

## **TUDOR AND STUART CONSTITUTIONS**

### *1485–1603 – Tudors*

Henry VIII (1509–1547)

1515–1529 — ascendancy of Thomas Wolsey

1527–1532 — the “King’s Great Matter” (divorce)

1532–1540 — Thomas Cromwell; Reformation Parliament; dissolution of the monasteries

Edward VI (1547–53); radical Protestantism

Mary (Philip and Mary) (1553 [1555]–1558); Catholicism

Elizabeth I (1558–1603); perhaps a less radical Protestantism

1563 — 39 Articles

1587 — execution of Mary Queen of Scots

1588 — defeat of the Armada

### *1603–1714 — Stuarts (with a break 1649–1660)*

James I (1603–1625) (James VI of Scotland)

1605 — Gunpowder Plot

1616 — Dismissal of Coke

1621 — The Great Protestation

Charles I (1625–49)

1628 — Petition of Right

1640–1653 — The Long Parliament (called “the Rump” from 1648–1653)

1642–1646 — Civil War

1648–1650 — Civil War

1649 — execution of Charles I

Commonwealth (1649–1660) – Oliver Cromwell Protector (1653–1658)

Charles II (1660–85, officially from 1649)

1660 — Restoration

1667 — Impeachment of Clarendon

1678 — Popish Plot

James II (1685–88)

William & Mary (1689–1702)

1689 — Glorious Revolution; Bill of Rights

Anne (1702–14)

1707 — Act of Union (of England and Scotland)

1710–1714 — ascendancy of Bolingbroke

## **I. REVIEW UP TO THE REFORMATION PARLIAMENT**



Henry VII by or after Michael Sittow, probably around done around 1500, National Portrait Gallery.

1. It makes little sense to consider 1485 a major breaking point other than the change of dynasty. It makes more sense to take 1461 (accession of Edward IV) as a breaking point.
2. In the first half of the 15th century control of the Chancery comes to rest first in the council and the privy seal and then in those who possess the signet and the way is paved for the reforms of Thomas Cromwell in the reign of Henry VIII.
3. We noted that Edward III had experimented with chamber finance. Richard II did not, nor did the Lancastrians. In the second half of the 15th century there was a return to the practice of chamber finance. Edward IV, Richard III, Henry VII had increasingly tight control over finances through the Chamber. Again the final reform comes under Cromwell with the reform of the Exchequer and the rise of the Privy Council.



## II. TUDOR

### 1. Henry VIII (1509–1547).



After Hans Holbein's portrait for the Whitehall mural, which was destroyed by fire, Walker Art Gallery, Liverpool.

- a. Continuity, nationalism, humanism, anticlericalism, reformation (Wittenberg, 1517).
- b. Divorce.
- c. Reformation Parliament(s): Appeals, Supremacy, Annates (episcopal elections), Succession, Monasteries, Uses and Wills
- d. The reforms of Thomas Cromwell.



2. Edward VI (1547–53) & Mary (1553–58).



Edward VI, by an unknown artist (?Flemish), derived from a portrait by William Scrots, in which the king looks much younger. Since he is depicted in the robes of the Prince of Wales, it was probably painted before his father's death in 1547, when Edward was ten.

The reigns of Edward VI (1547–53) and Mary I (1553–58) represent an attempt to impose two more religious changes by law.





Queen Mary I, 1544, aged 28 yrs, by Master John.  
National Portrait Gallery, London.







Known as the ‘Hardwick Hall Portrait’ from its location in a splendid building in Derbyshire and attributed to workshop of Nicholas Hilliard.

3. Elizabeth (1558–1603)

- a. The Prayer Book (1559) and the 39 Articles (1563).
- b. Mary of Scotland (in England 1566 to 1587) and Elizabeth.
- c. Economic expansion.
- d. War with Spain (Armada 1588)
- e. The age of Shakespeare.
- f. The reforms of Thomas Cromwell developed.
- g. Various incidents in Elizabeth’s parliaments reflect a growing bloody-mindedness on the part of the commons.

