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Catholic ‘conscience’, duty and disputes over English liberties in Jacobean Ireland.*

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Abstract

The article examines Old English claims to catholic ‘liberty of conscience’ and the way in which this engendered a discussion of English liberties in Ireland. Old English representatives sought to ground their claims to ‘liberty of conscience’ in established practice, custom and law. Their claims to ‘liberty of conscience’ also brought into play the vocabulary of corporate and parliamentary liberty. In response, New English protestants turned to ideas of duty and citizenship, which were equally embedded in conceptions of English liberties. They argued that a catholic ‘conscience’ sat in opposition to ideas of duty to the king and the commonwealth. In doing so, the New English questioned both the basis and extent of the liberties possessed by the Old English. Such an exchange, this article argues, is illustrative of the way in which an English pairing of liberties, with ideas of duty and active citizenship, opened up an area of dispute involving a shared set of political concepts and vocabulary.

Key words: duty and citizenship; corporate and parliamentary liberty; liberty of conscience; custom and law; catholic Old English & protestant New English.

In 1603 the catholic Old English residents of Ireland’s corporate towns claimed ‘liberty of conscience’ – something to which the ruling protestant regime could not agree. The different Old English communities were to argue that in openly practicing Catholicism they were not stepping beyond the limits of the law and were in fact following customary and received practice. Two more specific vocabularies would also become involved. The first concerned corporate liberty, the freedom of self-government which had been granted to the different corporate towns in Ireland as set out in the charters issued; and the second, parliamentary liberty, which came into play in 1613 when an Irish parliament was summoned in order to strengthen measures to enforce religious conformity to which many Old English Lords and MPs objected. Parliamentary liberty entailed the privileges possessed by both the House of Lords and the House of Commons in order to regulate their own affairs and debate bills brought before parliament. Such liberty and its associated practices would be deployed in the Irish parliament to prevent further restrictions being placed on catholic freedom of worship.

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These liberties possessed by the Old English, however, did not only denote a space for freedom of action. Such liberties, namely corporate and parliamentary liberty, were also regarded as privileges or liberties granted from the prince and as such entailed notions of duty and citizenship. Such liberties had been provided so the citizen or subject would act for the commonwealth. It was to this part of an English conception of liberties that a protestant response to Old English claims turned. In such a context, a claim to catholic 'liberty of conscience' raised two problems. First, a lack of true knowledge of God raised the possibility that the Old English citizenry possessed a 'will' bent towards ungodly ends and would therefore misuse liberty by failing to act dutifully. Second, the possibility arose that the Old English community would in fact be united in catholic 'conscience' and 'will' in opposition to government in Ireland.

The Irish case, the article argues, helps reveal the mechanics in a wider conceptualization of English liberties. Difference of religious opinion and profession not only engendered distrust and division; the Irish case went to the root of the different component parts of English liberties. Because questions concerning 'conscience' and division of 'wills' brought ideas of duty and citizenship into dispute, and because ideas of duty and citizenship were embedded in an English conception of 'liberties', this made different claims to 'liberties' highly contested. The Irish exchange also underlines the continued importance of an English vernacular understanding of 'liberties' as grounded in custom and law. Though the Irish exchange, and the attempt to ground 'liberty of conscience' in received practice, failed to achieve the results Old English catholics wanted, in thinking in such terms, there was an attempt to ground a claim to 'liberties' in practice as opposed to principle. By talking in terms of custom, law and the liberties provided, questions concerning division of 'will' and intention might be avoided. It is this exchange and its place within a wider story of English liberties which the rest of the article explores.

I

Such discussions began, when, with the death of Elizabeth I, and the accession of James I & VI in England and Ireland, it was believed within Ireland's corporate towns that some form of religious toleration would be provided. Ireland's corporate towns were inhabited by Old English gentlemen and women, who had been resident in Ireland since the twelfth century conquest. Their very presence on the island was predicated on their service to the crown and their role in upholding English government and law, in opposition to the Gaelic Irish who

were thought to sit outside the normal structures of civil society.¹ In particular, in deciding to celebrate Mass openly at the outset of James's reign, the Old English corporate towns of Waterford, Cork, Wexford and Drogheda sought to justify their actions. They argued that in acting thus they had remained within the limits of the law and established practice. Corporate liberty would also be deployed in an attempt to prevent protestant government in Ireland from encroaching into the corporate towns to end the open celebration of Mass. In justifying or explaining their actions, the city of Waterford was the most confident. In 1603 the mayor, in a letter to the Irish lord deputy, argued that the corporation had not acted outside the limits of the law in allowing 'liberty of conscience':

the manifesting of the same is no breach of his majesty's laws, nor any disturbance of his quiet or peace, considering that the citizens of the city have always lived in quiet, perfect and due subjection.²

Interestingly, much of the penal legislation which had come into force in England had never come into force in Ireland, because it had been impossible to achieve parliamentary consensus on the matter in the last Elizabethan parliament held in 1586-7.³ The mayor further noted that no attempt had been made to overturn the parameters of law or to act against crown authority: 'as well in the time of the old catholic religion, as other times, when they were restrained of the liberty of their conscience' the citizens had remained in obedience.⁴

The citizens also made use of the perceived negative checks on the authority of government. On the arrival of the English protestant Lord Deputy Mountjoy at the city gates, who sought to restore order, the corporation denied the deputy entry, protecting their actions and their perception of self-government. In so doing, they relied on the rights and liberties contained in the city's charter. Mountjoy reported how 'four agents came ... excusing the mayor's not coming, on plea of sickness ... began to make request for the public toleration of the Mass ... [and that the lord deputy should only] enter the city with no greater number than they themselves would allow, to which effect they showed a clause extracted out of an ancient

¹ S.J. Connolly, *Contested Island: Ireland 1460-1630* (Oxford: Oxford University Press, 2007), 26-34.

² Robert Walsh, mayor of Waterford, to lord deputy, 23 April 1603, TNA SP63/215/40 III. It was also reported by Sir Nicholas Walsh, the former speaker of the Irish Commons, to Robert Cecil, how the corporation had actively decided to ignore the proclamation denoting James's accession, thus maintaining the lacunae in authority which allowed them to act - 16 April 1603, SP63/215/31.

³ See Victor Treadwell, 'Sir John Perrot and the Irish Parliament of 1585-6', *Proceedings of the Royal Irish Academy: Archaeology, Culture, History, Literature* 85C, (1985): 259-308.

⁴ Walsh, mayor of Waterford, to lord deputy, 23 April 1603, TNA SP63/215/40 III.

charter granted by king John'.⁵ In this manner, their established customary and legal 'privileges' and 'liberties' were used to prevent external interference.

The arguments made also took a more theological turn, because of the presence of the Counter-Reformation figure, the priest Dr White, with whom the lord deputy conversed. Mountjoy expressed the standard protestant concern with catholic claims to 'liberty of conscience' – that the citizens, in subjecting themselves to the pope's authority, would, he believed, be bound to obey the pope first and to depose a non-catholic monarch. White argued that the citizens 'had desired and were resolved to join their loyalty and religion', whilst Mountjoy expressed his frustration that in being asked 'whether a citizen might take arms against the prince for matters of religion', White refused (according to Mountjoy) to give a direct answer.⁶ In fact, White insisted that catholic doctrine acknowledged that temporal authority had been ordained by God, so acknowledging the papacy's supreme authority did not entail a rejection of James's temporal authority.⁷ However, such a line of argument, connecting catholic conscience with duty and citizenship, was avoided by most. After all, in Waterford, the situation resolved itself when Mountjoy threatened to cut the charter with his sword, thus threatening Waterford's corporate liberties. In response, the mayor and aldermen came at night to the lord deputy and surrendered the keys of the city to him.⁸

The other communities of the different corporate towns continued to speak about their established customary rights and liberties and the agreed boundaries within which they had continued to act as a means of grounding and protecting their claim to 'liberty of conscience'. With the arrival of commissioners at the city gates of Cork, the city set its chartered rights firmly against the authority which had been delegated to crown officers in Ireland – once again turning to corporate liberty. In the absence of the president of Munster George Carew, the city 'violently caused the ports to be shut against' the commissioners Charles Wilmot and George Thornton. The mayor expressly stated 'that he doubted whether the commissioners

⁵ Lord deputy and council to English privy council, 4 May 1603, SP63/215/47.

⁶ Ibid.

⁷ Ibid.

