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ARTICLE

The First Earl of Shaftesbury's Resolute Conscience and Aristocratic Constitutionalism

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Abstract

This article provides a reappraisal of the first earl of Shaftesbury (1621–83) and challenges his reputation as an unprincipled politician. Conversely, it is argued that Shaftesbury's opposition to both Cromwell during the Protectorate and Charles II in the Restoration was guided by a resolute 'conscience'. While there was certainly elasticity in his conduct, Shaftesbury was very much the product of a political education framed during the Civil War and Commonwealth eras. The article explicitly demonstrates through an exposition of his activity and thought in the 1650s and 1670s that four guiding values remained consistent in his career. Both periods were shaped by concerns over political and religious tyranny by an overbearing executive and a threat to 'lives, liberty, and property' from the ruler, the church, and the army. Shaftesbury's significance lies in the aristocratic constitutionalism he believed offered a restraint to encroachment by the executive and the people in government. Relying upon long-established traditions that positioned the nobility as an independent bridle against arbitrary government, Shaftesbury suggested a forward-thinking vision of elite rule supported by the people. In clarifying Shaftesbury's values, the article rejects interpretations of him as a republican, Neo-Harringtonian, or a believer in popular government (democracy).

King Charles II's maverick lord chancellor, Anthony Ashley Cooper, the first earl of Shaftesbury (1621–83), remains a much misunderstood and maligned figure today. Famously portrayed by John Dryden as the disingenuous and self-serving biblical counsellor Achitophel to King Charles II's naïve illegitimate son the duke of Monmouth, this depiction has largely survived.¹ His capacity to change sides – from the royalists to parliamentarians, to working for Oliver Cromwell before opposing him, a feat repeated under Charles II – gained him a reputation as an unprincipled, disloyal man determined to aggrandize his own position and fame. Yet this representation is specious. Shaftesbury

¹ [John Dryden], *Absalom and Achitophel. A poem* (London, 1681).

may well offer an example of an early ‘Trimmer’, like his nephew Lord Halifax, but his pre-1660 political education found him surrounded by numerous pre-trimmers. The Civil War (1642–9) and Commonwealth (1649–60) eras contained many men willing to switch sides as well as unite with strange ideological bed-fellows in politics. Conversely, Shaftesbury’s aptitude for transferring allegiances was directed by a resolute ‘conscience’ and four unwavering values that motivated his political career.

These four (concatenating) principles – the application of the rule of law, hostility to multiple forms of tyranny, a belief in a free parliament reformed by the nobility, and the liberty and rights for the people – look unremarkable within their context, and in relation to more recent reappraisals concerning Shaftesbury. It has been frequently claimed that Shaftesbury was opposed to tyranny in the form of arbitrary monarchy and (French) Catholicism, which made him suspicious of King Charles II’s political machinations and the court and Commons’ acquiescence.² Moreover, Shaftesbury’s solution to reform a free (mixed) government along aristocratic lines to provide liberty and religious toleration (for Protestants) has also been noted.³ Nevertheless, this does not reflect the nuances of his outlook and has led to the mistaken conclusions that Shaftesbury promoted popular sovereignty to engender democracy, or that he applied Neo-Harringtonian republican language to counter Charles II.⁴ This article will demonstrate that his four values were driven by a conviction that governance should be by the few rather than a single ruler, the many, or an army. Cutting his political teeth between 1643 and 1660 imbued Shaftesbury with a strong distaste for arbitrary behaviour by the executive, the use of religion to bolster political tyranny, and the threat of the army towards free government potentially resulting in (democratic) ‘mechanic tyranny’.⁵ By concentrating on Shaftesbury’s speeches and conduct in the 1650s and pre-Exclusion Crisis 1670s, the article will reveal the consistency in his outlook and that much of his antagonism towards Charles II was shaped by anxieties from a generation earlier. Clarification of Shaftesbury’s objectives and thinking are important because his promulgation of a long-standing aristocratic constitutionalism would ultimately gain traction

² See W. D. Christie, *A life of Anthony Ashley Cooper, first earl of Shaftesbury 1621–1683* (2 vols., London, 1871), II, pp. 184–5, 463–5; K. H. D. Haley, *The first earl of Shaftesbury* (Oxford, 1968), pp. 251–3; and John Spurr, ‘Shaftesbury and the seventeenth century’, ch. 1 in John Spurr, ed., *Anthony Ashley Cooper, first earl of Shaftesbury 1621–1683* (Farnham, 2011), p. 13.

³ See J. H. Plumb, ‘The first earl of Shaftesbury’, *History Today*, 3 (1953), pp. 267–8, 269–70; Alan Marshall, ‘“Mechanic Tyranny”: Anthony Ashley Cooper and the English Republic’, ch. 2 in Spurr, ed., *Anthony Ashley Cooper*, pp. 37–9; and John Spurr, ‘Shaftesbury and the politics of religion’, ch. 6 in Spurr, ed., *Anthony Ashley Cooper*, pp. 130, 131–9.

⁴ For democratic Shaftesbury, see Haley, *First earl*, p. 739; and Richard Ashcraft, *Revolutionary politics and Locke’s Two treatises of government* (Princeton, NJ, 1986), pp. 165–9; and for Neo-Harringtonian Shaftesbury, see J. G. A. Pocock, ‘Machiavelli, Harrington and English political ideologies in the eighteenth century’, in *Politics, language and time* (London, 1972), p. 117; idem, *Machiavellian moment: Florentine political thought and the Atlantic republican tradition* (Princeton, NJ, 1975), pp. 407–8; and idem, ‘Varieties of whiggism’, in *Virtue, commerce and history: essays on political thought and history, chiefly in the eighteenth century* (Cambridge, 1985), p. 226.

⁵ John Evelyn, *The diary of John Evelyn*, III: (1677–1706) (London, 1996), pp. 103–4.

post-1688 shaping England and Britain, and historiographically it removes him from the republican tradition.

I

Despite an early career punctuated by periods of exclusion from parliament, Cooper experienced a meteoric rise. After briefly sitting as a member of parliament aged eighteen in the Short Parliament of 1640, he took up arms for Charles I in 1643 then fought for the parliamentary cause from March 1644. Cooper was barred from parliament between 1645 and 1652 for his previous association with the royalists, reappearing in the anarchic Barebones Parliament of 1653. He became a member of the Commonwealth's council of state under Cromwell that year but left his government to oppose him from December 1654.⁶ From 1659, he performed a valuable role in the council of state, and in 1660 became one of the twelve commissioners sent to Holland by the House of Commons to invite Charles II (r. 1660–85) to return to England. As a reward, Cooper was appointed to the privy council, and from 1660 until 1673 he held office in the king's government in roles that grew in status as his intelligence, oratory, and ability was recognized, elevated to Baron Ashley in 1661 and the earl of Shaftesbury and lord chancellor in 1672.⁷ Cooper served in the king's 'Cabinet Council' from the late 1660s, was notably involved in the Stop of the Exchequer policy, the Declaration of Indulgence, and the Third Anglo-Dutch War (all initiated in 1672), before resigning from the government in 1673. He remained in active opposition for the rest of his life, becoming implicated in the Popish Plot (1678), the campaign to exclude James, the duke of York, from the succession in the Exclusion Crisis (1679–81), then fleeing to Holland and shortly afterwards dying when (in)famously embroiled in the Rye House Plot (1683) conspiracy to kill Charles II and the duke of York.

Cooper's capacity for changing sides goes some way to understanding his atrocious reputation within his own lifetime. He was reviled by opponents and his political principles and pragmatism were interpreted as treachery, sedition stoking, and rebellion. The pen-for-hire, Marchamont Nedham, a man who also enjoyed a reputation for switching sides, referred to him as 'MEPHISTOPHILES', Dryden compared him with 'the Devil', and Nahum Tate claimed that his penchant for manipulating the people was fuelled by ambition for his own 'Pow'r unlimited' and desire to restore the popular government of the Commonwealth era.⁸ Nevertheless, this denigration as a man of flexible convictions is not accurate, and his core values were evident from the beginning of his career after enlisting with the parliamentarians. In *A copie of the*

⁶ K. H. D. Haley, 'Anthony Ashley Cooper, 1st earl of Shaftesbury, English politician [1621–1683]', *Encyclopaedia Britannica Online* (2008): www.britannica.com/biography/Anthony-Ashley-Cooper-1st-earl-of-Shaftesbury.

