

## JOHN SADLER (1615-1674)

## RELIGION, COMMON LAW, AND REASON IN EARLY MODERN ENGLAND

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I. INTRODUCTION: RE-THINKING EARLY  
MODERN COMMON LAW

Most histories of Early Modern English common law focus on a very specific set of individuals, namely Justices Edward Coke and Matthew Hale, Sir Francis Bacon, Sir Henry Finch, Sir John Doddrige, and—very recently—John Selden.<sup>i</sup> The focus is partly explained by the immense influence most of these individuals exercised upon the study and practice of common law during the seventeenth century.<sup>ii</sup> Moreover, according to J.W. Tubbs, such a focus is unavoidable because a great majority of common lawyers left no record of their thoughts.<sup>1</sup> It is my contention that Tubbs' view is unwarranted. Even if it is impossible to reconstruct the thoughts of a vast majority of common lawyers, there is no reason to limit our studies of common law to the aforementioned group of individuals. In fact, if we are to develop a more comprehensive understanding of the place of common law in political and intellectual culture of the seventeenth century, it is necessary to move beyond the limits to which current historiography has confined itself.

As it stands, current scholarship presents two

i See J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century, A Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1957, 1987); Glen Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (University Park, PA: The Pennsylvania State University Press, 1992); J.W. Tubbs, *The Common Law Mind: Medieval and Early Modern Conceptions* (Baltimore, MD: The Johns Hopkins University Press, 2000); Alan Cromartie, *Sir Matthew Hale, 1609-1676: Law, Religion and Natural Philosophy* (Cambridge: Cambridge University Press, 1995), "The Constitutional Revolution: The Transformation of Political Culture in Early Stuart England," *Past & Present*, 1999, 163 (1), 76-120, *The Constitutionalist Revolution: An essay on the History of England, 1450-1642* (Cambridge: Cambridge University Press, 2006); Reid Barbour, *John Selden: Measures of the Holy Commonwealth in Seventeenth-Century England* (Toronto: University of Toronto Press, 2003); Harold J. Berman, "The Origins of Historical Jurisprudence: Coke, Selden, Hale," *The Yale Law Journal*, Vol. 103, No. 7(1994), 1651-1738; Allen D. Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford: Stanford University Press, 2003).

ii Justice Matthew Hale, in particular, stands out for his influence on subsequent generations of lawyers. His views on marital rape were cited in court cases as recently as 1993.

major problems. First, religion—the pivotal force that shaped nearly every aspect of life in seventeenth-century England—has received very little attention in most accounts of common law. As I will show in the next section, either religion is not mentioned at all or treated as parallel to common law. In other words, historians have generally assumed a disconnect between religion and common law during this period. Even works that have attempted to examine the intersection of religion and common law have argued that the two generally existed in harmony or even as allies in service to political motives. The possibility of tensions between religion and common law has not been considered at all. Second, most historians have failed to consider emerging alternative ways in which seventeenth-century common lawyers conceptualized the idea of reason as a foundational pillar of English common law. Focused primarily on Sir Edward Coke's Aristotelian idea of "artificial reason," current scholarship does not address how the changing intellectual culture of seventeenth-century England might have transformed the ways in which common lawyers thought about reason and its relation to common law. As a result, it portrays common law as rather static.

This essay addresses these shortcomings in the existing historiography by first suggesting that common law and religion did intersect in a complex way, and then challenging the idea that common law was static. Ultimately, it is important to consider religion and common law together and pay careful attention to how the idea of reason changed with time. It will accomplish this through an in-depth examination of the career and writings of a particularly little-studied figure: John Sadler, Town Clerk of London and Master of Magdalene College, Cambridge. A prominent common lawyer, Sadler commanded respect and admiration from many of his contemporaries, including Oliver Cromwell

who invited him to become the Chief Justice of the Province of Munster, Ireland. In spite of Cromwell's carefully measured plea, Sadler, perhaps excited by his prospects in England, refused the offer.<sup>2</sup> Nonetheless, the invitation does speak to Sadler's stature. Munster was the largest and most settled of all the Irish provinces. The post of the Chief Justice of Munster, therefore, was one of the most important offices in the Irish administration. The fact that Cromwell offered it to the relatively young and inexperienced Sadler speaks volumes about the high regard in which Cromwell thought of Sadler.<sup>iii</sup>

Cromwell was not the only one who appreciated Sadler's knowledge of the law. Appointed the Town Clerk of London in July 1649, Sadler was widely in demand for his legal expertise throughout the 1650s. In March 1650, he was appointed to the High Court of Justice,<sup>iv</sup> and in January 1652, he served on the famous commission for law reform chaired by Justice Matthew Hale.<sup>3</sup> Apart from being a lawyer, Sadler was also a renowned scholar of Hebrew and a prominent academic. A philo-semitic, he was instrumental in arranging Menasseh Ben Israel's visit to England in 1655. When Israel died, Sadler urged Richard Cromwell to provide financial assistance to Israel's widow.<sup>4</sup> Upon the Restoration, however, Sadler lost all of his offices and spent the rest of his life in obscurity until he died in 1674.

In spite of Sadler's importance to his contemporaries, historians have largely neglected him. Several studies of the period mention him but only in passing. Historians of philo-semitism have taken note of him as an important part of the Cromwellian machinery that brought Menasseh Ben Israel to England and organized the famous Whitehall conference.<sup>5</sup> He has also been described as perhaps the first proponent of the powerful idea that the people of England are direct descendants of the Ten Lost Tribes of Israel.<sup>6</sup> Scholars of political thought have discussed his contribution to the defense of the Commonwealth in the aftermath of the execution of Charles I, and historians of the Hartlib Circle have casually mentioned him as a member of the group.<sup>7</sup> Likewise, Christopher Hill wrote of Sadler as one who "experienced defeat" at the

Restoration in 1660 but did not examine his work in any detail.<sup>8</sup> Sadler, therefore, has largely remained a marginal figure in most studies of the period.

Part of the neglect is to be explained by the fact that, unlike many of his contemporaries, Sadler did not leave behind any large collection of papers and writings. In 1666, the Fire of London ravaged his £5,000 house in Salisbury Court and very possibly destroyed most of his correspondence.<sup>9</sup> Many historians have also been repulsed by the nature of his writings. Janelle Greenberg, Richard Greaves and Alan Cromartie have found his works to be "mind numbing", "self indulgent" and "poorly organized".<sup>10</sup> It is especially difficult to interpret Sadler's tedious writings on biblical allegories and numbers. Claims that, beginning in the 1650s, Sadler grew mentally ill have hardly helped to change his image as a writer of incredibly obscure prose.<sup>11</sup> While none of these criticisms is unfair, it does not follow that Sadler has little historiographical value.

In rectifying this historiographical neglect and placing Sadler within the wider common law tradition, this essay makes two key arguments.<sup>v</sup> First, it argues that Sadler's interpretation of common law and his religious beliefs were neither completely separate nor in harmony with each other; they did intersect but were at odds with each other. While common law led him to support and defend the newly established Commonwealth in 1649, his religious beliefs dictated that the means through which the Commonwealth had been established were unjustified. Even as he felt enthusiastic for the political changes around him, this enthusiasm was contained by the pacifism central to his religious beliefs. For Sadler, therefore, common law and religion worked in opposite directions. The result was a rather unusual position in which Sadler ended up supporting the ends, but not the means of the

iii At the same time, the letter might also indicate the reluctance of the legal establishment to get involved in the Irish campaign. I thank Professor Adrian Johns for bringing this to my attention.

iv The High Court of Justice was a special court created by the Rump Parliament for the trial of King Charles I. However, the name continued to be used for a number of other courts after 1649.

v Due to my focus on common law and reason, I have refrained from discussing any of Sadler's post-1649 writings that have little to say about common law. These include *Olbia, The New Island Lately Discovered* (1660), and *Christ Under the Law* (1664). *Olbia* tells the fictitious tale of a pilgrim stuck on the island of Olbia in modern-day Italy. It describes his distress about being left on the island alone after a shipwreck. The work then moves on to a discussion of the nature of grace and faith, the "Law of Love" and millenarian musings filled with an intense study of Biblical numbers to determine the precise date of the beginning of the millennium. Given that it was written right around the Restoration, it is tempting to read the work as a political allegory of some sort. However, direct evidence for any such interpretation is lacking. *Christ Under the Law* pursues the millenarian speculations further and argues that, bound by a contract to his devotees, Christ is bound to return. It is possible that, during the 1640s, Sadler wrote a number of other works. Several of these might have been short pamphlets. However, since many such works end with the initials "J.S.," it is difficult to ascertain whether Sadler or John Streater or some other thinker with the same initials authored them.

Commonwealth. Second, with regard to reason and common law, it argues that Sadler's conception of reason was radically different from that of many other common lawyers of his time. Rather than being Aristotelian along the lines of Justice Edward Coke's "artificial reason," it was primarily Platonic. Bred in an intellectual tradition that detested Aristotelian Scholasticism and looked towards Platonism as an alternative, Sadler stands out as an exemplar of how the intellectual transformations of the seventeenth century affected the idea of reason as it related to common law.

