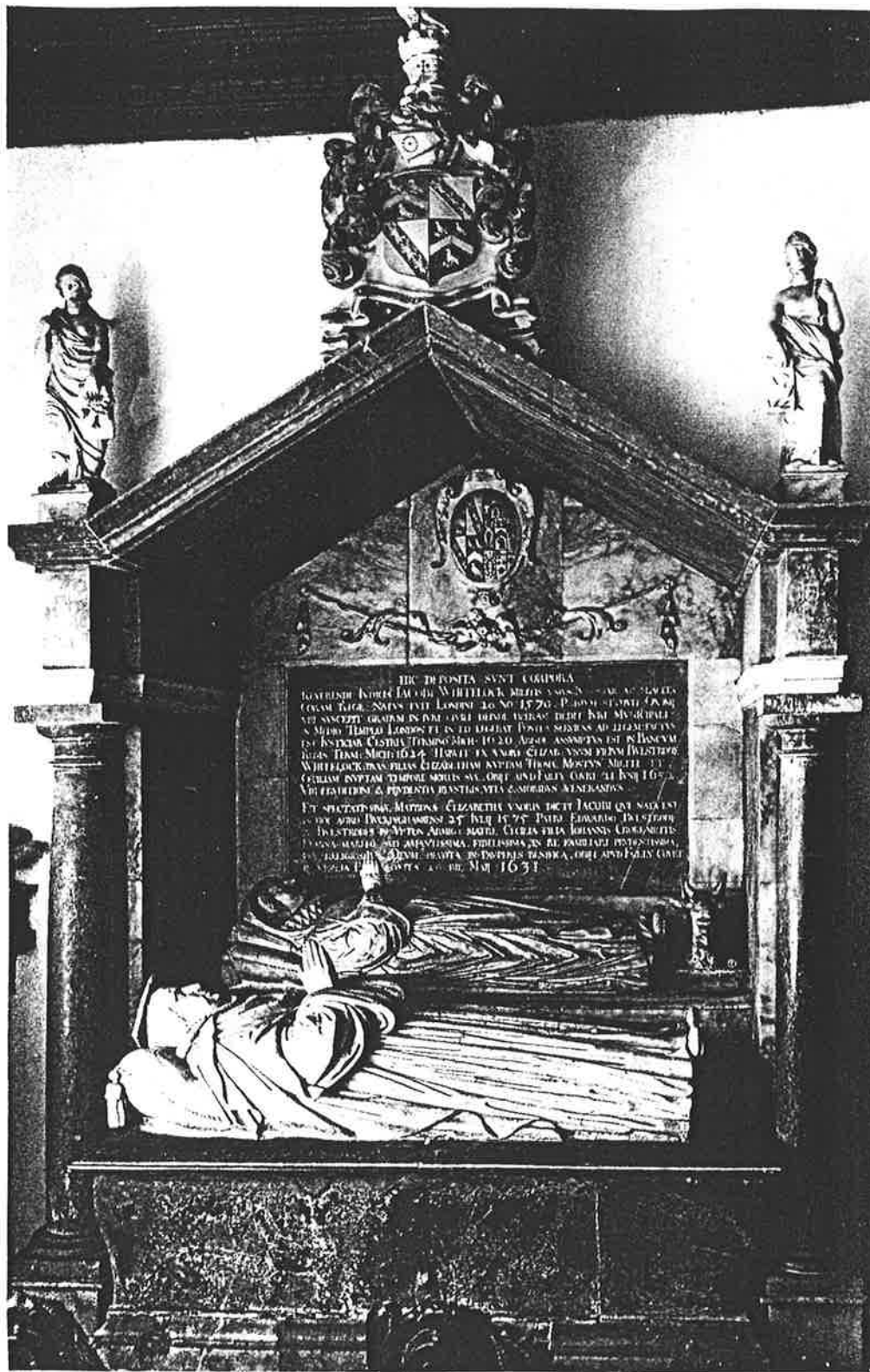
‡ Robert de Bingham, bishop of Salisbury 1228—1246.

§ Inclosure.

CAMD. SOC.

B

The monument lies in the south transept of the church. The Latin effigy is translated in Appendix 1.



BIBLIOGRAPHY

MANUSCRIPT SOURCES:

The Marquis of Bath's Collection, Longleat House:

Whitelocke Papers, vols. 1 - 5 (1562-1633); vols. 21, 24, 26 (miscellaneous); Parcel 9 (miscellaneous legal note books)

British Library:

Additional MS 53725 *Liber Famelicus*

Additional MS 24481, fols. 62-75v (J. Hunter's extracts from the *Liber Famelicus*, 19th century)

Additional MS 53726 Bulstrode Whitelocke's 'Annals of his own life Dedicated to his Children' (1605-1634)

Hargrave MS 198 'Lectura Jacobi Whitlock Armigeri in Medio Templo 2 Augusti 1619 super Statutum 21 Hen 8 cap. 13 de facultatibus beneficiorum' (reading on benefices)

Hargrave 91, fols. 196-295v (reading on benefices)

Hargrave 237, fols. 5-95v (reading on benefices; Bartholomew Hall's copy. Turn volume upside down and read from back to front)

Hargrave MS 91, fols. 296-319v 'Conceits sur le stat de 32 Hen 8 ca 5 c. 13' (list of points taken from 1619 reading)

Harley MS 4176, fols. 16-18 'Of the Antiquite, Use, and Ceremonie of Lawful Combats in England' (discourse on combats)

Stowe MS 596, fols. 35-39 (discourse on combats)

Additional MS 25247, fols. 93-95 (discourse on combats)

Cottonian MS Faustina E.v, fols. 51-52 'Of the antiquite, use, and privilege of places for students & professors of the common lawes of England' (autograph)

Additional MS 36,082, fols. 105-176v 'The Question whether the kinge without assent of Parliament may sett Imposicions uppon the wares & goods of Merchaunts exported and imported out of and into the realme' (1610 speech on impositions)

Stowe MS 298, fols. 89-140v (1610 speech on impositions)

Lansdowne MS 160, fol. 83 'The whole proceeding at Whitehall ag. Mr Whitlocke & Sr Robt. Mansell by the P.C. assisted by the Judges an. 1613 touching some contempts' (1613 prosecution; Sir Julius Caesar's notes)

Additional MS 4149, fols. 173-176v (copy of counsel record against Whitelocke and Mansel, incorrectly dated to 1609)

Harley MS 583, fols. 48-52 (Whitelocke's 1621 charge to Chester Grand Jury)

Cottonian Julius C.3, fol. 54 (letter from Whitelocke to Sir Robert Cotton, asserting the right of common lawyers to plead before the Earl Marshal's court; dated in margin 1609?)

Cottonian MS Titus F. iv, fols. 11-15 (Sir Francis Bacon suggests Whitelocke as potential reporter in review of common law, 1614)

Cambridge University Library:

MS Ll .3.12, fols. 326-477 (reading on benefices)

MS Ee .6.3, fols. 192-225v (notes on Whitelocke's reading in Law-French; includes discussions "after dinner" by Hadsor, Hoskins and Trist expounding questions of law raised by Whitelocke during the reading)

MS Oo .6.114, fols. 106-114 'The Antiquitye, Varyetye, and Reason of Mottoes, or words with armes of Noblemen and Gent. in England' (draft and two autograph copies)

MS Dd .2.25 (1610 speech on impositions)

MS Ff .3.17, fols. 75v ff. (1610 speech on impositions; Sir John Davies' copy)

MS Dd .5.7 (autograph record of cases in inns of chancery, c. 1599-1600)

MS Dd .9.20 (autograph academic commonplace book)

MS Dd .8.48 (autograph reports of cases in Queen's Bench and other courts, 39-42 Eliz.)

MS Dd .3.69 (autograph law commonplace book)

MS Gg .2.23, fol. 90 (Whitelocke listed as pleader before Justice Williams in King's Bench)

Bodleian Library:

MS Dep. d 804 (transcript of *Liber Famelicus* belonging to John Whitelocke [1757-1833])

MS Dep. d 746 (reading on benefices)

MS Rawlinson C. 207, fols. 62-96v (notes on 1619 reading)

MS Rawlinson C. 207, fols. 245-270 (paper book includes notes on Whitelocke's reading)

MS Ashmole 1150 (1), fols. 1-83 (reading on benefices)

MS Ashmole 856, fols. 149-153 (discourse on combats)

MS Tanner 278, fols. 141-142v (discourse on combats)

MS Tanner 85, fols. 16-38 (discourse on combats)

MS Smith 71, fol. 59 (copy of letter to Sir Robert Cotton)

MS Wood F.28, fols. 204-214 (papers relating to St. John's College)

MS Tanner 338, fols. 373-381 (papers relating to St. John's College)

Lincoln's Inn Library:

MS Miscellaneous 486 (8) (reading on benefices)

MS Law 14. Ii (reading on benefices)

MS Maynard 79, fols. 329-380 (reading on benefices)

MS Maynard 52 (4) (1610 speech on impositions)

Inner Temple Library:

MS Petyt 537.14, fols. 187v-213v (records examined and noted by Whitelocke in the case of impositions)

MS Miscellaneous 19, fols. 241-266v (record of Eliot's case; Whitelocke's judgement fols. 265-266v)

Middle Temple Library:

Uncataloged MS copy of reading on benefices; Muniment's Room

Minutes of the Parliament of the Honourable Society of the Middle Temple, vol. D 4 (1551-1610), vol. C3 (1610-1626)

Guildhall Library:

Merchant Taylors' Company Court Minute Book; Microfilm 326-328 (1595-1630)

Journal of the Court of Aldermen of the City of London, Report 33, 34.

Lambeth Palace Library:

Gibson MS 936, no. 249 (2 fols.) (draft submission for Whitelocke's release from prison in 1613 by Sir Francis Bacon)

College of Arms, London:

Vincent MS 43, fols. 26-42 (discourse on combats)

Public Record Office:

STAC 8/231/24 (Pope's petition against Whitelocke in Star Chamber, 1609)

CHES 21/3 (Chester Crown Book of judges' legal memoranda, 15 James I -12 Charles I; Whitelocke's notes are in fols. 49-107)

E2/2 (Exchequer appearance books; lists Whitelocke as attorney Eliz. 39)

CHES 28/8, 28/9 (Prothonotary's papers of court proceedings; 14 James I -1 Charles I)

C 33/100-138 (Chancery decree & order books, 1600-1620. Indexed by PRO Index 1478-1516 [A and B books])

C 66/1956 (Chancery Patent Rolls, Whitelocke (& Heath) to clerkship of enrollments in King's Bench)

C 66/2220 (Whitelocke's commission as Justice of Denbigh & Montgomery)

C 66/2324 (Whitelocke's commission as Justice of King's Bench)

C 142/481/36 (Whitelocke's landholdings)

PROB 11/62, Q. 113 (Whitelocke's will)

Woodstock Record Office:

Woodstock Borough MS B79/1, fol. 60 (notice of Whitelocke's recordership).

Eton College:

Eton College Records 27/267 (Whitelocke's appointment, and fees and as steward)

Eton College Records 60/300.

