REVIEWS

PURITANS, LAWYERS, AND POLITICS IN EARLY SEVENTEENTH CENTURY ENGLAND. By John Dykstra Eusden. New Haven: Yale University Press, 1958. Pp. xii, 238. $4.50.

THE preface of this book reveals a scholar functioning in the best tradition of his profession. Aware that scholarship is fundamentally a cooperative enterprise and yet that an author must ultimately "stand alone," Eusden acknowledges an indebtedness to many and modestly rates his own contribution to historical knowledge. Candidly, also, he confesses having had to abandon a conjecture which intrigued him, for "the evidence of Puritan influence on common law and vice versa did not materialize."[1] He retreats to a relationship between Puritanism and common law which he is able amply to support, "one of ideological parallelism."

His analysis concerns the substance of what men perseveringly wanted and manifestly expressed in the early seventeenth century, not with what the twentieth century might articulate for them. For his period of intensive study he takes the years 1603 to 1630, which were sketched in broader strokes by Notestein in his *The English People on the Eve of Colonization.*[2] Although the first five chapters of the Eusden book deal with ideas and events familiar to students of the seventeenth century, the author engages in an organization of this material essential to his purpose.

The Puritans of his study comprise three groups who worked together in their common predicament but were differentiated by their concepts of church organization—the Puritan Anglicans, the Presbyterians, and the Independents or pre-Civil-War "nonseparating Congregationalists," who favored an established but loosely federated church. As the ten spokesmen of Puritanism to be specifically examined, Eusden judiciously selects John Preston, Richard Sibbes, William Gouge, Thomas Gataker, Thomas Scott, William Prynne, Paul Baynes, William Bradshaw, Samuel Ward, and Richard Holdsworth. He analyzes the essential Calvinism of their religious and moral doctrines, and their concepts of divine sovereignty and the autonomy of church and university. He demonstrates the distinction between Puritan thinking of the early seventeenth century and that of the Elizabethan period and of the mid-seventeenth-century.

The lawyers of his study are those actively defending the common law against the expanding claims of the royal prerogative. They are distinguished from the antiquarians, from those, like Eliot and Pym, who were primarily concerned with Parliament, and from their lawyer-opponents who supported the crown. The ideas of their leading champion, Sir Edward Coke, as well as five

1. P. viii.
2. NOTESTEIN, THE ENGLISH PEOPLE ON THE EVE OF COLONIZATION, 1603-1630 (1954).

others—William Hakewell, Sir James Whitelocke, John Selden, Nicholas Fuller, and Sir Ranulphe Crew—are extensively drawn upon. Analyzing the complexity of their concept of fundamental law, their exaltation of the common-law courts, and their guardianship of the Inns of Court, Eusden distinguishes the early seventeenth-century phase of common-law championship from the preceding and succeeding phases.

Both Puritans and lawyers are portrayed as defensive against royal encroachments, although, undeniably, there was an expansion in the early seventeenth century of what—in the eyes of Puritans and lawyers—were imprescriptible rights. Because of the author's natural partisanship (which I share) he is little concerned with explaining why James I regarded the Puritans as "Pests in Church and Commonwealth," and the lawyers as "meddlers with the King's prerogative." Instead, he concentrates on the instances of monarchical intrusion. These were indeed formidable, and they appear all the more so when presented in explicit detail (in chapters four and five) as a series of deliberate assaults, ranging from the prescriptions of new ceremonials for religion in the universities, and the canons of 1604, through the cases of Bate, Peacham, Darnel, and commendams. In the light of the crown's provocative conduct, as characterized in these chapters, the Puritan position seems one of restraint. The thinking of the lawyers, as is well known, adhered to the emphatically conservative method of reasoning from authority—previous decisions, statutes, or procedures—precedents which, although usually genuine, were sometimes questionable or imaginary.