To this end, I begin section 2 with a discussion of the inadequate treatment of religion in common law historiography from Sir Herbert Butterfield (1944) to Alan Cromartie (2006). In section 3, I will explore the tensions between Sadler's religious views and ideas about common law in his *Rights of the Kingdom* (1649). I will first examine how he arrived at authoring this intricate defense of the Commonwealth and then highlight the centrality of common law treatises to this defense. Next, I will look at the nature of his religious beliefs, particularly his millenarian convictions, and suggest that they led him to question his commitment to the Commonwealth, thereby bringing his religion and ideas of common law into conflict with each other. In section 4, I will move away from religion and begin with a discussion of the existing historiography on reason within the common law tradition. Next, focusing primarily on Sadler's 1640 work *Masquarade Du Ciel* (1640), I will highlight the Platonic nature of his idea of reason and situate it within his understanding of common law. The essay ends with a summary of the key arguments and their historiographical implications, and sketches out some directions for further research.

## II. RELIGION AND COMMON LAW: A MISSING LINK IN HISTORIOGRAPHY

In 1940, as Germany waged war against England, Herbert Butterfield, then a lecturer at Cambridge, was intrigued by how often English leaders reminded their citizens of how the English could draw upon the past as a source of courage and inspiration in a time of crisis.<sup>12</sup> Four years later, in *The Englishman and his History* (1944), he set out to better understand this powerful link between the English past and the present. Unlike the French, he

wrote, the English never created a rift between the past and the present. For them, their past and their present were essentially the same. When seventeenth-century Englishmen spoke of their "historic rights," they were not speaking of a medieval relic that they wanted to hang on to. Rather, they had made their past move with themselves. While French liberty sprang from a revolt against history and tradition, "our liberty is based on "the historic rights of the Englishmen."<sup>13</sup> This idea of historic rights, forgotten under the Tudors, was effectively revived under the Stuarts. The agents of this revival, however, were not aristocrats with claims to a long continuous tradition behind them, but "middle class citizens interested in antiquarian research."<sup>14</sup>

Thirteen years later, in his path-breaking work, *The Ancient Constitution and the Feudal Law*, J.G.A. Pocock built upon the work of his mentor. Acknowledging the influence of *The Englishman and his History* on his own work, he too set out to examine the nature of historical thought in England. Pocock's seminal contribution, however, lay in emphasizing the intersection of common law and historical thought in the Early Modern period. In his view, during the sixteenth and seventeenth centuries, studying law was the most important way of studying the past.<sup>15</sup> But when they spoke of law, the English referred primarily to common law—the set of unwritten rules and customs that had regulated their conduct since time immemorial. While civil and canon law were systems borrowed from abroad, common law was native to England. In Pocock's view, the grasp of common law on English thought was such that legal, constitutional, and national history was almost always interpreted within the frame of common law.<sup>16</sup>

Subsequent writings on common law, even if somewhat different in focus from Pocock's, have largely remained within the parameters he laid out. Alan Cromartie's work on Justice Matthew Hale, arguably the most prominent common lawyer of the 1640s and 1650s, and what Cromartie refers to as the "constitutionalist revolution"<sup>17</sup> in English history, is a case in point. A remarkable omission from Pocock's work was any substantive discussion of common law's relationship with the religious turmoil of the time. This omission on Pocock's part is understandable. Writing in 1957, he was obviously unaware of the central role that the ferocious

historiographical disputes of the 1970s and 1980s would accord religion in the legal and political issues of seventeenth-century England, and John Morrill's contentious assertion that religion was the sole cause of the English Civil War was not available to Pocock.<sup>vi</sup> However, Cromartie's work, despite being written in the 1990s, still presents the same problem. His biography of Hale is divided into three parts: law, religion, and, natural philosophy. However, in his introduction to the book, Cromartie confidently asserts that the sections on natural philosophy and religion can be read "quite independently" from the one on law.<sup>18</sup>

In one of his shorter writings, Cromartie attacks several leading historians of the English Civil War, most notably John Morrill and Conrad Russell, arguing that due to their excessive focus on religion, they had failed to realize that common law too has to be taken in account when considering the origins and the course of the parliamentary rebellion. He believes that Conrad Russell's argument that "...religious views were an excellent predictor of behavior during the wars" does not imply that everyone who spoke about these issues had theology in mind or that "religion was a sufficient cause of their allegiance."<sup>19</sup> Cromartie's argument presents a welcome revision.<sup>vii</sup> However, his zeal to assert its distinctiveness and novelty is misguided.

While there is nothing wrong with Cromartie's argument per se, he sells himself short by suggesting that common law too should be considered. Rather than simply arguing that common law is as relevant a theme as religion, it appears to be more fruitful to ask how common law and religion mixed with each other to define one's worldview or the political stance that one took. Such an approach has the benefit of helping us to go beyond the parameters drawn by Pocock and taking a more expansive view of common law's place in seventeenth-century politics. By using Sadler as a case study, my aim is to accomplish precisely this.

This is not to suggest that religion has been completely ignored in studies of common law. In his recent book, *The Constitutionalist Revolution*, Cromartie argues that religion was central to common law's dominance of English political life

in the seventeenth century. The legalistic nature of the English Reformation, he argues, gave birth to the belief that, "English common law in a strict sense was omnicompetent, that is, was capable of finding answers to every social and political question including questions that concerned the powers of the church and the monarch."<sup>20</sup> For Cromartie, therefore, the relationship between common law and religion was a positive one in which religion enabled common law to acquire the dominant position that it did from the beginning of the seventeenth-century.

Reid Barbour's biography of John Selden, one of the most influential polymaths of the seventeenth century, suggests that, on a smaller scale, Cromartie's interpretation is rather simplistic.<sup>21</sup> Focusing on the role of common law in Selden's vision of the "holy commonwealth," Barbour uncovers the highly ambiguous ties between common law and religious beliefs of the time. Born in 1584, Selden began to make his mark as a lawyer and legal scholar in the 1620s. Like many of his contemporaries, he took great interest in establishing a comprehensive Holy Commonwealth. The idea was to envision a society in which "the social unity in question subsumes all of its practices, habits of thought, customs, institutions, and history under a predominantly shared sense of divine dispensation and warrants..."<sup>22</sup> In most of his writings, Selden explored the role common law might play in establishing and regulating such a society.

Initially, according to Reid, Selden was convinced that, without common law, the holy commonwealth could not thrive. Selden's studies, however, gradually led him to an ambiguous attitude towards the utility of common law for the establishment of the Holy Commonwealth. Selden's 1616 edition of the writings of Sir John Fortescue, Chief Justice of the King's Bench in the fifteenth century, reveals a remarkable ambivalence towards common law. On one hand, Selden promoted Fortescue's image as a legal sage, a Mosaic common lawyer. Yet, at the same time, he also critically refined this image. Gradually, Selden came to the conclusion that even if common law held power as a form of artificial reason, it would still have to "reckon with the imperfections of its own artifice."<sup>23</sup> Selden began to believe that England's native laws, common law prominent amongst them, were not sufficient for the Holy Commonwealth. Rather, the laws of the Hebrews provided much more effective solutions

vi Morrill famously argued that, rather than being the first of Europe's modern revolutions, the English civil war was the last of its wars of religion.

vii With greater force and more comprehensive evidence, Janelle Greenberg has made the similar argument that the themes of common law and the ancient constitution were central to the parliamentary cause throughout the 1640s. Greenberg, *Radical Face of the Ancient Constitution*.

to the problems inherent in the establishment and running of the Commonwealth. To conclude, while Selden had begun with great confidence in common law as an agent of religious change, over the years, as he examined the common law tradition in greater depth, his confidence began to waver. What was earlier a firm belief gradually devolved into a proposition that Selden entertained only with great hesitation.

Barbour, of course, explores other aspects of Selden's multifaceted life and scholarship. Nonetheless, his relatively short account of Selden's writings on common law accomplishes two major goals. First, as has been discussed here, Barbour analyzes them in relation to Selden's religious beliefs, thereby breaking away from the earlier historiography that kept common law and religion in isolation from each other. Second, in contrast to Cromartie, Barbour shows how common law and religion were not always allies. While Selden initially believed that common law was key to establishing the Holy Commonwealth, his faith in common law gradually weakened. Hence, in Selden's case at least, the relationship between common law and religion was far from straightforward and positive.

In the subsequent section, I build upon Barbour's approach to explore the connection between Sadler's ideas about common law and his religious beliefs. In doing so, I first hope to join Cromartie and Barbour in examining the link between religion and common law to better understand common law's position in seventeenth-century political and intellectual culture. Second, by emphasizing that Sadler's common law and religion were at odds, I wish to suggest that the relationship between religion and common law could be both positive and negative.