Trinity College Library:

MS 853 (4) (reading on benefices)

MS 733 (3) (reading on benefices)

Edinburgh University Library:

Laing MS II.645/1, fols. 34-38 (discourse on combats)

University College of North Wales:

Mostyn MS 7294 (marriage negotiations with Mostyn)

Clwyd Record Office:

Mostyn MS D/M/3608 (articles of marriage between Sir Roger Mostyn and Elizabeth Whitelocke)

Harvard Law School:

MS 1077 (reading on benefices)

MS 1083, fol. 50v (judgement in King's Bench)

William Andrews Clark Memorial Library:

Selden-Hale Collection MS 586 (reading on benefices)

University of Pennsylvania Law School:

MS 1206 (reading on benefices)

Henry E. Huntington Library:

Ellesmere MS E 6472 (letter from Bridgewater to Sir James, 1621)

PRINTED SOURCES:

Historical Manuscripts Commission:

3rd Report

5th Report Appendix

8th Report Appendix Part I

8th Report II, Appendix Part III (p. 15, Bulstrode Whitelocke's "Historie of the Parliament of England" incorrectly attributed to James; original is BL MS Stowe 300)

10th Report Appendix IV

11th Report Part VII

13th Report Part IV

Cowper I

Cowper II

De L'Isle and Dudley vol. V

Downshire IV

Portland IX

Salisbury (Cecil) XXII

Calendar of State Papers Domestic

Calendar of State Papers Venetian

Acts of the Privy Council

Journal of the House of Commons

Journal of the House of Lords

Statutes of the Realm

Archaeologica: or Miscellaneous Tracts, relating to Antiquity, London, Society of Antiquaries, 1770.

Bacon, N., *An Historical and Political Discourse of the Laws and Government of England*, 4th ed., London, 1688.

Baildon, W.P. (ed.), *The Records of the Honourable Society of Lincoln's Inn: the Black Books* (2 vols.), London, Society of Lincoln's Inn, 1897-1902.

Baker, J.H. (ed.), *The Reports of Sir John Spelman* (2 vols.), London, Selden Society 93 & 94, (1976 & 1977).

(ed.), *The Order of Serjeants at Law: A chronicle of creations, with related texts*, London, Selden Society Supplementary Series 5, 1984.

Ballard, A., *Chronicles of the royal borough of Woodstock, compiled from borough records and other original documents*, Oxford, 1896.

Barnes, T.G. (ed.), *Somerset Assize Orders 1629-1640*, Somerset Record Society 65 (1959).

Bateson, M. (ed.), *Records of the Borough of Leicester: Being a series of Extracts from the Archives of the Corporation of Leicester, 1509-1603* (3 vols.), Cambridge, Cambridge University Press, 1905.

Bede, *The history of the church of England* (trans. T. Stapleton), Antwerp, 1565.

Birch, T. (ed.), *The Court and Times of James the First. Illustrated by Authentic and Confidential Letters, From Various Public and Private Collections* (2 vols.), London, Henry Colburn, 1848.

(ed.), *The Court and Times of Charles the First* (2 vols.), London, Henry Colburn, 1848.

Bland, D.S., (ed.), *Early Records of Furnival's Inn: Edited from a Middle Temple manuscript*, Newcastle upon Tyne, Department of Extra-Mural Studies, 1957.

Bossewell, J., *Workes of armorie, deuyled into three bookes*, London, 1597.

Bracton, H., *Henrici de Bracton de legibus & consuetudinibus Angliae*, London, 1569.

Lord Braybrooke (ed.), *The Autobiography of Sir John Brampton, K.B., of Skreens, in the hundred of Chelmsford*, London, Camden Society Old Series 32, 1845.

Bruce, J. (ed.), *Liber Famelicus of Sir James Whitelocke, a Judge of the Court of King's Bench in the reigns of James I and Charles I*, London, Camden Society Old Series 70, 1858.

(ed.), *The Diary of John Manningham of the Middle Temple, and of Bradborne, Kent, Barrister-at-Law 1602-3*, London, Camden Society Old Series 91, 1868.

Buc, G., *The Third Universitie of England. Or a Treatise of the Foundations of all the Colleges, Avncient Schooles of Priviledge etc.*, appended to J. Stow, *The Annales, or General Chronicle of England*, London, 1615.

Cardwell, E. (ed.), *Documentary Annals of the Reformed Church of England* (2 vols.), Oxford, Oxford University Press, 1844.

Carr, C. (ed.), *The Pension Book of Clement's Inn*, London, Selden Society 78, 1960.

Coke, E., *The Fourth Part of the Institutes of the Laws of England concerning the Jurisdiction of Courts*, London, 1767.

The Twelfth Part of the Reports of England, London, 1655.

Cowell, J., *Institutiones juris Anglicani*, London, 1605.

Clark, M.A. (ed.), *Register of the University of Oxford* (4 vols.), Oxford, Clarendon Press, 1889.

Clarke, A.W.H. (ed.), *The Parish Register of St. Dunstan in the East, London 1558-1654*, London, Harleian Society vol. 69, 1939.

Crew, T., *The proceedings and debates of the House of Commons, in the sessions of Parliament, begun the twentieth of January, 1628 and ended by dissolution the tenth of March following...*, London, 1707.

Davies, *Jus imponendi Vectigalia; or the Learning touching the Customs, Tonnage, Poundage, and Impositions on Merchandizes &c., asserted*, London, 1656.

De Villiers, E. (ed.), 'The Hasting Journal of the Parliament of 1621', *Camden Miscellany* 20, London, Camden Society, 1953.

Dugdale, W., *Origines Juridiciales*, London, 1663.

Dyer, J., *Abridgement des reportes signior Dyer*, London, 1590.

Erasmus, *On Copia of Words and Ideas* (trans. D.B. King and H.D. Rix), Milwaukee, University of Milwaukee Press, 1963.

Fortescue, J., *The commendation of the laws of England* (trans. R. Mulcaster), London, 1590.

Foster, E.R. (ed.), *Proceedings in Parliament 1610* (2 vols.), New Haven, Yale University Press, 1966.

Foster, J., *Alumni Oxonienses: The Members of the University of Oxford* (4 vols.), London, 1891.

Fulbecke, W., *A Direction or Preparatiue to the study of the Lawe: Wherein is shewed, what things ought to be obscured and used of them that are addicted to the study of the Law, and what on the contrary part ought to be eschued and auoyded*, London, 1600.

Fuller, N., *The Sovereign's Prerogative and the Subjects' Privileges discussed, &c, in the 3rd and 4th year of King Charles I*, London, 1657.

Fuller, T., *The history of the worthies of England: who for parts and learning have been eminent in the several counties: together with an historical narrative of the native commodities and rarities in each county*, London, 1662.

Gardiner, S.R. (ed.), *Parliamentary debates in 1610; edited from a member of the House of Commons*, London, Camden Society Old Series 81, 1862.

(ed.), *Notes of the Debates in the House of Lords officially taken by Henry Elsing, clerk of the parliaments A.D. 1624 and 1626*, London, Camden Society New Series 24, 1879.

- Gibson, E. (ed.), *Reliquiae Spelmanniae. The Posthumous Works*, London, 1727.
- Goodman, G. (ed.), *The Court of King James I* (2 vols.), London, Richard Bentley, 1839.
- Groombridge, M.J. (ed.), *Calendar of Chester City Council Minutes 1603-1642*, Blackpool, Record Society of Lancashire and Cheshire, 1956.
- Hart, E.P. (ed.), *Merchant Taylors' School Register 1561-1934* (2 vols.), London, Eastern Press, 1936.
- Haywarde, J., *Les Reportes del cases in camera stellata* (ed. W.P. Baildon), London, 1894.
- Hearne, T. (ed.), *A Collection of Curious Discourses written by Eminent Antiquaries upon several heads in our English Antiquities* (2 vols.), London, 1771.
- Hill, L.M. (ed.), *The Ancient State, Authoritie, And Proceedings of the Court of Requests by Sir Julius Caesar*, Cambridge, Cambridge University Press, 1975.
- Hinde, W., *The Office and Use of the Morall Law of God in the dayes of the Gospell*, London, 1623.
- Holdsworth, R., 'Directions for a Student in the Universitie', Emmanuel College MS 48 in Fletcher, *The Intellectual Development of John Milton*, vol. 2, Appendix 2, pp. 623-655.
- Holles, J., 'A summary of what was done in the Parliament begun the 5 of April, 1614 &c' HMC Portland IX, pp. 132-139.
- Hopkinson, H.L., *Report on the Ancient Records in the possession of the Guild of Merchant Taylors of the Fraternity of St. John the Baptist in the City of London*, London, Waterlow & Sons, 1915.
- Hopwood, C.H. (ed.), *Middle Temple Records* (3 vols.), London, Published by order of the Masters of the Bench, 1904.
- Howell, T.B. (ed.), *A Complete Collection of State Trials* (34 vols.), London, 1809-1828.
- Hughey, R. (ed.), *The Correspondence of Lady Katherine Paston 1603-1627*, Norfolk Record Society 14 (1941).

Jansson, M. (ed.), *Proceedings in Parliament 1614 (House of Commons)*, Philadelphia, American Philosophical Society, 1988.

Jessop, A. (ed.), *The Lives of the Right Hon. Francis North, Baron Guilford; the Hon. Sir Dudley North; and the Hon. and Rev. Dr. John North* (3 vols.), London, 1890.

Jones, W., *Les Reportes de William Jones*, London, 1675.

Jovius, P., *The worthy tract of Paulus Jovius* (trans. S. Daniel), London, 1585.

Keeler, M.F., M.J. Cole & W.B. Bidwell (eds.), *Proceedings in Parliament 1628* (6 vols.), New Haven, Yale University Press, 1977-1983.

King, H.C., *Records and Documents concerning Serjeant's Inn, Fleet Street*, London, Richard Flint & Company, 1922.

Lamoine, G. (ed.), *Charges to the Grand Jury 1689-1803*, London, Camden Society, 1992.

Langley, T., *The History and Antiquities of the Hundred of Desborough, and Deanery of Wycombe, in Buckinghamshire; including the Borough Towns of Wycombe and Marlow, and Sixteen Parishes*, London, 1797.

Livy, T., *The Romane Historie* (trans. P. Holland), London, 1598.

MacGreath, H.F. & H.A.C. Sturgess (eds.), *Register of Admissions to the Honourable Society of the Middle Temple* (3 vols.), London, The Honourable Society of the Middle Temple, 1949.

Martin, C.T. (ed.), *Minutes of the Parliament of the Middle Temple* (4 vols.), London, Printed for the Masters of the Bench, 1904.

McClure, N.E. (ed.), *The Letters of John Chamberlain* (2 vols.), Philadelphia, Princeton University Press, 1939.

McIllwain, C.H. (ed.), *Political Works of James I: Reprinted from the Edition of 1616*, Cambridge (Mass.), Harvard University Press, 1918.

Monro, C. (ed.), *Acta Cancellariae; or, selections from the Records of the Court of Chancery*, London, William Benning and Co., 1847.

Nicholas, E., *Proceedings and Debates of the House of commons in 1620 and 1621* (2 vols.), Oxford, 1766.

Nichols, J.G. (ed.), *Collectanea Topographica and Genealogica* (8 vols.), London, 1834-1843.

Notestein, W., *Commons Debates for 1629: critically edited and an introduction dealing with parliamentary sources for the early Stuarts*, Minneapolis, University of Minnesota Press, 1921.

F.H. Relf & H. Simpson (eds.), *Commons Debates in 1621*, New Haven, Yale Historical Publishing, 1935.

Oliphant, J. (ed.), *The Educational Writings of Richard Mulcaster (1532-1611)*, Glasgow, James Maclehose & Sons, 1903.

