THE ANCESTRAL CONSTITUTION'

In a political pamphlet, the *Areopagitius*, probably written not long before 350 B.C., Isocrates, the influential Athenian rhetorician, grumbled (7.15—16) that, 'though we sit around in the shops denouncing the current situation, saying that never under our democracy have we been worse governed', we act as if we are more satisfied with our present democracy 'than with the one inherited from our ancestors'. I shall argue, he continued, that 'the only way to rescue ourselves from our present evils and head off future dangers is if we are willing to restore the democracy instituted by Solon, who was the most demotic of legislators, and re-established by Gleisthenes, who drove out the tyrants and led the people back to power'.

Two thousand years later the House of Commons complained that Charles I 'had a wicked design to subvert the ancient and fundamental laws and liberties of this nation'.¹ In our own century, a New York lawyer delivered the following effusion: 'Our great and sacred Constitution, serene and inviolable, stretches its beneficent powers over our land over its lakes and rivers and forests, over every mother's son of us, like the outstretched arm of God himself. ... O Marvelous Constitution! Magic Parchment! Transforming word! Maker, Monitor, Guardian of Mankind!² Mr Henry Estabrook's rhetoric was not exhausted by these few words, as you will have guessed, but one brief sample is sufficient for my point.

This rhetoric may lack the rotundity of Isocrates, nevertheless it is on its level a manifestation of one political argument that has been deployed in widely different historical situations. Not a sophisticated

¹ The Inaugural Lecture I delivered on 4 May 1971 was an abridged version of this original text. I made a few revisions prior to publication by Cambridge University Press, following suggestions of A. Andrewes and John Dunn, who kindly read the manuscript. I have made no changes in the style.

² Copyright © 1971 by M. I. Finley, and reprinted by permission of Cambridge University Press.
THE ANCESTRAL CONSTITUTION argument, to be sure—one will find no mention of it in Brian Barry’s recent book on political argument; and an argument that is easily caricatured, as in Cornford’s ‘nothing should ever be done for the first time’. But a high level of sophistication is not a necessary condition for effectiveness. The appeal to the ‘ancestral constitution’ satisfies the canon that it must ‘seem rational and persuasive’, that both its proponents and those they persuaded could, if pressed, defend themselves ‘by some rules of logic and evidence that they would themselves accept’. It is therefore a legitimate historical exercise to examine the argument seriously, as I now propose to do in three periods of sharp political conflict, once approaching and twice reaching civil war.

The first occurred in Athens at the end of the fifth century B.C. Athens had been a democracy for a century, ever since that form of government was established by Cleisthenes in 508 B.C., and it had gradually stretched the notion of a direct democracy (as distinct from a representative system) about as far as was possible outside Utopia. The sovereign assembly met frequently throughout the year, and its membership consisted of whichever adult male citizens (who had attained the age of eighteen) chanced or chose to be present at any particular meeting. The council of 500, virtually all administrative officers, and the juries were selected by lot and were paid a small daily wage while on duty. Most officials were restricted to a tenure of one year, so that a very large proportion of the male population had some direct experience in government in addition to attendance in the assembly or membership on a jury. Political leadership, it is true, remained with the wealthy, and for a long time even more narrowly with the old aristocratic families, but this was not thought to be a breach in the democracy, nor was it in practice.

Not everyone in Athens was enamoured of the system, but opposition was effectively silenced by its success, as Athens became the largest, richest and most powerful state in the Greek world. Then came the long war with Sparta, beginning in 431, and still there was little evidence of anti-democratic activity for nearly two decades, until the Sicilian disaster of 413, which appeared to end any chance of an Athenian victory. The despairing mood that ensued gave the latent opposition an opportunity, and they soon seized it. Early in 411 there was an oligarchic coup; the assembly, its composition distorted by the absence of a large proportion of the poorer citizens on active naval service, its wits assailed by organized conspirators employing a classic mixture of terror and propaganda, voted the democracy out of existence. A commission of thirty was instructed to create new instruments of government on certain lines, which
THE USE AND ABUSE OF HISTORY included a property qualification for office-holding and abandonment of pay for most offices. Meantime power was given to a council of 400, appointed (not elected) by a procedure which guaranteed that the key conspirators controlled its membership. Within a few months it became apparent that the ruling junta were not proceeding as they had promised and they were unseated in a brief flurry of street fighting. For another few months Athens had a government based on property qualification, about which we know nothing, and then the democracy was quietly restored.

Our contemporary evidence is almost entirely restricted to some forty 'chapters' in Thucydides (8.54-97). From his account we know only that the decisive propaganda on behalf of the coup was the argument that the war against Sparta could no longer be won except with Persian financial support, the condition for which was the replacement of democracy by oligarchy, and that the leaders of the coup were divided between a hard core who never intended to surrender tyrannical power and another group, led by Theramenes, who genuinely sought a more broadly based government, in which full citizenship would be confined to those eligible by wealth for military service. However, the chance preservation of three brief documents reveals the existence of another political argument, which Thucydides ignored as he regularly ignored all arguments which, in his judgment, did not express the 'real' issues.

At the assembly that set up the drafting commission of thirty, Gleitophon moved the following amendment to the decree, 'that the elected commissioners should also investigate (search out) the ancestral laws (nomoi) laid down by Gleisthenes when he instituted the democracy.' Cleitophon was not a major figure in Athenian life, but he was a man of some standing, both in politics, in which he was associated with Theramenes, and in the intellectual circles that gravitated towards and round the Sophists. Cleitophon makes two appearances in the Platonic corpus, once briefly and insignificantly in the first book of the Republic and again in the pathetic and very short pseudo-dialogue that goes under the name of Cleitophon, certainly not written by Plato. Both times he is identified as a friend and follower of the Sophist Thrasy machus, and by chance the only substantial surviving fragment of Thrasy machus bears directly on our theme. No more than thirty lines long, it pretends to be a speech in the Athenian assembly which it could not have been, since Thrasy machus was not an Athenian citizen. And yet its authenticity is not to be doubted, and it has to be dated on internal evidence to precisely the time we are considering.