### III. MILLENARIANISM AND COMMON LAW IN *RIGHTS OF THE KINGDOM* (1649):

Born in the town of Patcham, Sussex in 1615, John Sadler was educated at Emmanuel College, Cambridge.<sup>24</sup> Widely considered to be the bastion of Puritan thought in the years before the outbreak of the English Civil War, Emmanuel brought him into contact with a number of theologians and clergymen, including his future brother-in-law John Harvard.<sup>25</sup> Though elected a fellow in 1639, Sadler left the scholarly corridors of Cambridge for London in 1640.

Once in London, he quickly cultivated a network of influential patrons and made his way into important political circles. Under the patronage of army officer and religious writer Robert Greville, Sadler wrote *Masquarade Du Ciel* (1640), a short masque that he dedicated to Charles I's French Catholic Queen Henrietta Maria. However, with the beginning of the Civil War, as politics became increasingly divided, he emerged as a prominent parliamentarian.

In 1645, thanks to his increasingly robust political connections, Sadler, along with the writer Henry Parker, was appointed as secretary to the House of Commons.<sup>viii</sup> Apart from being an administrator, he also became an important part of the parliamentary propaganda machine. In June 1645, when the parliamentary forces led by Sir Thomas Fairfax and Oliver Cromwell defeated the royalist forces and seized scandalous letters the King had sent to Queen Henrietta Maria, Sadler, along with Henry Parker and poet Thomas May, was chosen to edit the letters and later published them as *The King's Cabinet Opened* (1645).<sup>ix</sup> To the editors and most of their readers, the letters stood as proof of the justness of the parliamentary cause. The letters showed the King to be an opportunist under the baleful influence of his Catholic queen. "The King," argued the editors, "will declare nothing in favour of his parliament, so long as he can find a party to maintain him in this opposition; nor perform any thing which he hath declared so long as he can find a sufficient party to excuse him from it."<sup>26</sup> Publication of the letters had a devastating

impact on the popular perception of Charles and did irreversible damage to the royalist cause.<sup>27</sup>

Similarly, in 1646, when an abortive royalist counter-revolution supported by the Presbyterians was at hand (the threat was so serious that the military had to mount a takeover to stop it), Sadler immediately responded with a short tract entitled *A Word in Season*.<sup>x</sup> The royalists, he argued, were

viii Ariel Hessayon, *'Gold Tried in Fire': The Prophet Theaurau/John Tany and the English Revolution* (Hampshire: Ashgate Publishing Limited, 2007), 147. For Parker's activities as a polemicist, see Michael J. Mendle, *Henry Parker and the English Civil War: The Political Thought of the Public's 'Privado'* (Cambridge: Cambridge University Press, 1995, 2002).

ix For historiographical debates surrounding *The King's Cabinet Opened*, see W.J. Bulman, "The Practice of Politics: The English Civil War and the Resolution of Henrietta Maria and Charles I", *Past and Present* (2010) 206 (1): 43-79.

x Austin Woolrych misrepresents Sadler's argument when he writes that Sadler's "main theme was that parliament's authority was paramount and must not be impugned, even in the name of 'the glory of God, the setting up of the Kingdome of JESUS CHRIST.'" When speaking of Christ's kingdom, Sadler was referring to the false millennial promises of royalist prophets and

actively trying to deceive citizens who should also be cautious of the Presbyterians: “Wolves that come to us in sheepees clothing.”<sup>28</sup> The royalists might make any number of promises, but the English people, he suggested, owed their freedom to the parliament:

Had it not been by this Just Authority [parliament], Wee had never been freed, from the tyrannies, oppressions and cruelties of the High Commission, Star-Chamber, and Councel-Board: from the burthenous Execution of Forrest Law, Court of Honor, Commissions of Waste: from the Extortions, and Exorbitances, in the Courtes of Justice, Chancery, Requests: from Shipmoney (for remission whereof, no lesse than twelve Subsidies were required) and from all those other innumerable Patents, Projects, Illegal Warrants and Imprisonments...<sup>29</sup>

By 1649, Sadler had established himself as a staunch defender of the Parliamentary cause. Therefore, it should come as no surprise that, once the King was executed, he jumped to the defense of the newly established Commonwealth with *Rights of the Kingdom* (*Rights* hereafter).<sup>xi</sup> Unlike *Mascurade Du Ciel* (1640) and *Malignancy Unmasked*, there is no evidence that a patron commissioned Sadler to produce *Rights*. However, upon publication, it attracted the attention of some of Sadler’s most prominent contemporaries; Milton and George Lawson, for example, cited him in their writings on the Commonwealth.<sup>30</sup> In 1653, while on trial, soldier, printer, and republican thinker John Streater cited Sadler in his defense.<sup>xii</sup> Later in the century, John Locke recommended Sadler to readers who wanted to learn more about English legal history.<sup>xiii</sup>

As Sadler’s most renowned work, *Rights of the*

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politicians. Thus, rather than subordinating millennial beliefs to respecting the Parliament’s authority, Sadler was simply warning his readers to be wary of Royalists who deluded them in the name of setting Christ’s kingdom on earth. See Woolrych, *Commonwealth to Protectorate*, 205. John Sadler, *A Word in Season* (London, 1646), 6-8.

xi Two separate editions of the tract survive. The first dates from 1649 when the tract was originally printed in either June or July (The two copies from 1649 in the Thomason Tracts in the British Library carry two different dates of June 22, 1649 and July 10, 1649). The other edition is from 1682 when the tract was re-printed in wake of the Exclusion Crisis. Unless stated otherwise, all citations here come from the more legible 1682 edition.

xii “The Case of Captain JOHN STREATER, on an Habeas Corpus, at the Upper Bench in Westminster-hall, A.D. 1653” in William Cobbett, *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors*, Volume V (London, 1810), 378, 382. For Streater’s Republican thought and his work as a printer, see Adrian Johns, *Nature of the Book: Print and Knowledge in the Making* (Chicago: University of Chicago Press, 1998), 266-324.

xiii For a brief analysis of Sadler’s influence on Locke, see Cromartie, *The Constitutionalist Revolution*, 276-278.

*Kingdom* has often been featured in a longstanding debate in English historiography. Following J.G.A. Pocock, Glen Burgess has argued that writers such as Sadler, despite their seemingly radical orientation, still suggest that the notion of the “ancient constitution” was inherently conservative in nature.<sup>31</sup> Janelle Greenberg, in contrast, has argued that it is precisely writers like Sadler who represent what she calls the “radical face of the ancient constitution.”<sup>32</sup> The debate between Burgess and Greenberg, however, has a major shortcoming. At best, the debate seems irresolvable because both use rather arbitrary standards of what it means to be radical at the time, and neither provides a justification for why their usage of the label is valid. What makes Sadler a radical for Greenberg hardly counts as evidence for Sadler’s radicalism in Burgess’s view. Consequently, our understanding of Sadler has been bogged down in a debate where he does not serve the ends of either of the debaters.

This section moves away from this seemingly endless debate and explores the connection between Sadler’s understanding of common law and his religious views. Sadler, as I will show, believed common law mandated the House of Commons to be the supreme authority in England. His religious views, however, allowed him to impose limitations on what the House could do. Therefore, unlike John Selden, who furnished an example of how one’s religious beliefs (about the Holy Commonwealth) could be aligned with one’s ideas about common law, Sadler stands out as someone whose religious views came to oppose what his faith in common law entailed.

In *Rights*, Sadler’s main aim, he explained, was to:

...see the Kingdoms *Rights*, the *Laws* and *Customs* of our Ancestors, concerning King and Parliament; that we may know their Power and Priviledge, their Duty and their Limits, &c. and how our Fathers did commit the power of making *Laws*, and judging by those *Laws*; and how they made us swear Allegiance to our King; what power they gave him over us; and what they did not give him over any of his subjects; and how we should behave ourselves.<sup>33</sup>

In doing so, he wanted to establish that executing the King and abolishing the House of Lords were perfectly legal and by no means extraordinary. Through an exhaustive examination of nearly 2000

years of “British, Saxon, Norman laws and histories,” he came to the conclusion that most kings in English history had come to power, not through royal succession but upon election by the Parliament and the people of England. Since the kings were elected, they were accountable to Parliament and the people. Consequently, if they failed to perform their duties, they could be punished.

Common law was central to this contention. In order to make his case, Sadler decided to see what “Antient Lawyers and Historians do record about our 26 Kings, their limitations by our Laws, their Title by Succession or Election at the common Law.”<sup>34</sup> If Justice Henry de Bracton (c.1210-c.1268) and the medieval common Law treatise *Fleta* were to be asked about the nature of English kingship, wrote Sadler, they would unequivocally answer that, “in their times our King was Elective.”<sup>35</sup> In some instances, Sadler conceded that the crown had indeed passed from a king to his biological successor. These, however, were situations where no other person in the entire kingdom was as capable as the biological successor to the throne. Regardless of the exceptions, the general trend in English history had been one of election rather than succession.