⁸ Alan Ford, "'Firm Catholics" or "Loyal Subjects"?: Religious Allegiance in Early Seventeenth-Century Ireland', in D.G. Boyce, R. Eccleshall and V. Geoghegan, eds., *Political Discourse in Seventeenth- and Eighteenth-Century Ireland* (London: Palgrave, 2001), 1-3.

had any authority to command the city or not, saying that never any governor before them ever did place any by such warrant'.⁹

In a more tentative manner, Wexford and Drogheda stuck to a more conservative position. For the sovereign of Wexford the corporation and citizens had acted in accordance with established practice,

'the people here had such great liberty of conscience long before the death of our late sovereign queen Elizabeth, they expect no less gracious favour and liking from their most excellent and sovereign lord the king that now is'.¹⁰

In entering different churches to celebrate Mass, it was even emphasized how it was the corporation who had acted, 'they (the mayor and commons)', without any hint of violence, since they had acted 'without armour'.¹¹ The citizens of Drogheda stressed that they had always remained within the boundaries of the established order, that they had 'never [been] spotted with the lest jot of disloyalty', thus suggesting they should not be dealt with in a hard manner 'for our consciences'.¹²

The deployment of the vocabulary of custom, law and corporate liberty in this way was driven by the desire of the different Old English communities to worship freely as Catholics. In making these arguments, however, it is noteworthy that the Old English representatives did not make any direct claims to active or dutiful citizenship – notions which were equally embedded in an English conception of liberties. After all, the liberties and privileges granted to the Old English, such as the freedom of corporate self-government, were predicated upon a commitment to serve the crown and the common good. As Conal Condren has argued, those liberties or privileges, which were granted from the prince, were associated with specific institutional spaces. In this manner, liberties were attached to an idea of office, concerning a subject's or citizen's role in society, and in holding office the subject or citizen had obligations to act for the good of society.¹³

It is also the case that an understanding of English liberties had been reshaped by an English engagement with classical humanism – an engagement shared by the Old English of Ireland.

⁹ Sir Charles Wilmot and Sir George Thornton, commissioners, to Sir George Carew, president of Munster, 24 March 1603, TNA SP63/215/1.

¹⁰ Francis Bryan, sovereign of Wexford, to lord deputy, 23 April 1603, TNA SP63/215/40 IV.

¹¹ Ibid.

¹² Stephen Duff, mayor of Drogheda, 13 April 1603, TNA SP63/215/28.

¹³ Conal Condren, *Argument and Authority in Early Modern England: The Presuppositions of Oaths and Offices* (Cambridge: Cambridge University Press, 2006), 80-103.

Classical ideas of citizenship placed emphasis on the need to act for the betterment of society at large, namely the commonwealth, thus drawing on the need to foster civic virtue in order to act in public life. As Ian Hampsher-Monk has illustrated, such ideas easily folded into, and expanded, pre-existent claims to liberties. A citizen's or subject's obligation and duty to obey the king and uphold the established order broadened into an idea of active citizenship and the need to act for the common good.¹⁴ The language of 'commonwealth' and 'weal public', so heavily associated with classical humanism, was very much present within Old English discourse, where the need to act for the 'commonweal' framed the different treatises calling for a more activist government in Ireland.¹⁵ Such vocabulary was prominent in the Irish section of the first edition of Holinshed's *Chronicle* (1577), which stressed the virtue of the Old English nobility and the service of the citizens of the different corporate towns. After all, the reason which underpinned Old English residency in Ireland was the community's role as upholders of the first English colony.¹⁶

II

Strikingly, in this regard, the response of the New English turned on the other dimension of English liberties not raised by the Old English representatives – that of duty and citizenship. The New English were those 'new' protestant arrivals from England who dominated government in Ireland under Elizabeth and James and who had subsumed the positions once held by Old English gentlemen.¹⁷ Their primary concern was that the Old English, on the basis of catholic conscience, might not act for the commonwealth. The decision of Old English agents not to speak of duty and citizenship may have been conditioned by an awareness of New English thinking, whilst a shared vocabulary of custom, law and established practice were potentially less open to dispute.

At one level, such a critique had deep roots in Ireland, because of the serious doubts expressed about the progress of religious reformation there, which had raised consistent concerns about the condition of 'the will' and 'conscience' of the crown's Irish subjects. In those letters despatched from government in Ireland to the privy council in England, a lack of

¹⁴ Ian Hampsher-Monk, 'Liberty and Citizenship in Early Modern English Political Discourse', in Quentin Skinner and Martin van Gelderen, eds., *Republicanism: A Shared European Heritage, Volume 2: Values of Republicanism in Early Modern Europe* (Cambridge: Cambridge University Press, 2002), 105-127.

¹⁵ Brendan Bradshaw, *The Irish Constitutional Revolution of the Sixteenth Century* (Cambridge: Cambridge University Press, 1979), 32-55.

¹⁶ Richard Stanihurst, 'Description of Ireland', in R. Holinshed, *Chronicles* (1577), 1-29; and Stanihurst, 'The Thirde Booke of the Historie of Ireland', in Holinshed, *Chronicles*, 76-115.

¹⁷ Nicholas Canny, *Making Ireland British* (Oxford: Oxford University Press, 2001), 59-120.

true knowledge of God amongst the crown's Irish subjects was consistently linked to a sinful 'will', which formed the basis for an explanation of disorder and a general failure to abide by the norms of good government. English protestants in Ireland drew on quite a dark anthropology, arguing that it was only through the action of God's saving grace on an individual's 'conscience' that the 'will' of the crown's Irish subjects would be turned away from sin. Crucially, in the absence of grace, humanity, it was argued, lacked the freedom of 'the will' to take a truly good act; and since grace came from the hearing of God's word preached, questions abounded over the capacity of the crown's Irish subjects to act for the common good in light of a failure to further religious reformation.¹⁸

With the open catholic confessional commitments of the Old English communities, this concern over a corrupt 'will' morphed into a concern over a 'conscience' and 'will' now in direct opposition to the 'protestant' commonwealth as established by law. The most aggressive response came from the Archbishop of Dublin Adam Loftus and the Bishop of Meath Thomas Jones. Their critique of Old English claims to 'liberty of conscience', which had been expressed in the context of corporate liberty, turned on the question of 'the will' and that of duty or citizenship – the other dimension of corporate self-government. For Loftus and Jones, the Old English sought a 'free liberty and [the] exercise of their conscience and of the Romish religion'. The Old English sought a liberty 'free' from the obligations and duties they owed to the crown in their refusal to conform to the established religious settlement. The rest of the letter drew on a broader vocabulary associating catholic 'conscience' with a corrupted 'will' and raising questions about the behaviour and intentions of Old English citizens. Lamenting how the Old English were 'corrupt, incorrigible, and [display] wilful bold obstinacy in matters of religion', Loftus and Jones explained that as a consequence Old English citizens did not know the 'duty of the subject' because they were 'drowned in ignorance, wilfully obstinate, hating the light of the truth and in a matter wholly miscarried from the sound religion'. In contrast, these two godly bishops knew 'the duty we owe God'.¹⁹

A similar pattern of assertion can be found in 'A discovery of the decayed state of the kingdom of Ireland' which was produced by Chief Justice William Saxey in 1604. Saxey sought to demarcate the extent of the 'liberties' which the Old English could claim, arguing

¹⁸ Brendan Bradshaw 'Sword, Word and Strategy in the Reformation in Ireland', *Historical Journal* 21 (1978): 475-502; Mark A. Hutchinson, *Calvinism, Reform and the Absolutist State in Elizabethan Ireland* (London: Pickering & Chatto, 2015), 15-62, 81-108. Also see John Calvin, *Institutes of the Christian Religion*, trans. Henry Beveridge (Peabody, MA: Henrickson, 2008), 155-76.