III. STUART

1. The 17th and early 18th centuries.
2. Large claims about the importance of the 17th century from Christopher Hill, *The Century of Revolution*, pp. 1–4:

... [The century] begins with the accession of King James [I], who united the crowns of England and Scotland: in 1707 Parliament achieved that more solid union of the two kingdoms which James had failed to bring about. James succeeded by hereditary right, confirmed by Elizabeth’s nomination; in 1714 George I owed his throne to an Act of Parliament which passed over many persons with a better hereditary claim. James, like the Tudors before him, chose ministers and favourites as seemed best to him; by the early eighteenth century ministers could not govern without a Parliamentary majority. James was still expected to ‘live of his own’, to finance government from crown lands, feudal dues, and the customs: no distinction was drawn between the public and private capacity of the King [we may doubt that]. ... By 1714, Parliament, in almost permanent session, had complete control of finance. ... James and Charles acted arbitrarily in matters affecting the stability of the country’s economic life—raising or lowering the customs, granting industrial monopolies, controlling prices, prohibiting land enclosure. The economy was highly regulated. At the end of the period economic policy was formulated by Parliament, and *laissez-faire* had succeeded regulation in most spheres. ...

The England of 1603 was a second-class power; the Great Britain of 1714 was the greatest world power. ...

Englishmen’s diet was transformed in this century by the introduction root crops, which made it possible to keep cattle alive and so to have fresh meat in winter. Potatoes and many new vegetables were introduced, as were tea, coffee, chocolate, sugar, and tobacco. Port- and gin-drinking became national habits. Plague was frequent in the first half of the century, extinct by the end. ... By the end of the century pottery and glass had replaced pewter and wood at table; many families used knives, forks, mirrors, and pocket handkerchiefs; at Chatsworth the Duke of Devonshire had installed a bath with hot and cold running water. [Notice by the way that this is only the duke of Devonshire; in 1714 most English still

regarded water as something on which you floated boats and which cows drank. The emperor of China held a perfumed handkerchief to his nose whenever westerners visited.]

In 1603 all English men and women were deemed to be members of a state Church, dissent from which was punishable offense. Heretics were still burned at the stake, just as suspected traitors were tortured. By 1714 Protestant dissent was legally tolerated: the Church could no longer burn, the state no longer tortured. Church courts, powerful in all spheres of life since the Middle Ages, lost almost all their functions in this century. [‘Almost all’ — The church courts continued to have some jurisdiction until the middle of the 19th century.] Under Charles I Archbishop Laud ruled the country; under Anne it caused a sensation when, for the last time, a Bishop was appointed to government office.

Under the early Stuarts Justices of the Peace were subjected to direction from Whitehall, and had to answer in Star Chamber for recalcitrance; by Anne’s reign country gentlemen and town oligarchies were virtual dictators of local government, responsible only to men like themselves in Parliament. James I and his son dismissed judges who were too independent of royal wishes; after 1701 judges could be removed only by address of both Houses of Parliament.

James I preached that kings ruled by Divine Right, and many political writers argued that subjects’ property was at the king’s disposal. Parliamentarians countered these positions by Biblical text or medieval precedents. By 1714 politics had become a rational inquiry, discussed in terms of utility, experience, common sense, no longer in terms of Divine Right, texts, and antiquarian research. James wrote a treatise on witches, and was no more credulous than most of his subjects, with whom astrology and alchemy were still in high repute. The second half of the century saw modern science triumphant; by 1714 fairies, witches, astrology and alchemy were no longer taken seriously by educated men. ... Shakespeare had thought of the universe and of society in terms of degree, hierarchy; by 1714 both society and the universe seemed to consist of competing atoms. ...

So we could go on through every phase of life and thought. ... For the ‘metaphysical poets’ from Donne through Traherne ... thoughts were experiences which modified their sensibility. By Dryden’s time poets had lost this ability to devour and digest any kind of experience: there were ‘poetic’ subjects and there was poetic diction. ‘The language became more refined, the feeling became more crude’ as we pass from the tortured doubt of Donne and Shakespeare’s tragic period to the superficial certainties of Pope. Prose became less poetic as poetry became more prosaic. ... [The seventeenth] century was a great century in English musical history; but by its end native creative talent appears to be dead. On the other hand, the first part of the century saw an increasing dominance of foreign masters and models in painting and architecture, the latter part the re-emergence of a native tradition and styles that were to survive.

The transformation that took place in the seventeenth century is then far more than merely a constitutional or political revolution, or a revolution in economics, religion, or taste. It embraces the whole of life. Two conceptions of civilisation were in conflict. One took French absolutism for its model, the other the Dutch Republic. [The difficult thing is] to understand the changes which set England on the path of Parliamentary government, economic advance and imperialist foreign policy, of religious toleration and scientific progress.