Despite the immense variety of Sadler’s sources, his analysis, as Janelle Greenberg has pointed out, rests mostly on three main sources: the *Leges Edwardis Confessoris* (Laws of Edward the Confessor, written c. 1140),<sup>xiv</sup> lawyer Andrew Horn’s *The Mirrors of Justices* (early fourteenth century), and *Modus Tenendi Parliamentum*, or Method of Holding Parliament (author unknown).<sup>xv</sup> All three sources were central to common law in the seventeenth century and Sadler, an eminent common lawyer himself, drew heavily upon them to illustrate the nature of English kingship and role of the Parliament. The *Mirrors*, wrote Sadler, is clear that his Saxon ancestors always elected their kings and bound them by “Oaths and Laws.”<sup>36</sup> Similarly, *Laws of Edward the Confessor* mentioned that the king was always elected by a council of the Kingdom. Never in English history had the Crown ever passed from one monarch to another through “blind succession.” For

Sadler’s purposes, it was also important to illustrate that the people had always been represented in parliament, which had consistently played a central role in governance. Here too, he turned to these three sources. “The track of parliaments,” he wrote, “is visible enough, in all the Saxons reigning here.”<sup>37</sup> As the *Mirrors* clearly illustrated, parliaments were so central to governing the Kingdom that King Alfred (ninth century) decided to hold them at least twice a year.

Parliament, however, was more than just an important accessory to the monarch. In Sadler’s view, without the parliament, the king was a mere figurehead. Sadler drew on *Mirrors* for this argument. In order to make this point, Sadler turned his reader’s attention to the popular maxim, “The King can do no wrong.” He argued the maxim made sense only if we recognized that the king “can do nothing but by Law; and what he may by Law, can do no wrong.”<sup>38</sup> The king, therefore, was bound to act within the confines of the law. Only then did it make sense to argue that he can do no wrong. However, if he went against the Law, his actions were meaningless because, on his own, as the *Mirrors* explained, the king’s rights and dignities were akin to those of a child: “If he do against the Law, his Personal Acts, Commands or Writing do oblige no more than they were a Childs.”<sup>39</sup> The implication was that, independently, the king could pass as many as laws as he wanted. However, since in legal terms he was nothing but an infant, it was only the consent or approval of the Parliament that gave the laws meaning and force.

By Parliament, however, Sadler only meant the House of Commons. The House of Lords, he argued, was rather superfluous, implying that the recent abolition of the House of Lords was not an extraordinary measure. Rather than making laws, members of the House of Lords acted simply as “Judges and the Kings Counsellors.” This was evident in the Old “Writs of Summons,” which explained that nothing could be done without the Commons.<sup>40</sup> To elaborate upon this, Sadler made a distinction between Barons by tenure and Barons by patent or writ. Barons by tenure were those who wielded a great amount of power before the Barons’ War in the thirteenth century. The new Barons or Barons by Patent or Writ, while they might have had legislative rights, had been created by the Monarch to serve solely in a judicial capacity. Therefore, it was unfair

xiv The laws were not written or issued by King Edward the Confessor (1042-1066) but were composed anonymously. This explains why they appeared almost eighty years after his death.

xv According to Thomas Duffus Hardy, senior assistant keeper of the Public Record Office and editor of the *Modus* in the Nineteenth century, the work was authored at some point between 1294 and 1327. Thomas Duffus Hardy, *Modus Tenendi Parliamentum: An Ancient Treatise on the Mode of Holding the Parliament in England* (London: G.E. Eyre and W. Spottiswoode, 1846), xvii.

to argue that present day Lords who had descended from the Barons by patent or writ wielded the same authority as the “old Barons by Tenure.”<sup>41</sup>

For further proof, Sadler again turned to the *Laws of Edward the Confessor*, the *Mirrors*, and *Modus*. *Laws of Edward the Confessor*, he noted, obligated the king to pass the just laws made by the House of Commons. The House of Lords had no significant role in the process. Similarly, the *Mirrors*, he argued, mentioned that the House of Commons was older than the House of Lords. The latter had emerged from the former but carried no legislative authority, only judicial. The *Modus*, in his opinion, presented a remarkably similar view and suggested that, while there was a time when the Parliament had no House of Lords, it was impossible to imagine a time when there was no House of Commons. Older and more authoritative than the Lords, the House of Commons was the preeminent legislative authority in England. No one, including the king, was above it.<sup>42</sup>

In order to better illustrate that the Parliament was the supreme legislative authority, Sadler turned to the militia. In doing so, he moved from the rather obscure realm of legal antiquarianism and touched upon an issue with strong contemporary resonance. The problem of whether the king could muster a militia without the Parliament’s consent had led to the rapid escalation of hostilities in 1642. By June 1642, it had become clear to Charles that the Parliamentarians were neither going to retract any of their demands nor settle for a compromise. Therefore, in case hostilities broke out, it would be best to have the provinces on his side. To this end, Charles decided to use the Commission of Array, a royal instrument that had not been used since 1557. Signed by the king and impressed with the Great Seal, one Commission of Array was drawn for each county and major city.<sup>43</sup> Each document contained a list of individuals whom the king expected to take up arms in his defense. These men, known as the Commissioners of Array, were required to summon the local militia and persuade them to support the king. They were also responsible for collecting men and money and sending them to join the armies the king had begun to raise.<sup>44</sup>

Parliament, of course, had been a step ahead of Charles. In March 1642, it had already passed the militia ordinance in order to muster up forces from all parts of the country. Unsurprisingly, there was

little legal trouble. Unlike statutes, ordinances did not require the King’s assent and were meant to be temporary.<sup>45</sup> However, when Charles took a similar step, the Parliament reacted furiously. Declaring that Charles’s orders were illegal, as he had failed to secure parliamentary consent, it sought to counter his propaganda with equally strong measures. According to a note dated July 4, 1642, in the Journal of the House of Commons, 9,000 copies of the Declaration against the Commissions of Array were printed and distributed widely.<sup>46</sup>

A committed parliamentarian, Sadler had been clearly vexed by the problem of who could and could not raise a militia. He conceded that men ought to have arms to defend the king and the kingdom. However, he felt that the evidence used to make a claim for the Commission of Array stood more against than for it. Referring to a passage from the *Laws of Edward the Confessor* that had often been cited in support of the Commission of Array, Sadler noted that the end of the passage did speak of the command of the king. However, the arms in question had to be assessed by common consent.<sup>47</sup> More importantly, the requirements should always be proportional to a man’s estate, “Free for the Defence of the Kingdom; and for the Service due to the Lords.” According to various sources of common law, this should be and always had been the case.

Going beyond the authority of *Laws of Edward the Confessor*, Sadler referred to a number of other texts and examples of monarchs who raised militia but only with consent of the Parliament. The Writings of William I, he argued, followed the same line as that of *Laws of Edward the Confessor* and proved the presence of “Common Council in his time,” which sanctioned the raising of a militia.<sup>48</sup> Similarly, “These Laws of King William, with the Additions and Emendations of the Confessor’s, were afterwards confirmed by King Henry the 1st. as appeareth by his Charter.”<sup>49</sup> Other monarchs, noted Sadler, had practiced what they preached. While it was true that Henry IV issued a Commission of Array, “it was again declared as the undoubted Right of this Kingdom, not to be charged with ought, for Defence of the Realm, or Safeguard of the Seas, but by their own Will and Consent in Parliament.”<sup>50</sup> The keyword here is “own Will” because it bears Sadler’s other contention that Parliament’s consent alone was insufficient. The people themselves had to give their

consent.<sup>xvi</sup> In his view:

There is no such boundless Authority, given to two or three Strangers, (or others,) to compel all Men but themselves, to provide and bear Arms, how, and when, and where it shall seem good to such commissioners: Which at one seemeth to Dissolve all Laws of Liberty.<sup>51</sup>

Related to this is Sadler's discussion of tenures. Supporters of the Commission of Array had suggested that the "Tenures of Crown" bound subjects to the defence of the kingdom. Common law, according to Sadler, presented a more complicated picture. Referring to lawyer Andrew Horn's *Mirrors of Justices*, Sadler argued that even if the *Mirrors* suggested that "Tenures of the Crown were appointed for the Defence of the Kingdom," this tenure had to be assessed by the aforementioned "Common Consent," comprising both the Parliament and the people.<sup>52</sup> Another source that Sadler drew his reader's attention to was Sir Thomas Littleton's treatise on tenures known as *Littleton*. Written sometime in the fifteenth century, *Littleton* proved to be enormously influential during the Early Modern period.<sup>53</sup> None other than Justice Edward Coke published a well-known commentary on it.<sup>xvii</sup> William Fulbecke, a playwright and legal scholar, captured the work's influence aptly when he wrote that, "Littleton is not now the name of a lawyer, but of the law itself."<sup>54</sup> Divided into three parts, *Littleton* deals with the system of estates in land, title, and tenures. Sadler analyzed the second part, which

focused on tenures. According to Sadler, anyone who had read *Littleton* could not fail to see that tenure, according to the "common law and Custom of the King," was to be assessed not by the King but by "Common Assent in Parliament."<sup>55</sup> Therefore, even if it was true that tenure bound subjects to their King's defense, they could not legitimately be forced to take up arms against their own will and without the consent of the Parliament. The ultimate control of the militia, consequently, rested with the people and the Parliament.

