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tribunal without a jury. This inferior court was in turn to be supervised by justices of the
peace, and in addition the JPs would constitute the bench of a county court for civil
litigation. The main qualification for places in these courts was that potential judges be
classified ‘godly’ by county assessors who were to divide the population into those who
were godly, those who were civil, and those who were neither godly nor civil. In the
circumstances of the late 1650s, any comprehensive plan of law reform was bound to
counter many objections, but this one was particularly impracticable. Leaving aside
the religious qualifications, it faced the propertied with having their disputes settled by
amateurs in a period when it was notorious that local juries were corruptible. On the
other hand, JPs were already overworked, their appointments involved political
considerations, and Sheppard included no elective principle which would have made
them answerable to local communities. It is small wonder that his plan for local courts
was laughed at when it was presented to parliament in 1656. There was little in it to
satisfy either conservatives, radicals, or moderates.

J. G. A. Pocock, Virtue, Commerce, and History: Essays on Political Thought and
History, Chiefly in the Eighteenth Century, Cambridge: Cambridge University Press,

Reviewed by Stephen A. Conrad

The title promises familiar arguments and erudition. Nine of the eleven chapters are
reprints of essays by Professor Pocock that were first published between 1976 and 1982.
Indeed, the entire volume is largely concerned with augmenting themes developed in
Pocock’s earlier work, principally his redoubtable Machiavellian Moment (1975). Yet,
while any of the eleven essays can profitably be consulted without reference outside it,
frequent emphasis on the relationships between each of these ‘texts’ and its ‘contexts’
signals that this volume has general aims that do go beyond Pocock’s occasional
treatments of particular subjects. Moreover, like certain texts by some of those
‘Anglophone’ (p. 48 and pass.) political writers with whom Pocock shows a connois-
seur’s affinity, these essays are too much engaged with anticipated responses to indulge
in merely repeating earlier arguments without refining them. Nor is self-consciousness
about methodology any less evident than relish of controversy.

Like the first collection of Pocock’s essays, Politics, Language and Time (1971), this
volume begins with an essay composed especially to introduce what follows. It seeks to
‘describe’ Pocock’s own current ‘practice’—as an historian of ‘political discourse’—in
terms of ‘the language of theory’. (p. 1) This language of theory, propounding a theory
of language, may not be to every taste. It is often abstract and esoteric. Perhaps, to echo
the diction and tone of this essay, the theory and methods at issue ‘entail’ such language,
which itself refers at times to ‘paralanguage’ and ‘metalanguage’ and to Saussurean
distinctions between ‘langue (language context)’ and ‘parole (speech acts)’. Still, even
those readers who find Pocock’s presentation uncongenial and his themes unsurprising
will also find in this report on ‘the state of [his] art’ not just clarifications of but new
developments in his long-term enterprise. It would be unfortunate were historians of law
to overlook these clarifications and developments, either as characterized in the
introduction or as exemplified in the subsequent essays.

The first of these subsequent essays was presented, in a slightly different version, at

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the Legal Theory Workshop at Yale Law School. The title is ‘Virtues, rights, and manners: A model for historians of political thought’. The topic is nothing less than that hotly disputed entity denominated by some critics ‘liberal legalism’. Pocock’s essay would, however, keep to an historian’s perspective in the ‘ideal’ (p. 31) narrative it relates. It traces a model of continual ‘dialogue [in Western political writing] between the concepts of “virtue” and “right”’ (p. 31) that extends (at least) as far back as the thirteenth century (p. 39), but appears suddenly, ‘about 1789’, to move beyond ‘the confines of the ... model’. (p. 50) The chronological span is recognizably that of the Machiavellian Moment; and the emphasis on the concept of virtue harks back to that book. But the focus on ‘rights’ here is intensified; and this focus, together with the model it highlights, should induce more historians of law to address the implications of Pocock’s provocative revisionism.