Ormerod, G. (ed.), *The History of the County Palatine and City of Chester* (3 vols., rev. T. Helsby), London, 1875-82.

Ornsby, G. (ed.), *The Correspondence of John Cosin, D.D., Lord Bishop of Durham*, 2 vols, London, Sturtees Society 52 & 55 (1868 & 1870).

Parsons, R., *An Answer to the Fifth Part of the Reportes Lately set forth by Syr Edward Coke, knight, the Kinges Attorney generall*, St. Omer, 1607.

Plutarch, *Lives of the Noble Grecians and Romanes together with that grave and learned philosopher Plutarke of Chaeronea. Translated out of Greeke into French by James Amyot: and out of French into Englishe by Thomas North*, 5 vols., London, 1572 (reprinted by the Nonesuch Press, London, 1929-1930).

Prest, W.R. (ed.), *The Diary of Sir Richard Hutton 1614-1639*, London, Selden Society Supplementary Series 9, 1991.

Relf, F.H. (ed.), *Notes of the Debates in the House of Lords officially taken by Robert Bowyer and Henry Elsing, clerks of the Parliaments, A.D. 1621, 1625, 1628*, London, Camden Society New Series 42, 1929.

Ridley, T., *A View of the Civile and Ecclesiastical Law*, Cambridge, 1607.

Robinson, C.J. (ed.), *A Register of Scholars Admitted into Merchant Taylors' School, from AD 1562 to 1874, Compiled from Authentic Sources and Edited with Biographical Notices*, London, 1882.

Robinson, F.J. (ed.), *The Works of Geoffrey Chaucer*, 2nd ed., London, 1957.

Rushworth, J., *Historical collections of private passages of state, weighty matters in law, remarkable proceedings in five Parliaments* (8 vols.), London, 1659-1701.

Rymer, T., *Foedera Conventiones, Literae et cujuscunque generis Acta Publica, inter Reges Angliae* (10 vols.), London, 1745.

Selden, J., *Historie of Tithes*, London, 1618.

Singer, S.W. (ed.), *Table Talk: being the discourses of John Selden esquire, or his sense of various matters of weight and high consequence &c*, London, 1847.

Sorien, R.P. (ed.), *The Diary of John Manningham of the Middle Temple 1602-1603*, Hanover New Hampshire, University of New England, 1976.

The Sovereigns Prerogative and the Subjects Privilege, comprised in several Speeches, Cases, and Arguements of Law Discussed between the Late King Charles And the most Eminent Persons of both Houses of Parliament, London, 1658.

Spalding, R. (ed.), *The Diary of Bulstrode Whitelocke 1605-1675*, New York & London, The British Academy, 1990.

Spedding, J., R.L. Ellis & D.D. Heath (eds.), *The Works of Sir Francis Bacon, Baron of Verulam, Viscount St. Alban, and Lord High Chancellor of England* (7 vols.);

Spedding, J. (ed.), *The Letters and Life of Francis Bacon: Including All His Occasional Works* (7 vols.; vols. 7-14 of *Works*), London, Longman & Co., 1858-1874.

Spingarn, J.E. (ed.), *Critical Essays of the Seventeenth Century*, 3 vols. Oxford, Oxford University Press, 1908-1909.

Steer, F.W. (ed.), *A Catalogue of the Earl Marshal's Papers at Arundel Castle*, London, Harleian Society, 1964.

Sturgess, H.A.C. (ed.), *Register of Admissions to the Honourable Society of the Middle Temple from the Fifteenth Century to the year 1944* (5 vols.), London, printed for the Honourable Society of the Middle Temple, 1949.

Tanner, J.R. (ed.), *Constitutional Documents of the Reign of James I*, 2nd ed., Cambridge, Cambridge University Press, 1962.

Taylor, A., *The Epistle of the Lord to his Bride*, London, 1623.

Thorne, S.E. & J.H. Baker (eds.), *Readings and Moots at the Inns of Court in the Fifteenth Century* (2 vols.), London, Selden Society 71 & 105, 1954 & 1989.

Vives, J., *On Education [De tradendis disciplinis]* (trans. F. Watson), Cambridge, Cambridge University Press, 1913.

Winwood, R., *Memorials of Affairs of State in the Reigns of Queen Elizabeth and King James &c.* (3 vols.), London, 1725.

Whitelocke, B., *Memorials of English Affairs: or, An Historical Account of what passed from the Beginning of the Reign of King Charles the First, to King Charles the Second his happy Restauration*, London, 1732.

Whitelocke, J., *A learned and necessary argument to Prove that each Subject hath a Propreity in his Goods &c.*, London, 1641.

Williamson, J.B. (ed.), *The Middle Temple Bench Book, being a Register of the Middle Temple from the Earliest Records to the Present Time with Historical Introduction*, 2nd ed., London, for the Masters of the Bench, 1937.

Wilson, J.P. (ed.), *The Complete Works of William Shakespeare*, London, 1980.

Wood, A., *Athenae Oxonienses: An exact history of all the writers and bishops who have had their education in the University of Oxford* (5 vols., ed. P. Bliss), London, 1813-20.

Woodbine, G.E. (ed.), *De legibus et consuetudinibus angliae* (4 vols., rev. and trans. S.E. Thorne), Cambridge Mass., Harvard University Press, 1968-1977.

D.E.C. Yale (ed.), Hake, E., *Epiekia: a dialogue on equity in three parts*, New Haven, Yale University Press, 1953.

Yates, J.B. (ed.), 'The Rights and Jurisdiction of the County Palatine of Chester', *Chetham Miscellany* 37 (1856), pp. 14-34.

SECONDARY SOURCES:

Adamson, J.S.A., *The Diary of Sir Richard Hutton* (book review), *Cambridge Law Journal* 51 pt 3 (1993), pp. 550-552.

Allen, J.W., *A History of Political Thought in the Sixteenth Century*, London, Methuen, 1928.

Alsop, J.D., 'Religious preambles in early modern English wills as formulae', *Journal of Ecclesiastical History* 40 no. 1 (1989), pp. 19-27.

Amussen, S.D., 'Gender, Family and the Social Order, 1560-1725' in Fletcher & Stevenson (eds.), *Order and disorder in early modern England*, pp. 196-217.

Ashman, P.M., 'Heraldry and the Law of Arms in England', *Journal of Legal History* 9 no. 1 (1988), pp. 50-86.

Ashton, R., *The English Civil War: Conservatism and Revolution 1603-1649*, 2nd ed., London, Weidenfield & Nicholson, 1989.

Atherton, I.J., 'Viscount Scudamore's Laudianism: The Religious Practices of the First Viscount Scudamore', *Historical Journal* 34 no. 3 (1991), pp. 567-596.

Aylmer, G.E., *The King's Servants: The Civil Service of Charles I 1625-1642*, revised ed., London, Routledge & Kegan Paul, 1974.

Baker, D., *Sanctity and Secularity: The Church and the World*, Oxford, Oxford University Press, 1973.

Baker, H., *The race of time: three lectures on Renaissance historiography*, Toronto, Toronto University Press, 1967.

Baker, J.H., 'The Dark Age of English Legal History' in Jenkins (ed.), *Legal History Studies*, pp. 1-27 (reprinted in *Legal Records and the Historian*, pp. 435-460).

'The Inns of Court and Legal Doctrine' in Charles-Edwards *et al.* (eds.), *Lawyers and Laymen*, pp. 274-286.

(ed.), *Legal Records and the Historian*, London, Royal Historical Society, 1978.

An Introduction to English Legal History, 3rd ed., London, Butterworths, 1990.

The Legal Profession and the Common Law: Historical Essays, London, Hambledon Press, 1986.

& S.F.C. Milsom (eds.), *Sources of English Legal History: Private Law to 1750*, London, Butterworths, 1986.

(ed.), *Manual of law French*, 2nd ed., London, Scolar Press, 1990.

Bakhtin, M.M., *Rabelais and his World* (trans. H. Iwolski), Bloomington, Indiana University Press, 1984.

Barbu, Z., *Problems of Historical Psychology*, London, Routledge & Kegan Paul, 1960.

Barnes, T.G., 'Star Chamber Litigants and their Counsel, 1596-1641' in Baker (ed.), *Legal Records and the Historian*, pp. 7-28.

Somerset 1625-1640: A County's Government During the Personal Rule, Cambridge, Cambridge University Press, 1961.

Barracrough, G., 'The earldom and county palatine of Chester', *Historical Society of Lancaster and Cheshire Transactions* 103 (1951/2), pp. 23-57.

Bateson, M. (ed.), *Borough Customs* (2 vols.), London, Selden Society vols. 18 & 21 (1904, 1906).

Beaven, A.B., *The Aldermen of the City of London: Temp. Henry III - 1908. With notes on the parliamentary representation of the city, the aldermen and the livery companies, the aldermanic veto, aldermanic baronets and knights, &c*, London, Fisher & Company, 1908.

Bellot, H.H., 'The Jurisdiction of the Inns of Court over the Inns of Chancery', *Law Quarterly Review* 26 (1910), pp. 384-399.

Berman, H.J., *Law and Revolution: The Foundation of the Western Legal Tradition*, Cambridge Mass., Harvard University Press, 1983.

Bindoff, S.T., J. Hurstfield & C.H. Williams (eds.), *Elizabethan Government and Society*, London, Athelone Press, 1961.

Bland, D.S., 'Learning Exercises and Readers at the Inns of Chancery in the 15th and 16th Centuries', *Law Quarterly Review* 95 (1979), pp. 244-252.

Bloch, M., *The Historian's Craft* (trans. P. Putnam), Manchester, Manchester University Press, 1967.

Bolgar, R.R., *The Classical Heritage and its Beneficiaries*, Cambridge, Cambridge University Press, 1954.

Bossy, J., 'Godparenthood: The Fortunes of a Social Institution in Early Modern Christianity' in Van Greyerz (ed.), *Religion and Society in Early Modern Europe*, pp. 194-201.

Bouwsma, W.J., 'Lawyers in Early Modern Culture', *American Historical Review* 78 no. 2 (1973), pp. 303-328.

'Anxiety and the Formation of Early Modern Culture' in Malament (ed.), *After the Reformation*, pp. 215-246.

John Calvin: A Sixteenth-Century Portrait, Oxford, Oxford University Press, 1988.

Bowen, C.D., *The Lion and the Throne: the life and times of Sir Edward Coke 1552-1634*, London, Hamish Hamilton, 1957.

Bowker, M., *The Henrician Reformation: the Diocese of Lincoln under John Longland 1521-1547*, Cambridge, Cambridge University Press, 1981.

Braddock, R., 'The Rewards of Office Holding in Tudor England', *Journal of British Studies* 14 no. 2 (1975), pp. 29-47.

Brauer, J.C., 'Types of Puritan Piety', *Church History* 56 no. 1 (1987), pp. 39-58.

Brewer, J. & J. Styles (eds.), *An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries*, London, Hutchinson, 1980.

Brinkworth, E.R.C., 'The Laudian Church in Buckinghamshire', *Birmingham University Historical Journal* 5 no. 1 (1955), pp. 31-59.

Brooks, C.W., 'Litigants and Attorneys in the King's Bench and Common Pleas 1560-1640' in Baker (ed.), *Legal Records and the Historian*, pp. 41-59.

& K. Sharpe, 'History, English Law and the Renaissance', *Past & Present* 72 (1976), pp. 133-142.