Having provided a study in depth of Puritans and common lawyers in the early seventeenth century, the author can convincingly demonstrate in his central sections on "Authority and Obedience" and "The Role of Laws" (in chapter six) the parallel between the divine sovereignty of the Puritans and the fundamental law of the barristers. Both divine sovereignty and fundamental law evoked unqualified obedience, and although neither concept was characterized by precision, evidence supporting the authority of both was thought to be concrete and overwhelming. It took the form of individual laws, either scriptural or secular, rather than political theorizing. In their respective spheres, Puritan divines and common lawyers alike frankly claimed superior qualifications to interpret those laws and thus explicitly to reveal God's will on the one hand and fundamental law on the other. In fact, an "actual reciprocity" existed among divines and barristers. "The Puritans found the whole common law tradition to be a part of God's extensive rule of the world, while the lawyers discovered that the Bible undergirded the authority of common law rules and statutes and thereby augmented the supremacy of fundamental law."[3]

From this point in his book, through the discussion of "Natural Law" and "Distributive Authority" (also in chapter six), "Puritan-Common Law Influence on Parliament" (chapter seven), and "Sovereignty and the Stuff of Political History" (chapter eight), Eusden has much of significance to say. But

3. P. 125.

here, in contrast to the first two thirds of the volume, he is at times scholastically vulnerable.[4]

To be sure his discussion of natural law is compact and skillful. After showing how the secular, individualistic version of natural law, from Hobbes to Burlamaqui, differed from the Stoic and the medieval Christian forms, Eusden makes valid and subtle distinctions between the Puritan-common-law image of a higher law and the concept of natural law as it evolved during its most liberating phase in the late seventeenth and the eighteenth centuries. He should, however, have clarified this distinction by comparing it with the immediately preceding point of view, particularly that of Richard Hooker. More importantly, since the early seventeenth century "was dead water in the flow of natural law political thought in England,"[5] Eusden should have commented on the measure of agreement about natural law among antagonists—in particular, between the Puritans and common lawyers on the one hand and James I on the other. Such an analysis would surely have proved more pungently relevant to this book than the author's treatment of the Puritan-common-law anticipations of Montesquieu.

On the Puritan-common-law concept of distributive authority Eusden presents a brief but searching discourse. Here, he fully establishes the connection with Richard Hooker and makes the extension of "the thought of the Anglican apologist" include "the many institutions of English life, not just church and state."[6] In the course of showing how "the themes of responsibility to higher authority, independence, and interdependence dominate the conception of institutional authority"[7] for the Puritans and the lawyers, Eusden compensates for some of the deficiencies in his treatment of natural law. But, in this demonstration and as he proceeds to a discussion of Parliament, he becomes more deeply involved in another difficulty. This arises from his neglect of categories of socially powerful and politically-minded early seventeenth-century Englishmen other than the Puritan divines and their parliamentary spokesmen, the common lawyers (in his restricted sense), and the first two Stuart monarchs.

It should at once be granted that Eusden is entirely justified in avowedly confining the scope of his study to the Puritans and common lawyers. He not only states clearly in his introduction, "We would explore two of the major strands

4. To the initial part of this statement, there are a few minor exceptions which are probably mainly due to Eusden's taking James I's stubbornness and pretensions to divine-right authority as evidence of a strong will. Actually, James completely lacked the positive qualities essential to the powerful monarch of his theorizing. If Eusden had been more aware of James's weaknesses and inconsistencies in the practice of kingcraft, he would have written some sentences differently, such as those concerning Archbishop Abbot and John Cowell. See pp. 20, 70, 87, 89. The view that James was weak-willed is amply supported by two historians cited by Eusden, S. R. Gardiner and David Harris Willson, whose excellent biography, *King James VI and I* (1956), is inadvertently omitted from Eusden's bibliography.

5. P. 131.

6. P. 143.

7. P. 144.

in the opposition, the one religious and the other legal,"[8] but he periodically indicates an awareness of other elements in the opposition to Stuart policy. He writes constantly, however, of distributive authority as if it were an exclusively Puritan-common-law concept. This approach, in the first place, implicitly ignores the significant role of all those who may be classified as political Puritans, whether of the gentry, merchant, or even the yeoman or artisan classes. These were men who had political and social, rather than religious or legalistic, reasons for adhering to a medieval-Tudor tradition of a balanced polity. In the circumstances of the early seventeenth century, they saw in the Puritans and the lawyers their natural allies.