¹⁹ Bishops of Dublin and Meath to the king, 4 June 1603, TNA SP63/215/68.

that they should only be allowed ‘the liberty’ to ‘live private’. The right to hold office and magistracy could not be something which the Old English could possess:

the liberty of a subject to live private is sufficient for them. So it was ordained by Charles the Great, the first monarch of the German empire, who, having conquered the Lombards, yet, spurning at his government, took from them all magistracy, to the end he might settle a firm peace, and cut off their rebellious humour.²⁰

Saxey’s particular fear was that the Old English community, wedded to Catholicism, and in possession of public office, would use such a position to act in direct opposition to the godly commonwealth. Such a point prefaced his concession of ‘the liberty of a subject to live private’ – that their claims to act in the political sphere were no longer sustainable. Drawing on the biblical example of a redeemed polity, as found in the Old Testament, Saxey described how ‘doctrine faileth in the bishops themselves, who are not after the order of Aaron, bearing on their breast Urim and Thummim, but as the priests of Jeroboam, taken out of the basest people’. Such a failure to communicate true knowledge of God meant that whilst the ‘judges and justices of that [Irish] nation’ should have been ‘religious and faithful to that state’, they were not.²¹

Such a critique had a longer-provenance in Ireland, which is neatly exemplified in the work of John Hooker, who served as an MP in the Irish parliament of 1569-71 and in the English parliament of 1570/71 and 1586. In fact, Hooker’s production of texts addressing circumstances in both England and Ireland neatly embodies the contradictions or tensions in an English position on liberties, which Ireland drew out. In Hooker’s *Order and Usage of an English Parliament* a fusing of parliamentary liberty with classical and godly ideas of citizenship is apparent. Hooker stressed the necessity to elect MPs who ‘feare ... God’, who were not ‘timerous to speak’, and who would therefore uphold ‘lawdable customes and ... lawes’.²² He also engaged with some of the components of classical humanism, drawing on examples of civic virtue from ancient Greece and Rome. In particular, for Hooker, a commonwealth, governed by law, made by parliament, was crucial, because it ensured protection from arbitrary actions by the ruler, thus ensuring the citizen would be free to act for the common good.²³ In this manner, Hooker brought into play something of what Quentin

²⁰ Ibid.

²¹ ‘A discovery of the decayed state of the kingdom of Ireland’, 1604, TNA SP63/216/59.

²² Vernon F. Snow ed., *Parliament in Elizabethan England: John Hookers’ Order and Usage* (New Haven: Yale University Press, 1977), 125. 121-28.

²³ Snow, *Parliament*, 123.

Skinner has described as a republican notion of liberty, defined as independence or non-domination. Namely, that the citizen was only free to the extent that those in authority did not have the capacity to interfere, threaten or subjugate each citizen's independence or agency, whereby the very idea of threat or coercion might lead the citizen to curtail actions they thought consonant with the common good.²⁴

There has been some discussion over whether such an explicit idea of non-domination was in reality present within English thought or was limited by an English vernacular understanding of liberties. After all, any claim to freedom of action was conditioned by the acceptance that liberties were also privileges granted by the prince.²⁵ What is certainly clear is that a claim to active service for 'the commonweal', grounded in both godliness and ideas of classical virtue, helped extend claims to liberties into a claim to liberty of action. Liberty was not simply a collection of privileges or rights found in law or held from the prince, but was grounded in a wider claim to act for the common good.²⁶ English protestants involved with the government of Ireland were certainly involved in networks which made them aware of classical humanism and its political implications.²⁷

Such claims, however, took on a very different weighting when Hooker came to address parliamentary liberty and corporate liberty in an Irish context. In his contribution to the Irish section in the second edition of *Holinshed's Chronicle*, Hooker addressed the Irish parliament of 1569-71, in which he had served as an MP. Of course, the Irish parliament was granted its 'liberties and freedoms' concerning liberty of speech and freedom from molestation.²⁸ But the return of a series of New English MPs had caused unrest. In fact, Hooker was the source of some of that unrest. He had been sent to Ireland in service to Sir Peter Carew, who was asserting an ancient claim to land in the barony of Athenry.²⁹ Such intervention was a clear

²⁴ Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008), 60-5.

²⁵ Johann P. Sommerville, 'English and Roman Liberty in the Monarchical Republic of Early Stuart England', in John F. McDiarmid, ed., *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson* (Aldershot: Ashgate, 2007), 201-16.

²⁶ Patrick Collinson, 'The Monarchical Republic of Queen Elizabeth I', in P. Collinson, *Elizabethan Essay* (London: Hambledon, 1994), 31-58; Collinson, 'Puritans, Men of Business and Elizabethan Parliaments', *Elizabethan Essay*, 59-86; Markku Peltonen, *Classical Humanism and Republicanism in English Political Thought 1570-1640* (Cambridge, 1995), 18-189, 229-70; A.N. McLaren, *Political Culture in the Reign of Elizabeth I: Queen and Commonwealth 1558-1585* (Cambridge, 1999), 134-235; David Colclough, *Freedom of Speech in Early Stuart England* (Cambridge, 2005).

²⁷ See Peltonen, *Classical Humanism*, 73-102. Also see, Lisa Jardine and Anthony Grafton, "'Studied for Action": How Gabriel Harvey Read his Livy', *Past and Present* 129 (1990), 40-2 – Ireland was a main topic of discussion.

²⁸ John Hooker, 'The Supplie of this Irish Chronicle ... until this present yeare 1586', in R. Holinshed, *Chronicles 2nd edn* (London, 1587), 119.

²⁹ Snow, *Parliament*, 3-28.

threat to the Old English nobility and gentry. Such claims caused a level of ethnic tension, and akin to some of the practices which would be deployed in the 1613 parliament, the legitimacy of the processes involved in the return of MPs was used to try and remove New English MPs from the Commons. Broadly speaking, this was unsuccessful, which fueled division and discord.³⁰

Ignoring his own part in the disorder, Hooker returned to the question of duty. In the absence of an overt confessional dimension to the dispute, it was to the classical dimension of citizenship that he turned. He paraphrased his own speech in the Commons, which referenced Pythagoras, who had stressed the need for ‘reason’, experience and virtue. He suggested the Old English MPs lacked such qualities in failing to support the programme of bills aimed at the welfare of the kingdom and so he questioned their right to aspects of parliamentary liberty. In effect, Hooker suggested they should not have availed of ‘liberty of speech’ in the absence of virtue and wisdom.³¹ This contrasts with his own comments in the *Order and Usage*, where a claim to virtuous citizenship bolstered and expanded the remit of parliamentary liberty. In other words, a correct internal condition, namely virtuous citizenship, was as important as customary and legal claims to liberties; and in Ireland, where such internal conditions were doubtful, such claims in turn became doubtful. Hooker placed his *Order and Usage* immediately after his account of the Irish parliament in *Holinshed* in order to stress the contrast.³²

In his account of corporate liberty a starker pattern emerges. When addressing the city of Exeter, where he was born, Hooker can be found fusing classical, godly and English vernacular vocabularies once again. In his 1584 pamphlet on the *Offices and Duties of Everie ... Sworned Officer of the Citie of Excester*, duty was made the fundamental component of corporate liberty. The two fundamental duties entailed were, first, to ‘serve ... the eternall God’ and second to fulfil the ‘offices of humanitie whereby mans societie is conserved’. In particular, Hooker stressed how the second duty, ‘concerning ... our office in politike gouernment ... dependeth vpon the first’.³³ Whilst he made reference to classical authors, such as Aristotle and Cicero, and the need for active service, Hooker also spoke in the same

³⁰ Hooker, ‘The Supplie of this Irish Chronicle’, 119-21.

³¹ *Ibid.*, 120.

³² *Ibid.*, 121.

³³ John Hooker, *A Pamphlet of the Offices, and Duties of Everie Particular Sworne Officer, of the Cittie of Excester* (1584), fo. 2r. For a later fusing of godly citizenship and corporate liberty in England, see Phil Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England* (Cambridge: Cambridge University Press, 2005), 234-6.

terms as Chief Justice Saxey, but with very different intent. Hooker informed those holding office within city government, that they must ‘procure and provide ... godly preachers, who having in their breast plate *Vrim* and *Thumim*, do catechize, teach and instruct your citizens to know God and the grounds of Christian religion’.³⁴ The fostering of godly citizenship provided the surest foundation for corporate liberty predicated upon action for the common good.

In an Irish context, when Hooker turned to address the corporate towns there, in his continuation of the Irish section of *Holinshed*, this same analysis had a very different weighting. Taking the city of Waterford as an example, he acknowledged the city’s expansive liberty:

[how their charter meant] that no officer of the kings or queens of England, nor their deputies shall intermeddle, nor exercise any authority nor jurisdiction, within the city and liberties, but onely the mayor & officers of the same.