### 3. James I (1603–1625)





James I by Daniel Mytens, 1621. National Portrait Gallery in London.

- a. Personal incompatibility.
- b. Foreign policy—
  - Scotland—*Calvin's Case*.
  - Ireland — settlements in Ulster
  - the Continent (30 years war, 1618–1648, France and Spain). His continental son-in-law (a Protestant) and marriages (Anne of Denmark, his queen, became a Catholic); finally Charles marries Henrietta Maria.
- c. 1605—the Gunpowder Plot—Guy Fawkes Nov. 5
- d. 1616—dismissal of Coke

- e. 1621—the Great Protestation—parliamentary rights

#### 4. Charles I (1625–49)



Triple portrait of Charles I by Anthony van Dyke, 1635 or 1636, Royal Collection.

- a. The problem of finance. 1628 the petition of right, Coke's last parliamentary effort. The fear of the parliamentarians that the institution is in trouble.
- b. Attempts to raise money without Parliament, for a long time successfully. The *Ship-money Cases*.
- c. The problem of Scotland, St. Giles 1637, the attempt to impose episcopal organization and Anglican ritual on a Presbyterian church, the covenanters (the Swiss analogy), the bishops' wars (1639) and the short Parliament (spring of 1640).
- d. The long parliament (1640–1660)—Pym—impeachment of Thomas Wentworth, earl of Strafford, Laud—abolition of the prerogative courts—Parliament starts giving money to the Scots—Parliament divides along religious lines—2 armies—the Great Remonstrance (1641).



- e. 1st Civil War (1642–46)—Prince Rupert (Charles's nephew) and Cromwell, Marston Moor (Dec. 1643) and Naseby (1644).
  - f. 2d Civil War (1648–1651)—Pride's purge—the Rump—execution of Charles.
- 5. Commonwealth—their inability to govern—a kind of black hole in the traditional legal history
  - 6. Charles II (1660–85)



Charles II by John Michael Wright circa 1660-1665, National Portrait Gallery.

James II (1685–88)



James II by Sir Godfrey Kneller, Bt, 1684, National Portrait Gallery.



William & Mary (1689–1702)



Mary II by Sir Peter Lely, circa 1677, National Portrait Gallery.

Anne (1702–14)



Anne, studio of John Closterman, circa 1702, National Portrait Gallery.

- a. Restoration (1660) and the return of the religious issue (the financial issue had largely gone away)—1667 the impeachment of Clarendon—1678 Popish Plot
- b. The bill of rights—1689
- c. The Protestant succession, the Hannoverians (inheritance through a dau. of James I)
- d. The beginning of the party system Bolingbroke and Walpole
- e. Does the modern English constitution really begin in this period?

#### IV. SOME FUNDAMENTAL CONSTITUTIONAL AND LEGAL THEMES

1. On the consitutional side:



- a. Law, the king and the state—parliament and prerogative.
  - b. Courts and the Constitution—the big cases, e.g., *Monopolies* (1602), *Bates's Case* (1606), *Commendams* (1616) and the fall of Coke.
  - c. Law, history and revolution—fundamental law and the Whig view of history. The sovereignty of Parliament is still a ways off; the phrase “fundamental law” may mean something that is hard to change. *Dr. Bonham's Case* (1610) is isolated.
  - d. Law and Liberty—*certiorari*, prohibition, *mandamus*, *habeas corpus*, as means of restraining the courts and other bodies against which the individual is powerless. The beginning of the notion of the rights of criminal defendants that appear in the state trials of the late 16th and 17th centuries.
  - e. Law and Inequality—villeins, pastime of the gentry, levelers and gentry.
  - f. Law and Community—family, corporate bodies, the inns, the realm, the charities. This is the part that fits into the Whig view of history the least well. This is not economic liberalism or anything like it yet.
2. The relation of all this to private law.
    - a. During the 16th and early 17th centuries Parliament emerged as lasting institution in English government; yet we did not and need not have said a word about it in our history of contract.
    - b. The social and economic history of these centuries is complex.
    - c. The 17th and 18th centuries are the great periods of common-law conveyancing.
    - d. The 17th c. sees a concerted attack on the prerogative courts and the church courts. The chancery survived. None of the prerogative courts were restored in 1660. The church courts were restored in 1660, but they never really recovered.
    - e. The history of the institutions may provide us with a link between the social and political and the private law.