Moreover, given the widespread belief that English institutions had existed since "the memory of man knoweth not to the contrary," one would not expect to find a fully matured theory of parliamentary sovereignty this early in the development of a movement which eventually became revolutionary.[9] The concept of distributive authority, seemingly threatened by the Stuart monarchs, still prevailed as the generally accepted view of the English form of government, and the Puritans and lawyers merely articulated cogent versions of it. In fact, there is absolutely no justification for attributing the common concurrence with the idea of distributive authority solely to those who were inveterate opponents of the Stuart monarchy. Only a relatively small group of high churchmen, councilors, and courtiers, and Charles I himself, could be described as hostile to such a theory. Furthermore, the actual impotence of this seemingly powerful group was exposed by the events of 1637 to 1641, during which the lasting portion of the English revolution was effected. This enduring accomplishment was made possible by a broad consensus of potential royalists and parliamentarians favoring the restoration of a balance, though a new one, to the English polity. The tragedy of this achievement was that it came too late to fend off civil war.

Eusden recognizes that distributive authority was deliberately unclear as a secular political theory of sovereignty. This was not a baneful flaw so long as its proponents played the political game as Elizabeth I and her parliaments usually did. Even in Eusden's chosen period, the issue between distributive authority and monarchical absolutism was not as sharply drawn as he seems to imply. Most men agreed that conflicts of authority had practically to be resolved in Parliament—meaning the King in Parliament—but as a clarification serving

8. P.3.

9. In his discussion of the status of early seventeeth-century Parliaments, Eusden makes too much of the apparent divergence among historians as to when the concept of parliamentary sovereignty emerged. See pp. 154 n.11, 156-58. Maitland, whom he classifies among those who assert its early appearance, was, as Helen Cam and William Dunham remind us, the modern historical restorer of the view that parliament "was first of all a court of justice." MAITLAND, SELECTED HISTORICAL ESSAYS (Cam. ed. 1957), reviewed by Dunham, 67 YALE L.J. 763, 764 (1958). The process of transforming a high court into a primarily law-making body extended over a long time. Although the early seventeenth-century Puritans and lawyers did not enunciate a theory of parliamentary sovereignty, they can be seen historically to have contributed substantially to a concept which went beyond their intentions.

the needs of that time this solution was ominously inadequate. Those who agreed on this formula inevitably and painfully confronted the necessity of seizing one horn or another of the dilemma presented by King in Parliament. Although convictions were hardening in 1641-1642, few gladly chose either royal absolutism or parliamentary sovereignty.[10]

If valid, the foregoing critique of Eusden's treatment of distributive authority partly vitiates his subsequent review of parliamentary history and the concluding discussion of modern limitations on parliamentary sovereignty. He nowhere suggests that there were many other possible roads, besides the Puritan-common-law way, to a belief in distributive authority. Admittedly, his historical reconstruction of early seventeenth-century Puritan and legal thinking is entirely convincing, and possibly the Puritan-common-law concept of distributive authority did have a subsequent intellectual adventure only now revealed. Of the later historical impact of Sir Edward Coke's ideas, there need be no doubt. Obviously, too, English political and constitutional history is rich in events, like the signing of Magna Carta, which live and grow and fructify. And in all probability, the strong stand made on the Petition of Right, and Sir John Eliot's martyrdom for free speech in Parliament, during the period encompassed by this volume, fortified men for the impending trial of strength. But Eusden has failed to disclose convincing evidence for the belief that the particular Puritan-common-law complex of ideas—which linked divine sovereignty, fundamental law, and distributive authority—has notably influenced intellectual history over a span of three hundred years. The transmission of ideas in his mind has not been historically demonstrated.