Based on only common law, it would seem that any action the Parliamentarians took against the King was justified. However, this is not the position Sadler takes in *Rights*. On the contrary, the work also illustrates how Sadler's religious beliefs conflicted with the lessons of common law. The focal point is Sadler's discussion of how his millenarian beliefs obligate him to criticize Pride's Purge, the stepping stone towards the execution of the King and establishment of the Commonwealth. It is at this point that the opposition between common law and religion becomes sharp and clear. If Sadler's interpretation of common law led him to the conclusion that the recent abolition of the monarchy was not anomalous, his religious views created serious doubts about the means through which the abolition had been achieved.

Though focused primarily on "Rights of the Kingdom" and the "Customs of our Ancestors," as indicated in the full title, *Rights* was also meant to be, "An Occasional Discourse of great changes yet expected in the world." The "great changes" refer to the then-prevalent belief in the Second Coming of Christ mentioned in the Book of Revelation. This belief can best be described with the label of millenarianism. To borrow Norman Cohn's description, millenarianism, a variant of Christian eschatology, denotes the belief that after his Second Coming, Christ would establish a messianic kingdom on earth and would reign over it for a thousand years before the Last Judgment.<sup>56</sup>

There is no doubt that, even before he wrote *Rights*, Sadler was an ardent millenarian. He was a very active member of the Hartlib Circle, the renowned group of millenarian thinkers oriented around the Polish émigré Samuel Hartlib.<sup>xviii</sup> Sadler

xvi It is clear from the text that Sadler opposed the Commissions of Array. However, whether he took the rather unlikely position that defending the realm was entirely voluntary is hard to tell.

xvii Historiography on the Hartlib Circle is rich and varied. The most comprehensive work is Webster Charles, *The Great Instauration: Science, Medicine and Reform, 1626-1660* (New York: Holmes & Meier, 1975). For more specific aspects of the Circle, see Samuel Hartlib and Universal Reformation: Studies in Intellectual Communication ed. by Mark Greengrass, Michael Leslie and Timothy Raylor (Cambridge: Cambridge University Press, 1994), Yamamoto, Koji. "Reformation and the Distrust of the Projector in the Hartlib Circle." *The Historical Journal* 55, no. 2 (2012): 375-397. For biographies of prominent Hartlibians, see Thomas Leng, Benjamin Worsley (1618-1677): Trade, Interest and The Spirit in Revolutionary England (Boydell & Brewer, 2008) and Ted McCormick, William Petty and the Ambitions of Political Arithmetic (New York: Oxford University Press, 2009). Some historians, however, have been skeptical of the claim that all members of the Hartlib Circle were ardent millenarians. Malcolm Oster's essay on Robert Boyle is a case in point. Oster questions the prominence James Jacob assigned to Boyle's millenarianism and contends that Boyle's relationship with millenarianism remains ambiguous at best. One of the defining characteristics of millenarianism, notes Oster, is a "specific expectation adopted in predicting a particular configuration of literal political transformations of the earth." At times, Boyle's writings exhibit a "distinct reluctance to follow that disposition." See Malcolm Oster, "Millenarianism and the New Science: The Case of Robert Boyle" in Samuel Hartlib and Universal Reformation ed. by Greengrass, Leslie and Raylor, 137-148.

xviii Historiography on the Hartlib Circle is rich and varied. The most comprehensive work is Webster Charles, *The Great Instauration: Science, Medicine and Reform, 1626-1660* (New York: Holmes & Meier, 1975).

used his political contacts to help Hartlib with his “Office of Address” and established connections with prominent thinker and Robert Boyle’s sister Katherine Jones, Viscountess Ranelagh. In his letters to Hartlib, he often expressed his millenarian aspirations. In an undated letter to Hartlib, Sadler told him: “If I deceive not myself, I dayly (*sic*) grow in hopes, & some assurance, *that* God is coming to dwell in *the* World to bind up *the* Devil, with our lusts & passions... For *the* whole Earth might be full of his Glory: & all his workers shall praise him; yea every Tree shall rejoyce.”<sup>57</sup> With the socio-political upheavals that preceded and accompanied the publication of *Rights*, Sadler’s confidence in his millenarian beliefs seems to have gained greater strength. He wrote:

I hope and believe, or know that God will come, and appear, ere long, to dwell in the World: For, the *Earth* shall be *full* of his *Glory*, and his *Kingdom* shall *come*, and his *Will* be done, on *Earth*, as now in *Heaven*, So, we were taught to ask; and it therefore shall be fully answered.<sup>58</sup>

However, unlike many other millenarians, particularly the Fifth Monarchists, Sadler did not see revolutionary violence as the way to hasten the coming of the Millennium.<sup>xix</sup> In an uprising led by the Fifth Monarchists in 1661, over forty people were killed in street fighting and numerous others wounded.<sup>59</sup> Sadler, in contrast, believed that he did not know what force would pull Babylon down but the one that builds the new Temple or the new Jerusalem certainly would not be built by violence or violent men: “...they may perish by the Sword

For more specific aspects of the Circle, see *Samuel Hartlib and Universal Reformation: Studies in Intellectual Communication* ed. by Mark Greengrass, Michael Leslie and Timothy Raylor (Cambridge: Cambridge University Press, 1994), Yamamoto, Koji. “Reformation and the Distrust of the Projector in the Hartlib Circle.” *The Historical Journal* 55, no. 2 (2012): 375-397. For biographies of prominent Hartlibians, see Thomas Leng, *Benjamin Worsley (1618-1677): Trade, Interest and The Spirit in Revolutionary England* (Boydell & Brewer, 2008) and Ted McCormick, *William Petty and the Ambitions of Political Arithmetic* (New York: Oxford University Press, 2009). Some historians, however, have been skeptical of the claim that all members of the Hartlib Circle were ardent millenarians. Malcolm Oster’s essay on Robert Boyle is a case in point. Oster questions the prominence James Jacob assigned to Boyle’s millenarianism and contends that Boyle’s relationship with millenarianism remains ambiguous at best. One of the defining characteristics of millenarianism, notes Oster, is a “specific expectation adopted in predicting a particular configuration of literal political transformations of the earth.” At times, Boyle’s writings exhibit a “distinct reluctance to follow that disposition.” See Malcolm Oster, “Millenarianism and the New Science: The Case of Robert Boyle” in *Samuel Hartlib and Universal Reformation* ed. by Greengrass, Leslie and Raylor, 137-148.

xix The standard work on the Fifth Monarchists is Bernard Capp, *The Fifth Monarchy Men: A Study in Seventeenth Century English Millenarianism* (Totowa, NJ: Rowman & Littlefield, 1972).

that use it most”.<sup>60</sup> The way to the millennium had to be one of peace, justice, and kindness. He prayed that “all may be both Just, and Justly done. Not with Justice only, but with Pity and great compassion, and much Mercy, for in many things we fail all.”<sup>61</sup>

It was this pacifism that led Sadler to his scathing critique of the House of Commons. The cause of his distress was the infamous Pride’s Purge. Referring to the Purge, Sadler argued that the House of Commons had failed the Commonwealth. “To speak freely”, he wrote, “although I will not Judg the Commons, yet I cannot justifie that House.”<sup>62</sup> On December 6, 1648, when Parliament’s normal guards came to Westminster, about a thousand men of the New Model Army blocked their way in Whitehall. By eight o’clock that morning, the soldiers had taken their positions in Palace Yard, Westminster Hall, the Court of Requests and on the stairs and lobby outside the House of Commons. It soon became clear to the M.P.s (Members of the Parliament) that something was amiss.<sup>63</sup> Soon, Colonel Thomas Pride of the New Model Army came with a list of M.P.s who had been attempting to reach a compromise with the King and were opposed to trying and punishing him. Holding his hat in his band, Pride entered the House and saluted the M.P.s. Seconds later, he told them that he had orders to arrest them.

Most of the members acquiesced to the arrest and gave themselves over to Pride’s officers. Others, however, either skipped out or got word of the situation before arriving. This was soon rectified. Colonel John Birch, M.P. for Leominster, and Edward Stephens, M.P. for Tewkesbury and Gloucestershire, were “pulled out... as they looked out at the door.” Birch called out to the other M.P.s for help but was ignored.<sup>64</sup> Similarly, lawyer and polemicist William Prynne was directly confronted by Pride himself but refused to submit. As he tried to move away, Pride, Sir Hardress Waller, and some other soldiers overpowered him and dragged him to the Court of Requests. Prynne continued to protest but was taken to join other arrested members, who were now under guard in the Queen’s Court.<sup>65</sup> By removing the members who were still seeking a way to compromise with the King, the Purge effectively created the way for the King’s execution and abolition of the House of Lords.