'The Common Lawyers in England, c. 1558-1642' in Prest (ed.), *Lawyers in Early Modern Europe and America*, pp. 42-64.

Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England, Cambridge, Cambridge University Press, 1986.

'The Place of Magna Carta and the Ancient Constitution in Sixteenth-Century English Legal Thought' in Sandoz (ed.), *The Roots of Liberty*, pp. 57-88.

Buck, A.R., 'The Politics of Land Law in Tudor England', *Journal of Legal History* 11 no. 2 (1990), pp. 200-217.

Burgess, G., 'On revisionism: an analysis of early Stuart historiography in the 1970s and 1980s', *Historical Journal* 33 no. 3 (1990), pp. 609-627.

'The Impact on Political Thought: Rhetoric for Troubled Times' in Morrill (ed.), *The Impact of The English Civil War*, pp. 67-83.

The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642, London, Macmillan, 1992.

Butt, J., 'The Facilities for Antiquarian Study in the Seventeenth Century', *Essays and Studies* 24 (1938), pp. 64-79.

Cam, H.M. (ed.), *Selected Historical Essays of F.W. Maitland*, Cambridge, Cambridge University Press, 1957.

Chafe, W.L., 'Language and consciousness', *Language* 50 no. 1 (1974), pp. 11-113.

Charles-Edwards, T.M., M.E. Owen & D.B. Walters (eds.), *Lawyers and Laymen: Studies in the History of Law presented to Professor Dafydd Jenkins*, Cardiff, University of Wales Press, 1986.

Charlton, K., 'Liberal Education and the Inns of Court in the Sixteenth Century', *British Journal of Educational Studies* 9 no. 1 (1960), pp. 25-38.

Education in Renaissance England, London, Routledge & Kegan Paul, 1965.

Christianson, P., 'The Causes of the English Revolution: A Reappraisal', *Journal of British Studies* 15 no. 2 (1976) pp. 40-75

'The Peers, the People, and Parliamentary Management in the First Six Months of the Long Parliament', *Journal of Modern History* 49 no. 4 (1977) pp. 575-599.

'Political Thought in Early Stuart England', *Historical Journal* 30 no. 4 (1987), pp. 955-970.

'Royal and parliamentary voices on the constitution, c. 1604-1621' in Peck (ed.), *Mental World of the Jacobean Court*, pp. 71-95.

'Ancient Constitutions in the Age of Sir Edward Coke and John Selden' in Sandoz (ed.), *The Roots of Liberty*, pp. 89-146.

Clark, P., *English Provincial Society from the Reformation to the Revolution: Religion, Politics and Society in Kent, 1500-1640*, Hassocks, Harvester Press, 1977.

Cliffe, J.T., *The Yorkshire Gentry from the Reformation to the Civil War*, London, Athelone Press, 1969.

The Puritan Gentry: the great Puritan families of Early Stuart England, London, Routledge & Kegan Paul, 1984.

Clode, C.M., *The Early History of the Guild of Merchant Taylors of the Fraternity of St. John the Baptist* (2 vols.), London, Harrison & Sons, 1888.

Memorials of the Guild of Merchant Taylors of the fraternity of St. John the Baptist in the city of London, London, Harrison & Sons, 1875.

Cockburn, J.S., 'Seventeenth-century clerks of assize - some anonymous members of the legal profession', *American Journal of Legal History* 13 no. 4 (1969), pp. 315-332.

A History of English Assizes 1558-1714, Cambridge, Cambridge University Press, 1972.

'Trial by the Book? Fact and Theory in Criminal Process, 1558-1625' in Baker (ed.), *Legal Records and the Historian*, pp. 60-79.

'Early modern assize records as historical evidence', *Journal of the Society of Archivists* 5 (1975), pp. 215-231.

(ed.), *Crime in England 1550-1800*, London, Methuen, 1977.

Collins, S.L., *From Divine Cosmos to Sovereign State: An Intellectual History of Consciousness and the Idea of Order in Renaissance England*, Oxford, Oxford University Press, 1989.

Collinson, P., *The Religion of Protestants: The Church in English Society, 1559-1625 (The Ford Lectures 1979)*, Oxford, Clarendon Press, 1982.

Cogswell, T.E., 'Coping with revisionism in early Stuart history', *Journal of Modern History* 62 no. 3 (1990), pp. 538-551.

'A low road to extinction? Supply and redress of grievances in the parliaments of the 1620s', *Historical Journal* 33 no. 2 (1990), pp. 283-303.

Cope, E.S., *Politics Without Parliaments 1629-1640*, London, Unwin & Allen, 1987.

'The Bishops and Parliamentary Politics in Early Stuart England', *Parliamentary History* 9 no. 1 (1990), pp. 1-14.

Corcoran, S. (ed.), *Law and History in Australia: A Collection of Papers presented at the 1989 Law and History Conference, Adelaide*, Adelaide Law Review Association, 1991.

Costello, W.T., *The Scholastic Curriculum at Early Seventeenth-Century Cambridge*, Cambridge Mass, Harvard University Press, 1958.

Costin, M.A., *The History of St. John's College Oxford 1598-1860*, Oxford, Clarendon Press, 1958.

Coward, B., 'The Lieutenancy of Lancashire and Cheshire in the Sixteenth and Early Seventeenth Centuries', *Transactions of the Historic Society of Lancashire and Cheshire* 119, pp. 39-64.

Cragg, G.R., *Freedom and Authority: A Study of English Thought in the Early Seventeenth Century*, Philadelphia, The Westminster Press, 1975.

Cressy, D., *Education in Tudor and Stuart England*, London, Edward Arnold, 1975.

'Educational Opportunity in Tudor and Stuart England', *History of Education Quarterly* 16 no. 1 (1976), pp. 303-306.

'Kin and Kinship Interaction in Early Modern England', *Past & Present* 113 (1986), pp. 38-69.

Croft, P., 'Fresh Light on Bate's Case', *Historical Journal* 30 no. 3 (1987), pp. 523-540.

'The Religion of Robert Cecil', *Historical Journal* 34 no. 4 (1991), pp. 773-796.

Croke, A., *The genealogical history of the Croke family, originally named Le Blount* (2 vols.), Oxford, 1823.

Croll, M.W., *Style, Rhetoric and Rhythm*, Princeton, Princeton University Press, 1966.

Cross, C., D. Loades & J.J. Scarisbrick (eds.), *Law and government under the Tudors*, Cambridge, Cambridge University Press, 1988.

Cumberlege, G., *The Corporation of London: Its Origin, Constitution Powers and Duties*, London, Corporation of London, 1950.

Curtis, M., *Oxford and Cambridge in Transition 1558-1642*, Oxford, Clarendon Press, 1959.

Curtis, T.C., 'Quarter Sessions Appearances and their Background: A Seventeenth-Century Regional Study' in Cockburn (ed.), *Crime in England*, pp. 135-154.

'Explaining Crime in Early Modern England', *Criminal Justice History* 1 (1980), pp. 117-137.

Cussons, J.E., *History of Hertfordshire* (3 vols.), London, Stephen Austin & Sons, 1870-1881.

Cust, R.P., 'Charles I, the Privy Council, and the Forced Loan', *Journal of British Studies* 24 no. 2 (1985), pp. 208-235.

'News and Politics in Early Seventeenth-Century England', *Past & Present* 112 (1986), pp. 60-90.

The Forced Loan and English Politics 1626-1628, Oxford, Clarendon Press, 1987.

& P.G. Lake, 'Sir Richard Grovenor and the Rhetoric of Magistracy', *Bulletin of the Institute of Historical Research* 65 (1981), pp. 40-53.

'Politics and the Electorate in the 1620s' in Cust & Hughes (eds.), *Conflict in Early Stuart England*, pp. 134-167.

& A. Hughes (eds.), *Conflict in Early Stuart England: studies in religion and politics 1603-1642*, London, Longman, 1989.

'Charles I, the Privy Council and the Parliament of 1628', *Transactions of the Royal Historical Society*, 6th series no. 2 (1992), pp. 25-50.

Daly, J., 'The idea of Absolute Monarchy in seventeenth-century England', *Historical Journal* 21 no. 2 (1978), pp. 227-250.

'Cosmic Harmony and Political Thinking in Early Stuart England', *Transactions of the American Philosophical Society* 69 no. 7 (1979), pp. 1-41.

Dawson, J.P., 'Coke and Ellesmere Disintered: The Attack on Chancery in 1616', *Illinois Law Review* 36 (1941), pp. 127-152.

The Oracles of the Law, Ann Arbor, University of Michigan Law School, 1968.

Dean, D.M. & N.L. Jones (eds.), *The Parliaments of Elizabethan England*, London, Basil Blackwell, 1990.

Dean, J., *Middle Temple Hall: Four Centuries of History*, London, Society of the Middle Temple, 1970.

Dollimore, J. & A. Sinfield (eds.), *Political Shakespeare: New Essays in Cultural Materialism*, Manchester, Manchester University Press, 1985.

Draper, F.W.M., *Four Centuries of Merchant Taylors' School*, London, Oxford University Press, 1962.

Dubrow, H. & R. Strier (eds.), *The Historical Renaissance: New Essays on Tudor and Stuart Literature and Culture*, Chicago, University of Chicago Press, 1988.

Eccleshall, R., *Order and Reason in Politics: Theories of Absolute and Limited Monarchy in Early Modern England*, Oxford, Oxford University Press, 1978.

Eisenstadt, S.N. & L. Roniger, 'Patron-Client Relations as a Model of Structuring Social Exchange', *Comparative Studies in Society and History* 22 no. 1 (1980), pp. 42-77.

Elton, G.R., 'Studying the History of Parliament', *British Studies Monitor* 2 no. 1 (1971), pp. 4-14.

'The Rule of Law in Sixteenth-Century England' in Slavin (ed.), *Tudor Men and Institutions*, pp. 265-294.

'A High Road to Civil War?' in *Studies in Tudor and Stuart Politics and Government*, vol. 2, pp. 164-182.

'The Points of Contact' in *Studies in Tudor and Stuart Politics and Government* vol. 3, pp. 3-57.

Studies in Tudor and Stuart Politics and Government (3 vols.), Cambridge, Cambridge University Press, 1974-1983.

Emerson, C. & M. Holquist (eds.), *Speech genres and other late essays* (trans. V.W. McGee), Austin, University of Texas Press, 1986

Eusden, J.D., *Puritans, Lawyers, and Politics in Early Seventeenth-Century England*, New Haven, Yale University Press, 1958.

Evans, J., *A History of the Society of Antiquaries*, Oxford, Society of Antiquaries, 1956.

Everitt, A., *The Community of Kent and the Great Rebellion 1640-1660*, Leicester, Leicester University Press, 1966.

Change in the Provinces: The Seventeenth Century, Leicester, Leicester University Press, 1969.

The Local Community and the Great Rebellion, London, The Historical Association, 1969.

Farnell, J.E., 'The Social and Intellectual Basis of London's Role in the English Civil Wars', *Journal of Modern History* 49 no. 4 (1977), pp. 641-660.

Ferguson, A.B., *Clio Unbound: Perception of the Social and Cultural Past in Renaissance England*, Durham (NC), Duke University Press, 1979.

Figgis, J.N., *The Divine Right of Kings*, Cambridge, Cambridge University Press, 1914.