But Hooker proceeded to warn the citizens that unless they abided by the norms of godly citizenship, they would lose such liberty. Concerns about Waterford’s recusancy no doubt played a crucial part in his comments, alongside their refusal to fund crown government. Hooker told the citizens of the need to continue in their ‘offices and duties’; but their lack of godliness presented a problem, which in the colonial context of Ireland, formed the threat that they would be removed from possession of the city.³⁵

If you be the children of light, then as children walke you in the light; otherwise that light which is in you shall be darknesse. If you be the children of Abraham, then doo you the works of Abraham: otherwise God, who is able and will raise up the verie stones to be sonnes of Abraham, shall reject you, and give your city to a people which shall bring forth fruits of duties and obedience.³⁶

In contrast to Exeter, where godliness and corporate liberty strengthened the autonomy of the citizen-body, the citizens of Waterford were issued with a warning: ‘dispute [not] your liberties with ... [the prince’s] prerogative. For notwithstanding your privileges, [and] liberties’ the prince receives authority from God.³⁷ A different dimension of a conception of

³⁴ Ibid., fo. 4v.

³⁵ Hooker, ‘The Supplie of this Irish Chronicle’, 139-41.

³⁶ Ibid. Hooker is quoting from Matthew 3:9.

³⁷ Ibid.

English liberties was invoked – namely, the authority of the prince and the crown’s right to revise the liberties which had been granted to the city.

This underlines the potential for conceptions of duty and citizenship to destabilize an English vocabulary of liberties and the beginnings of longer-term reconfiguration. Here much has been made of the far later dichotomy which would emerge in Anglophone thought between ideas of positive and negative liberty - positive liberty entailing the internal capacity to act for the correct ends and negative liberty entailing the freedom to act within the boundaries and limits of the law. In fact, Quentin Skinner has suggested that it was only through a later reconfiguration by Thomas Hobbes in *Leviathan* that such strict distinctions were introduced.³⁸ Skinner’s point is that we have forgotten a richer republican idea of liberty, which did not draw out such distinctions. Liberty was not only about our freedom to act within the limits of the laws, but consisted of our capacity to act, which required independence or agency which would be curtailed through the threat of coercion. In contrast, Hobbes argued that those very claims to political agency, as found in republican notions of freedom, had been highly damaging. After all, during the English civil wars, ideas of active or godly citizenship had been used to justify an attack on the established order which involved trampling on the freedom of others. Instead, for Hobbes, liberty should be defined as the freedom to act within the limits of law (negative liberty) because it was the least contested and only operable language of liberty.

The more vernacular discussion in Ireland suggests, however, that a longer-term dichotomy or tension was in fact present, which went to the very basis of the claims made to liberties. In Ireland it was the interplay between a conception of duty or obligation, which was embedded in early modern conceptions of liberties, and the confessional commitments of the Old English, which quickly brought Old English claims to liberties into dispute – the obvious problem being a catholic collective ‘will’ directed against a protestant commonwealth.³⁹ The

³⁸ Skinner, *Hobbes and Republican Liberty*, 211-16. Also see Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999), 17-49. There has been some discussion over whether in fact Hobbes was making such a move. See Alan Cromartie, ‘Hobbes, History and Non-Domination’, *Hobbes Studies* 22, (2009): 171-77. This article, however, is engaged with the tension in a broader vocabulary of liberties, which was not necessarily republican in character, the point being that there was a persistent and long-established tension between the different component parts of an English conception of liberties.

³⁹ Condren, Conal, ‘The History of Political Thought as Secular Genealogy: Th Case of Liberty in Early Modern England’, *Intellectual History Review* 27 (2017), 122-25.

perception that the Old English were internally suspect, and so might not act as dutiful citizens, also raised serious concerns about the basis of Old English claims to liberties.

In turn, an Old English focus on their rights and liberties, as grounded in law and custom, becomes particularly striking – a line of argument which would continue to be developed. In doing so, the Old English rooted their claims in a language or vocabulary which avoided the problematic issue of citizenship or duty. An increasing hint of the vocabulary of ‘the ancient constitution’, which was emerging in English legal thought, would also be deployed to ground their claims. This was the germ found in the English common law, that the rights and liberties held could be grounded in the simple fact of their customary and immemorial use.⁴⁰ In this manner, the dichotomy which was to emerge in Ireland was between a claim to liberties based upon obligation or duty, and an Old English claim to liberties based on “the agreed” legal, customary and constitutional structure of the kingdom of Ireland. Another way of putting this is that in Ireland, the longer-term issue in an English conception of liberties, went far beyond a particular republican iteration and involved a more fundamental problem – namely the difficulty of reconciling obligation or duty (and the doubts raised by confession and conscience) with a law-based order which established the specific liberties held by the subject.⁴¹

III

In this respect, the New English not only raised questions about the liberties possessed by Old English gentlemen. The dominance of the Old English gentry in the corporate towns meant their presence could not be easily done away with, and thus there was a strained attempt to resolve both protestant and catholic concerns. Here the prerogative powers of the crown (the authority to act outside the prescriptions of the law) were exercised in an attempt to clarify a

⁴⁰ See J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: English Historical Thought in The Seventeenth Century* (Cambridge: Cambridge University Press, 1957), 33-55. Both Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (Basingstoke, 1992) and Alan Cromartie, *The Constitutionalist Revolution: An Essay on the History of England, 1450-1642* (Cambridge, 2006), have revised Pocock’s view of ‘the ancient constitution’ in different ways. Nevertheless, the key aspect of customary and ‘ancient’ usage, and an emphasis on the limits of the law, remain robust parts of the thesis of ‘the ancient constitution’ and it is simply this dimension which is present in the Irish discussion over liberties.

⁴¹ Interestingly, in this respect, as Conal Condren has noted, in Hobbes’s own account of liberty, namely the freedom to act within the law, the problem of obligation or duty and its reconfiguration plays a particularly dominant role. After all, the obligation to act within the limits of the law arises from our obligation to the sovereign who creates the law. Such an obligation, moreover, does not arise from God or our conscience, but from the very act in covenanting and giving up our natural freedom, whereby we seek our own security. In doing so we are obliged to follow the command of the sovereign who offers us such safety. Condren, ‘The History of Political Thought as Secular Genealogy’, 125-27.

specific obligation or duty. This concerned the crown's supremacy in ecclesiastical affairs and the demand that the Old England gentry accept the prince's temporal jurisdiction over the church. No doubt the intention was to ensure catholic Old English acceptance of the established legal order in Ireland. This brought into play another part of a developing English discussion over liberties, namely the balance within 'the ancient constitution', and whether law and custom placed boundaries upon 'the prerogative' powers of the prince, thus protecting the liberties and rights of the subject. Here the question of catholic 'conscience' and duty undermined a consensus on the limits of 'the prerogative' and 'the liberties' of the subject.

Not surprisingly, such an exchange centred on Dublin. As the centre of English government, the citizens of Dublin had not openly proclaimed or demanded 'liberty of conscience' in line with Ireland's other corporate towns. The refusal of leading citizens to attend the services of the established church did, nevertheless, raise the same set of issues for protestants; a problem magnified by the practice of a 'private' liberty of conscience, with the celebration of Mass in the houses of different citizens. In particular, the refusal of one John Shelton, who had been elected mayor, to take the oath of supremacy, because he saw it as violating his conscience, suggested that many other leading citizens would refuse to take office in order to avoid the oath, which sparked a certain uneasiness in government circles.⁴² Ominously, Old English residents of Dublin were withdrawing themselves from participation in the polity.

As with the protestant critique of the actions of the other corporate towns, Shelton's actions were understood as denoting how 'the will' of Ireland's Old English citizens now sat in opposition to duty. The specific issue at stake was that of the crown's temporal jurisdiction over the church, but this also entailed a wider concern over their capacity to act for the common good. Following on from the comments made in a joint letter with the Archbishop of Dublin Adam Loftus, the Bishop of Meath Thomas Jones expressed his doubts about the 'city and country', where citizens and subjects acted in 'an insolent and resolute obstinacy' and his fear that it might be impossible 'to bring this ignorant, wilful, and therefore stubborn people to perform any duty, either to God or the king'.⁴³

The response adopted by the attorney general Sir John Davies was to issue mandates or letters, which involved the use of the crown's prerogative powers, as manifest in the Irish prerogative Court of Castle Chamber, which directly instructed the leading citizens of Dublin

⁴² John Davies to Robert Cecil, 8 Dec. 1604, TNA SP63/216/54.