This essay consolidates Pocock’s challenge to the predominant historiography of Western law by marshalling the elements of a very complex contention. Couched analytically, the contention is that ‘“virtue” cannot be satisfactorily reduced to the status of right or assimilated to the vocabulary of jurisprudence’. (p. 41) Couched historically, the contention is that throughout the early modern period there existed, ‘alongside the history of liberalism, which is a matter of law and right’, a concurrent ‘history of republican humanism, in which [civic] personality was considered in terms of virtue’. (p. 45) Formally and empirically, it follows, then, that during this period ‘[p]olitical thought ... move [d so] decisively, though never irrevocably, out of the law-centered paradigm’ (p. 48) that ‘[t]he effect was to construct a liberalism which made the state’s authority guarantee the liberty of the individual’s social behavior, but had no intention whatever of impoverishing that behavior by confining it to the rigorous assertion of ego-centered individual rights’. (p. 50) To the extent that Pocock’s entire argument is valid, it would seem not only to question the convention of locating the liberal origins of the concept of ‘authority’ within the concept of ‘property’—which is, in fact, an issue pursued in the third and sixth essays in this volume—but to call for redrafting the early modern pedigree of Western jurisprudence altogether.

As the title of the essay suggests, it climaxes by turning to a discursive concept of social ‘manners’, here and elsewhere portrayed as a concept that did much to redefine, and mediate between, the concepts of ‘virtue’ and ‘right’. This appeal to ‘manners’ is especially provocative because of its ambiguous implications for some of the current debates over the history of the development of Anglo-American legal culture. Consider, for example, that while this essay and others here attempt to revise orthodox insistence on the central place of liberalism in early modern political thought (p. 38), nevertheless, this avowed revisionism proceeds by maintaining not only a substantive emphasis but also some express procedural assumptions that are themselves said to be ‘ideologically liberal’. (p. 34) Pocock’s concentration on political ‘discourse’, as distinguished from ‘consciousness’ (p. 34) and ‘experience’ (p. 28), is justified at one point, for example, by ‘presupposing’ that in the culture(s) under study such discourse was conducted by ‘agents’ who were ‘responsible even when they [were] venal or paranoid’ and that ‘one [could] utter and another utter a reply, made from a standpoint not that of the first performer’. (p. 34)

Ideologically, then, Pocock’s own critique of some historians’ fixation on liberalism is itself in some ways not merely ‘liberal’ but even somewhat ‘Whiggish’, as he acknowledges, and his essays are very much alive to the ambiguities they are perpetrating. His own bravura ‘performance’ in this respect comes with the final essay. Offered in homage to Caroline Robbins, and hitherto unpublished, it is a tour de force entitled ‘The varieties of Whiggism from Exclusion to Reform’. Although the scope of the essay is indeed roughly 1675–1832, the word ‘varieties’ proves to be understatement

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verging on modest misrepresentation. This ninety-six-page essay amounts to a canny quasi-taxonomy of Whig polemics—in England, Scotland, and America—organized entirely around Pocock’s paradigmatic ‘antithesis between virtue and commerce’.(cf. p. 231)

Indeed, it is above all this key word ‘commerce’ and the protean ‘concept’ it represents that ultimately give a distinctive coherence to this final essay, and to all the foregoing essays. For ‘commerce’ eventually prevails over, if it does not quite absorb, ‘virtue’, ‘property’, ‘rights’, and even ‘history’ itself in Pocock’s account of early modern Anglophone political culture. What saves coherence from becoming tendentiousness in this account are Pocock’s strategic interpretations of ‘intelligent Tories’. Figures such as John Toland, Andrew Fletcher, Viscount Bolingbroke, David Hume, Josiah Tucker, Edmund Burke, Alexander Hamilton, William Cobbett, and Samuel Taylor Coleridge all loom large—because they articulated the accommodations that the varieties of conservatism reached with ‘commerce’ as a concept variously, but never radically, reconceived during the period in question.

In fact, most of the essays in this collection are so much devoted to intelligent Tories and their accommodation of commerce that the intelligence of conservative accommodation emerges as the mark of truly ‘sophisticated’ eighteenth-century thought.(p. 78 and pass.) The resilience of parliamentary sovereignty in Britain becomes a testament to this principle in the fourth essay, on the 1776 ‘revolution against Parliament’. And the fifth essay, ‘Modes of political and historical time in early eighteenth-century England’, defines two types of Anglophone conservatism—the one ‘authoritarian’ and ‘presentistic’ (p. 95), the other prudent or customary (p. 96–97)—that distinguished Anglophone from Continental political discourse.

