

Law and Authority in Early Modern England: Essays Presented to Thomas Garden Barnes

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Law and Authority in Early Modern England is a tribute to a professor of law and history at the University of California, Berkeley who has for over 40 years made important contributions to early modern English history. In fact, as the editors point out, Tom Barnes hardly confined himself to England. To give only a hint at his range, he has also published on the history of law and the legal professions in colonial Massachusetts and 18th-century Nova Scotia, as well as legal education in 19th- and 20th-century California. Nevertheless, British historians will recognise him primarily for his pioneering work in two apparently separate fields, and all of the papers in this volume are devoted to English history.

Born in Pittsburgh, Pennsylvania Barnes took his first degree at Harvard, and then went to Oxford to complete his doctorate in 1955 under the supervision of R. B. Wernham. Published in 1961 as *Somerset 1625-1640: A County's Government During the 'Personal Rule'* (Cambridge, MA, 1961), the book reflects Wernham's deep knowledge of sources in The National Archives, but it is most impressive as one of the first major studies of a particular locality that was also based on a total immersion in local records such as gentry correspondence and quarter sessions papers. It was, therefore, a precursor to several generations of works of the 1960s and 70s including Alan Everitt's study of Kent, John Morrill's of Cheshire and Anthony Fletcher's on Sussex as well as numerous doctoral dissertations that explored the 'relationship between the centre and the localities'.⁽¹⁾ Like most of those pursuing this approach, Barnes's examination of local politics and society led him to rethink, or revise, older 'Whiggish' views that stressed the rise of a politically aware gentry that aimed for a greater say in national government, stressing instead the way more parochial interests and factional quarrels tended to pre-occupy local governors. Culminating in the village study of Terling in Essex by Keith Wrightson and David Levine,⁽²⁾ the trend Barnes was influential in developing formed a cornerstone of so-called 'revisionist' accounts of pre-civil war English political history that emerged during

the 1980s. Yet, as revisionism became the new orthodoxy, the local study apparently lost its appeal, and it is only during the last decade that questions about the relationship between the centre and the localities have come back onto the agenda. As a result there has been a renewed interest in the 'state' (3) and in the relationship between individuals and institutions such as the Church of England, the law courts and the military. Here too Barnes made a significant contribution. Having finished with Somerset, he turned in the early 1960s to the history of the notorious court of Star Chamber. He also started to pioneer a new style of 'historian's legal history', which has come to involve the widespread use of court depositions as a rich source for social history, and which aims for a broader consideration of the functions of courts and their role in the social and economic lives of ordinary subjects as well as the landed elite. Along with William Jones, who wrote on the Elizabethan Chancery, (4) Barnes was an innovator in looking in depth at the workings of a single jurisdiction. He considered legal processes as well as legal doctrines in order to understand how courts worked, how much it cost to litigate and who and what was involved in contemporary lawsuits. His essays contributed enormously to a better understanding of Star Chamber and its generally symbiotic relationship with the common law prior to the 1630s, when its use by Charles I's government to enforce the policies of the Personal Rule led to its largely unopposed abolition by the Long Parliament in 1641. Always in the vanguard, Barnes also utilised early 1970s computer technology in order to make qualitative as well as quantitative analyses of the work of the court: his three-volume list and index of Jacobean Star Chamber proceedings is still an invaluable finding-aid for the archive of the jurisdiction in its heyday (the vast majority of Star Chamber proceedings for the reign of Charles I have been lost). (5)

Although none of the eight papers collected here aim for the complete archival mastery that Barnes pursued in connection with Star Chamber, they well reflect his interests in local as well as national politics, jurisdiction and the kinds of 'sharp practices' and human failings frequently encountered when considering early modern legal arrangements. In a concise piece that was previously published elsewhere, the late Conrad Russell provides a fascinating insight into the relationship between the common law and King James VI and I in connection with the union of the crowns of Scotland and England. Russell dissects the character of 'judge made' English law, which did not normally dwell much on questions about its sources of authority, with profound insight. Although his contention that common lawyers in the age of Sir Edward Coke were particularly hostile to the legal implications of the proposed merger of English and Scottish institutions is hardly novel, his general conclusion that common law eyebrows were invariably raised in this period whenever there was an outside jurisdictional threat certainly appears to hold true, and as he also suggests, the reaction was hardly mollified in this specific instance by James VI and I's intention of achieving a legal convergence between the two countries by means of parliamentary statute. Indeed, William M. Abbott's detailed and valuable chapter that chronicles the attack on the secular functions of bishops in the early stages of the Long Parliament raises some similar issues, although in this case the lack of much discussion of the longer-term history of the relationship between the ecclesiastical polity and the common law makes it difficult to understand exactly how and why various lay and lawyer MPs expressed such a range of opinions about the issue in 1640-1.