Even if Sadler did not know any of these particular details, he found himself outraged by this

show of force by the New Model Army. Speaking of the House of Commons, he wrote, "I must also condemn what was lately done to them also...by that army which hath often been acknowledged, to have both served and saved them from Ruine or Slavery."<sup>66</sup> Sadler acknowledged that his thoughts on the events were somewhat hazy, and he found it difficult to make up his mind. The distinction between "free" and "force," he said, was very thin. What he considered to be force might mean freedom to someone else. Similarly, he was in no position to judge what counted as an act of treason or felony as there were situations when force might be deployed to avoid disaster. He said, "For it may be possible (but I hope not probable) that some Parliament-men may design or consent to such a dangerous Treason or Felony, that it may be the Duty of Officers or others to detain or secure them, till the Cause be heard in Parliament."<sup>67</sup> Nonetheless, Sadler felt it was very clear that, even though the "Law and Custom of Parliament" said that, "40 may be an House of Commons as well as 400," he wondered to "see 40 sit alone, about the greatest Matters possible, without so much as calling the rest, or sending Writs for new Elections."<sup>68</sup> Similarly, if the King could not absent himself without the Parliament's consent, the M.P.'s too had no right to do so. According to the old "Writ of Election," M.P.'s could not depart from Parliament without Consent of the Parliament.<sup>69</sup>

Like many of his contemporaries, Sadler saw God's hand as guiding the events around him. He too interpreted the sociopolitical changes around him as another step towards the fulfillment of his millenarian beliefs and aspirations. However, as mentioned earlier, force and violence did not fit into Sadler's worldview. When the Parliament that he had spent the entire Civil War supporting turned to such a show of force and violence, Sadler felt obligated to criticize it. Yet, in doing so, he ended up taking the rather unusual position that the ends but not the means of the Commonwealth were justified.<sup>xx</sup> It is not clear whether Sadler was aware of the apparent inconsistency of his position. Similarly, he never explicitly recognized the tension between his religious views and his interpretation of common law. Regardless of his recognition, the two were still at

odds.

Throughout the 1640s and the 1650s, Sadler was a committed parliamentarian. During the Civil War, he staunchly defended the Parliament against repeated attacks of the royalists and those who doubted the efficacy of the Parliament. When the King was executed, Sadler quickly jumped to the defense of the newly established Commonwealth. In asserting the supremacy of the House of Commons over the monarchy and the House of Lords, he put his knowledge of common law to use and fervently argued that common law justified the new Commonwealth. However, when the House resorted to force, Sadler's religious views overrode his belief in the supremacy of the House of Commons. If his faith in common law had allowed him to speak for the authority of the Parliament, his religious views allowed him to impose limitations on the very authority that common law helped establish. Consequently, Sadler's religious views and his faith in common law clashed with each other.

#### IV. REASON: ARISTOTELIAN AND PLATONIC

In sixteenth- and seventeenth-century England, common lawyers often emphasized reason and custom as the keys to the supremacy of common law; both of these lent it an unmatched distinction. However, as J.G.A. Pocock discovered in his seminal study, appealing to both reason and custom presented a peculiar paradox. If law is custom, it follows that law changes constantly and adapts to the changing circumstances, but if it is reason, it is immutable.<sup>70</sup> How, asked Pocock, can law be both changing and immutable at the same time? In *The Politics of the Ancient Constitution* (1993), Glen Burgess argued that, despite identifying the problem, Pocock failed to resolve it. Burgess wrote that Pocock focused mainly on custom and failed to adequately consider reason. In fact, upon a closer examination, Pocock's paradox turns out to be an illusion.<sup>71</sup> In Burgess's view, common lawyers did not treat custom and reason as necessarily antithetical. Taking reason to be more important than custom, they believed that it was the customary nature of common law that made it reasonable.<sup>72</sup>

The debate, however, does not end here. A number of historians have been vexed with the related problem of how common lawyers defined reason. In his biography of Sir Matthew Hale (1609-

xx As far as I know, no other thinker took this position. John Milton and Marchamont Nedham, two of the most articulate and influential defenders of the commonwealth do not seem to have criticized Pride's Purge. Blair Worden, *Literature and Politics in Cromwellian England: John Milton, Andrew Marvell, Marchamont Nedham* (Oxford: Oxford University Press, 2007), 218.

1676), the leading legal authority of the *Interregnum*, Alan Cromartie tried his hand at the problem through a study of Sir Edward Coke. Coke's belief that law acquired its authority through reason was hardly novel.<sup>73</sup> However, what distinguished Coke from others who had made the same point (such as Circeo) was his conception of "artificial reason." Unlike the layman's "natural reason," artificial reason was the skill and specialized knowledge acquired by the common lawyer through diligent study of Year Books and Reports produced by other lawyers for over three centuries.<sup>74</sup> No one is born with this form of reason; rather, one develops it only through education and practice.

In *The Common Law Mind* (2000), J.W. Tubbs suggested that this understanding of Coke's "artificial reason" is questionable. Citing the varied scholarly interpretations of the concept, he contended that Coke's writings appear to support all of the varied readings.<sup>75</sup> Nonetheless, sweeping his initial doubts aside, he presents an interpretation similar to Cromartie's. Regardless of a person's natural gifts, he writes, artificial reason can be developed only through education, training, and experience.<sup>76</sup> However, Tubbs departs from Cromartie and others in two ways. First, he attempts to ground this understanding of reason in the wider intellectual context of the time. Second, he compares Coke with other common lawyers, most notably Sir Henry Finch (c.1558-1625) and Sir John Doddridge (1555-1628). The notion of artificial reason, according to Tubbs, is a standard product of the Aristotelian learning of the time. With its emphasis on the art of argument and derivation of further conclusions from first principles, Aristotelianism laid the foundation for a notion of reason that stood for specialized knowledge derived through the study of particular cases.<sup>77</sup> In his discussion of Finch and Dodderidge, Tubbs points to a number of ways in which they differed from Coke. Nonetheless, like Coke, they too were under the influence of the prevailing Aristotelianism of the time. Therefore, Tubbs concludes, seventeenth-century common lawyers thought of reason primarily in Aristotelian terms.<sup>78</sup>

Not all historians, however, have argued for the prominence of Aristotelianism as sweepingly as Tubbs. Stephen A. Siegel has suggested that the Aristotelian foundations of reason as it related to common law increasingly came under attack over

the course of the seventeenth-century.<sup>79</sup> Siegel locates the source of this attack in what historians now refer to as the "Scientific Revolution" that swept through Europe during the period. The "Scientific Revolution," he writes, gave birth to the "analytical-synthetical method," which diverged from the existing Aristotelian method in a very important way. While Aristotle's teleology had led him to create a distinction between form and matter, several seventeenth-century thinkers did not oppose matter and form. Consequently, since matter and form were essentially the same, they could be understood equally well.<sup>xxi</sup> This led to a demand for certainty and truth that, as Hobbes argued, common law and its dependence on Coke's "artificial reason" failed to meet. While Hobbes's attack was against the notion of common law itself, for our current purposes, it is sufficient to highlight his critique of the idea of "artificial reason." In Hobbes's view, "artificial reason" acquired through diligent study and experience led not to knowledge but opinions that are, at best, probable truth. Consequently, the notion of "artificial reason" was severely inadequate for dealing with the crucial matters of justice and administration.<sup>80</sup>

Unlike Siegel who focused on the "Scientific Revolution," this section looks at Platonism as a force in seventeenth-century thought. Pointing to Sadler as a notable exception, it argues that Sadler's understanding of reason was primarily Platonic, not Aristotelian. Emerging from a tradition that sought to break away from the Aristotelian scholasticism formally dominant in English universities, Sadler's understanding of reason was fundamentally different from that of Coke and others. To this end, this section begins with an account of the emergence of Platonism as a strand of thought in seventeenth-century England. In particular, it highlights Sadler's association with the Cambridge Platonists, a group of thinkers based at the University of Cambridge.

Until the seventeenth century, scholasticism, based on the corpus of Aristotle's writings, was the dominant mode of thought in European universities.

xxi Ibid., 47. Admittedly, Siegel's interpretation of the "Scientific Revolution" is a bit dated. It is hard to imagine that any historian of science today would accept it. Nonetheless, this does not necessarily diminish the value of his article as perhaps the only attempt to examine the changes common law underwent in response to the intellectual transformations of the seventeenth-century. For more recent interpretations of the "Scientific Revolution," see H. Floris Cohen, *The Scientific Revolution: A Historiographical Inquiry* (Chicago: University of Chicago Press, 1994), Steven Shapin, *The Scientific Revolution* (Chicago: University of Chicago Press, 1998), and Lawrence Lipting, *What Galileo Saw: Imagining the Scientific Revolution* (Ithaca, NY: Cornell University Press, 2014).