⁷ *Ibid.*

⁸ See [Marchamont Nedham], *A packet of advices and animadversions sent from London to the men of Shaftesbury* (London, 1676), pp. 4–5, 76; [Dryden], *Absalom and Achitophel*; and [Nahum Tate], *The second part of Absalom and Achitophel* (London, 1682), pp. 1, 9, 6, 21, 23.

kings message, Cooper attacked the Cavaliers for hindering ‘the rightful proceedings in Parliament’ and preventing it from addressing the country’s evils. Furthermore, the royalists’ reliance upon French mercenaries who committed atrocities against the English people facilitated ‘barbarous Blood-suckers and inhumane beasts, and all their abettors, [in] their ideavours...to extirpate our Religion and Liberty’.⁹ As a ‘moderate’, Cooper professed to have switched sides because he was ‘following good conscience’, unhappy with a ‘reckless, absolutist, Catholic faction’ within the royalists who rewarded ‘soldiers of fortune’ for damaging the country.¹⁰

This intervention by Cooper generates two important considerations. First, his aptitude for using emotive and eye-catching language to stir the reading public and pull them to his opinion is evident from his early twenties. Key trigger words or slogans of the day – such as ‘justice’, ‘Liberty’, ‘bondage’, ‘property’, and ‘our Religion’ – were utilized as propaganda. His talent for employing accessible rhetoric in his pamphlets was evident before his opposition in the *Letter sent out of Wiltshire to a gentleman in London* (1654). This work has not been attributed to Cooper, but the targets of the pamphlet were under no illusion that it had been written by ‘Sir Anthony Ashley Cooper’ using his lofty perch amongst ‘the Saints’ in government to falsely accuse them of electioneering.¹¹ During the 1654 election campaign in Wiltshire against the Republicans, Cooper wanted to ensure he and ‘the right sort of people’ were elected as MPs.¹² Sharing the emotive language of the *Copie*, the *Letter* manifests a common strategy of the time found in his later propaganda: reference to hidden, dangerous factional plots that endanger an unwitting people. As the Wiltshire election had exposed, in co-operation with the ‘Cavaliers’, the ‘Clergie of the Nation’ wanted to place the people under ‘Egyptian bondage’ by filling parliament with placemen and ministers to carry out their ‘designe’.¹³ These ‘false, vile Christians’ driven by their ‘carnall weapons’ were motivated by ‘worldly honour, and popular applause’ and guilty of misleading ‘the generality of the injudicious people, by [their]...false and malicious imputations’.¹⁴

This exploitation of ‘injudicious’ voters had led a ‘corrupt interest’ into allowing men of ‘inconsiderable estates’ and understanding to vote in the Wiltshire election, their aim being to intermeddle ‘in state matters’ and raise ‘factions’ to create a ministry of their bidding, and ‘imbroyle the Nations in blood’ by pulling it back into war.¹⁵ Cooper suggested England

⁹ [Cooper], *A copie of the kings message sent by the duke of Lenox* (London, 1644), pp. 1, 5–6.

¹⁰ Haley, *First earl*, pp. 47–9.

¹¹ H. Chambers, A. Birfield, J. Strickland, and P. Ince, *An apology for the ministers of the county of Wilts, in their actings at the election of members for the approaching parliament* (London, 1654), pp. 1–2, 15, 16.

¹² Christie, *A life of Anthony Ashley Cooper*, I, pp. 112–13; Haley, *First earl*, pp. 81–3.

¹³ [Cooper], *Letter sent out of Wiltshire to a gentleman in London, wherein is laid open the dangerous designs of the clergy in reference to the approaching parliament*, ed. C. H. Firth, *The memoirs of Edmund Ludlow* (2 vols., Oxford, 1894), I, pp. 545–6, 548.

¹⁴ *Ibid.*, p. 545.

¹⁵ *Ibid.*, pp. 545, 547.

should become secularized like Holland, where the law prevented the clergy from intrusion in the state. Religion and perceived interference by the clergy in politics was a recurrent theme in his speeches and works. While this is commonly attributed to a fear of Catholicism, his accusations during the Protectorate era point to a deeper dislike of the clergy per se. This was juxtaposed with the intrusion upon people's consciences and free worship, plus the clergy's ability to deceive the people of their liberties through persuasion and pressure for the executive. Such destabilization of free government by church engagement in the state was a form of tyranny for Cooper. His Protestantism may therefore have possessed a staunch hostility towards Catholicism, but he was also disinclined to the priestcraft of his own religion.¹⁶

Cooper's move from the royalists when they were doing well is a second consideration, because it was driven by his 'conscience' rather than ambition or glory. The conduct of the royalists to Cooper's mind smacked of absolutism, interference in the religion of the English via support for Catholicism, and a nonsensical disregard for public welfare. This more sympathetic evaluation of Cooper's actions is perhaps sustained by his break with the Lord Protector on 28 December 1654. Unable to persuade Cromwell to become king as a means of restraining him, Cooper was alarmed by the increasingly tyrannical and militaristic nature of the Commonwealth. Arbitrary pretensions in the executive and movements towards 'absolutism' enslaved the people and necessitated tyrannical rule.¹⁷ As a member of the council of state named in the Instrument of Government, he had drafted the workings of the council and government. Fundamental to the Instrument was that government (Protector and parliament) were to think of 'the care, wisdom and gravity of this House...[for] the interest of the people' and not that of 'the single person'.¹⁸ After the chaotic behaviour of a Barebones Parliament (1653) dominated by religious and political zealots, Cromwell's Protectorate became more militaristic. The army transformed from 'the Champions of our Liberty' to 'the instruments of our Slavery', as Cromwell 'rendered all Englishmen no better than his Vassals' and made 'himself an absolute Lord and Tyrant over three potent Nations'.¹⁹

Cooper cut his political teeth at this time when members proved to be 'adept, elusive of "party", fluid in their allegiances', and highly sophisticated politicians. Instead of focusing on divisions and blame for the Civil War and Regicide, the council of state brought together individuals who had to be

¹⁶ See Mark Goldie, 'Priestcraft and the birth of whiggism', ch. 10 in Nicholas Phillipson and Quentin Skinner, eds., *Political discourse in early modern Britain* (Cambridge, 1993), pp. 228–9.

¹⁷ Haley, *First earl*, pp. 29, 66, 141, 740–1; Plumb, 'First earl', p. 268; and Tim Harris, 'Cooper, Anthony Ashley, first earl of Shaftesbury', *Oxford dictionary of national biography* (2004): www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-1012035?rskey=7LYr19&result=1.

¹⁸ Cooper in Thomas Burton, *Diary of Thomas Burton, esq. member in the parliaments of Oliver and Richard Cromwell from 1656 to 1659*, ed. John Towill Rutt (4 vols., London, 1828), III, p. 227.

¹⁹ [Silius Titus/Edward Sexby?], *Killing noe murder. Briefly discours in three questions* ([London?], 1657), p. 3; and *A declaration of the free-born people of England, now in armes against the tyrannie and oppression of Oliver Cromwell, esq.* ([London?], 1655).

flexible in their approach and willing to work with a broad spectrum of people to shape a new England.²⁰ When restored to parliament in January 1658 following an eighteenth-month exclusion, he returned amidst the continuing debates of the Humble Petition and Advice (from 1657) and liaised with assorted oppositionists to undermine the government. Irrespective of Cromwell rejecting the crown offered in the Humble Petition, the installation of 'a hereditary protectorate, with extremely limited powers for Parliament' generated anxieties of tyranny.²¹ As did discussion of the re-establishment of a second chamber ('the Other House') nominated by Cromwell. This furnished a platform for MPs to raise wider concerns, as Cooper and others used a 1620s tactic of exploiting key issues and controlling deliberations.

In terms of Cooper's opposition to Cromwell, his unwavering values of resistance to tyranny, the belief in the rule of law, free parliament, and liberty and rights are evident. Cromwell's executive was deemed to have 'subverted by force and fraud of late year' the 'Rights, Liberties, Properties of all English freemen'.²² This had been achieved by the manipulation of parliament and menace of force by the army, which had dishonoured *An agreement of the people* (1649) by ignoring the 'SUPREME AUTHORITY' of the freemen as its masters.²³ Cooper's own intervention in parliament during the Humble Petition debate spoke of the unfettered support of the judiciary, alleging it would unquestionably consent to whatever the Protector proclaimed law. On 11 February 1658, Cooper stated that '[n]ever was so absolute a Government if the Florentine [Machiavelli] and he that sate in the great chair of the world [Pope Alexander VI], had...met together, they could not have made a thing so absolute'.²⁴ The main thrust of Cooper's quarrel was that one way or another, and no matter how long it took, with the endorsement of the 'Gentlemen of the long robe' (judges) Cromwell would eventually make the Humble Petition and Advice law without parliament. This placed 'the interest of the person [Cromwell]' over the 'people', which 'was not consistent with the care, wisdom, and gravity of this House'.²⁵ Such executive action subjugated the 'free' minds of the English and neutered parliament, in a strategy that 'left a bone of contention to posterity'.²⁶

Following the death of Cromwell in September 1658 and accession of his son Richard (1626–1712), Cooper declared on 28 March 1659 that reconstructing a nominated 'Other House' with a negative voice gave the Protector (backed by

²⁰ Sean Kelsey, 'Constructing the council of state', *Parliamentary History*, 22 (2003), pp. 217–41, at pp. 240–1.

