

# CONFLICTS BETWEEN KING, PARLIAMENT AND THE COMMON LAW

## *The Idea of Law in the Civil War*

### **Beginnings of Conflict**

- The death of Elizabeth I saw James VI Scotland (James I England) come to power
- Civil war ensued between James I and Sir Edward Coke
- James I was a proponent of natural law, based on will of Sovereign (pro-monarchy, divined by God)
- Sir Edward Coke – embodied view that common law was customary, not enacted by a sovereign, so it could not be abrogated by anybody – sovereign or otherwise

### **Natural Law Perspective (James I and Monarchy)**

- Law as deriving from sovereign
- Royal prerogative paramount
- The natural law is naturally knowable by all human beings
- The natural law is knowable by the power of reason
- The natural law is naturally authoritative over all human beings
- The good is prior to the right
  - o Good- what morally should be the case
  - o Right – how, in a narrow sense, one responds to what is good
- Right conduct is action that responds non defectively to the good
- There are a variety of ways in which conduct can be defective with respect to the good ie intention, circumstance
- Some of these ways can be captured and formulated as general rules

### **Common Law Perspective (Common Lawyers Perspectives)**

- Law was derived from custom and tried through ‘artificial reasoning’
- Ancient precedent connoted its legitimacy
- **Custom** – elevated the common law as being custom – “distilled wisdom of past ages was far greater than that which moderns could unaidedly attain.”
- **Reason**- common law was derived from supreme rationality, based on a rock of reason – not only conformed to but actually *was* the law of nature, maxims of the common law allowed for the interpretation of the law
- Law cannot be extinguished by anyone – it is internally consistent and rational system

### **Monarchist Perspective eg: James I**

- Kings power derived from God as the author of nature
- King was the source of sovereignty – prerogative power
- King always possessed absolute extra-legal rights – not open to others, incl. lawyers to rule above royal power
- King could not be prosecuted for illegal actions
- King could not abrogate statute

### **Common Law Perspective eg: Edward Coke**

- Common law was supreme – based on custom and reason
- King’s power derived from the rights that he possessed at law
- King had no extra- legal powers
- King could not be prosecuted for illegal actions
- King could not abrogate slightest provision of common law
- King could abrogate statute

## *Bonham's Case (1610)*

### **Facts**

- Action of false imprisonment against the President and Censors of the College of Physicians
- College had royal prerogative to determine who could practice there
- Bonham determined insufficient for practice, despite his certificate at Cambridge
- Fine and imprisoned for continuing to practise
- Claimed that the college had no authority over him

### **Issues**

- Did the college have authority on behalf of the king to dismiss and imprison him?

### **Reasoning**

Coke CJ

- Censors did not have power by the letters patent from the King because he did not practise without a concern that he would cause harm by continuing
- Because he practiced in good manner
- The common law should be able to deem acts of parliament void when they go against common reason, are impossible to be performed, or repugnant

### **Outcome**

- Bonham was successful and received compensation

### **Significance**

The case demonstrated that common law could overrule the statutory law – “when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such an Act to be void.”

- **What were the arguments that the common lawyers used against the kings prerogative?**

Common law was based in customary law – tried reason. The Kings power came from the rights given to him by the common law. The purpose of government was to protect people and property, and laws to protect individual freedoms – thus the King should not be able to make rules without the people's consent.

- **Why did so much of the argument about the power of the common law and parliament turn on issues relating to the royal prerogative?**

Questions surrounding where the origins of power laid and who should be given the power, and at the time, the King held all such power.

- **Why does Pocock say the ancient constitution was a myth? Does it matter?**

Custom, by its very nature, is something that adapts with culture. If custom has always been the same, if the common law arises from this source, then how can it claim to be consistent?

- **What was the importance of natural law theory to the arguments about the royal prerogative and to the arguments about common law as custom?**

The origins of morality and what is right, the basis of true law, came from God in both perspectives. However, the idea that the King had divine powers suggested that, according to natural law thinking, that he should have unlimited royal power. Alternatively, although common law thinkers suggested that morality came from humanity, and thus, law should come from the common people- the king had no more right to be above the law than the average man.

- **What was the difference between artificial and natural reason according to the common lawyers? Does the difference still exist?**

Natural reason is possessed by every man – it includes the idea that a common sense of morality is a basis for common law. Artificial reason is the reason attained only by lawyers, developed through years of studying the law. There still exists a strong conceptual distinction between the two areas of law.