Uninformed by such conservatism, Continentals, it seems, inclined towards ‘a dialectical historicism based on the need to maintain consciousness of a self being constantly transformed into its antithesis’. (p. 101) Anglophiles, however, inclined towards conserving syntheses, in their constitutionalism, personality, polity, and economy. (p. 101) And Anglophiles’ conceptions of each of these eventually derived not from a concept of transformation but from a pervasive continual dialectic—between ‘virtue’ and ‘commerce’. What sustained this dialectic was, at least for the consummately intelligent conservative Hume, an ‘inexhaustibly subtle ambivalence’. (p. 133) Such is the argument of Pocock’s seventh essay, ‘Hume and the American Revolution’. And in the eighth essay Gibbon appears almost as subtle and equally ambivalent. By recurring, in the ninth essay, to the less subtle but still ‘significant’ (cf. p. 119 n.) conservative Josiah Tucker, Pocock’s argument, on behalf of a pattern of ambivalent syntheses of virtue and commerce, almost founders—on the relatively shallow facility of both Tucker’s ‘progressive conservatism’ (p. 184) and Tucker’s reconciliation of ‘economic progress’ with ‘natural law’ (p. 185). But despite the prominence of Tucker in the title, this essay is really about Burke, who is at last accorded center stage, in the succeeding, penultimate essay, as the personification of the synthesizing genius of Whig political discourse. It was Burke who almost resolved the intelligent conservative ambivalence about virtue and commerce, by most fully reconceiving Whig culture in general, and early modern commerce in particular, as a function of manners.(p. 209–10)

To view Burke’s conservatism in this way does not gainsay other interpretations, including an earlier interpretation by Pocock himself.(p. 193–4) Such pluralism is implicit in Pocock’s methods for interpreting ‘sophisticated political discourse’, which is by nature ‘polyvalent’, according to its contexts. In any case, there is considerable tentativeness in each of the essays collected here, notwithstanding their consistent service to the themes announced on the title page. Each essay displays how much the author has recently learned from critics, and from other scholars, who have apparently
surprised him with reorienting discoveries or arguments. Any and all concessions in these essays are, however, merely tactical, and are usually recouped in short order. To whatever extent one ultimately accepts the arguments in this volume, one must, I think, come to terms with Pocock's aim to remain interstitial. Whether the contending alternatives be formalist textualism vs. post-structuralist contextualism, in methodology, or neo-classical liberalism vs. neo-classical republicanism vs. neo-classical Marxism, in scheme of interpretation, Pocock avoids simple affiliation in these essays even more successfully than in his earlier work. I infer that it is partly this determination to explore the interstices between such alternatives that has led Pocock to topics like the political functions of manners or the early modern varieties of conservatism. As a compound 'text' in its own right, this volume signifies, then, that Pocock has shifted the burden of going forward, back to critics of his *Machiavellian Moment*.

More important, however, than the immediate polemical aftermath of this volume is the probability that, like some classic but undefinitive collections of essays in 'theory and history' (Arendt's work comes to mind), this one, so replete with ambiguities, will prove useful in ways that the author does not, and no reviewer should, embarrass himself by trying to predict. As Cynthia Ozick has observed, 'ambiguity is how we sort things out, how we decide'.


Reviewed by Kermit L. Hall

As John Phillip Reid has recently observed, American legal history is finally coming of age. The process of maturation is incomplete, but there can be no doubt that legal historians have moved beyond the phase of cataloging what needs to be done and actually getting down to doing it. These two fine bibliographies are welcome additions to the research arsenal and, like any good research tool, they will further stimulate the development of American legal history by allowing scholars to better exploit available sources.

Wilfred Ritz's *Bibliography* is the first and only comprehensive compilation of American judicial proceedings before 1801, and it also includes citations to imprints relating to these proceedings. What in the seventeenth and eighteenth centuries was a judicial proceeding? The answer is that it was something similar to yet not quite like one today. 'The term "judicial proceeding"', Ritz concludes, 'defies precise definition'. (p.xiii) The *Bibliography*, as a result, includes, according to Ritz, 'every proceeding that today would be considered "judicial", as well as those before 1801 which, if modern conceptions are extended back to that period, would also be viewed as judicial proceedings, whether or not they were so considered at the time'. (ibid.) For example, Ritz has included almost eighty pages of citations to 'confessions, narratives, and dying speeches of criminals' as well as 'sermons on judicial proceedings', particularly at executions.

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