²¹ See Jonathan Fitzgibbons, 'Hereditary succession and the Cromwellian Protectorate: the offer of the crown reconsidered', *English Historical Review*, 128 (2013), pp. 1095–128; and J. T. Peacey, 'Nibbling at Leviathan: politics and theory in England in the 1650s', *Huntington Library Quarterly*, 61 (1998), pp. 241–57, at p. 255.

²² [William Prynne], *Demphilos, or the assertor of the people's rights* (London, 1658), pp. iv–v.

²³ *Ibid.*, p. v; and Prynne, *A brief necessary vindication of the old and new secluded members, from the false malicious calumnies* (London, 1659), pp. 61–2.

²⁴ Burton, *Diary*, III, p. 228.

²⁵ *Ibid.*, III, p. 227.

²⁶ *Ibid.*, III, pp. 228–9.

the judiciary) absolute authority.²⁷ He purported that the Protector would be ‘possest of two parts of the Legislative Power which would mean “an intolerable...Arbitrary Power”’.²⁸ Cooper expressed one articulation of disquiet concerning the nature of a second chamber amongst others. Another argued that the creation of a second nominated House had been born from ‘an underground Plot’ that would cheat the people of the ‘Good Old Cause’ and inaugurate a hereditary senate.²⁹ Its accusation that the executive was merely replicating the previous monarchy was a point of alarm for many, who felt it betrayed their escape from Egyptian slavery. Monarchy and its court had led to ‘*Schisms and Heresies*’, burdened the people with taxes, and removed peace and liberty by cultivating ‘a Land of Confusion’.³⁰ The return of the hereditary nobility, especially, contradicted an equal commonwealth in its dependence upon the ‘Tyrannie of Custome’ and ‘Pyramids of Greatness’, which permitted the nobility to enrich themselves and their greatness to the detriment of the people.³¹

Yet during the mounting peril of a tyrannical executive defended by a tyrannical army, there were growing calls to advance the position and experience of the ancient nobility at a period of crisis. In a time of ‘licentious Quills, Tongues od lawless sordid Sectaries, and Mechanick Levellers’ with the ‘Sword’ in their hands the ancient nobility should stand against them.³² Rather than reverting to the Instrument of Government, parliament should reject the Humble Petition by revisiting the Triennial Act (1641). It would reinstate ‘*the antient Peers*’ and with it, justice for ‘the Peace, Prosperity, security of the *English Nation*’.³³ Cooper similarly appealed for the return of the hereditary nobility as the second chamber in parliament.³⁴ Condemning a clause that would not safeguard the rights of the old peers in the new ords, he averred it was ‘natural’ for the nobility to be occupied within government, an ancient role that would be of advantage.³⁵ Cooper sought to thwart the abuse of authority by the executive and to uphold ‘an oligarchic, but literally interpreted rule of law against military rule’.³⁶

Selected as a non-member of the House to the council of state in 1659, Cooper considered the paternalistic and sober ancient nobility to be an antidote for growing militarism. While Fleetwood and others avowed the army was working in the interests of the people and parliament,³⁷ Cooper worked

²⁷ *Ibid.*, IV, pp. 21, 284.

²⁸ [Cooper], *A seasonable speech, made by a worthy member of parliament in the House of Commons concerning the Other House...March 1659* (London[?], 1659), pp. 2–3.

²⁹ [Anonymous], *A negative voyce: or, a check for your check* ([London?], 1659), pp. 6, 10.

³⁰ [William Sprigg], *A modest plea for an equal common-wealth against monarchy* (London, 1659), pp. viii–ix.

³¹ *Ibid.*, pp. 75–7.

³² William Prynne, *A plea for the Lords and the House of Peers* (London, 1659), p. 1.

³³ [Anonymous], *A probable expedient for present and future publique settlement* (London, 1658), p. 1.

³⁴ *Ibid.*, pp. 3, 5–6; and Spurr, ‘Shaftesbury and the seventeenth century’, p. 13.

³⁵ [Cooper], *Seasonable speech*, p. 6.

³⁶ Haley, *First earl*, p. 108.

³⁷ See *The Lord General Fleetwoods answer to the humble representation of Colonel Morley* ([London], 1659), pp. 22–3; and [Cooper?], *The remonstrance and protestation of the well-affected people of the cities of London, Westminster...the 13th October 1659* (London, 1659), pp. 16–17.

with the Republicans to prevent military dictatorship. He, Thomas Scot (d. 1660), and others in the council employed force to take the Tower of London to prevent it coming into the possession of Lord Fleetwood's army. In *A letter*, the authors pointed out that they were acting for parliament to preserve the 'Peace and Liberty of these Nations' against Fleetwood. Moreover, as 'the sole law full Authority', parliament championed General Monk in the interest of the Commonwealth. The authors elucidated a clear dichotomy the people faced between two paths: tyranny of 'the Sword' or 'Civil Authority'.³⁸

Following the *Letter*, the *Remonstrance and protestation* contended that the abuses of Charles I – misuse of parliament, raising taxes and levies without consent, use of the militia, the Star Chamber, and a tyrannical army – had been replicated by the equally arbitrary Cromwell.³⁹ He had subverted 'the fundamental Laws and Principles of Government, upon which the Land was firmly established', and prevented the formation of a 'free state' as the 'Rampant Sword' endeavoured 'to seat itself for ever upon us, and intayle an Army to posterity over us, for the Government of these Nations'.⁴⁰ As had been seen with 'many Tyrants and Monarchs in former times', the 'Arbitrary Power' of the army offered 'a most absolute servitude' and the 'Blood of Innocents'.⁴¹ Evident under Charles I, the engagement of military dictatorship was not only illegal, it instituted tyranny either through a single individual or a 'mechanic tyranny' in which (some of the common) people ruled through the army.⁴²

From 1660, Cooper sensed that the restoration of the Stuarts via the efforts of the 'noble Patriot and gallant Assertor of English Rights', General Monk, was the best method for achieving a free parliament.⁴³ An idea born in the 1620s but repeatedly thwarted between 1642 and 1660, it was clear that the Commonwealth had failed and restoration could beget a free parliament.⁴⁴ Cooper and many others had genuinely endeavoured to achieve a free government; nevertheless, the 'hand of Providence' led them 'through various forms of government, and had given power into the hands of several sorts of men, but he had given none of them a heart to use it as they should'.⁴⁵ Restoration presented the prospect of achieving a free government under a grateful monarchy rather than a collapsing republic prone to arbitrary conduct.

³⁸ [Sir Anthony Ashley Cooper, Thomas Scot, Io Berners, and John Weaver], *A letter* (London[?], 1659), pp. 3, 4.

³⁹ [Cooper?], *Remonstrance*, p. 1. This article accepts Haley's contention that the work bears striking similarities to Shaftesbury's speeches and works from 1675; *First earl*, p. 121.

⁴⁰ [Cooper?], *Remonstrance*, p. 3.

⁴¹ *Ibid.*, pp. 6–7.

⁴² *Ibid.*, pp. 3–4, 7.

⁴³ *Ibid.*, p. 6.

⁴⁴ See Blair Worden, 'Oliver Cromwell and the Protectorate', *Transactions of the Royal Historical Society*, 20 (2010), pp. 57–83, at p. 83; Blair Worden, 'The campaign for a free parliament, 1659–60', *Parliamentary History*, 36 (2017), pp. 159–84, at pp. 159–60.

⁴⁵ Christie, *A life of Anthony Ashley Cooper*, II, pp. 251–3.

II

In 1673, Cooper, now the first earl of Shaftesbury, came to realize that like Cromwell Charles II did not possess 'the heart to use' government as he should. He gave his famous *Delenda est Carthago* speech to parliament in early 1673 to implore its continued subsidy of the Third Anglo-Dutch War. At some point after this speech, he discovered that the treaty he had helped sell to parliament, which allied England with France against the Dutch for commercial superiority, fronted a secret treaty, in which Charles II had acquiesced to convert to Catholicism and furnish assistance against the Dutch in exchange for a pension from Louis XIV.⁴⁶ Concern over tyrannical governmental power led to his resignation as the lord chancellor (1672–3), once Shaftesbury discovered that the Treaty of Dover he had signed in 1670 was a lie. From this point, and for the remainder of his life, he became a committed opponent to the court led by the earl of Danby between 1674 and 1678, which appeared to promote closer ties with the French and a move towards popery and arbitrary government.