By contrast, as Alan Horstman shows in his chapter on the resurrection of parliamentary impeachment, although Nicholas Fuller, a well-known lawyer and puritan critic of the church courts in the first decade of the 17th century, was also involved in the revival of the judicial role of parliament, the rediscovery of impeachment in 1621 (based on precedents from the time of Edward III), which brought down Lord Chancellor Bacon as well as the monopolist Giles Mompesson, was evidently relatively uncontroversial. Everybody agreed that parliament was a court, even if there were questions about the relative roles of the House of Lords and House of Commons in the process. Yet as Stephen J. Stearns shows in his piece on 'military disorder' in the later 1620s, the introduction of martial law in connection with the wars against France and Spain was met by parliamentary hostility from lawyers and country squires alike because it was seen as an illegal introduction of an alien law into the localities that undermined traditional legal processes and the magisterial powers usually associated with them. Given the national political importance of the debates on martial law in the later parliaments of the 1620s, this chapter is particularly valuable in looking beyond the outcry in London to some of the actual problems that gave rise to criticisms of martial law in the localities. Stearns shows that there was little precedent for the application of military law on domestic soil (a

point frequently stressed by lawyer opponents) but the government, nevertheless, had to confront the problem of maintaining soldiers in arms at home while they were awaiting deployment abroad. The common law evidently had no way of dealing with desertion and other issues relating specifically to military discipline, but laymen became concerned that joint commissions incorporating martial law with the traditional powers of JPs were liable to subject laymen to military rule and/or undermine the authority of civilian magistrates to maintain the peace in their localities by prosecuting offences such as theft by conscripts. In the best Barnes tradition, Stearns shows that most of the problems in the localities arose primarily from the indiscipline of soldiers who were often poorly treated and inadequately paid by a government chronically short of money. He explores in some detail one of the most notorious episodes: 'Saltonstall's mutiny' at Harwich in the spring of 1627, to demonstrate how the poor treatment of men by their inexperienced officers could lead to trouble, and concludes that a collapse in the Crown's capacity to support the army in late 1627 and 1628 led to an escalation of disorder among the soldiers and hostility from local people who had to bear the brunt of it. The Crown naturally assumed that the use of martial law was the most effective means of dealing with the problem, but local justices came to see it as much as a hindrance as a help to them. At the same time, as opposition to all aspects of the war effort (including measures such as the Forced Loan) intensified, there was apparently concern that martial law might be also used to discipline civilian critics of the policy. In the midst of this frustration, lawyers such as John Selden and Sir Edward Coke led the attack on martial law in parliament, and they were, according to Stearns, able to convince 'conservative' gentry MPs that the application of military law to civilians in England was contrary to the common law unless there was a state of war at home.

As the editors observe in their introduction, discontent among soldiers as a result of a lack of provision was of course matched in this period by a number of well-known episodes in which civilian populations also resorted to protest and, sometimes, direct action in order to encourage the authorities to enforce the laws against those who hoarded grain in times of dearth, or bought it up in one locality with the intention of selling it in another - most commonly the rapidly growing and voracious London. This is a subject that is explored in Buchanan Sharp's complex and lengthy contribution. Aimed primarily at challenging the orthodox view among literary scholars that the protest scenes involving a Roman mob in William Shakespeare's *Coriolanus* were a direct reference to the Midlands revolt of 1607 (primarily an agrarian protest against the enclosure of common land), the chapter contends instead that the unrest depicted by Shakespeare was urban and, therefore, had more in common with the disorders associated with the shortages of grain in London during the later 1590s. The problem is that while Shakespeare would almost certainly have been aware of the latter, the best guesses about the composition of the play indicate that it was much nearer in date to the Midlands revolt. Nevertheless, Sharp convincingly shows that the protest depicted in the play looks more like an urban food riot than a rising against enclosures. Furthermore, since there is no way of knowing for certain exactly what was in Shakespeare's mind when he wrote, Sharp plausibly maintains that this cannot be adequately deduced simply from the doubtful evidence about the date of composition (or indeed conception) of the work. At the same time, he also provides some useful detailed material on the character of the London disorders and the reactions of the authorities to them. Here, like most recent scholars who have studied such incidents, Sharp concludes that the early modern crowd normally expressed an overt commitment to law and order, and that both they and the authorities, like Shakespeare's plebs, blamed failures of grain supplies on illegal market manipulation and individual greed.