⁴³ Bishop of Meath to early of Salisbury, 30 Nov. 1605, TNA SP63/217/58.

to attend the services of the established protestant church.⁴⁴ Naturally, Davies had strong protestant credentials, having arrived in Ireland, after education at the Inns of Court, as solicitor general in 1603 with Lord Deputy Mountjoy. Considering the sensitivity surrounding the use of the prerogative in England – especially when it came to the English church – the question emerges as to why Davies decided to make use of the prerogative in this way. After all, the decision to make use of the prerogative to remove more ‘puritan’ clergymen from positions within the English church had met with vigorous opposition. There was, moreover, a broader sensitivity concerning the use of the prerogative to limit discussions in parliament or bypass protections in common law.⁴⁵ Davies’ own comments on the fine balance between prerogative powers and the liberties of the subject as found in ‘the ancient constitution’ gives some suggestion of his thinking. In his prefatory remarks to his *Les Reports des Cases & Matters en Ley ... en Ireland*, Davies accepted the customary basis of English ‘liberties’. The one proviso, though, was that ‘[l]ong experience’ had operated to uphold ‘the common good’:

for neither does the king make his own prerogative, nor the Judges makes the *Rules* or *Maximes* of the law, nor the common subject prescribe and limit the *Liberties* which he enjoyeth in law ... Long experience, and many trails of what was best for the common good, did make the common law.⁴⁶

In Ireland, the very question of catholic ‘conscience’, and the refusal to accept the crown’s supremacy in ecclesiastical affairs, threatened both ‘[l]ong experience’ and the commonwealth. Davies made part of his rationale clear early on. The prerogative concerned the temporal jurisdiction of the prince over the church, which was ‘no new thing’ but part of the ‘good ancient laws governing [the kingdom]’. Enforcing church attendance was about upholding this part of Ireland’s ‘ancient laws’ and protecting the protestant commonwealth.⁴⁷

In the censure issued from Castle Chamber against those who refused the mandates, Davies also described such citizens as ‘wilful and disobedient’ – echoing part of a wider concern with

⁴⁴ Hans S. Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (Cambridge: Cambridge University Press, 1985), 103-21.

⁴⁵ John Guy, ‘The Elizabethan Establishment and the Ecclesiastical Polity’, in J. Guy, ed., *The Reign of Elizabeth I* (Cambridge: Cambridge University Press, 1995): 126-49; Johann P. Sommerville, *Royalists and Patriots: Politics and Ideology in Early Stuart England* 2nd edn (Harlow: Routledge, 1999), 91-175; Cromartie, *Constitutionalist Revolution*, 179-233.

⁴⁶ John Davies, *Les Reports des Cases & Matters en Ley ... en Ireland* (1674), fo. 4v.

⁴⁷ ‘Sir John Davys’s Speech at the Censuring of the Recusants’, 22 Nov. 1605, *Calendar of State Papers Ireland 1603-1606*, no. 580.

the internal disposition of the Old English.⁴⁸ In a more extended set of observations, Davies even spoke of how the slackness in the enforcement of government's religious policy had given way to 'licentiousness' – that the Old English knew none of the limits or duties associated with liberty.⁴⁹ In line with these concerns, in poetry written as a student at the Inns of Court, Davies had reflected on the consequences of humanity's lack of free will and the necessity of God's saving grace, suggesting that 'reason', and humanity's capacity to take a truly good act, remained fragile when there was a '[p]rivation of that grace within' – a worry which continued to run below a protestant commentary on supposed Old English 'wilfulness', entailing doubts about their capacity to act for the wider good of society.⁵⁰

The response of the Old English community to Davies actions is noteworthy in two respects. First, aspects of the argument as set out by Dr White at Waterford came tentatively to the fore. Lord Gormanston, alongside other leading Old English gentlemen, advanced the position that Catholicism did not sit in opposition to duty – possibly responding to the questions raised by the New English. In a 'petition' to the lord deputy, effectively pleading for more religious freedom, it was made clear that on matters of 'conscience' Old English gentlemen could not be shaken from their 'duty to God'; but equally they could not be shaken from their natural 'duty' to their prince.⁵¹ In conjunction, a letter was dispatched to the English Court protesting against the mandates and the stricter imposition of penal legislation, which stressed that never 'by any human working, [would they] be withdrawn from their duties' to the king.⁵² Such arguments may reflect part of an attempt by Irish catholic clerics in exile to respond to the issue of catholic 'conscience' and duty.⁵³ The catholic archbishop of Armagh, Peter Lombard, as early as 1605, had sought to draw a distinction between a monarch who forsook Catholicism during their reign, who should be disposed, and a monarch who was not catholic

⁴⁸ 'Censure or decree of the Irish Star Chamber', 29 Jan. 1606, *Calendar of State Papers Ireland 1603-1606* ed. C. W. Russell and J. P. Prendergast (London: Longman, 1872), no. 719.

⁴⁹ 'Observations made by Sir John Davies, Attorney General of Ireland', 4 May 1606, TNA SP63/218/53.

⁵⁰ Robert Krueger and Ruby Nemser, eds., *The Poems of Sir John Davies* (Oxford: Oxford University Press, 1975), 32. The editors of the Oxford edition point to the tension in the view of the nature of humanity, between 'reason' and 'the will' on p. 332 in their 'commentary'. They see Davies as taking the position of Aquinas as opposed to Augustine. There is, however, far greater ambiguity here, in that Davies is struggling to somehow rehabilitate reason's function in holding passions and appetites in control, but his argument is never able to depart from the deep concern that without 'grace', 'reason' and 'will' remain bound and directed by humanity's sinful nature.

⁵¹ 'A Petition to the Lord Deputy', TNA SP63/217/89 I.

⁵² Lord Gormanston and other noblemen of the English Pale to earl of Salisbury, 8 Dec. 1605, TNA SP63/217/90.

⁵³ No doubt such exchanges were also conditioned by the ongoing dispute over allegiance and the papacy's claim to an indirect deposing power, which suggested that in extreme cases of the violation of God's law the papacy had the authority to absolve subjects from their allegiance to a prince. Ford, 'Religious Allegiance in Early Seventeenth-Century Ireland'.

to begin with and thus must be accepted as a ruler ordained by God.⁵⁴ This was meant to clarify the implications of developments in catholic political thought and theology and reassure James that his catholic subjects were bound in ‘conscience’ to obey him as a protestant monarch.

Second, in just over a week this position had been dropped. Instead, a leading Pale lawyer, Sir Patrick Barnewall, who had worked with Gormanston, turned back to the vocabulary of custom and law and its limits. Barnewall was part of a coterie of Old English lawyers who had a tradition of deploying such thinking in opposing government in Ireland, who were equally steeped in ‘the ancient constitution’ having been educated in the common law.⁵⁵ In a letter to the earl of Salisbury, which played with English sensibilities over the prerogative, Barnewall openly rejected Davies’ position. He argued that the issuing of such commands, namely the mandates, under ‘the broad seal ... of purpose to draw men into the Star Chamber [was] contrary to the law which appoints the course for the offence committed that way, and absolutely forbideth all other’.⁵⁶ The mandates went beyond the provisions as set out in statute law, which set out the procedures to be followed in the case of non-attendance at church. In acting thus, Barnewall returned to the idea of a law-based order and the limits on the prerogative and sought the barest form of ‘liberty of conscience’ by stopping recusants from being examined before Castle Chamber. Barnewall’s decision to speak solely in terms of established practice and law, in order to check the actions of government, also represented a now conscious decision to dispense with the vocabulary of duty. As he explained, when Gormanston and he had approached the lord deputy to discuss the severity of ‘the mandates’ policy, their ‘conduct’ had been ‘dutiful’ and their petition ‘dutifully’ framed. Despite grounding their defence in duty, their rights and liberties had simply been disregarded. Both had been imprisoned immediately by the lord deputy.⁵⁷

Davies own response revisited once again the issue of catholic ‘conscience’, which, for him, remained key to resolving the question of duty, and by implication the problem of corporate liberty in Dublin, where a catholic citizenry now refused to take the mayoral office. His response argued that the mandates should be understood as enforcing ‘merely a civil duty ...

⁵⁴ J.J. Silke, ‘Primate Lombard and James I’, *Irish Theological Quarterly* 22 (1955): 124-50.

⁵⁵ Brady, *The Chief Governors: The Rise and Fall of Reform Government in Tudor Ireland, 1536-1588* (Cambridge: Cambridge University Press, 1994), 209-44.

⁵⁶ Sir Christopher Barnwell to earl of Salisbury, 16 Dec. 1605, TNA SP63/217/96.