From 1673, Shaftesbury and other like-minded peers used the restored fortunes of the nobility to take on the court's secret plans to alter Protestantism and government. Throughout, Shaftesbury's targets were consistent with the values demonstrated in the 1650s: the promotion of the rule of law and a free parliament to repel tyranny, and preserving the rights and liberties of England. What became more apparent in his solution to monarchical tyranny was the independence and restraint proffered by the nobility, and its wider appeal for public support to place pressure on the court and Charles II. The catalyst for the works and speeches of Shaftesbury and his circle was Danby's introduction of a Test Oath on 15 April 1675 – later to become the Test Act (1678) – which office-holders in both houses of parliament were to swear concurring it was not permissible to resist the king or his ministers, and to refrain from endeavours to alter church or state government as recognized by law. Shaftesbury led the opposition that defeated the bill by one vote fifteen days later, asserting it was sometimes lawful to resist the king's ministers and the Protestant Reformation had shown it necessary to sometimes correct error in the church. This parliamentary skirmish with Danby exacerbated another wrangle between the Lords and Commons over their jurisdictions in the case of Shirley versus Fagg.

In the Shirley versus Fagg debate of November 1675, the question centred on which House could hear appeals from the lower courts when a case involved members of the Commons: Sir John Fagg was the MP for Steyning and had been taken to the Lords on appeal by Dr Thomas Shirley over a property dispute.⁴⁷ Shaftesbury and other peers reinforced this attack on the Commons and Danby,

⁴⁶ Ashcraft, *Revolutionary politics*, pp. 17–20, 115–16. According to Ashcraft, Shaftesbury was made aware of the treaty by one of his fellow (CABAL) council members, either Lord Arlington (who signed the secret treaty) or the duke of Buckingham (who signed the spurious version with Shaftesbury). The latter was responsible according to the Shaftesbury family (p. 115 n. 148).

⁴⁷ 'Shirley v. Fagg, 1675', in J. P. Kenyon, ed., *The Stuart constitution, 1603–1688: documents and commentary* (2nd edn, Cambridge, 1989), pp. 425–6.

calling a motion to have parliament dissolved for fresh elections – the Cavalier Parliament had been extant since 1661 – which was defeated by two votes. Shirley versus Fagg was shut down when the king prorogued parliament on 22 November, announcing that it would not sit again until 15 February 1677.⁴⁸ The implementation of kingly prerogative for the second time in six months was perceived as an assault on the peer's power and attack on religious and political rights and freedoms, inspiring the response from Shaftesbury and his circle.

Shaftesbury's speeches took place and pamphlets were published prior to and during the Shirley versus Fagg debate in October and November 1675, although the infamous *Letter from a person of quality to his friend in the country* was composed after the first prorogation (June) and published in November. The overwhelming concern of the *Letter* is the attack upon Protestant freedoms occurring in England.⁴⁹ It argued that the church party within parliament had pursued the ends of the high episcopacy and old Cavaliers and allied itself to the monarchy to achieve the aims of the high church through the Act of Uniformity (1662) which threatened dissenters from the Declaration of Indulgence. Apprehensions over the shift towards arbitrary monarchy and the use of a standing army were born from a fear – present since the sixteenth century – that these instruments would provide the means to impose Catholicism on to the nation by a popish prince. Evoking his alarm during the 1650s of interference by the established church in politics, the executive could use religion to imperil religious and civil rights. Sharing the concerns of the duke of Buckingham, the Declaration of Indulgence instigated further disquiet as it proffered toleration and promotion for Catholicism, which could be potentially spread via the parish system to the people to enforce the king's will undermining Protestantism in England.⁵⁰

In the opinion of the *Letter*, the church was shadowing the court with its own agenda, which had been made evident through the oath of the Test Act (1673). Such an oath was worthy of the 'Church of Rome', positioning as it did the king underneath the power of the church, and framing a government that was 'more Absolute, and Arbitrary' as manifest from the use of Archbishop Laud's divine right theory. Applying natural (divine) law over positive (human) law was a naked manoeuvre to remove freedom, by precluding rebellion and situating the monarch under the power of the 'Bishops' when it should be the reverse.⁵¹ In his speech in parliament on 20 October, Shaftesbury emphasized the 'Episcopal' clergy's 'Popish' belief in the divine right theory of kings. It usurped positive law and the 'Magna Carta', according to Shaftesbury,

⁴⁸ Harris, 'Shaftesbury', ODNB.

⁴⁹ On authorship of the *Letter* and John Locke's role, see Haley, *First earl*, pp. 390–1; Ashcraft, *Revolutionary politics*, p. 134; Goldie, 'Priestcraft and the birth of whiggism'; and Paul Seaward, 'Shaftesbury and the royal supremacy', ch. 3 in Spurr, ed., *Anthony Ashley Cooper*, pp. 51–2.

⁵⁰ See [Shaftesbury], *Letter from a person of quality to his friend in the country* (London, 1675), pp. 1–2, 4–6; and Buckingham, *The duke of Buckingham's speech in the House of Lords, November 16 1675* (Amsterdam, 1675), pp. 13–14. Both were lauded in their endeavours by Andrew Marvell; *An account of the growth of popery and arbitrary government in England* (London, 1677), p. 61.

⁵¹ [Shaftesbury], *Person of quality*, pp. 16–17, 24–5.

because it subjugated parliament and the people under the king and enabled him to assault their property, rights, and justice in the name of God and obedience.⁵²

The natural conflation of religious and civil issues during this period is highlighted in Shaftesbury's discussions of the peril faced by the English under Danby's pro-high-church direction. Both religious and civil liberty were seen to be under assault by the court's power-grab, which generated forebodings of another rebellion and civil war. The use of divine right theory and the Test Oath were a move towards arbitrary government because they strove to stultify rebellion, at a time when the risk of rebellion was necessary to thwart the shift towards French tyrannical government. Charles II's changes to lawful government ran the risk of repeating the events that led up to the Civil War under his father by removing the right to self-defence, and a standing army could be directed against private individuals and their property.⁵³ The separation between the court's perspective and several peers and other countrymen was exposed in the dichotomy within the Cavalier Parliament. For Shaftesbury and his circle, two old Civil War enemy camps were sitting together and still held distinct views: the 'old Cavalier' and 'the Round-head'.⁵⁴ While the 'old Cavalier's' loyalty was to the episcopacy and church and their interest for the crown, the 'Round-head' supported a free conscience. The court was offering the 'Round-head' faction and 'Country Gentlemen' a liberty of conscience if they agreed to its civil plans, all the while the king continued to prorogue, adjourn, and dissolve parliament. Grievances were therefore left unresolved as issues were not addressed and time wasted, frustrating those who dreaded the direction of England.⁵⁵

This was part of a wider interference in the running of parliament by the king and court. Shaftesbury had already fired shots at the Commons in his speech of 20 October, proclaiming that the 'Kings Ministers' in the Commons were reporting back to the king 'daily' and thereby hindering the independence of parliament and impeding its 'Ability' and 'Integrity'.⁵⁶ In a speech delivered on 20 November 1675, Shaftesbury repeated the placemen accusation of the *Wiltshire Letter* (1654) by asking how many MPs 'by the favour and Goodness of the Prince...[had] become officers in the Court', which, in turn, prevented them from representing the 'Interest' of the people that elected them.⁵⁷ The essence of representation had been further eroded by keeping the same men in parliament since 1661, eliminating the accountability of MPs. In Shaftesbury's opinion, the manipulation of parliament by the crown to achieve its ends through prorogation, dissolution, and the number of

⁵² [Shaftesbury], *Two speeches...House of Lords the 20th of October, 1675* (Amsterdam, 1675), pp. 10–11.

⁵³ [Shaftesbury], *Person of quality*, pp. 16–18.

⁵⁴ [Shaftesbury], *A letter from a parliament man to his friend, concerning the proceedings of the House of Commons this last sessions, begun the 13th of October, 1675* (London[?], 1675), pp. 1–2.

⁵⁵ *Ibid.*, p. 2.

⁵⁶ [Shaftesbury], *Two speeches*, p. 3.

⁵⁷ [Shaftesbury], *Two seasonable discourses concerning this present parliament*, in Joyce Lee Malcolm, ed., *The struggle for sovereignty: seventeenth-century English political tracts* (2 vols., Indianapolis, 1999), I, pp. 593–4.