'I wish', the fragment begins, 'I had lived in those olden times
THE ANCESTRAL CONSTITUTION

when the young men could remain silent because affairs did not require public discussion and the old men were administering the state correctly.' Now we are in a mess, and yet the factions are arguing over an issue that is no issue. "There is an uproar over the ancestral constitution (patriot politeia), which is in fact easy to understand and which all citizens have in common.'

Thrasymachus was not referring to learned discussion in intellectual circles, but to public political argument, in the market-place and in the assembly itself. Cleitophon's amendment was thus not an isolated quirky intellectual's idea but a formal proposal to turn widespread talk into action, whether Thucydides thought it a 'real' issue or not, and we must ask what Cleitophon (and presumably Theramenes) was after.

Our task is not made easier by the language employed. We conventionally translate nomos as 'law', politeia as 'constitution', psephisma as 'decree' and patriot as 'ancestral', and though each rendering can be defended, each can also be misleading, for two reasons. The first is that each word has a cluster of meanings: when Thucydides has Alcibiades say that the oligarchic conspirators had abolished the 'ancestral laws' of Athens (8.76.6), he may have been unconsciously reflecting the debate he consciously ignored, but he did not mean what Cleitophon meant. His 'ancestral laws' were the laws in force on the day the fatal vote took place in the assembly, and that use of patriot is well attested: it can mean 'traditional' in the specific sense of 'what we have been doing for some time now'.

You will also have noted that both Alcibiades (or Thucydides) and Cleitophon spoke of ancestral nomoi, Thrasymachus of the ancestral politeia. No distinction is to be inferred, and there lies the second weakness in our translations. Another contemporary began one of his model forensic speeches in this way: 'When the facts are agreed, a case is decided in advance by the law (nomos) or decrees (psephismata) which rule the whole politeia',* and here politeia is not 'constitution' but 'way of life'. Of course Athenians at the end of the fifth century B.C. were intellectually capable of distinguishing among the laws which defined the powers of the assembly, council and magistrates, the laws which laid down penalties for assault and theft, the laws establishing the calendar of festivals and sacrifices, and the decrees declaring war against Sparta or extending honours to a distinguished foreigner.* However, they had not yet begun to

* I have written 'laws' for more general rules, 'decrees' for decisions of the assembly pertaining to a single action, only because that linguistic distinction comes more 'naturally' to us. I do not mean to suggest that such a distinction was made in the language by fifth-century Athenians.
THE USE AND ABUSE OF HISTORY work out a conceptual framework for either jurisprudence or political science, let alone political theory. And on the particular distinctions we are now concerned with, they never advanced very far. It is therefore an anachronism to impose on Cleitophon, say, a distinction between constitutional law and some other kind of law. When Cleitophon proposed an investigation into the laws of Cleisthenes, he was obviously referring to what we should call the constitution and not to laws about contracts or inheritance or assault and battery. The issue was, How shall Athens be governed? By whom? If he said nomoi, not politeia, no one in his audience misunderstood him, and probably no one even noticed.

But why did he bother at all? We can only surmise, and the direction towards which to turn may be signposted by another question. Why should a large section, probably a majority, of Athenian citizens have agreed to abandon permanently the democratic system under which they had been brought up and from which they had greatly benefited? 'Win the war' was no doubt a powerful appeal, but the patriotic and militant Athenian sailors then based on the island of Samos rejected it as a transparent trick. Theoretical arguments about the superiority of one system of government over another would have convinced no one but those already convinced. The men I have called the hard core were unconcerned; they were happy to seize power by terror and hold it by force. Not the Theramenes group, however, and, lacking other (or better) arguments, they grasped a limited psychological one.

The Athenian heroic past was almost exclusively a mythical one; few genuinely historical figures were heroized, fewer still were relevant in the present crisis: one could not appeal, for example, to the tyrannicides Harmodius and Aristogeiton. Not even the historically decisive Cleisthenes had become a folk-hero, but at least he was known as the man who had instituted the democracy. Therefore, Cleitophon proposed, let us turn back to the father of democracy, under whose laws, he might have added, we Athenians had our finest hour when we saved Greece from the barbarians, the invading Persians, at Marathon and Salamis. By turning that far back, we shall still remain a democracy, the ancestral one, the one that served us so well before men like Ephialtes and Pericles distorted its pristine form through such demagogic devices as pay for office. Not much of an appeal to the 'naval mob', certainly, but ideologically attractive to the largish group in the middle who disliked government by 'demagogues' but shuddered at the word 'oligarchy'.

The attempt at oligarchy was, as we have seen, a rapid failure, but
THE ANCESTRAL CONSTITUTION

one practical consequence followed from the debate. After the fall of the Four Hundred, it was decided to examine the ramshackle accumulation of laws and decrees, and to publish a tidied-up code of binding law over the whole field, of which a (to us) surprisingly large part consisted of the sacred calendar. The commission given this assignment in 410 B.C. had not finished its work when Athens finally lost the war in 404, partly because of the magnitude of the task in a state that had no central record office—hence Cleitophon’s choice of words when he moved that the laws of Gleisthenes be investigated or searched out; partly because the commission seems to have behaved disreputably, in ways that are obscure to us. The end of the war disrupted the work of codification, but it revived the political conflicts of 411, with one faction again demanding a narrow oligarchy, another resisting on behalf of democracy, and a third, in which Theramenes and Gleitophon reappear, proposing the return to the ancestral constitution. The decision, however, was not left to Athenians: the victorious Spartans sent in a garrison and imposed a junta, even tighter and far more brutal than the Four Hundred of 411, a junta who later came to be called the Thirty Tyrants.