Fildes, V. (ed.), *Women as Mothers in Pre-Industrial England: essays in memory of Dorothy McLaren*, London, Routledge, 1989.

Fisher, R.M., 'The Reformation in microcosm? Benchers at the Inns of Court, 1530-1580' in Jack (ed.), *Rulers, religion and rhetoric in Early Modern England*, pp. 33-61.

Fitzhugh, T.V.H. (ed.), *The Dictionary of Genealogy*, rev. ed., Sherborne, Alphabooks, 1988.

Flemion, J.S., "'A savings to satisfy all": the House of Lords and the Petition of Right", *Parliamentary History* 10 no. 1 (1991), pp. 27-44.

Fletcher, A., 'National and Local Awareness in the County Communities' in Tomlinson (ed.), *Before the English Civil War*, pp. 151-174.

A County Community in Peace and War: Sussex 1600-1660, London, Longman, 1975.

Reform in the Provinces: The Government of Stuart England, New Haven, Yale University Press, 1986.

& J. Stevenson (eds.), *Order and disorder in early modern England*, Cambridge, Cambridge University Press, 1985.

Fletcher, H.F., *The Intellectual Development of John Milton* (2 vols.), Urbana, University of Illinois Press, 1956.

Fletcher, J.M., 'Change and resistance to change: a consideration of the development of English and German universities during the sixteenth century', *History of Universities* 1 (1981), pp. 1-36.

Foss, E., *The Judges of England; with sketches of their lives, and miscellaneous notices connected with the courts of Westminster, from the time of the conquest* (10 vols.), London, Longman, Brown, Green, Longmans & Roberts, 1857.

A Biographical Dictionary of the Judges of England: From the Conquest to the Present Day, London, John Murray, 1870.

Foster, A., 'The function of a bishop: the career of Richard Neile, 1562-1640' in O'Day & Heal (eds.), *Continuity and change*, pp. 33-55.

'Church Policies of the 1630s' in Cust & Hughes (eds.), *Conflict in Early Stuart England*, pp. 193-223.

Foster, E.R., 'Procedure in the House of Lords During the Early Stuart Period', *Journal of British Studies* 5 no. 2 (1966), pp. 56-73.

'Printing the Petition of Right', *Huntington Library Quarterly* 38 (1974/5), pp. 81-84.

'Petitions and the Petition of Right', *Journal of British Studies* 14 no. 1 (1974), pp. 21-45.

The House of Lords 1603-1649: Structure, Procedure, and the Nature of its Business, Chapel Hill, University of North Carolina Press, 1983.

Foster, F.F., 'Merchants and Bureaucrats in Elizabethan London', *Guildhall Miscellany* 4 no. 3 (1972), pp. 149-160.

Fox, L. (ed.), *English historical scholarship in the sixteenth and seventeenth centuries: a record of the papers delivered at a Conference arranged by the Dugdale Society to commemorate the tercentenary of the publication of Dugdale's Antiquities of Warwickshire*, London, Oxford University Press, 1956.

Fryde, E.B. and E. Miller (eds.), *Historical Studies of the English Parliament* (2 vols.), Cambridge, Cambridge University Press, 1970.

Fussner, F.S., *The Historical Revolution: English Historical Writing and Thought 1580-1640*, Westport, Greenwood Press, 1962.

Gardiner, S.R., *History of England from the Accession of James I to the Outbreak of the Civil War 1603-1642* (10 vols.), London, Longmans, Green & Co., 1883-1884.

Gleason, J.H., *The Justices of the Peace in England 1558 to 1640: A later Eirenarcha*, Oxford, Clarendon Press, 1969.

Godwin, G., *The Middle Temple: the society and fellowship*, London, Staples Press, 1954.

Gordon, W.M. & T.D. Fergus (eds.), *Legal History in the Making: Proceedings of the Ninth British Legal History Conference*, London, Hambledon Press, 1991.

Grafton, A., 'Renaissance Readers and Ancient Texts: Comments on Some Commentaries', *Renaissance Quarterly* 38 no. 4 (1985), pp. 615-649.

& L. Jardine (eds.), *From Humanism to the Humanities: Education and the Liberal Arts in Fifteenth and Sixteenth-Century Europe*, London, Duckworth, 1986.

Gray, C.M., 'Parliament, Liberty, and the Law' in Hexter (ed.), *Parliament and Liberty*, pp. 155-200.

Gray, H.H., 'Renaissance Humanism: The Pursuit of Eloquence' in Kristeller & Wiener (eds.), *Renaissance Essays*, pp. 199-216.

Greaves, R.L., *The Puritan Revolution and Educational Thought: Background for Reform*, New Brunswick, Rutgers University Press, 1969.

& R. Zaller (eds.), *Biographical Dictionary of British Radicals in the Seventeenth Century* (3 vols.), Brighton, Harvester Press, 1982.

Green, T.A., *Verdict according to conscience: perspectives on the English criminal trial jury, 1200-1800*, Chicago; University of Chicago Press, 1985.

Greenblatt, S., 'Invisible Bullets: Renaissance Authority and its Subversion, Henry IV and Henry V' in Dollimore & Sinfield (eds.), *Political Shakespeare*, pp. 18-47.

'Psychoanalysis and Renaissance Culture' in Parker & Quint (eds.), *Literary Theory/Renaissance Studies*, pp. 210-224.

Shakespearean Negotiations: The Circulation of Social Energy in Renaissance England, Berkeley, University of California Press, 1988.

Greenleaf, W.H., *Order, Empiricism and Politics: Two Traditions of English Political Thought, 1500-1700*, London, Oxford University Press, 1964.

Gruenfelder, J.K., 'The Parliamentary Election at Chester, 1621', *Transactions of the Historic Society of Lancashire and Cheshire* 120 (1968), pp. 35-44.

'The Electoral Patronage of Sir Thomas Wentworth, Earl of Stafford, 1614-1640', *Journal of Modern History* 49 no. 4 (1977), pp. 557-574.

Influence in early Stuart elections, 1604-1640, Columbus, Ohio State University Press, 1981.

Guy, J.A., 'The Origin of the Petition of Right Reconsidered', *Historical Journal* 25 no. 2 (1982), pp. 289-312.

Hainsworth, D.R., 'The Estate Steward' in Prest (ed.), *The Professions in Early Modern England*, pp. 154-180.

Hall, G.D.G., 'Impositions and the Courts 1554-1606', *Law Quarterly Review* 69 (1953), pp. 200-218.

'An Assize Book of the Seventeenth Century', *American Journal of Legal History* 7 (1963), pp. 228-245.

Ham, R.E., 'The Four Shire Controversy', *Welsh History Review* 8 no. 4 (1977), pp. 381-399.

Hammer, C.I., 'Bolts and Chapel Moots at Lincoln's Inn in the 16th Century', *Journal of the Society of Public Teachers of Law* 11 (1970), pp. 24-28.

Harris, B.E., 'Palatine Institutions and County Government 1547-1680' in *V.C.H. Cheshire*, vol. 2, pp. 36-55.

Harris, G.L., 'Medieval doctrines in the debates on supply, 1610-1629' in Sharpe (ed.), *Faction and Parliament*, pp. 73-104.

Hart, J.S., 'Provincial Politics and Government in Stuart England', *Journal of British Studies* 28 no. 3, (1989), pp. 304-311.

Justice upon Petition: The House of Lords and the Reformation of Justice 1621-1675, London, HarperCollins Academic, 1991.

Hawkins, M., 'The Government: Its Role and Its Aims' in Russell (ed.), *The Origins of the English Civil War*, pp. 35-65.

Heal, F., 'The Idea of Hospitality in Early Modern England', *Past & Present* 102 (1984), pp. 66-93.

Hospitality in early modern England, Oxford, Clarendon Press, 1990.

Herrup, C.B., 'Law and Morality in Seventeenth-Century England', *Past & Present* 106 (1985), pp. 102-123.

The Common Peace: Participation and the criminal law in seventeenth-century England, Cambridge, Cambridge University Press, 1987.

'The counties and the country: some thoughts on seventeenth-century historiography', *Social History* 8 no. 2, pp. 162-182.

Hexter, J.H., 'The education of the aristocracy in the Renaissance', *Journal of Modern History* 22 no. 1 (1950) pp. 1-20.

(ed.), *Parliament and liberty from the Reign of Elizabeth to the English civil war*, Stanford, Stanford University Press, 1992.

'Power Struggle, Parliament and Liberty in Early Stuart England', *Journal of Modern History* 50 no. 1 (1978), pp. 1-50.

'The Early Stuarts and Parliament', *Parliamentary History* 1 (1982), pp. 181-215.

Hibbard, C., *Charles I and the Popish Plot*, Chapel Hill, University of North Carolina Press, 1983.

Hill, C., *The Economic Problems of the Church: From Archbishop Whitgift to the Long Parliament*, Oxford, Clarendon Press, 1956.

Intellectual Origins of the English Revolution, Oxford, Oxford University Press, 1965.

Society and Puritanism in pre-Revolutionary England, London, Secker & Warburg, 1964.

Change and Continuity in Seventeenth-Century England, London, Weidenfield and Nicholson, 1974.

Hill, J.E.C., 'Parliament and the People in Seventeenth Century England', *Past & Present* 93 (1981), pp. 100-125.

Hill, L.M., 'County Government in Caroline England' in Russell (ed.), *The Origins of the English Civil War*, pp. 66-90.

Bench and Bureaucracy: The Public Career of Sir Julius Caesar, 1580-1636, Stanford, Stanford University Press, 1988.

Hinton, R.W.K., 'English Constitutional Theories from Sir John Fortescue to Sir John Eliot', *English Historical Review* 75 no. 296 (1960), pp. 410-467.

Hirst, D., *The Representative of the People? Voters and Voting in England under the Early Stuarts*, Cambridge, Cambridge University Press, 1975.

'Court, County, and Politics before 1629' in Sharpe (ed.), *Faction and Parliament*, pp. 105-137.

'The Privy Council and Problems of Enforcement in the 1620s', *Journal of British Studies* 18 no. 1 (1978), pp. 46-66.

'Parliament, Law and War in the 1620s', *Historical Journal* 23 no. 2 (1980), pp. 455-461.

'The Place of Principle' in Rabb & Hirst, 'Revisionism Revised', pp. 79-99.

Holdsworth, W.S., *A History of English Law* (3 vols.), 3rd. ed., London, Methuen & Co., 1923.

Hollinger, D.A., 'T.S. Kuhn's Theory of Science and Its Implications for History', *American Historical Review* 78 no. 2 (1973), pp. 370-393.

Holmes, C., 'The County Community in Stuart Historiography', *Journal of British Studies* 19 no. 2 (1980), pp. 54-73.

Seventeenth Century Lincolnshire, Lincoln, Society for Lincolnshire History and Archaeology, 1980.

Holquist, M. (ed.), *The dialogic imagination: Four essays by M.M. Bakhtin* (trans. C. Emerson & M. Holquist), Austin, University of Texas Press, 1981.

Howell, W.S., *Logic and Rhetoric in England, 1500-1700*, New York, Russell & Russell, 1956.

Hughes, A., 'The King, the Parliament, and the Localities during the English Civil War', *Journal of British Studies* 24 no. 2, (1985), pp. 236-263.

Politics, Society and the Civil War in Warwickshire, 1620-1660, Cambridge, Cambridge University Press, 1987.

'Local History and the Origins of the English Civil War' in Cust & Hughes (eds.), *The Causes of the English Civil War*, pp. 224-253.