MPs acting for the ‘Cabals and Interest at Court’ had made government ineffective.⁵⁸

One month later, Shaftesbury used common law to argue that in accordance with ‘the Constitution of the *Government*, the ancient Laws and Statutes of this *Realm*...there should be frequent and new *Parliaments*’.⁵⁹ As Lord Denzil Holles (1598–1680), his friend and member of the same group, made clear, prorogation of parliament for more than a year was contrary to statute (4 Edw. 3 c. 14 and 36 Edw. 3 c. 10).⁶⁰ Regular parliaments had been customary until the reign of Edward III (r. 1327–77), which denoted that Charles II’s was contravening the law, custom, common law, and the ancient constitution by abusing the prerogative. He called on the king to hold elections in the interests of the nation to freshen parliament and guarantee accountability.⁶¹ This would propitiate a nation concerned about the court’s movement towards French arbitrary government and French interference in English affairs, at a time when the aggrandizement of Louis XIV (r. 1643–1715) strove for ‘Universal Monarchy’.⁶²

In Shaftesbury’s opinion, the Lords and the Commons held clearly defined roles: the Lords as the ‘*Judicature*’ should ‘redress Grievances’ and ‘Maintain the Old Land-Marks’ but not make new law, and the Commons’ ‘Business is to complain Your *Lordships* to redress’.⁶³ The Commons retained the ‘Sence, the Mind, the Information, the Grievances, and the *desires* of all those People whom they serve’, and the Lords were ‘the *Councill*, the *Wisdom*, and *Judgement* of the *Nation*’ while the king gave ‘Life and Vigour to the proceedings of the other Two’.⁶⁴ Referring back to the king’s *Answer to the nineteen propositions* (1642), Shaftesbury maintained that if the three parts of government did not work effectively it would undermine the public good, and if there was interference, it led to ‘private Interests’ and factions that further eroded their service to the nation. For Shaftesbury, the House of Lords was under attack from the Commons and the crown. While promising to ‘serve my Prince as a Peer’, he warned against undermining the Lords as a body because parliament would lose the independence that had secured peace for the nation in the last two years and prevented the French from profiting by the European situation.⁶⁵ Within the Commons, some of the gentry and commoner MPs were more focused on advancing their own private interests at the expense of the House of Lords.⁶⁶

⁵⁸ *Ibid.*, p. 596.

⁵⁹ *Ibid.*, p. 592.

⁶⁰ [Denzil Holles], *Some considerations upon the question, whether the parliament is dissolved by its prorogation for 15 months?* (London, 1676), pp. 5, 12.

⁶¹ [Shaftesbury], *Two speeches*, pp. 7, 9.

⁶² [Denzil Holles], *The British constitution consider’d, with a character of the court and parliament in the year 1676* (London, 1712), pp. 3–4, 14.

⁶³ [Shaftesbury], *Two speeches*, pp. 6–7.

⁶⁴ [Shaftesbury], *Two seasonable*, p. 595.

⁶⁵ [Shaftesbury], *Two speeches*, pp. 7–8, 9.

⁶⁶ *Ibid.*, pp. 597–8.

Shaftesbury's solution was twofold. The first was to audit the boroughs and reduce the franchise. He considered the 'Parliament of England...[to be] that Supreme and absolute Power which gives life and Motion to the English Government'. It was dangerous for the king to control the franchise, and Shaftesbury dismissed the idea that representation in parliament was a gift from God.⁶⁷ The boroughs required an audit because there was a surfeit of reasons ('titles') justifying why boroughs had an MP, and the glut of sitting MPs necessitated an excess of grievances and petitions when parliament sat, which retarded its business. There was a further issue with some geographical areas possessing too much power due to their disproportionate number of boroughs (Cornwall had forty-three MPs), which created a parliament that could be swayed by local interests. The franchise should be reduced to only allow 'Men of Substance' (over £40 per annum) to vote, so that poorer voters could not be financially induced 'to a contrary Interest' because they were easily 'Corrupted and Seduced'.⁶⁸ Courtiers through 'the strength of their Purse, and liberal Baits...so seduced these poor Rural Animals, as to obtain an Election from them, though to the ruin and overthrow of their own Laws and Liberties'. Shaftesbury had no qualms about reducing and regulating the franchise as 'the Majority is generally of a mean and abject fortune in the World' and 'misguided also by their ignorance'. It was not practical for every person to possess 'a Natural Right to Vote', and the country gentry should control local offices and elections while ensuring only 'the most eminent Persons for Wealth, Gravity, and Wisdom in the Parish' should vote. These voters chose MPs that represented 'the whole Body of the People' and all persons in the kingdom, so should vote in secret to relieve pressure from them and avoid corruption.⁶⁹

The desire to pursue electoral reform was a continual theme throughout the seventeenth century. Due to the tension between the Commons and both James I (r. 1603–25) and Charles I (r. 1625–49), from 1621 reform was promulgated as a means of opposing the crown. Such ideas were not concerned with popular sovereignty or extending the franchise for democratic purposes but instead to contest intrusion from the court in elections and the selection of candidates, mayors, and bailiffs. Many boroughs could be unruly, especially in the country, and this was regularly caused by venality and abuse by the local elites; indeed, Charles II wanted to fill parliament with placemen aided

⁶⁷ [Shaftesbury], *Some observations concerning the regulating of elections for parliament* (London, 1689), pp. 5–7, drafted in 1679; see John Cannon, *Parliamentary reform 1640–1832* (Cambridge, 1973), p. 19.

⁶⁸ [Shaftesbury], *Regulating of elections*, pp. 12–13.

⁶⁹ *Ibid.*, pp. 15–16, 18. On representation, see Edward S. Morgan, *Inventing the people: the rise of popular sovereignty in England and America* (New York, NY, 1988), pp. 48–50, 60–1; Alan Cromartie, 'Parliamentary sovereignty, popular sovereignty, and Henry Parker's adjudicative standpoint', in Quentin Skinner and Richard Bourke, eds., *Popular sovereignty in historical perspective* (Cambridge, 2016), pp. 157–8, 160–1; and Eric Nelson, 'Representation and the fall', *Modern Intellectual History*, 17 (2020), pp. 647–76, at pp. 662–3.

by a loyalist church.⁷⁰ What is noteworthy is that Shaftesbury inverted this earlier call to extend the franchise to oppose the crown. His experiences of elections in the Commonwealth period had led him to the conclusion that voters of ‘inconsiderable estates’ were too ‘injudicious’ in their choices and prone to (financial) exploitation by the clergy and court.⁷¹ Besides, like many of his contemporaries, Shaftesbury was ‘deeply suspicious’ of ‘the multitude’.⁷² What makes Shaftesbury a complex and often misunderstood politician was that while his experiences prior to 1660 had made him fear the mob and despise democracy, it likewise made him comprehend that the people were indispensable.⁷³ The capacity to propagate public pressure through pamphleteering against the crown or opposition was a lesson from the 1640s pamphlet war he gleefully embraced and applied from 1675. Crucially, this was to serve the nobility against the crown and Commons, but it was born from the knowledge that the people were themselves a source of tyranny. In taking control of local government with the assistance of the gentry, the nobility could control the country populace and resist monarchical centralization.

III

Shaftesbury’s second solution was the promotion of the nobility within government. In his speech to parliament in March 1659, Shaftesbury had advocated the role of nobility within government, arguing that for ‘Great Men to govern ‘tis ordinary: for Able Men ‘tis natural’.⁷⁴ He accepted (while citing Livy), that although the nobility could impact ‘the People’s liberty and patience’, its ancient role was to occupy the key positions in government and provide hereditary council. This was because the nobility had been bred for leadership, consolidated by their education, which put them in possession of ‘good Arms and good Shoulders, then good Heads’.⁷⁵ Charles I had undermined the nobility prior to the Civil War through ‘personal rule’ and by ennobling new peers loyal to him, a stratagem of Jeroboam and a number of European countries such as Portugal and Spain. Nevertheless, hereditary nobility offered the vital component within government by protecting both the people and the monarch. They protected the ‘Old Land-Marks’ (constitution),

⁷⁰ See William Gibson, ‘The limits of the confessional state: electoral religion in the reign of Charles II’, *Historical Journal*, 51 (2008), pp. 27–47, at p. 28; and James Harris, ‘Partisanship and popular politics in a Cornish “pocket” borough, 1660–1714’, *Parliamentary History*, 37 (2018), pp. 350–68, at p. 368.

⁷¹ [Cooper], *Wiltshire*, pp. 545, 548.

⁷² J. H. Plumb, ‘The growth of the electorate in England from 1600 to 1715’, *Past & Present*, 45 (1969), pp. 90–116, at p. 109.

⁷³ See Tim Harris, *Restoration: Charles II and his kingdoms, 1660–1685* (London, 2005), pp. 143–5, 219–20, 415–17; Tim Harris, ‘Publics and participation in the Three Kingdoms: was there such a thing as “British public opinion” in the seventeenth century?’, *Journal of British Studies*, 56 (2017), pp. 731–53, at p. 733; and Peter Lake and Steve Pincus, ‘Rethinking the public sphere in early modern England’, *Journal of British Studies*, 42 (2006), pp. 270–92, at pp. 270, 274.

⁷⁴ [Cooper], *Seasonable speech*, p. 6.