Thanks to a division within the Spartan leadership, the Athenian democrats were soon able to fight their way back into control of their city. No sooner was the democracy restored in 403 than it was decided to complete the codification proposed in 410. The decree begins as follows: 'The Athenians shall be governed in the ancestral way [patrios is here converted into a plural noun, ta patria], using the laws, weights and measures of Solon and also the regulations of Draco, which had previously been in force.' Clearly patrios here is ancestral in the sense we have previously noticed in Thucydides, to mean merely the way Athens was governed before the Thirty Tyrants took charge, further defined as 'the laws of Solon and the regulations of Draco'; not in any archaic sense of going back to codifications of 594 and 621 B.C., respectively, but in an elliptical sense. By 'the laws of Solon and Draco' the decree meant the law of Athens as it stood in 403, some of it indeed going back to the ancient lawgivers but much of it either revised or wholly new legislation promulgated in the two centuries since Solon. Such ellipsis may strain the imagination, but even more striking examples are available from texts composed after the completion of the codification. After the year 403/2 no earlier law was valid unless it had been incorporated into the code: yet advocates went on cheerfully citing in the courts what they called 'a law of Solon', even when it was blatantly impossible for the enactment to have been very ancient.

Draco introduces a further complication which I must put aside,
THE USE AND ABUSE OF HISTORY

except to note that one of the first actions of the legislative commission, in 409 or 408, was to republish Draconic laws on homicide. Solon occupied a different rank: he was one of the Seven Sages and the most charismatic of all historical Athenians of the olden days. Although the decree of 403 is the earliest surviving reference to him in the debate over the ancestral constitution, I am confident that this is mere chance, given the scarcity of available texts. What is not chance, surely, is Solon's appearance in an official document in the context of the restored democracy. Let us speculate a moment. The Therameneans, we know, attempted to claim ancestral authority for oligarchy in the name of democracy. The democrats, I suggest, promptly countered by invoking an even older and more heroic ancestor, Solon himself. The play on words helped. The metaphorically ancestral constitution of the present was coalesced with the literally ancestral constitution going back two hundred years. In so far as the argument mattered at all, the democrats had played a trump card. Then, once the political crisis was resolved, the argument lost significance in practical affairs. However, it had created a stir among intellectuals, and what they did with it in the following century is a subject I shall look at later. Here I shall just record one final flurry. In 322 B.C., following the death of Alexander the Great, the Macedonians subdued an Athenian rebellion and included among the peace terms the condition that 'the ancestral constitution based on a property qualification' be restored. The qualifying clause prevented any further games with words.

From Cleitophon we turn to Sir Edward Coke. The seventeenth-century constitutional crisis was of course a different one, between king and parliament, but the basic issue can be reduced to the same questions: How shall England be governed? By whom? And again there was an appeal not only to contemporary interests, but, with great force, to the authority of the distant past. The lead was given by the common lawyers, with Coke in command. Starting from their professional stress on immemorial custom and usage, interpreted and applied by the courts, they found it a short step to the 'fundamental laws' and the pre-Conquest 'ancient constitution', the political frame within which, they insisted, the common law functioned 'immune from the king's prerogative action'. So attractive did the historical argument prove that it was quickly to become perhaps the most favoured single argument among the pamphleteers, whether lawyers or not. There was even an English Solon available in Edward the Confessor, and it was unnecessary to forge the leges Edwardi Confessoris; that had already been accomplished in the later Middle Ages, and Coke, for example, cited them repeatedly in his
THE ANCESTRAL CONSTITUTION

Institutes.19 The paradox, as Professor Pocock noted, was that the great common lawyer thus turned for his highest authority to apocryphal statutes and succeeded 'in some peculiar way in regarding their existence as proof of the antiquity of the unwritten law which they do not contain'.

The story is now so well known that I can restrict myself to three aspects, selected primarily to pinpoint parallels with the Athenian situation:

(i) There is the element of bogus history: not only were the laws of Edward the Confessor a fiction but the whole account of the institutions before and after the Conquest was false, as was the account of Magna Carta. 'Coke was no historian', wrote Professor Douglas with rare understatement, 'but he was ever ready to seek the origin of the Common Law in Saxon antiquity.'

Maitland spoke in less veiled terms: 'It is true that, as regards very old times, little that was of real value came from the imperious dogmatist who dominated the jurisprudence of his time. When he was on unfamiliar ground Sir Edward Coke was, of all mankind, the most credulous. There was no fable, no forgery, that he would not endorse; and a good many medieval legends and medieval lies passed into currency with his name upon their backs.'

(2) Although there is much vagueness about such terms as 'constitution', a relatively late comer anyway, and 'fundamental law', nevertheless, when Francis Bacon, for example, wrote in 1596 that Edward I 'bent himself to endow his state with sundry notable and fundamental laws, upon which the government since hath principally rested', his language, reminiscent of some of the Greek authors I have quoted, was as unambiguous as theirs, despite the absence of the word 'constitution'.

(3) There is the same refusal of the other side to surrender the past. James I took a dim view, and rightly so in the event, when the Society of Antiquaries was re-founded in 1614,' but the crown lawyers were in fact able to summon better history in the king's defence: 'the Prerogative of the Crown is the first Table of that Fundamental Law' was easy to document a long way into the past. History proved a weak defensive weapon; the royalists lost the real battle, and the victorious parliamentarians were promptly attacked by the radicals, with the charge that the common law itself was an oppressive instrument, the creation of the Norman conquest. The word 'Norman' is employed pejoratively in numerous pamphleteering passages by the Levellers; even poor Coke was tarred with the label. The Levellers appealed to natural right and reason, profoundly non-historical authorities, but they, too, would not forgo
the past, and a curious hybrid emerged. The Englishman's law, wrote Robert Norwood in 1653, was both enacted by the Parliament of 'King Ethelree' and 'rooted by Heaven itself in the hearts of Englishmen'. Seven years earlier, John Lilburne, in *The Just Man's Justification* used language we have already encountered several times: we must abolish the 'Norman innovation' of courts at Westminster and restore 'the ancient frame of government in this Kingdom before the Conquerors dayes'.