The Causes of the English Civil War, London, Macmillan, 1991.

Hutchinson, J., *A Catalogue of Notable Middle Templars, with Biographical Notices*, London, for the Masters of the Bench, 1902.

Ives, E.W. & A.H. Manchester (eds.), *Law, Litigants and the Legal Profession (British Legal Conference 1979)*, London, Royal Historical Society, 1983.

Jack, S.M. (ed.), *Rulers, religion and rhetoric in early modern England: A Festschrift for Geoffrey Elton from his Australasian Friends*, Sydney, Paragon, 1988.

James, M., *Family, Lineage, and Civil Society: A Study of Society, Politics, and Mentality in the Durham Region, 1500-1640*, Oxford, Clarendon Press, 1974.

Society, Politics & Culture: Studies in early modern England, Cambridge, Cambridge University Press, 1986.

Jenkins, D. (ed.), *Legal History Studies: papers presented to the Legal History Conference, Aberystwyth, 18-21 July 1972*, Cardiff, University of Wales Press, 1975.

Jensen, J.V., 'The Staff of the Jacobean Privy Council', *Huntington Library Quarterly* 40 no. 1 (1976/7), pp. 11-44.

Jones, F., *The Princes and Principality of Wales*, Cardiff, University of Wales Press, 1969.

Jones, G., *History of the Law of Charity 1532-1827*, Cambridge, Cambridge University Press, 1969.

Jones, N.L., 'An Elizabethan Bill for the Reformation of the Ecclesiastical Law', *Parliamentary History* 4 (1985), pp. 171-189.

Jones, W.J., *The Elizabethan Court of Chancery*, Oxford, Clarendon Press, 1967.

'Ellesmere and Politics, 1603-1617' in Reinmuth (ed.), *Early Stuart Studies*, pp. 11-63.

Politics and the Bench: The Judges and the Origins of the English Civil War, London, George Allen & Unwin, 1971.

'The Exchequer of Chester in the Last Years of Elizabeth I' in Slavin (ed.), *Tudor Men and Institutions*, pp. 123-170.

'The Crown and the Courts in England 1603-25' in Smith (ed.), *The Reign of James IV and I*, pp. 177-194.

Judson, M.A., *The Crisis of the Constitution: an essay in constitutional and political thought in England 1603-1645*, New York, Octagon Books, 1964.

Kantorowicz, E.H., *The King's Two Bodies: A Study in Medieval Political Theology*, Princeton, Princeton University Press, 1957.

Kelley, D.R., *Foundations of modern historical scholarship: language, law and history in the French Renaissance*, New York, Columbia University Press, 1970.

'History, English Law and the Renaissance', *Past & Present* 65 (1974), pp. 24-51.

'Jurisconsultus perfectus: the lawyer as Renaissance man' in Schochet *et al.* (eds.), *Law, Literature and the settlement of regimes*, pp. 143-170.

Kendall, R.T., *Calvin and English Calvinism to 1649*, Oxford, Oxford University Press, 1979.

Kenyon, J.P., *The Stuart Constitution 1603-1688*, Cambridge, Cambridge University Press, 1966.

The Stuart Constitution 1603-1688, 2nd ed., Cambridge, Cambridge University Press, 1986.

The Civil Wars of England, London, Weidenfield & Nicholson, 1988.

Kinney, A.F., 'Sir Phillip Sydney and the Uses of History' in Dubrow & Strier (eds.), *The Historical Renaissance*, pp. 293-314.

Kishlansky, M.A., 'The Emergence of Adversary Politics in the Long Parliament', *Journal of Modern History* 49 no. 4 (1977), pp. 617-640.

Parliamentary Selection: Social and Political Choice in Early Modern England, Cambridge, Cambridge University Press, 1986.

Kittleson, J.M. & P.L. Transue (eds.), *Rebirth, Reform and Resilience: Universities in Transition 1300-1700*, Columbus, Ohio State University Press, 1984.

Klein, W.E., 'Parliament, Liberty and the Continent in the Early Seventeenth Century: The Perception', *Parliamentary History* 6 no. 2 (1987), pp. 209-221.

Knafla, L.A., 'The Law Studies of an Elizabethan student', *Huntington Library Quarterly* 32 no. 3 (1969), pp. 221-240.

'The Matriculation Revolution and Education at the Inns of Court in Renaissance England' in Slavin (ed.), *Tudor Men and Institutions*, pp. 232-264.

Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere, Cambridge, Cambridge University Press, 1977.

"Sins of all sorts swarmeth": Criminal Litigation in an English County in the early Seventeenth Century' in Ives & Manchester (eds.), *Law, Litigants and the Legal Profession*, pp. 50-67.

Kopperman, P.E., *Sir Robert Heath 1575-1649: Window on an Age*, London, Royal Historical Society, 1989.

Kretzmann, N., A. Kenny & J. Pinborg (eds.), *Cambridge History of Later Medieval Philosophy: From the Rediscovery of Aristotle to the Disintegration of Scholasticism*, Cambridge, Cambridge University Press, 1982.

Kristeller, P.O., *Renaissance Thought: the Classics, Scholasticism and Humanist Strains*, New York, Harper & Row, 1961.

& P.P. Wiener (eds.), *Renaissance Essays: From the Journal of the History of Ideas*, New York, Harper, 1968.

Lake, P.G., 'The Collection of Ship Money in Cheshire during the 1630s: A Case Study of Relations between the Central and Local Government', *Northern History* 17 (1981), pp. 52-70.

Moderate Puritans and the Elizabethan Church, Cambridge, Cambridge University Press, 1982.

'Calvinism and the English Church, 1570-1635', *Past & Present* 114 (1987), pp. 32-76.

Anglicans and Puritans? Presbyterianism and English Conformist Thought from Whitgift to Hooker, London, Unwin Hyman, 1988.

Lamont, W.M., *Godly Rule: Politics and Religion, 1603-60*, London, MacMillan, 1969.

Larminie, V.M., *The Godly Magistrate: The Private Philosophy and Public Life of Sir John Newdigate, 1571-1601*, Oxford, Oxford University Press, 1982.

Lees, S. (ed.), *Dictionary of National Biography* (63 vols.), 1st ed., London, Smith, Elder & Co., 1900.

Lemmings, D., 'Ritual and the Law in Early Modern England' in Corcoran (ed.), *Law and History in Australia*, pp. 3-20.

Levack, B.P., *The Civil Lawyers in England 1603-1641: A Political Study*, Oxford, Clarendon Press, 1973.

'The English Civilians, 1500-1750' in Prest (ed.), *Lawyers in Early Modern Europe and America*, pp. 108-128.

'Law and Ideology: The Civil Law and Theories of Absolutism in Elizabethan and Jacobean England' in Dubrow & Strier (eds.), *The Historical Renaissance*, pp. 220-241.

'The civil law, theories of absolutism, and political conflict in late sixteenth and early seventeenth-century England' in Schochet *et al.* (eds), *Law, Literature and the settlement of regimes*, pp. 29-48.

Levy, F.J., 'How Information Spread Among the Gentry, 1560-1640', *Journal of British Studies* 21 no. 2, (1982), pp.11-34.

Lipscomb, G., *The Historie and Antiquities of the County of Buckingham* (4 vols.), London, J. & W. Robins, 1831-1847.

Little, D., *Religion, Order, and Law: A Study in Pre-Revolutionary England*, Oxford, Oxford University Press, 1970.

Lloyd, J.E., & R.T. Jenkins (eds.), *The Dictionary of Welsh Biography down to 1940, under the auspices of the Honourable Society of Cymmadorion*, Oxford, Blackwell, 1959.

Lockyer, R., *Buckingham: The Life and Political Career of George Villiers, First Duke of Buckingham 1592-1628*, London, Longman, 1981.

The Early Stuarts: A political history of England 1603-1642, London, Longman, 1989.

Lovejoy, A.O., *The Great Chain of Being*, New York, Harper, 1960.

Lytle, G.F., 'The Careers of Oxford Students in the Later Middle Ages' in Kittleson & Transue (eds.), *Rebirth, Reform and Resilience*, pp. 213-253.

'Religion and the Lay Patronage in Reformation England' in Lytle & Orgel (eds.), *Patronage in the Renaissance*, p. 65-114.

& S. Orgel (eds.), *Patronage in the Renaissance*, Princeton, Princeton University Press, 1981.

MacCaffrey, W., 'Place and Patronage in Elizabethan Politics' in Bindoff *et al.* (eds.), *Elizabethan Government and Society*, pp. 95-126.

'Patronage and Politics under the Tudors' in Peck (ed.), *Mental World of the Jacobean Court*, pp. 21-35.

MacFarlane, A., *The Justice and the Mare's Ale: Law and Disorder in Seventeenth-Century England*, Cambridge, Cambridge University Press, 1981.

Maitland, F.W., *The Constitutional History of England*, Cambridge, Cambridge University Press, 1908.

'English Law, 1307-1600' in Cam (ed.), *Selected Historical Essays*, pp. 122-134.

Malament, B.C. (ed.), *After the Reformation: essays in honour of J.H. Hexter*, Manchester, Manchester University Press, 1980.

Mallet, C.E., *A History of the University of Oxford vol. II: The Sixteenth and Seventeenth Centuries*, London, Methuen & Co., 1924.

Marchant, J.R.V., 'The Middle Temple Records', *Law Quarterly Review* 21 (1905), pp. 346-356.

Marcus, L.S., *Childhood and Cultural Despair: A Theme and Variations in Seventeenth-Century Literature*, Pittsburgh, University of Pittsburgh Press, 1978.

Marsh, C., 'In the name of God? Will-making and faith in early modern England' in Martin & Spufford (eds.), *The records of the nation*, pp. 61-66.

Martin, G.H., & P. Spufford (eds.), *The records of the nation: the Public Record Office, 1838-1988*, Woodbridge, British Record Society, 1990.

McConica, J., 'The social relations of Tudor Oxford', *Transactions of the Royal Historical Society*, 5th series no. 27 (1977), pp. 115-134.

'Scholars and Commoners in Renaissance Oxford' in Stone (ed.), *The University in Society*, vol. 1, pp. 151-181.

(ed.), *The History of the University of Oxford vol. III: The Collegiate University*, Oxford, Clarendon Press, 1986.

McGowan, A.P. (ed.), *The Jacobean Commissions of Enquiry, 1608 and 1618*, *Navy Records Society* 116 (1971).

McIllwain, C.H., *The High Court of Parliament and Its Supremacy: An Historical Essay on the Boundaries between Legislation and Adjudication in England*, New Haven, Yale University Press, 1910.

McKendrick, N. (ed.), *Historical Perspectives: studies in English thought and society, in honour of J.H. Plumb*, London, Europa Press, 1974.

Meekings, C.A.F., 'King's Bench Files' in Baker (ed.), *Legal Records and the Historian*, pp. 97-139.

Moir, T.L., *The Addled Parliament of 1614*, Oxford, Clarendon Press, 1958.

Momigliano, A., *Studies in Historiography*, London, Weidenfield & Nicholson, 1966.

Morrill, J.S., *Cheshire 1630-1660: County Government and Society during the English Revolution*, Oxford, Oxford University Press, 1974.

The Cheshire Grand Jury 1625-1629: A Social and Administrative Study, Leicester, Leicester University Press, 1976.

The Revolt of the Provinces: Conservatives and Radicals in the English Civil War 1630-1650, 2nd. ed., London & New York, Longman, 1980.