⁷⁵ *Ibid.*, pp. 5–6.

and if they were to be removed, monarchy would again tumble 'into a *Democraticall Republique*'.⁷⁶ More recently, their intervention in the Test Oath had witnessed the nobility take a stand against the bill and remain independent, uncontaminated by the king or court's money unlike the Commons. It was the Lords that had salvaged the people's religious and civil freedoms against placemen, censorship, and an undermined parliament.⁷⁷ The *Letter* claimed that a 'new *Partie*' had emerged to defend the nation against the court and its 'weak councils'. This party included Shaftesbury, his allies, and other groups of opposition that were to be later bracketed under the banner of whigs, or whom Shaftesbury had categorized 'Round-Heads'.⁷⁸

Shaftesbury's championing of the nobility within government and parliament was logical if one factors the absence of the House of Lords during the Commonwealth, their rejuvenated fortunes by Charles II following the Restoration, and his background. The nobility had struggled from the fifteenth century when Henry VII capitalized on their diminution to sell off land to offset the cost of the War of the Roses, and strip away their juridical authority. This was compounded in the sixteenth century as population growth and economic problems forced the crown to sell off more estates (and church land) to face the threat of Catholic Counter-Reformation.⁷⁹ These Tudor financial problems, inherited by the Stuarts, had a twin effect. First, the gentry began to fill positions in parliament as business moved towards the Commons and the peers lost influence in central government. Employing the gentry in government administration, alongside their increased wealth over the course of the sixteenth century, led to their gradual dominance in parliament. The danger posed by this new civil elite, their embrace of humanist education at university, and their mocking of old feudal aristocratic militaristic values forced the seventeenth-century nobility to acclimate and embrace some of these developments, which they did while promoting aristocratic ideals.⁸⁰ Indubitably, the nobility had a significant role in the Civil War and Commonwealth eras, but it was not until the Restoration that the nobility's fortunes took a sharp up-turn.⁸¹

⁷⁶ [Shaftesbury], *Two speeches*, p. 7.

⁷⁷ [Shaftesbury], *Person of quality*, pp. 10–15.

⁷⁸ *Ibid.*, pp. 32–3. This article views Shaftesbury as a member of one of several oppositional groups, agreeing with Ashcraft, *Revolutionary politics*, pp. 176–80; and Melinda S. Zook, 'The Restoration remembered: the first whigs and the making of their history', *The Seventeenth Century*, 17 (2002), pp. 213–34, at pp. 224–5. For Shaftesbury as the whig leader, see J. R. Jones, *The first whigs: the politics of the Exclusion Crisis, 1678–1683* (London, 1961), pp. 6–7, 17–18, 33.

⁷⁹ Jonathan Scott, *How the old world ended: the Anglo-Dutch-American revolution, 1500–1800* (New Haven, CT, 2019), pp. 98–100.

⁸⁰ See Hillay Zmora, *Monarchy, aristocracy and the state in Europe 1300–1800* (London, 2001), pp. 45–6, 52–3, 81–2; Ronald G. Asch, *Nobilities in transition 1550–1700: courtiers and rebels in Britain and Europe* (London, 2003), pp. 25–7, 55–6, 115–16; John Adamson, *The noble revolt: the overthrow of Charles I* (London, 2007), pp. 7–8, 517–19.

⁸¹ See J. H. Hexter, 'The English aristocracy, its crisis, and the English Revolution, 1558–1660', *Journal of British Studies*, 8 (1968), pp. 22–78, at pp. 74–8; John Cannon, *Aristocratic century: the peerage of eighteenth-century England* (Cambridge, 1984), p. ix; and J. V. Beckett, *The aristocracy in England, 1660–1914* (Oxford, 1986), pp. 27–8.

Secondly, to improve the court's finances and continue his own form of divine right rule he employed in Scotland, James I pursued the centralization of the state and government through favourites. King James made it clear to the Commons that he did not share its self-image: as a source of counsel, the focal point of government, the nation's representative, and the saviour of the Protestant religion in England.⁸² While tensions existed under James I, he was able to largely navigate any problems with his estates, which did not prove to be true of his son Charles I. Despite the nobility gaining parity with royal officials under the Petition of Right (1628), King Charles's 'Personal Rule' (1629–40) saw him not call parliament, raise direct taxes, use the Star Chamber for 'speedy justice', and erode liberties further by imprisoning people (including peers) without charge.⁸³ The contradistinctive theories that were promulgated of 'absolutism' and 'constitutionalism' (or mixed government) continued to have a profound impact not only on the Civil War but the Restoration. During the Restoration, medieval thought was combed – conspicuously by Locke while in Shaftesbury's service – to assert the ancient juridical rights of the nobility, and reassert their capacity to act as a bridle upon kings as a (Bractonian) 'royal curia'. In the interest of the community, peers not only shared in the rule of the king as his 'noble companions', they had a duty to God to judge a tyrannical king and possessed the right to restrain him.⁸⁴ For Shaftesbury, the nobility were the only part of the constitution that were independent and possessed the capability to 'bridle' the king in consonance with ancient rights, custom, law, and justice.

According to J. G. A. Pocock, in his speech of 20 October 1675, Shaftesbury's 'image of the Lords as a *pouvoir intermédiaire*' is 'straight Harringtonian doctrine'.⁸⁵ Shaftesbury engaged the 'Good Old Cause' and Harringtonian republican language when confronting Danby's 'militant Anglicanism' as it allied with the king and began to corrupt parliament during that year. Shaftesbury supplies the Neo-Harringtonian link between the Civil War's 'Good Old Cause' and the Commonwealthmen of the eighteenth century.⁸⁶ Pocock sees the year 1675 as incredibly significant, as the *Letter from a person of quality* was published and the speeches made by Shaftesbury communicated disapproval towards Charles II's and the court's arbitrary machinations.

⁸² See Peter Lake, 'The politics of "popularity" and the public sphere: the "monarchical republic" of Elizabeth I defends itself', in P. Lake and S. Pincus, eds., *The politics of the public sphere in early modern England* (Manchester, 2007), pp. 78–81; and Joanna Paul, *Counsel and command in early modern English thought* (Cambridge, 2020), pp. 173, 177–8.

⁸³ David Wootton, 'Introduction', in D. Wootton, ed., *Divine right and democracy: an anthology of political writing in Stuart England* (London, 1986), pp. 25–6.

⁸⁴ See Janet Coleman, 'Dominium in thirteenth- and fourteenth-century political thought and its seventeenth-century heirs: John of Paris and Locke', *Political Studies*, 33 (1988), pp. 73–100, at pp. 83, 90; C. J. Nederman, 'Bracton on kingship first visited: the idea of sovereignty and Bractonian political thought in seventeenth-century England', *Political Science*, 40 (1988), pp. 49–66, at pp. 50–1, 53, 66; and idem, 'The mirror crack'd: the speculum principum as political and social criticism in the late middle ages', *The European Legacy*, 3 (1998), pp. 18–38, at p. 24.

⁸⁵ Pocock, 'English political ideologies', pp. 116–31.

⁸⁶ Pocock, *Machiavellian moment*, pp. 406–9, 414–16; and idem, 'Varieties of whiggism', p. 226.

Shaftesbury was of great import because he highlighted Danby's creation of a court party in the Commons, drew a link to a professional standing army and its sinister connotations (especially for the nobility), and his trepidation that the House of Lords may be extinguished. Shaftesbury's innovation was that he 'restated the old antithesis of "Court and Country" in a new form, one based upon the civic and republican concept of "corruption"' (from Harrington), while helping to develop 'the theory known to us as the "separation of powers"'. His Neo-Harringtonian attack on the court and Charles II was one that specifically concentrated on the corruption of the state and wider society by the executive, and the development of the standing army to upset the Gothic balance.⁸⁷ Accepting Harrington's assumption that the nobility had ceased to be a feudal aristocracy, Shaftesbury argued for an aristocracy based on 'talent and function' within an English republic where the many were not dependent on the few.⁸⁸

Pocock's republican vision of Shaftesbury and the rhetoric he employed detaches him from historical experience and ascribes language to Shaftesbury that is absent and ignores the deeper circumstantial concerns. Pocock's central claim focuses on Shaftesbury's reference to the 'two buckets' of the nobility and a standing army in the *Letter*. Moreover, the 'reference to "neighbour Northern monarchies"' is plain allusion to a common "Gothic" pattern of free government'. The 'Person of Quality has to explain its disappearance and present the standing army as an agent of historical change' using the Gothic model.⁸⁹ What the *Letter* was fearful of, however, was the menace posed to the Protestant faith if the House of Lords was brought 'low' and 'a Military Government' was established as some intended. The *Letter* does indeed state that the 'Power of Peerage and a standing Army are like two Buckets, the proportion that one goes down the other exactly goes up' and alludes to the examples of France and the Dutch.⁹⁰ Shaftesbury's point here was that the nobility had stood against the government (king, court, church, and the placemen in the Commons) as part of their ancient role of safeguarding the people and Protestant faith. Possessing a keen eye for history and events occurring on the continent, Shaftesbury and the *Letter* stressed two recent examples in which nobilities had been imperilled by the development of a standing army: in France (where the nobility had been successfully subdued) and in the United Provinces (where they had not).