We need not pursue the curious byways of the quarrel over the Norman Yoke thereafter. For all its boisterousness (and its continuing reliance on largely fictitious history), it did not possess the sting, as a political argument, of Coke's ancient constitution, because the political situation had altered. After the Glorious Revolution, indeed, 'the Conquest theory ceased to be a threat and became a joke', though it produced a few serious historical inquiries and a flurry of controversy in the press between 1730 and 1735. My third case-study is an American one, recent enough still to be called contemporary. The United States of course possesses the ancestral constitution, written down, well documented, and sanctified ever since John Marshall converted the Supreme Court into the arbiter of public policy. Interpretation of the constitution has been a continuing topic of political debate for more than a century and a half, but that is a different activity from the one I am discussing. For this, Americans replaced the ancestral constitution by the Founding Fathers, and reliance on their sanction is no new phenomenon, for reasons to which I shall return. During the presidential election of 1900, Sir Denis Brogan's favourite comic character, Mr Dooley, commented that both candidates were 'ancestorworshippers like th' Chinese'. But it was in the struggle over the New Deal that a climax was reached, a struggle, it is important to recall, that included a constitutional crisis, over the Supreme Court, which strengthens the parallel with the two situations we have already examined.

The almost unanimous choice for paramount Father was Thomas Jefferson, and that is puzzling. He was, to be sure, the patron of the Democratic Party and the author of the Declaration of Independence, the opening sentences of which every schoolboy learns by heart. However, he had not been (and never became) a folk hero—George Washington brooked no rival earlier than Abraham Lincoln—he had not been a distinguished president, he placed his faith in a society of agrarian homesteaders free from a strong centralized authority. 'Cultivators of the earth are the most valuable citizens,'
THE ANCESTRAL CONSTITUTION

he wrote from Paris in 1785. 'I consider the class of artificers as the panders of vice and the instruments by which the liberties of a country are generally overturned.' Yet now he became the ancestral spirit of an interventionist national government trying to resolve an industrial crisis in a highly urbanized country—an inversion of roles reminiscent of the respective appeals, each to the 'wrong' view of history, by the Bolingbroke and Walpole camps in the 1730s. Franklin Roosevelt contributed personally to the new mythmaking. In 1925 he had written his only book review, of Claude Bowers' Jefferson and Hamilton: The Struggle for Democracy in America. Once in office, he had a large and systematic dossier of Jefferson quotations compiled, which he plundered liberally for his speeches, and every 13 April a personal aide laid a wreath at Jefferson's tomb.

Jefferson's shade may well have been pleased. He himself, from similar motives, 'painstakingly collected every scrap of evidence to reconstruct the history' of his 'Saxon ancestors', as he called them. However, historians were not alone in promptly pointing out that on the substantive questions of the nature and role of government, Jefferson's antithesis, the elitist Alexander Hamilton, was the more appropriate Father. Some Republicans did indeed turn to him, but for several reasons he was an ineffectual and even dangerous ancestor. So they played the game we have already encountered: they claimed Jefferson from Roosevelt and the Democrats. By the time of the presidential election of 1936, when Roosevelt ran for his second term, the clashing appeals achieved a comic-opera effect, though the tone was solemnly earnest. In an article written early in that year Professor Brogan summed it up: 'Mr Dooley asserted, it is true, that "ye can't vote th' cimitories". American politicians are not so sure, and all this year there will be a determined effort to cast the vote of that [one] founding father.

Obviously the American argument from the ancestral past had to differ from the other two we have looked at because it was already too well documented and studied a past. Selective quotation therefore replaced forgery as the operational device. There are other differences: I need waste no time in pointing out that, institutionally and structurally, fifth-century Athens, seventeenth-century England and twentieth-century America diverged widely. On the other hand, significant common elements can be isolated, and the very fact of their recurrence in political argument among such diverse and temporally separated societies (nor are these three the only available examples) suggests that something fundamental about social behaviour is involved, something that cannot be smugly labelled
THE USE AND ABUSE OF HISTORY
'rhetoric' or 'propaganda' and left at that. (Rhetoric and propaganda can never be 'left at that' anyway.)

There are at least four common elements to consider: (i) It was assumed, rather than justified, that the argument from antiquity is a valid one in a debate about current politics. There were sceptics, of course, Mr Dooley, for example: 'I have a great respect for the sages, and I believe in namin' streets an' public schools after them.'38 However, those who joined in the debate, on both sides, disputed about the facts of the past, as they said these were, not about the legitimacy or even the limits of the appeal itself. They knew what they wished to find in the past, they sought it, and they found it. (2) The distant past was concretized and personalized, exactly as it had been in the myths and legends of archaic societies. The sanctioning ancestor was normally an ancestor, Solon or Edward the Confessor or Thomas Jefferson, or whoever, not just the past in general or even a specified period in the past. This was equally true of the seventeenth-century common lawyers, for all their rhetoric about 'the immemorial past': like fourth-century Athenian advocates, who never cited 'the law' or 'custom' in the abstract,39 neither Coke nor Sir Matthew Hale failed to specify which code, which statute, which king defined for the English any of their timeless liberties.40 We may no longer be able to understand in all instances why the choice fell on whom it did, as with the eighteenth-century discovery of King Alfred,41 but we must acknowledge the psychological insight revealed by the procedure. Our own public opinion experts have solemnly advanced 'the proposition that "who" says something to someone significantly influences the response to what is said'.42 Burke never heard of a poll, or a mass interview, but he already knew that. In the long fragment now known as An Essay towards an Abridgement of English History, he wrote that Alfred 'is generally honoured as the founder of our laws and Constitution', and then added in a footnote that, though historians, 'copying after one another', falsely attribute this and that reform to Alfred, 'these reports, however ill imagined, are a strong proof of the high veneration in which this excellent prince has always been held; as it has been thought that the attributing of these regulations to him would endear them to the nation'.43 Once the candidate for veneration had been selected, furthermore, everyone wished to share him, usually in preference to offering an alternative. Sometimes there was little or no choice: it is not difficult to appreciate why no one wanted the sanction of William the Conqueror in a constitutional crisis. But sometimes the absence of alternatives eludes our understanding.
THE ANCESTRAL CONSTITUTION