'The Religious Context of the English Civil War', *Royal Historical Society Transactions*, 5th series no. 34 (1984), pp. 155-178.

(ed.), *The Impact of the English Civil War*, London, Collins & Brown, 1991.

Neale, J.E., 'The Biographical Approach to History', *History* 36 no. 128 (1951), pp. 193-203.

Nederman, C.J., 'Bracton on Kingship Revisited', *History of Political Thought* 5 no. 1 (1984), pp. 61-77.

Notestein, W., *The Winning of the Initiative by the House of Commons*, London, the British Academy, 1924.

The House of Commons, 1604-1610, New Haven & London, Yale University Press, 1971.

Oakley, F., 'Jacobean Political Theology: The Absolute and Ordinary Powers of the King', *Journal of the History of Ideas* 19 no. 3 (1968), pp. 323-346.

O'Day, R., 'The Law of Patronage in Early Modern England', *Journal of Ecclesiastical History* 26 no. 3 (1975), pp. 247-260.

The English Clergy: The Emergence and Consolidation of a Profession 1558-1642, Leicester, Leicester University Press, 1979.

Education and Society, 1500-1800: the social foundations of education in early modern England, London & New York, Longman, 1982.

& F. Heal (eds.), *Continuity and change: Personnel and administration of the Church of England 1500-1642*, Leicester, Leicester University Press, 1976.

Ormerod, G., *The History of the County Palatine and City of Chester* (3 vols.), 2nd ed., (rev. T. Helsby), London, Routledge, 1875-1882.

Ong, W., *Ramus Method, and the Decay of Dialogue*, Cambridge (Mass.), Harvard University Press, 1958.

Interfaces of the Word: Studies in the Evolution of Consciousness and Culture, Ithaca, Cornell University Press, 1982.

Orme, N., *Education and Society in Medieval and Renaissance England*, London, The Hambledon Press, 1989.

Parker, P., & D. Quint (eds.), *Literary Theory / Renaissance Texts*, Baltimore, Johns Hopkins University Press, 1986.

Pawlisch, H.S., 'Sir John Davies, The Ancient Constitution and Civil Law', *Historical Journal* 23 no. 3 (1980), pp. 689-702.

Pearl, V., *London and the Outbreak of the Puritan Revolution: City Government and National Politics, 1625-1643*, Oxford, Oxford University Press, 1961.

Peck, L.L., 'Corruption at the Court of King James' in Malament (ed.) *After the Reformation*, pp. 75-94.

'Court Patronage and Government Policy: The Jacobean Dilemma' in Lytle & Orgel (eds.), *Patronage in the Renaissance*, pp. 27-46.

Northampton: patronage and policy at the court of James I, London & Boston, Allen & Unwin, 1982.

"For a King not to be bountiful were a fault": Perspectives on Court Patronage in Early Stuart England, *Journal of British Studies* 25 no. 1 (1986), pp. 31-61.

Court Patronage and Corruption in Early Stuart England, Boston, Unwin Hyman, 1990.

(ed.), *The Mental World of the Jacobean Court*, Cambridge, Cambridge University Press, 1991.

Pennington, D., & K. Wrightson (eds.), *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill*, Oxford, Oxford University Press, 1978.

Plunkett, F.B.A., *Early English Legal Literature*, Cambridge, Cambridge University Press, 1958.

Pocock, J.G.A., *The Ancient Constitution and Feudal Law: A Study of English Historical Thought in the Seventeenth Century*, Cambridge, Cambridge University Press, 1957.

Politics, Language and Time: essays on political thought and history, London, Methuen, 1972.

The Ancient Constitution and Feudal Law: A Study of English Historical Thought in the Seventeenth Century: a reissue with a retrospect, Cambridge, Cambridge University Press, 1987.

Pollock, L., 'Younger sons in Tudor and Stuart England', *History Today* 39/6 (1989), pp. 23-29.

Prest, W.R., 'The legal education of the gentry at the inns of court, 1560-1640', *Past & Present* 38 (1967), pp. 20-39.

'The Learning Exercises at the Inns of Court, 1590-1640', *Journal of the Society of Public Teachers of Law* 9 no. 3 (1967), pp. 302-313.

The Inns of Court Under Elizabeth I and the Early Stuarts 1590-1640, London, Longman, 1972.

'Counsellor's Fees and Earnings in the Age of Sir Edward Coke' in Baker (ed.), *Legal Records and the Historian*, pp. 165-184.

'The Dialectical Origins of Finch's Law', *Cambridge Law Journal* 36 pt 2 (1977), pp. 326-352.

'The Art of Law and the Law of God: Sir Henry Finch (1558-1625)' in Pennington & Wrightson (eds.), *Puritans and Revolutionaries*, pp. 94-117.

'The English Bar, 1550-1700' in *Lawyers in Early Modern Europe and America*, pp. 65-85.

(ed.), *Lawyers in Early Modern Europe and America*, London, Croon Helm, 1981.

The Rise of the Barristers: A Social History of the English Bar 1590-1640, Oxford, Clarendon Press, 1986.

'Politics and Profession in early Stuart England: the diary of Sir Richard Hutton' in Jack (ed.), *Rulers, religion and rhetoric*, pp. 163-177.

'Judicial Corruption in Early Modern England', *Past & Present* 133 (1991), pp. 66-95.

Prestwich, M., *Cranfield: Politics and Profits under the Early Stuarts*, Oxford, Clarendon Press, 1966.

Price-Williams, D., 'Toward the idea of a cultural psychology: A superordinate theme for study', *Journal of cross-cultural psychology* 11 no. 1 (1980), pp. 75-88.

Public Record Office Current Guide (1991) vol. 1, 'Records of the Palatinate of Chester'.

Quintrell, B.W., 'Government in Perspective: Lancashire and the Privy Council, 1570-1640', *Transactions of the Historical Society of Lancashire and Cheshire* 131 (1981), pp. 35-62.

Rabb, T.K., 'The Role of the Commons' in Rabb and Hirst, 'Revisionism Revised', pp. 55-78.

& D. Hirst, 'Revisionism revised: two perspectives on early Stuart parliamentary history', *Past & Present* 42 (1981), pp. 55-99.

Reinmuth, H.S. (ed.), *Early Stuart Studies*, Minneapolis, University of Minnesota Press, 1970.

Reeve, L.J., 'The legal status of the Petition of Right', *Historical Journal* 29 no. 2 (1986), pp. 257-277.

'Sir Robert Heath's advice for Charles I in 1629', *Bulletin of the Institute of Historical Research* 59 no. 2 (1986), pp. 215-224.

'The Arguments in King's Bench in 1629 concerning the Imprisonment of John Selden and Other Members of the House of Commons', *Journal of British Studies* 25 no. 3 (1986), pp. 264-287.

Charles I and the Road to Personal Rule, Cambridge, Cambridge University Press, 1989.

Relf, F.H., *The Petition of Right*, Minneapolis, University of Minnesota Press, 1917.

Richardson, R.C., *The Debate on the English Revolution Revisited*, 2nd ed., London, Routledge, 1988.

Richardson, W.C., *A History of the Inns of Court: With Special Reference to The Period of The Renaissance*, Baton Rouge, Claitor's Publishing, 1980.

Roberts, C., & O. Duncan, 'The Parliamentary Undertaking of 1614', *English Historical Review* 93 no. 368 (1978), pp. 481-498.

Roberts, P., 'Wales and England after the Tudor 'union': Crown, principality and parliament, 1543-1624' in Cross *et al.* (eds.), *Law and government under the Tudors*, pp. 111-135.

Rodgers, C.P., 'Humanism, History and the Common Law', *Journal of Legal History* 6 no. 2 (1985), pp. 129-156.

Roskill, J.S., 'Perspectives in English Parliamentary History' in Fryde and Miller (eds.), *Historical Studies of the English Parliament*, vol. 2, pp. 296-323.

Russell, C.S.R., (ed.), *The Origins of the English Civil War*, London, MacMillan, 1973.

'Parliamentary History in Perspective, 1604-1629', *History* 61 no. 201 (1976), pp. 7-29.

'The Nature of a Parliament in Early Stuart England' in Tomlinson (ed.), *Before the English Civil War*, pp. 123-150.

- Parliaments and English Politics 1621-1629*, Oxford, Clarendon Press, 1979.
- Unrevolutionary England, 1603-1642*, London, The Hambledon Press, 1990.
- The Causes of the English Civil War: the Ford Lectures delivered in the University of Oxford 1987-1988*, Oxford, Clarendon Press, 1990.
- 'English Parliaments 1593-1606: One Epoch or Two?' in Dean & Jones (eds.), *The Parliaments of Elizabethan England*, pp. 191-213.
- The Fall of the British Monarchies, 1637-1642*, Oxford, Clarendon Press, 1991.
- Russell, E., 'The influx of commoners into the University of Oxford before 1581: an optical illusion?', *English Historical Review* 92 no. 365 (1977), pp. 721-745.
- Salmon, J.H.M., 'Stoicism and Roman Example: Seneca and Tacitus in Jacobean England', *Journal of the History of Ideas* 50 no. 2 (1989), pp. 199-225.
- Sandoz, E. (ed.), *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of the Rule of Law*, Columbia and London, University of Missouri Press, 1993.
- Schmitt, C.B., *John Case and Aristotelianism in Renaissance England*, Ontario, McGill-Queens University Press, 1983.
- Schochet, G.J., *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England*, Oxford, Oxford University Press, 1975.
- P.E. Tatspaugh & C. Brobeck (eds.), *Law, Literature and the settlement of regimes*, Washington, Folger Shakespeare Library, 1990.
- Schoeck, R.J., 'Rhetoric and Law in sixteenth-century England', *Studies in Philology* 50 (1953), pp. 110-127.
- 'The Elizabethan Society of Antiquaries and Men of Law', *Notes & Queries* 199 (1954), pp. 417-421.
- Schwarz, M.L., 'James I and the Historians', *Journal of British Studies* 13 no. 2 (1974), pp. 114-134.

Seipp, D.J., 'The Structure of English Common Law in the Seventeenth Century' in Gordon & Fergus (eds.), *Legal History in the Making*, pp. 61-84.

'Bracton, the Year Books, and the "Transformation of Elementary Legal Ideas" in the Common Law', *Law and History Review* 7 no. 1 (1989), pp. 175-217.

Sharpe, J.A., *Crime in Seventeenth-Century England: A County Study*, Cambridge, Cambridge University Press, 1983.

Crime in Early Modern England 1550-1750, London, Longman, 1984.

Sharpe, K.M., 'Parliamentary History 1603-1629: In or Out of Perspective?' in *Faction and Parliament*, pp. 1-42.

'A commonwealth of meanings: languages, analogues, ideas and politics' in *Politics & Ideas*, pp. 3-71.

'Crown, parliament and locality: government and communication in Early Stuart England' in *Politics & Ideas*, pp. 75-100.

Faction and Parliament: essays on early Stuart history, New York, Oxford University Press, 1978.

Sir Robert Cotton, 1586-1631: history and politics in early modern England, Oxford, Oxford University Press, 1979.

'William Laud', *History Today* 33/8 (1983), pp. 26-30.

'The personal rule of Charles I' in Tomlinson (ed.), *Before the English Civil War*, pp. 53-78.

Politics and Ideas in Early Stuart England: Essays and Studies, London, Pinter Publishers, 1989.