In many ways, it is not relevant whether Shaftesbury infrequently espoused a Gothic or Harringtonian language in discussing the nobility, because his outlook and goals were not republican or rooted in the (distant) past.⁹¹

⁸⁷ Pocock, *Machiavellian moment*, pp. 406–9.

⁸⁸ *Ibid.*, pp. 414–16.

⁸⁹ Pocock, 'English political ideologies', pp. 118–19, 119–20.

⁹⁰ [Shaftesbury], *Person of quality*, p. 29.

⁹¹ On Pocock's incorrect ascription of republican language to authors, see Isaac Kramnick, 'Republican revisionism revisited', *American Historical Review*, 87 (1982), pp. 629–64, at pp. 630–1; Ian Hampsher-Monk, 'Political languages in time – the work of J. G. A. Pocock', *British Journal of Political Science*, 14 (1984), pp. 89–116, at pp. 109–10; and Ian Shapiro, 'J. G. A. Pocock's republicanism and political theory: a critique and reinterpretation', *Critical Review*, 4 (1990), pp. 433–71, at pp. 449–52.

Shaftesbury also did not have the same outcome for government as Harrington, as he believed in retaining a monarch, (modern) commercial activity, and did not advocate the restraint of the nobility by a second chamber or virtuous citizen soldiers. Certainly, throughout the works and speeches of 1675, the threat of a standing army is a recurring theme. Within the *Letter*, the standing army was perturbing because it could be engaged to compel private individuals to obey whoever controlled that army. This was a stark lesson from the Civil War and Commonwealth eras, which Shaftesbury, many in parliament, and the country had experienced first-hand. As Shaftesbury had made clear in the 1650s, reliance on an army set ‘the Sword’ against ‘Civil Authority’, conceivably forcing individuals to act against their conscience or aid a monarch in arbitrary government or popery through ‘Tirannical and oppressive Government of the Sword’.⁹²

Likewise, the ‘standing force’ was another form of prerogative, a coercive power that could be directed against nonconformists. For Shaftesbury, the Militia Act (1661) had enabled Charles II to replace the ‘Legal *Militia*’ with a standing army, undermining the ‘Antient and true Strength of the *Nation*’. Militias provided liberty for the people because they contained nobles, gentry, and the local populace and enjoyed a much greater degree of parochial independence than a professional army controlled by the king. Shaftesbury was again not emulating Harrington’s view on militias or trying to generate civic virtue, citizen-soldiers, or an agrarian society; instead, militia offered a pragmatic means to defend liberty and local government, and secure elite influence away from the tendrils of central government.⁹³ As with his call to reform the boroughs and elections, Shaftesbury was endeavouring to resist state centralization by preserving local political and military independence in the country. Furthermore, Shaftesbury claimed that a standing army was costly and superfluous as it was largely left idle.⁹⁴ Primarily, the greatest sin of a standing army was its proclivity for tyranny, particularly the ‘mechanic tyranny’ evident during the Protectorate under Cromwell: a militaristic state that used the army to impose its will and popular government.

This appropriation of Shaftesbury to Pocock’s Neo-Harringtonian or republican teleology – from the Renaissance to the American Founding – is also found in his discussion of the court and country dichotomy.⁹⁵ Shaftesbury’s willingness to emphasize a court party in parliament has been depicted by Pocock as Machiavellian and Neo-Harringtonian. Yet there are two issues with this claim. The first is that the court and country separation predates Harrington (which Pocock acknowledges), and the second is that Shaftesbury’s Commonwealth use also predates Harrington as he evidently

⁹² See [Shaftesbury], *Person of quality*, pp. 4, 6; [Cooper, Scot et al.], *A letter*, p. 4; and [Cooper?], *Remonstrance*, p. 3.

⁹³ See [James Harrington], *The common-wealth of Oceana* (London, 1656), pp. 1–2, 27, 59, 176, 273–4; and Steve Pincus, ‘Neither Machiavellian moment nor possessive individualism: commercial society and the defenders of the English Commonwealth’, *American Historical Review*, 103 (1998), pp. 705–36, at pp. 707, 711–12, 724.

⁹⁴ [Shaftesbury], *Parliament man*, p. 4.

⁹⁵ Pocock, ‘English political ideologies’, pp. 124–6, 131–2.

recognized that parliament contained (at least) two groups that were opposed to each other: the 'Cavaliers' and 'Round-Heads'. These two groups were philosophically separated by misgivings and views on England's religion and government that had fractured during the Civil War but had a much longer pedigree, at least back to the sixteenth century.⁹⁶ Shaftesbury's encouragement of discord between the court and the country had two motivations. First, references to a court and country severance were a familiar trope in the seventeenth century, and Shaftesbury utilized it as a call in his circle's campaign against the court while alluding to hidden plots as he had done in the 1650s. Talk of '*Court-Corruptions*' and the lost liberty of the '*Country Gentlemen*' were grist to the mill in firing prejudices many people held against a profligate and devious court.⁹⁷ Secondly, the dichotomy reflected the reality that many nobles, gentry, and others who served in local (country) government experienced in their dealings with the court as England moved towards a more centralized administration through successive legislative acts, such as the Clarendon Code Acts (1661–5), the Licensing of the Press Act (1662), the Act of Settlement and Removal (1662), and the Triennial Act (1664). Shaftesbury's plea was therefore a tactic to rally support from those who identified with the wider national 'country' interest against the various machinations of the court and king, both in parliament and beyond.

Shaftesbury's appeal to the country and wider people partly explicates his tarnished reputation and the invective aimed at him when in opposition, notably by Marchamont Nedham. Nedham's overall point about Shaftesbury – plus Dryden's and Tate's point during the Exclusion Crisis – was that he disingenuously swayed the populace and country gentlemen for his own aristocratic agenda. Nedham scoffed at his appeal to the 'Men of the World' and his desire to walk Christ-like 'among the Multitude' as he mingled 'Heaven and Earth' to address the people's distress on '*Indulgence, Trade, Religion, Kingdom and All*'.⁹⁸ It was clear to Nedham that they were impressing the 'sort of people that may be easily plaid upon, and led by the nose to do what [the] other please' through his and his circle's 'sophistry'.⁹⁹ Shaftesbury was a 'Mephistopheles' because he offered the people what they wanted to hear on all subjects. He was 'Ubiquitarian' in religion, populist in politics, and anything the people required as he claimed that he and other gentlemen were 'like Workmen' labouring with the people to combat the 'misery' inflicted by 'Courtiers'.¹⁰⁰ His real agenda was to establish 'a Power purely Aristocratical'. Shaftesbury was not concerned with religion or the rights and interests of the people, and his horror that the

⁹⁶ See Keith Feiling, *A history of the tory party, 1640-1714* (Oxford, 1924), pp. 13, 24–6; Keith Thomas, 'The Levellers and the franchise', in G. E. Aylmer, ed., *The Interregnum: the quest for settlement, 1646-1660* (Basingstoke, 1972), pp. 60–1; and J. P. Sommerville, *Politics and ideology in England, 1603-1640* (London, 1986), pp. 234–8.

⁹⁷ [Shaftesbury], *Parliament man*, pp. 6–7.

⁹⁸ [Nedham], *Pacquet*, pp. 8, 32, 51.

⁹⁹ *Ibid.*, pp. 52, 55.

¹⁰⁰ *Ibid.*, pp. 16, 32, 40, 51; and [Shaftesbury], *Parliament man*, p. 3.

king wanted to make ‘Monarchy absolute, and Rule by an Army’ was a ‘Men of Straw’ argument.¹⁰¹ Shaftesbury’s ‘design’ was the formation of a tyrannical and levelling ‘*Presbyterian Aristocratick*’ state, making it ‘purely *Aristocratical*, [and] directly contradistinct to the form of *Monarchy*’.¹⁰²

These series of broadsides by Nedham do contain elements of truth. His speeches and pamphlets make it clear that the issues highlighted and reforms championed were not born from a Harringtonian or republican aspiration to induce virtue or return to the past no matter what language he applied, but pragmatic solutions to halt an assault by the executive. While the Exclusion Crisis and Rye House Plot’s engagement of the duke of Monmouth as an alternative king suggest he wanted to retain the monarch, the crown’s role within his mixed system is unclear. What is clear is that Shaftesbury’s political vision of England was one in which the nobility played a leading role, restraining both the (Stuart) monarchy and the Commons. This was part of a much larger social and economic perspective in which the elevation of the nobility meant enhanced liberty for them to pursue their own ends unencumbered by an arbitrary king. Rather than a backward-looking return to a distant feudal past, Shaftesbury’s engagement in commerce, international trade, and colonialism discloses him to be prescient. Interestingly, *The fundamental constitutions of Carolina: March 1, 1669* accentuate Shaftesbury’s commitment to the nobility and advocate noble oligarchy in government under a distant king. The colony was to be headed by a hereditary aristocratic oligarchy assisted by an artificially created hereditary nobility (of ‘caziques’ and ‘landgraves’) and freemen controlling the labouring population, serfs (‘leetmen’), and slaves. Shaftesbury’s vision was of an empire united by the crown as figurehead, but led by an aristocracy that would prosper commercially.¹⁰³

Charles II’s secret Treaty of Dover not only inspired Shaftesbury and others to campaign against the perceived covert tyranny of the executive under Danby, but to assert the necessity of the nobility.¹⁰⁴ Going further, Shaftesbury’s vision appears to offer an aristocratic constitutionalism that stultifies executive overreach by exploiting two key factors: the historical role of the nobility (with supporting theory), and its connection to the people. The nobility drew from their historic social and legal position to claim their ancient rights under statute demanded they serve the people as a bridle to the king.¹⁰⁵ Building upon medieval and scholastic works by the Conciliarists and Monarchomachs, political theory and theology had asserted the rights and duty of the noble few to resist, restrain, and even replace a king who became tyrannical or threatened religion. Such ideas were prevalent in

¹⁰¹ [Nedham], *Pacquet*, pp. 41, 71–2.