⁵⁷ Ibid. Ruth Canning, *The Old English in Early Modern Ireland: The Palesmen and the Nine Years War, 1594-1603* (Woodbridge: Boydell and Brewer, 2019), has demonstrated how Old English protestations of duty and military service in the Nine Years’ War in Ireland at the end of Elizabeth’s reign were ignored by the ruling protestant regime.

not [a] spiritual [duty]'. As commands, they were a '*mandatum politicum*' not a '*mandatum morale*', concerning the crown's temporal authority - namely the king's supremacy in ecclesiastical affairs.⁵⁸ In fact, Davies suggested that the mandates in no way touched a subject's 'conscience', because the subject was asked to 'behave himself soberly and modestly [in church], which he ought to do in all times, and in all place', which was in accord with statute law. The subject was not commanded 'to hear or give attention, or pray or yield adoration', which was beyond the instructions as found in law.⁵⁹ The prerogative, therefore, was not overstepping its bounds, because it was enforcing the agreed boundaries of 'civil duty'.

It is hard to know what Davies intended to achieve here. Committed Catholics were never going to accept that church attendance was not a matter of 'conscience'. The intention may have been to draw those less committed in 'conscience' to conform within the supposed boundaries of 'civil duty', whilst identifying those who would not. For instance, Davies had suggested that up until John Shelton's refusal to take the oath of supremacy it had been an accepted 'ancient custom'. Interference by Jesuits, however, had persuaded the citizens otherwise.⁶⁰ Regardless, the exchange exposed how any consensus on the customary and legal basis of rights and liberties was collapsing on the question of Catholic 'conscience' and 'duty'; and the resolution, for Protestants, remained caught on the point of 'conscience' and the doubts this raised about 'duty'.

IV

Such an exchange only intensified when an Irish parliament was summoned in 1613. Hooker's account of the 1569 parliament had spoken of ethnic and cultural differences, alongside religious tensions. The increasing focus on the question of 'conscience', 'will' and 'duty', however, started to move into near irreconcilable division when it came to the meaning of shared political concepts. Thinking of the colonial aspects of Irish society, it was not simply difference of confessional and group identity, and the pursuit of differing interests, which fuelled division and mistrust.⁶¹ On the issue of Catholic 'conscience', the very conception of one polity, united in an agreed understanding of law, liberties and duty, was drawn into open question. What spurred this on was the lurking fear, for the Old English, that

⁵⁸ 'A defence of the proceeding in the Castle Chamber of Ireland upon the mandates', Sept. 1606, *Calendar of State Papers Ireland 1603-1606*, no. 882.

⁵⁹ *Ibid.*

⁶⁰ Davies to Robert Cecil, 8 Dec. 1604, TNA SP63/216/54.

⁶¹ For the current position on the formation of 'colonial' identities in Ireland see Canny, *Making Ireland British*.

government intended to create a majority for a protestant party in parliament, which would allow parliament to bring into force stricter legislation against the practice of Catholicism. Such a fear materialized because of the erection of new corporations with the Ulster plantation and in other counties which had been planted, alongside perceived manipulation in the return of MPs from the ancient corporations and boroughs.⁶²

Motivated by the need to maintain some form of space for the open practice of Catholicism, the catholic Old English in both the lower and upper houses now deployed the different practices and procedures associated with parliamentary liberty to bring both houses to a standstill in order block any new penal legislation.⁶³ Once again, the Old English MPs drew on a cadre of lawyers who understood how to use law and custom in Ireland to stymie the actions of government.⁶⁴ There also seems to have been a conscious decision to avoid the question of duty, though it was understood to be embedded in the vocabulary of parliamentary liberty. In a document located in St Isidore's College, Rome, which reflected on the Old English predicament, it is apparent that the Old English community understood that ideas of duty were being deployed against them. Under 'moral reasons' set out against the present parliament, it was recognized that parliaments were summoned 'pro bono Reip', for the good of the king and the commonwealth. Here the feeling was expressed that the New English were not using parliament for the correct ends, because they were intent on attacking the Old English. But it was equally acknowledged that in opposing the present parliament it would be suggested that the Old English were opposed to duty and the common good.⁶⁵

As a result, no direct reference was made to notions of duty and citizenship in Old English protests, which meant the vocabulary of parliamentary liberty was reconfigured. In terms of an emerging idea of 'the ancient constitution', as found in English common law thought,

⁶² T.W. Moody, 'The Irish Parliament under Elizabeth and James I: A General Survey', *Proceedings of the Royal Irish Academy: Archaeology, Culture, History* 45 (1939/40): 41-81; Aidan Clarke with R. Dudley Edwards, 'VII Pacification, Plantation, and the Catholic Question, 1603-21', in T.W. Moody, F.X. Martin, F.I. Byrne, eds, *A New History of Ireland III: Early Modern Ireland 1534-1691* (Oxford: Oxford University Press, 1976), 187-124. Coleman A. Dennehy, *The Irish Parliament, 1613-89: The Evolution of a Colonial Institution* (Manchester: Manchester University Press, 2019), gives an institutional as opposed to a constitutional history in order to illustrate how the institution of parliament was shaped by, and shaped, the processes of early modern state formation.

⁶³ Namely, 'An Act against Jesuits, seminar priests, and other disobedient persons' and 'An Act to make the laws of England in force against such English recusants as fly into this realm to avoid the penalty of the laws enacted in England against recusants, and to have more free exercise of the Popish religion here'. *Calendar of State Papers Ireland 1611-14*, ed. C. W. Russell and J. P. Prendergast (London: Longman, 1872-80), no. 439.

⁶⁴ Brady, *Chief Governors*, 209-44.

⁶⁵ Brian Jackson, ed., 'A Document on the Parliament of 1613 from St Isidore's College, Rome', *Analecta Hibernica*, 33 (1986): 47, 49-58. Strikingly the vocabulary of moral and dutiful action is clearly articulated by the Old English in exile, but not in their exchanges with government in Ireland.

customary use and practice formed the principal ground for Old English claims to parliamentary liberty. This avoided the idea of duty and citizenship, which had become an unstable basis for Old English claims. In speaking of their 'liberties', moreover, the Old English MPs now spoke of their protections and rights as found in law and custom in order to protect their (religious) interests. One of their first acts, however, sought to use law and procedure to exclude 'newly' arrived protestant MPs from parliament, thus illustrating the extent to which the political nation in Ireland was now fully divided by the matter of 'conscience'.

Old English MPs refused to recognize the right of MPs to take their seats in the Commons from the new Ulster corporations. Such complaints were put by the Old English recusant lords, who used their standing as noblemen to apply pressure to the lord deputy. In a petition it was argued that the new Ulster corporations had been erected after the writ for parliamentary elections had been issued, which meant they could not legitimately return MPs to parliament. It was further suggested that the MPs elected from the Ulster corporations had 'no residence in the places ... [with many having not seen or known of the] places, for which they are nominated'.⁶⁶ Crucially, an MP could only be elected if he was resident in the borough. In fact, the Ulster corporations were different from the ancient corporations, in that they were closed, meaning only the corporation's council elected the mayor, the senior officers and the MPs, whilst admission to the freedom of the city or the borough was the preserve of the council.⁶⁷ In this regard, government had designed the new corporations to ensure that only a protestant citizenship could exercise corporate liberty in Ulster.⁶⁸

Such an approach was further developed when the Old English MPs refused to elect Sir John Davies as speaker, because the catholic party, in not recognizing the right of many MPs to sit in the house, did not recognize their right to participate in the election of the speaker. Instead, those catholic MPs proposed a rival candidate Sir John Everard, pointing towards the presence of two distinct political communities in one parliament.⁶⁹ Importantly, this created

⁶⁶ 'Humble petition of the lords assembled ... to the lord deputy', [21 May 1613], BL Cotton Titus MS BX 297. [Document reference incorrect in *Calendar of State Papers Ireland 1611-14*]. Also see Jane Ohlmeyer, *Making Ireland England: the Irish aristocracy in the seventeenth century* (New Haven: Yale University Press, 2012), 236-7.

⁶⁷ Matthew Potter, *The Municipal Revolution in Ireland: A Handbook of Urban Government in Ireland since 1800* (Dublin: Irish Academic Press, 2011), 16.

⁶⁸ Davies in a letter to the earl of Somerset referred to the Ulster corporations as providing 'perpetual service of protestant burgesses' – 31/Oct/1614, TNA SP63/232/28. Also see Phil Withington, 'Plantation and Civil Society', in Michael O'Siochru and Eammon O'Ciardha, eds., *The Plantation of Ulster: Ideology and Practice* (Manchester: Manchester University Press, 2012), 55-77.