Not so much a system of theology or philosophy as a method of teaching, it followed the Aristotelian emphasis on establishing the first principles that articulated the fundamental nature of something, principles which were to be used later to derive further results via inference. Central to this method was the idea of formal disputation that involved a constant exchange of arguments between a teacher and his students and amongst the students themselves. Beginning in the 1630s and 1640s, a number of Cambridge scholars found themselves increasingly dissatisfied with scholasticism, despite the common current at the university. To many contemporaries, the method seemed wasteful and extremely unsatisfactory. In 1632, John Milton, then a student at Christ's College, complained that Aristotelian thought was outmoded and insufficient in meeting the intellectual challenges of the day.<sup>81</sup> Less a method for the pursuit of truth, the constant bickering appeared more to be a way of satisfying egos and settling scores. In his *Academiarum Examen* (1656), cleric and physician John Webster denounced the method as a:

...a civil war of words, a verbal contest, a combat of cunning, craftiness, violence and altercation, wherein all verbal force, by impudence, insolence, opposition, contradiction, derision, diversion, trifling, jeering, humming, hissing, brawling, quarreling, scolding, scandalizing, and the like, are equally allowed of, and accounted just, and no regard had to the truth....<sup>82</sup>

Even more vexing was scholasticism's close alignment with the reigning theology of Calvinism and, at times, doctrinaire Catholicism. With its rigid academic formulations, scholasticism proved to be a nurturing ground for the doctrines of Calvinism, which emphasized predestination and did not value human reason or freedom of the will.<sup>83</sup> As a student at Eton, the philosopher Henry More felt that this made God inscrutable and contradicted his personal belief in the inherent goodness of God.<sup>84</sup> Therefore, towards the beginning of the seventeenth century, there emerged increasing dissatisfaction with scholasticism and its Aristotelian foundations. When More and some of his contemporaries went to Cambridge, they fervently sought an alternative.

Aristotle's own teacher Plato, as well as his later interpreters, including Plotinus, furnished a

potential alternative to the inadequacies of Aristotle and scholasticism. Their writings proved to be instrumental in articulating a worldview markedly different from Calvinism. According to Mark Goldie, the starting point was Plato's doctrine of soul, reason, and knowledge. On Earth, the soul exists in a state of alienation from the universal divine mind. Its sole purpose is the pursuit of knowledge and contemplation of the divine. However, this is possible only through the exercise of reason.<sup>85</sup> But reason, unlike what the scholastics took it to be, went beyond the ability to form conclusions through deduction and inference. It was, as Platonic writers defined it, "the organ of divine sense."<sup>86</sup> Within themselves, humans carried "an intuition of archetypal truths that subsist in the divine mind."<sup>87</sup> Through this intuition, humans could choose between the good and the evil and embrace the divine. This understanding diverged from Calvinism in two ways. First, in contrast with the Calvinist disregard for reason presumably in favor of grace, the Platonic understanding affirmed reason's centrality to the contemplation of the divine. Second, through its emphasis on man's ability to choose between good and evil through his innate sense, it did away with the Calvinistic belief that it was only through God that man could do good and achieve salvation. Embracing Plato's writings, therefore, provided a distinctively new understanding of the meaning and power of human reason and man's relation to God.

These ideas were best articulated in the middle decades of the seventeenth century by the Cambridge Platonists.<sup>xxii</sup> The term "Cambridge Platonism," however, was first used in the nineteenth-century. When speaking of the seventeenth-century, the group cannot always be distinguished from the wider movement of latitudinarianism, which called for the rejection of "narrowness and sectarian

xxii Literature on the Cambridge Platonists is vast. See C.A. Patrides, *The Cambridge Platonists* (Cambridge: Cambridge University Press, 1969), Ernst Cassirer, *The Platonic Renaissance in England*, translated by J.P. Pettegrove (1953), Sarah Hutton, "The Cambridge Platonists", in S. Nadler (ed.), *Blackwell Companion to Early Modern Philosophy* (Oxford: Blackwell, 2002). For studies of individual Platonists, see Benjamin Carter, *The Little Commonwealth of Man: The Trinitarian Origins of the Ethical and Political Philosophy of Ralph Cudworth* (Louvain: Peeters, 2011), Sarah Hutton, *Anne Conway: A Woman Philosopher* (Cambridge: Cambridge University Press, 2004), Jasper Reid, *The Metaphysics of Henry More* (Dordrecht: Kluwer Academic Publishers, 2012) and David Leech, *The Hammer of the Cartesians: Henry More's Philosophy of Spirit and the Origins of Modern Atheism* (Louvain: Peeters, 2013).

partisanship in religion.”<sup>88</sup> Nonetheless, it is possible to identify the core members of the group. These were Henry More and Ralph Cudworth, both fellows of Christ’s College, and Benjamin Whichcote, John Worthington, Peter Sterry, John Smith, and Nathaniel Culverwell, all fellows of Emmanuel College. Therefore, rather than being a university-wide group, Cambridge Platonism was limited to Christ’s and Emmanuel.

Born in 1615, Sadler attended Emmanuel College in 1630. He earned his BA in 1634, his MA in 1638 and went on to become a fellow in 1639. Though there is no direct evidence, it is likely that Sadler came into contact with Whichcote and others during his time at Emmanuel, and several studies of the period mention him as one of the Cambridge Platonists.<sup>89</sup> Yet, as Sarah Hutton has pointed out, Sadler’s relationship to the group has never been explored.<sup>90</sup> That aside, we are yet to ascertain if he was a Platonist at all. My aim here is to fill the gap identified by Hutton. Through a close reading of Sadler’s masque *Masquerade Du Ciel* (1640), I hope to firmly establish that Platonism was a significant strand in his thought and came to shape his understanding of reason.<sup>91</sup>

In using Sadler’s masque as my case study, I do not wish to imply that the piece is exceptional by all standards. In fact, it is reasonable to suggest that most masques written by university students such as Sadler were neo-platonic.<sup>xxiii</sup> My point, as I will show, is that Sadler’s masque is particularly valuable in thinking about common lawyers conceptualized reason and its relation to common law.

Dedicated to Queen Henrietta Maria, the French Catholic Queen of King Charles I, the masque presents an allegory for royal supremacy, and the just and benign nature of Kingship. Set in “the Little World or the Isle of Britain,” it tells the story of how the “late commotions” between Saturn and Mercury are settled by the “goodnesse” of monarchs Phebus and Phebe. The plot, writes Sadler, is divided into two parts: “celestiall” and “terrestriall”. The “celestiall” aims at providing the “most true and exact draught of the Site and Motions of the SUN, MOONE, VENUS, MERCURY, JUPITER and MARS; with other heavenly bodies, through the yeeres, 1639, 1640, &c (*sic*).” The “terrestriall”, on the other hand, represents how these motions were “shadowed upon earth”.<sup>92</sup>

The quarrel between Saturn and Mercury begins with Phebus sending Mercury to the Northern Thule.<sup>xxiv</sup> However, Saturn, already present in the region, drives Mercury back. Enraged, Phebus, accompanied by Jupiter, Mars, and their Satellites, initially approaches Saturn in a “Warre-like Manner”. However, Phebe, with her “Royall Goodnesse”, intervenes asking Phebus to mediate peace which Phebus grants immediately. A discontented Mars tries to disturb the peace and “by divers assayes, Labours to break it.”<sup>93</sup> Phebus strikes and holds Mars prisoner. However, once Phebus returns to his Southern residence, Venus petitions him on behalf of Mars. Good and gracious, Phebus grants her request. Undeterred by his imprisonment, Mars still plots to incense Saturn and Mercury. He succeeds and, once again, Saturn drives Mercury out of Thule. Judging the gravity of the matter, Phebe and Phebus now summon the “Grand Councill of all the Seeming Deities.” Charged with rebellion against Phebus, Mars is now forced to “forfeit all His Honours, Dignities, Priviledges &c. to His Sovereigne PHEBUS.” Next, somewhat unexpectedly, Saturn and Mercury voluntarily “resigne up all Their Possessions, Claimes, &c. into PHEBUS Hands, acknowledging Their dependence on His Royall favour.” Yet Phebus, once again moved by his “wonted Goodnesse” reinvests them with their former privileges and several new ones knowing that “Royal Goodnesse” always makes “Loyall Subjects of all Noble Spirits.”<sup>94</sup>

The part recounted so far constitutes the political realm in which Saturn and Mercury exist. Yet, writes Sadler, they are also “sometime Poeticall, sometime Platonicall, yea Chymicall sometime.”<sup>95</sup> If we look to the poets, the quarrel stems from Saturn’s possession of Thule, a fact recounted in several of the “old Poets and Poeticall writers.”<sup>96</sup> While the poets make a claim for Saturn’s possession of Thule, the “chymists” explain why it should belong to Mercury. Of all the planets, Mercury has the greatest latitude from “Ecliptick, which is the SUNS constant Residence.” Therefore, it seems to be a good fit for places, such as Thule with “Climes, which are most Remote and distant from the SUN.”<sup>97</sup> Similarly, Mercury is cold and moist and, therefore, “fittest to reside in Cold Moyst Ilands; Such as THULE.”<sup>98</sup> For Sadler, the platonic writers go a step further than the

xxiv In early modern European maps and literature, Thule represents a region far north now variously identified as Norway, Orkney, and Shetland (archipelago off the coast of Scotland).