Similarly, Lamar Hill's investigation of four 'narrations of indebtedness' from the archives of the Court of Requests leads him to remind us that that the picture of reciprocal and 'neighbourly' credit relationships that has characterised the work of Craig Muldrew and others also needs to account for the no less commonplace problems of fraud, manipulation and deceit. (6) Although his observations are based on a mere handful of cases, Hill certainly shows that in the face-to-face world of Bristol tradesmen, there was scope for 'hard practice' and the exploitation of deferential, rather than more egalitarian, social relations. This is a subject that needs to be pursued further by Hill or others. But, if like John Taylor, the Water-Poet, we accept that the 1630s were indeed a 'brazen age', where public as well as private trust were constantly being put to the test, then the final essay in the collection, by Mark Charles Fissel, aims to show that the disease was entrenched at least as deeply in the head as in the feet of the body politic. In a fascinating and deeply-researched paper

on 'Early Stuart Absolutism and the Strangers' Consulage', Fissell traces the levies made by the Crown and its representative on members of the Levant Company trading in Turkey from the late 1620s into the Restoration period. Initially intended as a imposition paid by the merchants in return for protection from the Crown, Charles I allowed 'the strangers' consulage' to be collected as a perk that contributed to the income of his unpaid ambassador and in the 1640s attempted to requisition it to help finance the royalist war effort. But this is to simplify greatly an immensely complicated story of the relationship among government, commercial interests, and private greed. According to Fissel, much of the problem must ultimately be laid at the door of the king, who 'plundered' the Levant merchants in much the same way as he did other business and trading interests through the various royal 'projects' of the 1630s. While many historians might be more cautious than he is about labelling this as 'early Stuart absolutism', Fissel is able to show that by the early 1640s some members of the Levant Company had reason to think that the Sultan was less tyrannical than the King of England. On the other hand, he also demonstrates that first the Long Parliament and then Oliver Cromwell also tried to fill their empty coffers by exploiting the Levant trade. If, as Fissel suggests, this sorry tale provides a background for understanding the 'commercial revolution', it could also be construed as part of the playing out on a larger stage of the 'relationship between the centre and the localities' as English subjects ventured forth over the world in larger numbers and negotiated with the institutions in London, primarily the crown, the legal and jurisdictional frameworks that would underwrite their activities.

Like many such collections, *Law and Authority* is in some respects diverse and lacking in a single overarching theme or subject, but the essays inhabit discernible fields of interest which owe a considerable debt to the historian they were written in honour of. Some readers may find them slightly dated, and several of the pieces might have been more concisely written. But all of them have something worthwhile to say and reflect the timeless virtues of empirical research that Barnes advocated. In addition to a useful compilation of his published works, the volume also contains a brief but informative appreciation of his career as scholar and teacher.

Notes

1. A. Everitt, *The Community of Kent and the Great Rebellion* (Leicester, 1973); J. S. Morrill, *Cheshire, 1630-60: County Government and Society during the English Revolution* (Oxford, 1974); A. J. Fletcher, *A County Community in Peace and War: Sussex 1600-60* (London, 1975). [Back to \(1\)](#)
2. K. Wrightson and D. Levine, *Poverty and Piety in an English Village: Terling 1525-1700* (New York, 1979). [Back to \(2\)](#)
3. Most notably, M. Braddick, *State Formation in Early Modern England 1550-1700* (Cambridge, 2000) and S. Hindle, *The State and Social Change in Early Modern England 1550-1640* (Basingstoke, 2000). [Back to \(3\)](#)
4. W. J. Jones, *The Elizabethan Court of Chancery* (Oxford, 1967). [Back to \(4\)](#)
5. *List and Index to the Proceedings in Star Chamber for the Reign of James I (1603-25) in the Public Record Office, London, Class STAC 8* (Chicago, American Bar Foundation, 1975). [Back to \(5\)](#)
6. C. Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London, 1998). [Back to \(6\)](#)

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