⁶⁹ 'Brief relation of the passage of parliament', [July] 1613, *Calendar of State Papers Ireland 1611-14*, no. 732.

an impasse, since parliament, by precedent and custom, could not meet and conduct business in the absence of a speaker, which created a space which allowed the Old English to petition the lord deputy and the crown and assert that their freedoms and liberties had been disregarded.

In another petition, which involved both the Lords and the Commons, and which addressed the ancient boroughs, and the elections that had taken place there, the Old English use of the language of liberties, law and custom now turned to the idea of equitable and established procedure. In relation to the ancient corporations and boroughs of the city and county of Dublin, county Cavan, county Roscommon and others, it was reported how:

His majesty's subjects fear that the way is laid open to the infringing of those moderate liberties and privileges which the subjects of this his kingdom of England and Ireland hold as their birth right.⁷⁰

More importantly,

[t]he laws provide that the election of knights of the shire, citizens and burgesses who represent the whole body of the Commons of the kingdom should be made openly and freely without force or fraud and that such men should be chosen as are resident.⁷¹

This had not been the case. The Old English petitioners reported how in the return of MPs from the ancient corporations many irregularities could be identified. For example, in Dublin, the proper procedures had been used in the election of 'Francis Taylor and Thomas Allen, aldermen', since both 'were elected at the county court, before the sheriffs of Dublin'. The mayor, Sir James Carroll, had, in response, 'sent private instructions to men who were neither citizens nor free men of the city, to ... [gather the] next morning at 4 O'clock'. In hearing of this, the 'free citizens ... stood upon their liberties that the unfree ought not to assemble there'. Nevertheless, such arguments were ignored, because the mayor took the view that 'they [the unfree] had a voice in that election'; and since the 'free citizens ... [were] in greater number', the mayor persuaded the deputy to 'imprison divers of the aldermen', which resulted in the return of different MPs.⁷²

Of course, an echo of the language of duty is present. The emphasis placed on the rights of 'citizens' and 'freemen', drew on the assumption that those making use of liberties should

⁷⁰'Petition delivered by the recusancy party's agents', [May] 1613, TNA SP63/232/11.

⁷¹'Schedule of returns' as referred to in the above petition, 31 May 1613, TNA SP63/232/12

⁷²Ibid.

have knowledge of their communities and thus what might constitute the common good. But the Old English MPs were acting to prevent a protestant ruling regime from packing an Irish parliament in order to restrict their freedom of worship. In such circumstances a direct appeal to a language of duty, as a justification for their actions, had little traction. Instead, their appeal focused on established protections, rights and procedure as found in custom and law in order to protect their voice in parliament.

In line with such concerns, the petition emanating solely from the Commons argued that ‘terror’ had been employed in order to coerce the Old English MPs into accepting the suspect return of MPs and into accepting the election of Davies as speaker. The petitioners spoke of ‘[the] violence proffered to the speaker of the lower house of parliament elected by us, and of the terror put into their hearts in the miscarriage of that business’. The Old English sought to ‘be secured in their persons, and have the benefit of the laws of the kingdom and of the ancient freedom and customs of former parliaments held herein, with the censuring of the unduly elected, or that have unlawfully intruded into the lower house’.⁷³ No mention was made of duty and the need for liberty to act for the common good. Instead, the Old English MPs spoke solely of their liberties in terms of law and established process, which protected them from being coerced.

Even the fact that parliament had been held in Dublin Castle was presented in terms of legal practice and coercion. The very present threat of armed force was argued to violate further parliamentary liberty, because ‘the drawing of forces to the city [of Dublin] in so peaceable a time; and the holding parliament within the Castle of Dublin, enclosed within walls, gates, and guard ... [was in violation of] laws [which meant] the same should be kept in an open plane’.⁷⁴ The idea of ‘ancient’ or immemorial use was also deployed. One Dr Ryves told how ‘in the morning certain of the recusant lords complained to the deputy that the parliament would not be free, being, contrary to ancient usage, held within the castle, and certain companies of soldiers being drafted into the town’.⁷⁵

The one direct comment which did emerge addressing something of the ends to which parliamentary liberty should be directed underlines how problematic any appeal to duty or ‘the commonwealth’ had become. On the topic of the return of MPs from the Ulster

⁷³ ‘Petition of the recusant knights, citizens, and burgesses’, 21 May 1613, *Calendar of State Papers Ireland 1611-14*, no. 674.

⁷⁴ ‘Humble petition of the lords assembled ... to the lord deputy’, [21 May 1613], BL Cotton Titus MS BX 297.

⁷⁵ Dr T. Ryves to Sir Daniel Dunn, 29 May 1613, BL Cotton Titus MS BX 229.

corporations, the petition from the Irish Commons accepted that the ‘intention in erecting them [the new corporations]’ had been ‘to give those new planted counties voice in parliament, which ... they had not before’. But a query was raised. The petitioners questioned whether it could have been the king’s intention ‘to extend so far, as that these new corporations (being the thousand part of the kingdom ...) should make laws to bind the rest of the subjects, against their own wills and consents’.⁷⁶ Such a comment parallels that of John Hooker in the *Order and Usage*. Hooker had laboured the need for parliamentary consent in making the laws which governed ‘the commonwealth’. For Hooker, this underpinned the subject’s freedom from arbitrary action by the prince and ensured that citizens or subjects would act for the common good.⁷⁷ The Old English situation, however, was far from straightforward. The Old English MPs were, quite obviously, seeking to prevent protestant MPs from bringing into force penal legislation which would violate their ‘religious’ interests. In arguing that laws should not be made ‘against their own wills’, they could not speak of one political community acting together for the common good as Hooker had envisaged. Knowing that the issue of catholic ‘conscience’ and claims to duty would be deployed against them, they spoke instead of the legal space established by their liberties within which they were free to act for their own interests.

V

Whilst a resolution was reached, which accepted part of the basis of Old English concerns and objections, the tension between the question of ‘conscience’, ‘duty’ and ‘liberties’ remained unresolved. The first session of parliament was prorogued in June 1613 when James I & VI invited delegates from the catholic party to Court in order to resolve the impasse. James went to the root of the matter, expressing how the full extent of the liberties held by the Old English had been brought into question because of their confessional commitments. The king told the Old English representatives that in body they might be obedient to him, but in conscience they were obedient to the papacy, so they were ‘half subjects’, thus should they not have ‘half privileges’.⁷⁸ In this vein, whilst a commission of enquiry set up to investigate irregularities in the return of MPs from Dublin and other ancient boroughs accepted the grounds of Old

⁷⁶ Ibid.

⁷⁷ See section II on Hooker. In contrast to Ireland, MPs in England used the demands of citizenship, duty and godliness to extend the limits of parliamentary liberty. See, for example, Collinson, ‘Puritan Men of Business’, and Colclough, *Freedom of Speech*, 77-195.

⁷⁸ ‘Speech of King James I in the council chamber at Whitehall, on Thursday before Easter’, 20 April 1614, *Calendar of the Carew Manuscripts 1603-23*, ed. J. S. Brewer and William Bullen (London: Longman, 1867-73), 290.

English complaints, the question of ‘conscience’ and intention was used to justify any departure from procedure. The crux of the issue was that there had been ‘a general combination in many parts of the kingdom to elect no protestants, and that the Jesuits and priests so advised them’. Here government had simply acted to rectify such a situation.⁷⁹

The rights of the new Ulster corporations were also defended on the basis that they would act for the good of the kingdom of Ireland. James had the authority to act in this matter; and on the question of non-residence, in his speech addressing Old English representatives, he dismissed their avowed concerns as quibbling. Those Ulster MPs had an interest in the country and this was sufficient: ‘if they [the Old English] had said they [the Ulster MPs] had no interest in the kingdom’ this would have been a different matter.⁸⁰ Corporate self-government or liberty also remained on a knife-edge. Whilst the Old English would continue to participate in corporate self-government, retaining the right to elect a mayor and other officers and to practise their trades freely, on the question of magistracy, which concerned the duty or obligations of public office, tension pervaded. The Old English communities retained the right to elect a mayor, but the mayor and other officers needed to be protestant in order to take the oath of supremacy. In this regard, the corporations were threatened with the loss of their corporate liberties if they refused to comply in the election of an appropriate mayor.⁸¹

The need for parliament to return to some form of order, however, meant that a more ameliorating response was also forthcoming. James acted where the commission of enquiry had not called for action and he annulled the returns from a series of new boroughs which had been erected after the writs for elections had been sent, removing the working majority for the protestant party in parliament.⁸² More significantly, James made clear that he had no intention of delving into the private matters of conscience.⁸³ In fact, such was the drift of discussions at Court that one of the Old English representatives, Sir James Goughe, thought James was going to grant full toleration. James explained with some vehemence that he only meant to allow for a ‘private’ liberty of conscience.⁸⁴ What this meant was that whilst no new penal legislation would be added to the Irish statute book, existing statutes remained in force and continued to apply. In other words, the use of parliamentary liberty had worked in some

⁷⁹ ‘Commission to examine the abuses in parliament’, 15 November 1613, TNA SP63/232/24.