(3) Viewed objectively, that is to say, from the standpoint of an outside observer who is not involved (in so far as that is ever humanly possible) in the controversy itself, the debates were over genuine issues, over constitutional or other questions in which there were definable differences in interests and goals, and which could therefore be argued about rationally. Yet we have seen that even those who stressed the rational and moral arguments most strongly could at the same time rarely resist adding an appeal to the past. An important recent testimony comes from Dr. Lynd, a leader of the American intellectual New Left and a good historian in his own right. 'Despite the alleged antihistoricism of the New Left,' he wrote, 'the need for a collective past is felt with particular keenness today by young people. Many rebellious young Americans have profoundly mixed feelings when they confront our country's history.' Nevertheless, 'there is a diffuse sense that the rhetoric of the Revolution and the Civil War spoke then and speaks now to hopes widespread among mankind.'

(4) I do not believe I am straining when I detect a certain kinship between Dr Lynd's rebellious young Americans and Mr Estabrook's 'O Marvellous Constitution! Maker, Monitor, Guardian of Mankind!' 'The past has always been the handmaid of authority,' Professor Plumb has recently remonstrated with biting eloquence. A good servant, one must add: the appeal to, and argument from, the ancestral past habitually crosses lines, whether of class, educational level or political disposition. It has been sounded in the Athenian popular assembly, the English Parliament and the American Congress, in Fourth of July orations and Roosevelt's fireside chats, in the press, in popular pamphlets, in more learned disquisitions. It is, in short, ideology in its classic form. It can be linked with conservatism, as in Burke, but it need not be; both in seventeenth-century England and in America of the 1930s, the appeal was first raised by the party seeking more or less radical change, with the 'conservatives' then chiming in.

And what have modern historians made of all this? The plain answer is very little. In our more general histories and in the narratives of the respective periods, the deployment of arguments from the ancestral past is scarcely noticed. In Bury's History of Greece there is only a brief, inaccurate reference to the patrios politeia appeal in 411 B.C., and Hammond, in his History of Greece, has a single sentence reporting Cleitophon's amendment of 411 and another on the 403 11 lotion, without comment. Thomas Jefferson's name does not appear in the index of Leuchtenberg's Franklin D. Roosevelt and the New Deal if of Schlesinger's minutely detailed three-volume Age of Roosevelt.
THE USE AND ABUSE OF HISTORY

One must turn to specialized monographs and articles, concerned with aspects of the history of historiography or scholarship or political thought, or written just because a new subject was required for a doctoral dissertation, or because an archive was newly opened to research. Even the best of these, furthermore—and some are very good indeed in achieving their objectives—evade the difficulties of explanation. One way or another, the legitimacy of the appeal is accepted as if it were one of Euclid's axioms. To say that 'never perhaps have statesmen . . . turned more instinctively to the past' for 'a solution to the problems of the present' is just not helpful. Americans have never found it necessary to apologize for their return, again and again, to the Founding Fathers for wisdom and inspiration' is correct but again not helpful; to continue that a proper appraisal of Hamilton will provide 'clear guidance . . . as we confront our own perplexities' is not even correct, strictly speaking.

Two reasons for this failure (not too strong a word) suggest themselves. The first is that, however one explains the phenomenon, historians have not concerned themselves much with the psychology of the people who are their subject, with what the French call *structures mentales*, by no means identical with the 'conscious level—the manifest content of ideas and beliefs'. The history of religion seems to be an exception, in connection with such activities as asceticism or conversion, and I do not understand why psychological factors are permitted there but not in political behaviour. (There is, of course, the work, under Freudian influence, examining individual creative geniuses in depth, especially in literature, art and music, but that kind of 'psychohistory'—Erik Erikson's term for his own studies of Luther and Gandhi—has little bearing on our problem.)

The second reason is that we are all Thucydideans; by a kind of tacit collective decision, historians have given themselves licence not to report political arguments they themselves demean as 'romance' (Thucydides' to *mythodes*) or as irrational or as irrelevant to the realities of politics. We like to think of ourselves as hard-headed realists, and we project this image not only on to the actors but also on to those being acted upon. Paradoxically, historians are at the same time not averse to welcoming bogus history in political debate as better than no history at all. The Master of Balliol finds a kind of logic in the Norman Yoke theory: if we take the 'broader patriotic appeal into account', it 'was not quite so absurd as some twentieth-century historians have assumed.' Professor Malone concludes from Roosevelt's standing Thomas Jefferson on his head.
THE ANCESTRAL CONSTITUTION

that 'it begins to appear that Mr Roosevelt had read his history with
greater discrimination' than had his predecessors.\(^{50}\)

Particular explanations for the recurrence of this class of argument
are not hard to find. I myself suggested earlier that, in Athens, it was
comforting to be able to accept oligarchy in the name of Cleisthenes,
father of democracy. The peculiar English development of the common
law has been powerfully advocated as the key to the seventeenth-
century appeal. Alternatively Mr Hill has written that 'Men dared not
yet appeal to reason and utility alone; authority must be challenged by
counter-authority',\(^{61}\) but that does not tell us why the counter-authority
lay in six-hundred-year-old Anglo-Saxon precedent. No doubt when
life becomes intolerable for large sections of the population, a measure
of relief is obtained by dreaming about, and believing in, a time when
things were different and better, customarily a time in the distant past,
for obvious reasons. However, dreaming produces nothing more
concrete than Utopian visions of a Golden Age, irrecoverable save by a
miracle or act of divine grace, whereas our concern is precisely with
moments when specific political action is being demanded.\(^{62}\)