xxiii I thank Professor Adrian Johns for this point.

poets and the chemists. Rather than simply telling us about the roots of the quarrel between Saturn and Mercury, the Platonists found a way to reconcile them in “Words and Shew (show),” even though “SATURN and MERCURY could in re, never agree in Heav’n or Earth.”<sup>99</sup>

In making this case, Sadler displays a strong familiarity with the main doctrines of Plato and his leading interpreter Plotinus. However, before we delve further into Sadler’s thought, it is, even if somewhat crudely, worth stating Plotinus’s theory of the three hypostases, a formulation central to Sadler’s exploration of the relationship between different heavenly bodies. According to Plotinus, three principles or hypostases are fundamental to everything we experience. These are the One (Plato’s form of the good), Intellect (or Being, together with all beings or intellects) and the Soul (or, as Corrigan puts it, “all soul from which at a lower level the World soul and individual souls derive”).<sup>100</sup> The three principles are largely hierarchical. From the One emanate the Intellect or Being and then comes Soul. Just like the Soul reflects the Intellect, the physical world, comprised of form and matter, is a reflection or image of the Soul. However, it is worth remembering that the Intellect and Soul here are not our intellects or souls. Rather, they represent higher principles from which our more feeble and inferior intellect and souls derive.<sup>101</sup>

If not an exact representation of Plotinus’s theory, Sadler’s formulation is a relatively close approximation. Echoing Plotinus, Sadler begins with how Caelius, Saturn, and Jupiter—the “Three Highest Planets in Heaven”—represent the three hypostases to the Platonists. Caelius represents being, Saturn stands for knowledge, and Jupiter for activity. The three spheres exist in our own souls and, in the language of the scholastics, respectively represent essence, understanding, and will.<sup>102</sup> As the sphere of being, Caelius is all knowing, supreme, and infinite. “Caelius must have,” Sadler writes, “in himself all Entity; (else not Infinite) all perfections; Therefore Knowledge, He must be Intelligent. And Having All within Himself, He Cannot but know all.”<sup>103</sup> To express it in terms of Plotinus, Caelius represents the One, which is the origin of all things. Coming next, Saturn represents the sphere of knowledge or understanding. From Saturn emerge the ideas or concepts that are then stamped upon “Severall Lump

of Matter (as on Wax).”<sup>104</sup> Sadler is careful to reiterate Plotinus’s idea of one hypostasis being a reflection of the other. Even before these ideas were stamped on matter, they were “Swallowed by SATURN Himself.” Only then did they come out again, divided and broken to “beget Forms; of which came This Fabrick, which we call the WORLD.”<sup>105</sup>

Where does Jupiter stand in relation to Saturn? Jupiter, writes Sadler, is the third hypostasis representing activity or will. It functions as the medium through which Saturn made the world. Jupiter takes Saturn’s ideas and stamps them upon “rude indigested Moles of Matter.” If Saturn represents the “Ideal Cause,” according to which the world was made, Jupiter is “The Immediate Cause *By whom*<sup>xxv</sup> the world was made.”<sup>106</sup> In other words, Saturn provides the blueprint that Jupiter later executes to create the physical world. The link between Saturn and Jupiter is further explored through the notions of will and understanding. Even if the will follows understanding’s dictates, Saturn (understanding) and Jupiter (activity or will) are two branches of the same tree. If one thinks of “that Terrean Soule, that lump of living . . . Flesh, which we call our Heart,” Understanding is the “Soule’s Diastole,” and will its systole. Both will and understanding “make up but One Heart, One Soule.”<sup>107</sup> In arguing thus, Sadler again follows Plotinus’s notion of all things emanating from the One and comprising an essential unity.

Last, we come to Mercury—the subject of investigation throughout the masque. Sadler repeats how Saturn provides the ideas which Jupiter stamps upon matter. But the “words, Syllables and Letters” by which Saturn’s ideas or concepts come out and are expressed, belong to Mercury. Employing the metaphor of reproduction, he notes that “MERCURY to SATURN, is *Semen Ideale* (Ideal seed): That *Vis Prolifica* (Reproductive Force), by which *Ideahs* (sic) coming out of SATURN, and STAMPT by JUPITER, on *Matter*; do there beget the *Embryon of a Forme* . . .”<sup>108</sup> In other words, Mercury acts as the force of reproduction that is impressed on the building material that Jupiter uses to shape Saturn’s ideas into physical reality. Therefore, one need not assume that Saturn and Mercury are necessarily opposed to each other. In fact, drawing upon Platonic writers, as Sadler does, it is easy to see how the two

xxv Unless noted otherwise, the italics are in the original.



have reasonable time to remove his family and goods, “with free Egress and Regress.” Similarly, a “tenant by copy” is never entirely subject to the Lord’s whim because, by common law, the Lord must have always levy a reasonable fine.” Last, common law requires that:

Houseboot, Hedgboot, Ploughboot, all *Estovers* (both for Tenants and Prisoners) must be reasonable, and so must all Partitions between Parceners, and upon Elegit, &c. Which are therefore not left to the Sole Pleasure of a Sheriff, or of any other, but in a sworn Enquest, as we may find in the Writ *de Rationabili Partitione*.<sup>116</sup>

Unsurprisingly, at some points, Sadler repeats the arguments of those with a solely Aristotelian understanding of reason and its relation to common law. For example, like Justice Coke, Sadler argues that it is mostly the lawyers and judges who have the ability to determine what is reasonable when it comes to matters of the Law. Nonetheless, he concedes that there may be cases when the Law itself “leaveth private Men (even in their own Causes) to be Judges of Reason, or what is reasonable.” One such case is that of *escuage*: the payment made to a lord in lieu of military service. In cases relating to *escuage*, a man’s own reason is sufficient to determine the outcome.<sup>117</sup> The Law need not intervene. There could be other exceptions as well. However, in general, if we are to ask who must determine what is reasonable, the simple answer is that when a man finds himself troubled by his Lord, or his fellow tenants, he must go to the lawyers and the judges. The “Judges Breast” is a “Castle for right Reason.”<sup>118</sup>

The similarity between Coke and Sadler, however, is a minor one. It certainly does not obscure the fact (owing to his intellectual background) that Sadler had come to think of reason very differently from his predecessors. While Coke and various others followed an Aristotelian understanding of reason, Sadler leaned towards the Platonic alternative. For proponents of “artificial reason,” the strength of common law lay in the technical expertise of its practitioners acquired through the study of Year Books and Reports. Sadler, on the other hand, felt that there was more to the practice of common law. Instead of suggesting that it was the diligent study of old documents that lent common law its reasonableness, Sadler argued that it was the ability of judges and lawyers to strike a balance between their

activity, being, and knowledge that made common law reasonable. For Sadler, therefore, common law stood for the exercise of a type of reason that mimicked God’s infinite and proportional being, knowing, and activity.

As mentioned at the beginning of this section, at least one major recent work of

scholarship has emphasized the dominance of Aristotelian thought amongst common lawyers in the seventeenth century. The effect, however, has been to portray common law as untouched by the radical intellectual transformations of the period. By looking at a figure like Sadler, this section has attempted to argue that this was not the case. As several thinkers grew dissatisfied with Aristotelian scholasticism, they made their way into Platonism. A member of the Cambridge Platonists, the most influential group of Platonic thinkers in seventeenth-century England, Sadler also took to Platonism as a way to resolve intellectual problems. One such problem was the concept of reason as it related to common law. Moving away from Justice Edward Coke’s Aristotelian concept of “artificial reason,” Sadler developed a more Platonic view of reason. In doing so, he conceptualized common law not as the use of technical knowledge gathered through diligent study but as an exercise of the Platonic variety of reason.

## CONCLUSION

It is fitting to end by suggesting directions for further research. First, in thinking about common law and religion, it would be suitable to go back to Justices Edward Coke and Matthew Hale to connect their religious views with their ideas about common law. This exercise might change our interpretation of their writings and their impact on the subsequent generations of common lawyers. Second, due to the lack of substantive evidence, I have hesitated to draw a strong connection between Sadler’s religious views and his idea of reason. I have only hinted at such a connection by pointing out the role of the Divine in Sadler’s conception of reason. In pursuing this connection further, we should move away from Sadler and try to look at other common lawyers to understand the nature of this link better and construct an even more comprehensive picture of common law by linking common law, reason, and religion together.

Yet, as this essay has suggested, these avenues

can only be pursued if we appreciate two main arguments about common law in Early Modern England. First, as exemplified through Sadler, it is unwise to segregate religion and common law. Integrating the two is a much more productive approach. It allows us to appreciate common law's relationship with the most potent factor in Early Modern life and explain why certain legal thinkers took the positions they did. Second, by ignoring the seismic intellectual changes of the period, we run the risk of portraying common law as static. By appreciating the influence of ideas such as Platonism, we can fully highlight the truly dynamic nature of Early Modern legal and intellectual culture.

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