The Personal Rule of Charles I, London & New Haven, Yale University Press, 1992.

Sherzer, J., 'A discourse-centred approach to language and culture', *American anthropologist* 89 no. 2 (1987), pp. 295-309.

Shuger, D.K., *Habits of Thought in the English Renaissance: Religion, Politics and the Dominant Culture*, Berkeley, University of California Press, 1990.

Shweder, R.A., *Thinking Through Cultures: Expeditions in Cultural Psychology*, Cambridge (Mass.), Harvard University Press, 1991.

Simon, J., *Education and Society in Tudor England*, Cambridge, Cambridge University Press, 1966.

'Dr. Cowell', *Cambridge Law Journal* 26 no. 2 (1968), pp. 260-276.

The Social Origins of English Education, London, Routledge & Kegan Paul, 1972.

Simpson, A.W.B., 'The source and function of the later year books', *Law Quarterly Review* 87 (1971), pp. 94-118.

Skeel, C.A.J., *The Council in the Marches of Wales: A Study in Local Government during the Sixteenth and Seventeenth Centuries*, London, Hugh Rees Ltd., 1904.

Skinner, Q., 'History and Ideology in the English Revolution', *Historical Journal* 8 no. 2 (1965), pp. 151-178.

'The Limits of Historical Explanations', *Philosophy* 41 (1966), pp. 199-215.

'Motives, Intentions and the Interpretation of Texts', *New Literary History* 3 no. 2 (1972), pp. 393-408.

'The Principles and Practice of Opposition: The Case of Bolingbroke versus Walpole' in McKendrick (ed.), *Historical Perspectives*, pp. 93-128.

The Foundations of Modern Political Thought (2 vols.), Cambridge, Cambridge University Press, 1978.

collected essays in Tully, J., *Meaning and Context: Quentin Skinner and his Critics*, Princeton, Princeton University Press, 1988.

Slack, P., *The Impact of Plague in Tudor and Stuart England*, London & Boston, Routledge & Kegan Paul, 1985.

Slavin, A.J. (ed.), *Tudor Men and Institutions: Studies in English Law and Government*, Baton Rouge, Louisiana State University Press, 1972.

Smith, A.G.R. (ed.), *The Reign of James IV and I*, London, Macmillan, 1973.

Smuts, R.M., *Court Culture and the Origins of a Royalist Tradition in Early Stuart England*, Philadelphia, University of Pennsylvania Press, 1987.

Sommerville, J.P., 'Richard Hooker, Hadrian Saravia, and the Advent of the Divine Right of Kings', *History of Political Thought* 4 no. 2 (1983), pp. 229-245.

Politics & Ideology in England 1603-1640, New York, Longman, 1986.

'Ideology, Property and the Constitution' in Cust & Hughes (eds.), *Conflict in Early Stuart England*, pp. 47-71.

'James I and the divine right of kings: English politics and continental theory' in Peck (ed.), *Mental World of the Jacobean Court*, pp. 55-70.

'Parliament, Privilege, and the Liberties of the Subject' in Hexter (ed.), *Parliament and Liberty*, pp. 56-84.

Spalding, R., *The Improbable Puritan: a life of Bulstrode Whitelocke, 1605-1675*, London, Faber & Faber, 1975.

(ed.), *Contemporaries of Bulstrode Whitelocke*, New York, The British Academy, 1990.

Squibb, G.D., *The High Court of Chivalry: A Study of the Civil Law in England*, Oxford, Clarendon Press, 1959.

Stevenson, W.H. & H.E. Salter, *The Early History of St. John's College Oxford*, Oxford, Clarendon Press, 1939.

Steig, M., *Laud's Laboratory: The Diocese of Bath and Wells in the Early Seventeenth Century*, Lewisburg, Bucknell University Press, 1982.

Stigler, J.W., R.A. Shweder & G. Herdt, *Cultural psychology: Essays on comparative human development*, New York and Cambridge, Cambridge University Press, 1990

Stone, L., 'The Educational Revolution in England, 1560-1640', *Past & Present* 28 (1964), pp. 41-80.

The Crisis of the Aristocracy 1558-1641, Oxford, Clarendon Press, 1965.

'The Size and Composition of the Oxford Student Body 1580-1910' in *The University in Society*, vol. 1, pp. 3-110.

(ed.), *The University in Society* (2 vols.), Princeton, Princeton University Press, 1974.

The Family, Sex and Marriage in England 1500-1800, London, Weidenfeld & Nicolson, 1977.

Strathmann, E.A., 'Raleigh's *Discourse of Tenures* and Sir Roger Owen', *Huntington Library Quarterly* 20 (1956-7), pp. 219-232.

Swanson, R.N., 'Universities, graduates, and benefices in later medieval England', *Past & Present* 106 (1985), pp. 28-61.

Tanner, J.R., *English Constitutional Conflicts of the Seventeenth Century, 1603-1689*, Cambridge, Cambridge University Press, 1962.

Taylor, C., *Human agency and language: philosophical papers I*, New York, Cambridge University Press, 1985.

Sources of the self: The making of modern identity, Cambridge, Cambridge University Press, 1989.

Thirsk, J., 'Younger sons in the seventeenth century', *History* 54 no. 182 (1969), pp. 358-377.

Thomas, G.W., 'James I, Equity and Lord Keeper John Williams', *English Historical Review* 91 no. 360 (1976), pp. 506-528.

Thompson, C., 'The Divided Leadership of the House of Commons in 1629' in Sharpe (ed.), *Faction and Parliament*, pp. 245-284.

Thorne, S.E., *Essays in English Legal History*, London, Hambledon Press, 1985.

Tierney, B., *Religion, Law, and the Growth of Constitutional Thought, 1150-1650*, Cambridge, Cambridge University Press, 1982.

Tomlinson, H. (ed.), *Before the English Civil War: Essays on Early Stuart Politics and Government*, London, Macmillan, 1983.

Trevor-Roper, H., *Archbishop Laud 1573-1645*, London, MacMillan & Co., 1940.

Catholics, Anglicans and Puritan, London, Martin Secker & Warburg, 1987.

Tuck, R., 'Power and Authority in Seventeenth-Century England', *Historical Journal* 17 no. 1 (1974), pp. 43-61.

Natural Rights Theories, Cambridge, Cambridge University Press, 1979.

Tully, J., *Meaning and Context: Quentin Skinner and his Critics*, Princeton, Princeton University Press, 1988.

Tyacke, N., 'Puritanism, Arminianism and Counter-Revolution' in Russell (ed.), *The Origins of the English Civil War*, pp. 119-143.

'The Rise of Arminianism Reconsidered', *Past & Present* 115 (1987), pp. 201-216.

Anti-Calvinists: the Rise of English Arminianism, c. 1590-1640, Oxford, Clarendon Press, 1987.

& White, 'The rise of Arminianism reconsidered', *Past & Present* 115 (1987), pp. 201-229.

Underdown, D.E., *Somerset in the Civil War and Interregnum*, Newton Abbot, David & Charles, 1973.

Usher, R.G., 'Nicholas Fuller: A Forgotten Exponent of English Liberty', *American Historical Review* 12 no. 4 (1907), pp. 743-760.

Van Greyerz, K. (ed.), *Religion and Society in Early Modern Europe, 1500-1800*, London, Allen & Unwin, 1984.

Victoria County History:

Buckinghamshire

Oxfordshire

Cheshire

Wagner, A., *The Heralds of England: A History of the Office and College of Arms*, London, H.M.S.O., 1967.

Walzer, M., *The Revolution of the Saints: a study of the origins of radical politics*, New York, Atheneum, 1966.

- Waswo, R., *Language and Meaning in the Renaissance*, Princeton, Princeton University Press, 1987.
- Wertsch, J.V., *Voices of the Mind: A Sociocultural Approach to Mediated Action*, Cambridge (Mass.), Harvard University Press, 1991.
- Weston, C.C. & J.R. Greenberg, *Subjects and Sovereigns: The Grand Controversy over Legal Sovereignty in Stuart England*, Cambridge, Cambridge University Press, 1981.
- Whellan, F. (ed.), *History, Topography and Directory of Northamptonshire*, London, 1874.
- White, S.D., 'Observations on Early Stuart Parliamentary History', *Journal of British Studies* 18 no. 2 (1979), pp. 158-170.
- Williams, C.H., 'Early Law Readings', *Bulletin of the Institute of Historical Research* 3 no. 7 (1925), pp. 96-101.
- Williams, P., *The Council in the Marches under Elizabeth I*, Cardiff, University of Wales Press, 1958.
- 'The Activity of the Council in the Marches under the early Stuarts' in *The Welsh History Review* 1 no. 2 (1961), pp. 133-160.
- 'The Attack on the Council in the Marches 1603-1642', *Transactions of the Honourable Society of Cymmadorion* 1 (1961), pp. 1-22.
- Williams, W.R., *The parliamentary history of the county of Oxford, including the city and university of Oxford, and the borough of Banbury, Burford, Chipping, Norton, Dadington, Witney, and Woodstock from... 1213-1899*, Brecknock, 1899.
- Wilson, A., 'The ceremony of childbirth and its interpretation' in Fildes (ed.), *Women as Mothers in Pre-Industrial England*, pp. 68-107.
- Wilson, D.H., *The Privy Councillors in the House of Commons 1604-1629*, New York, Octagon Books, 1971.
- James VI and I*, London, Jonathan Cape, 1972.
- Wilson, H.B., *History of Merchant Taylors' School, from its foundation to the present time* (2 vols.), London, 1812-1814.

Wootton, D. (ed.), *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, London, Penguin, 1986.

Worden, B., 'The 'Diary' of Bulstrode Whitelocke', *English Historical Review* 153 no. 426 (1993), pp. 122-134.

Wormald, J., 'James VI and I, *Basilikon Doron* and *The Trew Law of Free Monarchies*: the Scottish context and the English translation' in Peck, *Mental World of the Jacobean Court*, pp. 36-54.

Wrightson, K., *English Society 1580-1680*, London, Hutchinson, 1982.

'Two concepts of order: justices, constables and jurymen in seventeenth-century England' in Brewer and Styles (eds.) *An Ungovernable People*, pp. 21-46.

Yates, F.A., *The Art of Memory*, 2nd ed., London, Ark Paperbacks, 1984.

Young, M.B., 'The Origins of the Petition of Right Reconsidered Further', *Historical Journal* 27 no. 2 (1984), pp. 449-452.

Zagorin, P., *Rebels & Rulers 1500-1660* (2 vols.), Cambridge, Cambridge University Press, 1982.

Zaller, R., *The Parliament of 1621: A study in constitutional conflict*, London, University of California Press.

Unpublished theses:

Burgess, P.G., 'Custom, Reason and the Common Law: English Jurisprudence 1600-1650' (University of Cambridge PhD, 1988).

Clendenin, T., 'The Common Lawyers in Parliament and Society: A Social and Political Study of the Common Lawyers in the First Jacobean Parliament' (University of North Carolina PhD, 1975).

Cooper, H.H.A., 'Promotion and Politics Among the Common-Law Judges of the Reigns of James I and Charles I' (Liverpool University MA, 1964).

Higgins, G.P., 'County Government and Society in Cheshire, c. 1590-1640' (Liverpool University MA, 1973).

Shaller, T.K., 'English Law and the Renaissance: the Common Law and Humanism in the Sixteenth Century' (Harvard University Ph D, 1979).