I suggest that the roots lie deeper, in the very nature of man, who
alone possesses both memory and the prescience of inevitable death,
leading unconsciously to a desire, a need, for something that will create
a feeling of continuity and permanence. Modern psycho-pathology has
demonstrated how a breakdown in the 'temporal horizon' leads to
disorientation and disorder of the personality.\(^{53}\) Hans Meyerhoff made
the attractive suggestion that one of the ways in which Sophocles' 
Oedipus Tyrannus may be read is 'as the tragedy of a man who is
suddenly and brutally destroyed because the continuity of time in his
life is irremediably disrupted. A terrible gap is opened up: on the one
hand, there is his past as lived and remembered since the defeat of the
sphinx, the liberation of Thebes, and the winning of throne and wife; on
the other hand, there is the past of his childhood and youth, forgotten,
repressed, or simply falsified, and subsequently brought to light.
Oedipus, therefore, may be said to have no self-identity.'\(^{54}\)

The tragedy of Oedipus is of course not only a personal one; it
implicates his family, as does much Greek tragedy; his oikos, as the
Greeks would say, and an oikos stretched backwards and forwards in
time.\(^{65}\) For our purposes, two aspects are important. The oikos was the
repository and transmitter of 'memories' of the past; without the
memories of the aristocratic houses Herodotus could not have begun to
write his history.\(^{56}\) And these same houses dominated Athenian politics
at least to the death of Pericles, reinforcing their
authority both by ancient tradition and by religious sanction. The two sanctions were, in fact, intertwined.

Here we enter treacherous ground, and I must be careful. In societies simpler than the classical Greek, and especially in stateless ties, ancestor cults are directly linked, often in quite subtle ways, not only with the health and prosperity of the living descendants but also with the maintenance of social norms, with power inside the lineage and with the transmission of its property. By the time the Greeks provide us with useful documentation, ancestor cult in the strict sense appears to have been replaced among them by cults of the household, especially of Zeus Herkeios, and of the heroes, a technical term in post-Homeric times most easily defined by quoting the poet Hesiod (Works and Days 159-60), 'a god-like race of hero-men who are called demi-gods'. The historical link between the two cults, of ancestors and of heroes, is well established.

In so far as heroes were patrons of cities and of political sub-groupings, ancestor worship in the strict sense had given way to a metaphoric version, analogous to the worship of saints, in general and in particular (as individual patrons). However, each of the aristocratic houses of classical Greece, even in democratic Athens, also had its hero, from whom the members were descended, and that is where matters become difficult. What did the Alcmaeonids, who counted among their members both Cleisthenes and Pericles, 'really' believe about Alcmaeon and their 'descent' from him? Or Pericles' great aristocratic rival, Cimon, who produced a pedigree straight back to Ajax?

With pedigrees we at least know where we stand. Whether of a royal family or of an aristocratic house, a pedigree, said Professor Goody, 'is a charter to office and to other rights; the longer the pedigree, the more imposing and the more effective it is as a device for legitimizing both the office and the officeholder'. Divine origin, even divine right, helps but is not indispensable; a generalized, not necessarily explicit, reference to God's will seems to serve almost as well. Pedigrees, furthermore, put us on the road back from individual and family-group psychology to the state or nation, which is our subject. I do not believe the kinship symbolism-the ancestral constitution, the Founding Fathers-to be accidental or meaningless. It is striking and often repeated in Burke; I shall restrict myself to a few sentences and clauses from a single passage in the Reflections'. 'People will not look forward to posterity, who never look backward to their ancestors. Besides, the people of England well know, that the idea of inheritance furnishes a sure principle of conservation and a sure principle of transmission. ... In this choice of inheritana
THE ANCESTRAL CONSTITUTION

we have given to our frame of polity the image of a relation in blood; binding up the constitution of our country with our dearest domestic ties; adopting our fundamental laws into the bosom of our family affections.... Always acting as if in the presence of canonized forefathers...

I am of course not suggesting that biological kinship, or fictitious or symbolic kinship, is the only notion binding a society to its past, or that in times of crises one always appeals to one's own past. The French Revolution, as Marx said in the opening of the Eighteenth Brumaire, 'draped itself alternately as the Roman Republic and the Roman Empire'. However, we all have personal experience of the way in which, in a variety of groups, bonds within the group are reinforced by the sense of continuity that comes from a shared knowledge (or pretended knowledge) of key figures and incidents in its past. And so too with the political unit. If historians are unable to comment beyond a few superficial or platitudinous remarks, or are driven to rather free speculation, in so far as that is not the consequence of their own disinterest, the responsibility lies with the comparable disinterest of social psychologists in this aspect of social behaviour and values. At least, I have not succeeded in finding a serious account of the matter.

It will be said in reply that there is nothing for the social psychologist to examine because the contemporary Western world has detached itself from its past, it has become a world of technical go-ahead in practical life and of incessant nouvelles vagues in culture. That was said to me in private conversation: when I countered with Jefferson and the New Deal, the further reply was that the United States is peculiar. And so it is. In an essay entitled 'The Search for a Usable Past', Henry Steele Commager pointed to the two key elements. The United States became a state before it was a nation, unequipped with 'history, tradition and memory'. The lack was quickly dealt with in the first half of the nineteenth century, chiefly by New England literati. Then came the repeated waves of immigrants, who had to be incorporated psychologically, and that was achieved by constant repetition of 'easily grasped common denominators' selected from the now well-established 'usable past'.

But the Soviet Union is also peculiar. The creation of a revolution that consciously and explicitly accepted its roots in the past, in the Marxist sense, and therefore stressed its dialectical break from the past, the Soviet Union by the late 30s paradoxically rediscovered its (Russian) ancestral heroes, Kutuzov, Peter the Great, even Ivan the Terrible. Israel, too, is peculiar-I need not go on, beyond mentioning the conversion of Masada into a national shrine.
THE USE AND ABUSE OF HISTORY

The point at which we are let down most badly is in trying to assess the effectiveness of a political argument based on the ancestral past. How much did it weigh on public opinion, the opinion of whichever public mattered at the time; in reinforcing or diverting opinion, as an appeal distinct from, and for some contrary to, arguments from reason and utility? I do not believe the tools of analysis exist with which to cope with such a question about a past age, but experts in contemporary public opinion might have provided us with a model, and I have been unable to find one. The model would not be automatically workable: such factors as the radical leap in the life-span and changes in the nature and role of the family would constitute important variables. Nevertheless, even a defective model would be better than none at all. Meantime, we are restricted to an examination of the place of the argument in the history of ideas, specifically in political theory and in historiography.