In the thinking of Bolingbroke and Burke, he discovers striking similarities to the Puritan-common-law view of distributive authority, but he does not show that either of these men derived his ideas, even in part, from the written works of early seventeenth-century Puritan divines and common lawyers. Bolingbroke and Burke drew on a much broader tradition of beliefs and practices, and in addition were affected by peculiarly eighteenth-century social and political circumstances. Likewise, the author finds the moderate brand of twentieth-century pluralism, a position between the extremes of Austin and Laski,[11] much in accord with the stand of early seventeenth-century Puritans and lawyers on distributive authority. Again the link is assumed rather than established.[12]

10. The main points of this and the preceding two paragraphs are fully supported by Margaret Judson in her *Crisis of the Constitution* (1949). (Eusden graciously acknowledges her assistance to him, and several times cites this work in other connections, although he inadvertently omits it from his bibliography.) Further substantiation of the textual line of criticism, from a somewhat different approach, may be found implicitly in J.G.A. Pocock's *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (1957), a penetrating work, published too recently to have been seen by Eusden.

11. This is the early Harold Laski of *Studies in the Problem of Sovereignty* (1917). Eusden does not allow for a considerable later modification in Laski's views on pluralism. See pp. 173-74 & n.3.

12. Actually the link is tenuous. The early seventeenth-century Puritans and lawyers would have been aghast at one of the most powerful factors operating in practice to sustain

In these last chapters, to be sure, Eusden does not pretend to present more than a fragmentary analysis of three hundred years of political and intellectual history as they relate to his theme. Throughout this portion, he generalizes soundly and writes perceptively on the rule of law, the "stuff of political history," and other topics. But he also makes over-ambitious sorties into general intellectual history. At one point, beginning with the remark, "the principle of distributive authority was ignored throughout most of the eighteenth century," he proceeds with a disquisition in the course of which the Whigs and Jeremy Bentham are partially acquitted of their sins against distributive authority. This is a travesty of historical detachment, deplorable in a book of such high quality.[13]

Suffice it to say that the victory of parliamentary sovereignty was a triumph for modern constitutional government precisely because a resolution of seventeenth-century conflicts, rather than a one-sided conquest, eventuated; neither the Tories nor the Puritan sects were annihilated. Of the two parties which emerged, the Whigs less equivocally espoused religious freedom, judicial independence and civil liberties. Sustained by the Whigs, these bulwarks of distributive authority subsequently were strengthened in the course of the eighteenth century, and strongly affirmed by the Benthamites. And, in clarifying the legal sovereignty of Parliament, the Benthamites exposed English political realities which, in the eighteenth century, had been obscured by the dominant principle of separation of powers—a principle which, too literally interpreted, can become distributive authority to the point of political strangulation.

The chief merit of Eusden's book, then, is its historical reconstitution of important aspects of early seventeenth-century English thought. Although this is not so neglected a period as he seems to think,[14] he has made a genuine contribution to our understanding. He writes with sustained lucidity.[15]

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the self-limitation of parliamentary sovereignty: the revolutionary expansion of democratic representation. Members of parliament, no matter how powerful they recognize themselves legally to be, usually want to be re-elected.

13. For this extraordinary lapse of nearly two pages (pp. 161-63), Eusden may lay part of the blame on Charles H. McIlwain, whose scholarly stature is great enough to bear an occasional fall from grace, especially in a period, like the eighteenth century, not within his fields of specialization. See p. 161 & n.30; MCILWAIN, CONSTITUTIONALISM ANCIENT AND MODERN (1947). Eusden's own knowledge of the eighteenth century is limited, if one may judge from his assertion that the Whigs "maintained supremacy in the government from 1688 until their downfall in 1790." This is really defying Sir Lewis Namier with a vengeance.

14. Pp. 1, 149.

15. His forty-page bibliography is excellent. The author includes a number of unpublished Yale doctorate dissertations of which he makes good use. His inclusion of items peripheral to his work, however, seems occasionally quixotic. If the Brunton and Pennington work on the Long Parliament is pertinent, why not Mary Frear Keeler's, which has much more material on Eusden's chosen period? See BRUNTON & PENNINGTON, MEMBERS OF THE LONG PARLIAMENT (1954); KEELER, THE LONG PARLIAMENT (1954).

The proofreading is impeccable, except for two unintentional Pogo-isms ("unequivocably" and "expoused") on a single page. P.17.

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