¹⁰² *Ibid.*, pp. 6, 40, 71.

¹⁰³ See *The fundamental constitutions of Carolina* (London, 1670); and Thomas Leng, ‘Shaftesbury’s aristocratic empire’, ch. 5 in Spurr, ed., *Anthony Ashley Cooper*.

¹⁰⁴ [Shaftesbury], *Two speeches*, pp. 7–8. On Shaftesbury’s aristocratic perspective, see Plumb, ‘First earl’, pp. 269–70; Haley, *First earl*, p. 100; Marshall, “‘Mechanic tyrannie’”, p. 37; and Mark Goldie, *The entering book of Roger Morrice: Roger Morrice and the puritan whigs*, I (Woodbridge, 2009), pp. 181–2.

¹⁰⁵ [Cooper], *Seasonable speech*, p. 6; and [Shaftesbury], *Two seasonable*, pp. 600–2.

England from the sixteenth century.¹⁰⁶ Within the republican tradition, too, there was an indubitable desire for aristocratic leadership, which is evident in Harrington's, Milton's, and Neville's systems, for example, and continued into the 1690s and the Augustan period.¹⁰⁷ What is fascinating is that Pocock and the Cambridge School have chosen to subsume the dominant aristocratic bias within constitutionalism in favour of a representation of the whole (people).¹⁰⁸ It should be argued that relative to the Cambridge School, it would consequently be more fitting to discuss two types of republicanism or constitutionalism: one aristocratic and one popular.

This is not to make Shaftesbury a republican but instead to emphasize that republican theory dating back many centuries, like constitutionalism, predominantly favoured elite authority. This would be reflective of society, culture, history, and politics in which the elite often under a single ruler dominated the populace who accepted their place and lack of direct representation. One reason why Shaftesbury is so important, however, is his recognition of the integral role that the wider populace played in politics due to their numerical power and genuine engagement with key issues, as evident to him from the Civil War onwards. He applied a tried and tested sleight of hand going back to classical times, in which he made aristocratic suspicions and resentments the apprehensions of the people at large. This does not mean, however, that Shaftesbury was a populist who wanted to widen popular participation and incorporate them within broader government. Shaftesbury shared his peers' trepidation of democracy and popular government, and the possibility of 'mechanic tyranny' in which the people managed to once more govern as they had under Cromwell. Shaftesbury's assessment of the people was that they were largely ignorant, malleable, and prone to corruption. This made them untrustworthy and dangerous, hence his aspiration to reorganize the franchise and elections to limit their impact. It was not simply to prevent influence from the court, but a deeper concern over their lack of self-control and animalistic natures.¹⁰⁹ The vast majority of the population were

¹⁰⁶ See John Mair, *A disputation concerning the authority of the council over the supreme pontiff*, in J. H. Burns, ed., *Conciliarism and papalism* (Cambridge, 1997), pp. 300–3; John Knox, *On rebellion*, ed. Roger A. Mason (Cambridge, 1994), pp. 6, 137, 147; George Buchanan, *De iure regni apud Scotus* (London[?], 1680), pp. 4, 19, 84, 117–18; John Pon[n]et, *A short treatise of politique power* (London[?], 1642), pp. 3, 5–6, 51; and Thomas Smyth [Smith], *De republica anglorum* (London, 1584), pp. 33–5, 47.

¹⁰⁷ See J[ohn] M[ilton], *The readie and easie way to establish a free commonwealth* (London, 1660), pp. 25, 44–5, 49–51, 73, 94–5; [Harrington], *Oceana*, pp. 7, 13–14, 19–22; and Henry Neville, *Plato Redivivus* (London, 1681), pp. 122–3, 253–7. Sir Henry Vane claimed that Harrington's system was led by a senate executive for the 'Aristocracy'; *A needful corrective or balance in popular government, expressed in a letter to James Harrington* (London, 1660), pp. 4–6.

¹⁰⁸ Pocock, *Machiavellian moment*; Quentin Skinner, *The foundations of modern political thought* (2 vols., Cambridge, 1978); and idem, 'A genealogy of the modern state', *Proceedings of the British Academy*, 162 (2009), pp. 325–70, at pp. 332–7. An issue highlighted by Paul A. Rahe, *Against throne and altar: Machiavelli and political theory under the English Republic* (Cambridge, 2008), pp. 25–6; John P. McCormick, *Machiavellian democracy* (Cambridge, 2011), pp. 10–11; and Jonathan Israel, *The Enlightenment that failed: ideas, revolution and democratic defeat, 1748–1830* (Oxford, 2019), pp. 73–4.

¹⁰⁹ [Shaftesbury], *Regulating of elections*, p. 14.

necessarily excluded from politics and should be controlled by their social superiors for the advantage of the state and nation to preclude a 'Democraticall Republique'.¹¹⁰ Yet by emulating the period between 1642 and 1660, the wider populace were drawn into the discussions and enmity towards the court (and church), augmenting public pressure on the crown to change course, as noble leadership was asserted.

IV

Establishing a more secure place under the king for the nobility was the least of Shaftesbury's aims from 1673. As has been demonstrated in this article, Shaftesbury's four values – belief in the rule of law, abhorrence of tyranny in numerous forms, a desire for free parliament headed by the nobility (from 1659), and pursuit of rights and freedoms – remained consistent throughout his time in politics. His vilified reputation aside, his 'conscience' guided his behaviour against the executive in both the 1650s and 1670s. Shaftesbury was determined to improve England's government and sought a system that would ensure the nourishment of these values for himself and his countrymen. Pointedly, this comes with a caveat: that Shaftesbury particularly strove to improve the fortunes of the nobility prior to the Restoration and once their circumstances progressed from 1660. While these efforts proved to be unsuccessful during his lifetime and faced a great deal of hostility from the court and his fellow peers, in the longer term, lessons were learned from his warnings and mistakes that helped to shape the 1688 Revolution and its aftermath. From which time, oligarchic government progressively engendered constitutional monarchy in a society that built upon Shaftesbury's imprecise vision.

These interventions are of historiographical significance for two reasons. First, while Shaftesbury's aristocratic principles have been long discussed, there is a belief that his use of the people and public opinion (anachronistically) signified that he was, or would have been, a devotee of an enlarged popular element in government and democracy. While it cannot be disputed that Shaftesbury was keen to retain the Commons, membership would have been restricted to make it more elite and the franchise vetted to scrutinize the means and social standing of the voter. In his opinion, the people were to be placated, managed, and feared through forms of manipulation that harnessed their activity but furthered aristocratic ends. Secondly, numerous contemporaries and forebears believed that the nobility had the (legal) status and means to counteract monarchical power to ensure a free parliament, liberty, and rights in accordance with their customary position. This aristocratic constitutionalism defied monarchical and popular tyranny and sought to redefine English sovereignty. In what had been an ongoing conflict from the sixteenth century, Charles II inadvertently provided the nobility with the tools to make this happen after more than two centuries of fragility. Likewise, the behaviour of Charles II following that of his father Charles I led many nobles to judge that the Stuarts could not be trusted and that breaking the ancient bond between

¹¹⁰ *Ibid.*, p. 18; and [Shaftesbury], *Two speeches*, p. 7.

the king and his peers offered freedom, protection, security in religion, and greater power. For Shaftesbury, this was not born from a theoretical Machiavellianism, but principles nurtured during his tumultuous political education in the Civil War and Commonwealth. Unresolved religious and political issues from the sixteenth century permeated the struggle between monarchy and constitutionalists fighting over the boundaries of the executive and the location of sovereignty in the constitution. In Shaftesbury's opinion, the nobility possessed the independence and influence in local and central government to restrain the monarchy and the people while delivering leadership.

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