With the restoration of democracy in Athens at the end of the fifth century B.C., oligarchy ceased to be a practical issue. However, the intellectual opposition to democracy remained, and in those circles (except for Plato and his close disciples) the appeal to the ancestral constitution retained vitality. Everyone now agreed that it was Solon who founded the modern Athenian state; hence Plutarch was to write his biography whereas Cleisthenes gradually dropped from sight. But what kind of state? A ‘mixed’ constitution, said the pamphleteers who preferred oligarchy (much as they denied it), with Isocrates as their chief spokesman, unflagging in his call for a return to the good old days. The democrats of course disagreed, and Demosthenes, for one, never even bothered to argue the case.

One looks in vain in all this writing for political theory in the proper sense. Political sentiments, dispositions, arguments, concepts—perhaps that is the highest claim one may make. Greek political theory began with the Sophists, who are too shadowy for close analysis in this context. But with Plato, the position is in no doubt. He was about eighteen when Cleitophon moved the amendment that opened the debate, he had close personal connections with some of the chief actors, he had an acute ear for what was going on, and when the time came, he dismissed the whole ‘historical’ discussion with magnificent contempt. Solon is mentioned some eighteen times in the Platonic corpus; Theseus appears six times, but never either Draco or Cleisthenes, and that is already a clue to the irrelevance of constitutional history. The references to Solon are casual but friendly: he is one of the old sages, a good lawgiver like Lycurgus of
THE ANCESTRAL CONSTITUTION

Sparta, the man who transmitted the Atlantis myth, a gnomic poet to be quoted. No serious argument ever rests on these casual remarks; they are simply part of the Platonic style of discourse, with its constant citation of the activities and references familiar to every ordinary Athenian.

In the \textit{Republic}, needless to say, there could be no place for the ancestral constitution, nor any reason to talk about it. In the \textit{Laws}, Plato does show some respect for \textit{ta patria} as such, but not in any way relevant to our subject: at issue are painting and music (II 656E), the nurture of infants from conception (VII 793A-D), and the like. That Plato reveals an 'archaic' bent is no doubt true, but his philosophy never rested on 'ancestral' arguments, and in the \textit{Politikos} or \textit{Statesman} he delivered his crushing dismissal. Having established that statesmanship is a science (\textit{episteme}) and that the only test of a true or correct constitution is whether or not it is scientifically established and administered (not whether it is oligarchic or timocratic or democratic or anything equally irrelevant), the Eleatic Stranger goes on (293B-299A) to demonstrate the 'hard doctrine' that formal legislation would then be unnecessary, indeed, a bad thing. This he does by an outrageous resort to the familiar Platonic analogy of the doctor and the pilot, climaxed in a hilarious parody of contemporary Athenian legislative practice. A bill is moved in the assembly, inviting all persons, no matter how unqualified, to lay down detailed rules for the practice of medicine and navigation; specifying that the rules shall be committed to writing; commanding that 'for all time' no other rules may be followed; providing for the selection of (unqualified) officials to navigate ships and cure the sick according to the code, and for popular control over these 'magistrates' by the usual methods.

Neither Solon nor the ancestral constitution is mentioned in these pages, but the passage is carefully dotted with pointers that no literate Athenian would have missed. The new laws are to be inscribed on \textit{kyrbeis} and \textit{stelai}, and everyone knew that Solon's laws were inscribed on \textit{kyrbeis}, modern ones on \textit{stelai}; repeatedly and regularly it is said that the assembly and the jurors are to be chosen either from the whole \textit{demos} or from the rich alone, and it was well known how the 'Therameneans' insisted that the Solonic constitution was timocratic. Professor Skemp must be right in his comment: 'Plato's answer is. The rot goes deeper... and affects "Solonian" democracy as much as any other.'\textsuperscript{60} That is always Plato's answer: of all existing constitutions, even the best are mere imitations of the true constitution; the debate over the ancestral constitution is a waste of time or worse; constitutions cannot be judged by reference to this
THE USE AND ABUSE OF HISTORY or that past hero or constitution. The echo of Thrasymachus is a pretty irony.

Aristotle's radically different method led him to the same fundamental conclusion though he did not say so expressly and though there are aspects of his work which superficially seem to suggest otherwise. One can be misled by Aristotle's temperament: he was a dazzling virtuoso and could not always resist a virtuoso display, as in the long section of the Politics (1313334!?) laying out systematically the ways in which tyranny could be preserved, or in the brief section (i273b35–74a2i) correcting the factual errors of those who hold that Solon 'had established the ancestral democracy'. In politics as in biology, Aristotle amassed data tirelessly and he sought political data in the past as in the present, but also abroad as at home. The reading of history enabled him to extend the range and number of experiences available for study; it had no virtue of itself. The approach, in Professor Guthrie's words, 'was in truth not genetic at all, but analytic'. The 'ancestral constitution' of Athens interested him because it was a constitution that others were discussing, not because it was ancestral. Writing about proposals to bring about equality of property, he says (Politics I266bi6-ig): 'among the ancients .. ., for example, there was the legislation of Solon, and elsewhere there is a law prohibiting a man from acquiring as much as he wishes; similarly there are laws prohibiting the sale of property; for example, there is a law in Locris...'. The mixture of tenses, the indifference to time, place and even circumstance are typical of the method.

This is paradigmatic history, not to be confused either with historiography or with political argument based on the past and tradition. Paradigms served to exemplify principles which were worked out by rational means (and also to reveal that Aristotle, unlike Plato, always kept the possible as well as the ideal in view). As for any claim that historiography is an episteme, a discipline, never has it been dismissed more peremptorily than in the notorious ninth chapter of the Poetics. 'Poetry is more philosophical and more weighty than history for poetry speaks rather of the universal, history of the particular. By the universal I mean that such and such a kind of man will say or do such or such things from probability or necessity; that is the aim of poetry, adding proper names to the characters. By the particular I mean what Alcibiades did and what he suffered.'