⁸⁰ ‘Speech of King James I in the council chamber at Whitehall, on Thursday before Easter’, 20 April 1614, *Calendar of the Carew*, 290.

⁸¹ King to Chichester, 30 Sept. 1612, *Calendar of State Papers Ireland 1611-14*, no. 529. Also see Pawlish, *John Davies*, 128-30.

⁸² See Moody, ‘Irish Parliament’, 59.

⁸³ *Ibid.*, 59-60.

⁸⁴ King to lord chancellor, [4 Jan.] 1614, *Calendar of State Papers Ireland 1611-1614*, no. 795.

form, in that the narrowest of room emerged for a ‘private liberty’ of conscience. This was especially the case because of the abandonment of the mandates policy. Recusancy fines did not impinge on conscience in the same direct fashion as mandated church attendance, and the fines were quite low. Without new legislation ‘against seminary priests – their receivers and relievers’, the Old English could practice their religion far from public view, in their own homes. The position of catholic clergy, though, remained strained, with the re-issuing in 1614 of the 1605 proclamation ordering priests to leave Ireland.⁸⁵

Furthermore, the congratulatory parliamentary oration given by Sir John Davies, the speaker of the house, elaborated on James’s position, providing a powerful illustration of the way in which conceptions of catholic ‘conscience’, ‘will’ and ‘duty’ continued to render Old English claims to parliamentary liberty deeply problematic from a protestant perspective. The oration was given at the beginning of the second session in 1614, after the king’s ameliorating intervention. Quite naturally, Davies’ oration emphasized a return to unity and concord. But the striking part of Davies’ oration was his critique of the behaviour and ‘the will’ of the Old English MPs. In spite of their victory, Davies warned the Old English members not to separate parliamentary liberty from a language of duty. His critique echoed that of Hooker’s account of the Irish parliament of 1569-71; and although Davies avoided any direct reference to the question of confession, his concern in the oration moved from a question of duty to a direct consideration of the implications of a political community divided in ‘will’. Davies spoke of the ‘willfulness’ of the MPs:

God forbid that the Commons of this kingdom, when the king shall vouchsafe to call them to his parliament to conference, to consult and to advise with them principally touching their own common good they should wilfully refuse and reject this grace and favour being the highest privilege.⁸⁶

Davies argued that liberty was only ever granted so action could be taken for the common good; and in doing so he turned to the idea that liberties were also a privilege held from the prince for a purpose. After all, it was originally the case that ‘no parliament at all holden in this kingdom, when the laws made in England were transmitted hither by writ, and those laws being once enrolled and proclaimed bound all the subjects of this kingdom’. But the Commons was now no longer subject to the wills of others, being given ‘their own

⁸⁵ ‘Proclamation against toleration of popery’, 31 May 1614, *Calendar of State Papers Ireland 1611-14*, no. 827.

⁸⁶ ‘The speaker’s congratulatory speech to the House of Commons at their second meeting’, 11 Oct. 1614, SP63/232/28 I. In a letter from Davies to earl of Somerset, [31 Oct.] 1614, TNA SP63/232/28.

[parliament] in this kingdom ... [so] they might have free voices in making of laws as well as the subjects of England had ... which is the greatest privilege that subjects can enjoy, as I said before, and passeth all the liberties contained in Magna Charta’.

This was why Old English actions in parliament in their election of a speaker, and their protest at the suspect return of MPs, was an affront to the liberties granted to them, because they had pursued conceit and factiousness instead of thinking of their duty to use liberty rightly. Not only ecclesiastical legislation, but civil legislation aimed at the welfare of the kingdom, had been blocked.⁸⁷

And herefore to reject and put off from us so great a grace and favour, and to neglect, and by our wilfulness to discontinue the use of so precious a liberty, is not only a contempt and ingratitude to the crown, but an unspeakable wrong and prejudice to ourselves.

Here the question of ingratitude now became a question of a divided ‘will’ and ‘conscience’. For Davies there should have been unity of ‘will’ and unity of action: ‘as I said before let us go on with the service that is to be performed cheerfully and like the members of one body agreeably and kindly’. Davies clarified his point by drawing a distinction between ‘reason and policy’ and ‘will’. Clearly it was natural that in discussions there should be division of opinion: ‘I speak not this as if I did expect or wish there should be altogether *unio opinionum*, for in all great councils there will be diversity of opinions’. But the question of unity and the division of ‘wills’ was a very different prospect:

but I wish there should be *unio voluntatum*, that we have all one will, that is, that we may be all willing to procure the welfare of this kingdom ... such an emulation will be pleasing to god, the king, and to all good subjects.

What Davies suggested was that division had not occurred over the manner in which a particular goal or the common good should be furthered; instead, division had arisen at the level of intention and aims, which was rooted in a division of ‘wills’. What Davies’ comment illustrates is why divisions in religious opinion and confession could in political terms be so irreconcilable. He outlined a fear that the Old English community had begun to form a distinct polity with no regard for the duty they owed their prince. This was a marked step

⁸⁷ See Clarke, ‘VII Pacification, Plantation’, 120-4. Colm Lennon, *Lords of Dublin in the Age of the Reformation* (Dublin: Irish Academic Press, 1989), 194. A main line of dispute concerned ‘An Act to repeal the provision in the Act of Poundage’, *Calendar of State Papers Ireland 1611-14*, no. 439. The corporate towns did not want to forgo privileges in order to fund Irish government.

away from Hooker's account, which had mainly noted the ethnic or cultural tensions in the parliament of 1569, which had arisen from the return of New English MPs. Over forty years later, the issue of 'duty', 'conscience' and 'will' suggested that a shared conception of liberties and one polity were no longer shared.

Conclusion

The Irish exchange, which began with a claim to 'liberty of conscience' made in Ireland's corporate towns, went to the root of an English conception of liberties. The claim made, which was grounded in received practice, custom and the limits of the law, drew into play the very conception of corporate liberty. The protestant response focused on the notion of duty embedded in the very idea of English liberties. In England, an active protestant citizenship and service to the commonwealth grounded and enlarged claims to corporate and parliamentary liberty. But in Ireland concerns over a catholic 'conscience' and 'will' raised questions about Old English citizenship. Would they act for the common good and would they act against the protestant commonwealth as established by the king? Ideas of citizenship and duty, which emboldened claims to liberty in England, undermined these same claims in Ireland. In Dublin this led to a bold use of the prerogative, in contrast to wider English sensibilities. The prerogative was deployed to define the boundaries of 'civil duty' and reset the basis for Old English enjoyment of their wider liberties and the protection of the law. In the Irish parliament of 1613 this shifted into an open acknowledgement by the speaker John Davies that the polity was divided in 'will' – that the Old English had stopped acting for 'the commonweal' and that a shared understanding of political concepts and English liberties was disappearing.

Here the tension or dichotomy which emerged was between an idea of liberties, grounded in duty, obligation and godly citizenship, and an account of liberties grounded in the established customary and legal framework of the kingdom of Ireland. In light of New English questions over their internal condition and external intention, the Old English turned increasingly to the vocabulary of received practice, custom and law in order to sustain a space for 'liberty of conscience' and their wider claim to liberties. The Old English representatives sought to set boundaries on actions of protestants in Ireland in order to protect their interests and their space for freedom of worship. They also emphasized that they were acting within the agreed limits of custom and law. Their claims to liberties were also grounded in their 'ancient' usage – namely 'the ancient constitution' and the established law-based order. Such appeals sought to ground their claims in a different vocabulary in light of the questions raised by New

English protestants over Old English duty and citizenship. Nevertheless, the problem of ‘duty’, ‘conscience’ and ‘will’ eroded the basis of a shared English-Irish political vocabulary. Ideas of duty, citizenship, virtue, and godliness would continue to be grounds for denying others their liberties.

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