After Aristotle, Greek political thought, in so far as one may still speak of it at all, turned away from the realities of the city-state and of politics; hence nothing would be gained by pursuing the inquiry in that quarter. Rome is another matter, but I have refrained from
THE ANCESTRAL CONSTITUTION

including Rome among my case-histories because that would have required a full study by itself. I might just note that in Cicero's unconsummated marriage between the natural reason or natural law of the Middle Stoa and Roman mos maiorum, with his not surprising discovery that the Roman 'ancestral constitution' was the embodiment of natural reason, it was the Stoic concepts that kept his De republica alive for later generations, not the bogus history.

When we turn to political theory in England, the impact of the seventeenth-century debate is so negligible that extended discussion becomes unnecessary. Hobbes was very learned, and, like Aristotle, could not resist an opportunity to correct historical errors. Exactly like Aristotle, too, he accepted no more than paradigmatic value in history, which, he said in Behemoth, can provide only 'examples of fact', not 'argument of right'. That Locke did not think otherwise about the ancestral argument requires no demonstration. Burke alone need occupy us.

Burke is not easy. He was not a systematic thinker; much of his enormous literary output was written for one or another political occasion, in which he was emotionally involved and in which he was trying to advance his party and its cause. No political thinker is a more obvious target for Mr Dunn's recent demand that the history of ideas be treated 'as the history of an activity'. A small number of simple sentiments reappear with fair consistency, but precisely what they imply is not self-evident, as is shown by the internal disagreements among the neo-conservative American group centring round the Burke Newsletter (since 1966 known as Studies in Burke and His Time). A measure of subjectivism is hard to avoid, especially in selecting the right quotation, and I do not pretend that I can myself do otherwise.

I begin by observing that most of the Burke texts adduced in modern discussions about our particular subject are taken from the Reflections on the Revolution in France, and by suggesting that it is not entirely irrelevant to remember that this was a political polemic of a bitterness and eloquence rarely if ever paralleled, that Burke's personal stake in the outcome of the debate over Whig policy towards France was very great, and that he was fully conscious of all the implications. The fury of the attack comes as something of a surprise; there is nothing in Burke's correspondence or public activity before the beginning of 1790 to suggest that he was about to burst forth with his lengthy manifesto calling for a pan-European counter-revolution; nothing in Burke's career, with its marks of antipathy to France, to prepare us for his activity in trying to help organize the counter-revolution or for the adulation of Louis XVI,
most obsequious in the sequel to the Reflections, the odious *Appeal from
the Mew to the Old Whigs.*" What was responsible? A reading of the
correspondence indicates that three themes, which recur regularly, lie at
the root: the large-scale confiscation of property, the attack on the
clergy, and fear amounting to panic lest the Revolution spread to
England, especially through the activity of Dr Richard Price and his
group of Dissenters.

About this there can be little dispute, or about the outcome, the
formulation in the Reflections of the quintessential doctrine of con-
servatism. But there is an important question of accent. In what has
already become a classic article, Professor Pocock argued that Burke
was deliberately placing himself within the common-law tradition, that
'a doctrine of traditionalism, very much akin to Burke's own, grew out
of the concept of the ancient constitution', that, in the Reflections, Burke
'in fact reverted to the position he formerly rebuked [Sir Matthew] Hale
for adopting'. That there are passages in the Reflections and elsewhere
which Pocock has legitimately quoted to support his claim is certainly
the case. But has he the accent right? I think not, for two main reasons
(quite apart from the point that an equally impressive collection of
quotations can be assembled to press the claim that the protection of
property was uppermost in Burke's mind).

First, although Burke never abandoned his belief that the seven-
teenth-century common lawyers had relied on bogus history, that a
proper history of English law could and ought to be written, his own
appeals to the ancient constitution and immemorial custom in the
Reflections are vague and timeless, except in so far as he persistently
pins his case on the Revolution of 1688. That difference in stress from
the arguments we have been examining, with their reference to specific
ancestors and specific ancestral events, seems to me to be substantially
significant.

My second reason is that Burke was arguing, after all, that the
French Revolution was a bad thing because it swept aside French
traditions and customs, including above all the rights of property and
the power and property of the clergy, but not including, I need hardly
say, anything remotely resembling the English common law Burke, in
short, was laying down universal conservative principles Addressing an
English audience of a particular stamp, he employee some of the
rhetoric familiar to them. For the history of politica theory, what is of
interest is that Burke alone among the major figure did not simply
dismiss the argument from the ancestral constitution he transcended it,
and that is in its way a dismissal, too.

It is pointless to pursue this question with my third case-study.
THE ANCESTRAL CONSTITUTION

Given the problematical status of political theory at the present time; for, different but equally obvious reasons, will the Jefferson-New-Deal syndrome help us with the problem of the rise of historiography, to which I now turn. Fifth-century Greece is of course central to any discussion of that question, but seventeenth-century England still has something to contribute, thanks to the medieval hiatus. I call this a 'problem' deliberately, because I do not believe it to be self-evident how historiography arose from the awareness of the past that all human societies reveal in some form. By historiography I mean a systematic, critical inquiry into some part or aspect of the past, critical not only in the sense of critical evaluation of evidence, but also in the larger sense of a conscious, rational examination of one's subject, its dimensions and implications, as free as one can make oneself of the automatic acceptance of received views, approaches, habits of mind.

The Greeks knew all they had to know about the past before Herodotus was born, knew through their myths, legends and orally transmitted tales what was essential for the various functions the more distant past fulfilled in the present. And even after Herodotus not many Greeks thought they had qualitatively better knowledge because of what he had done, no matter how much they may have been entertained. Thucydides, after all, immediately made two fundamental criticisms: history, he implied, was about politics, and that could be studied only in the present, not in the past.

Near the end of Thucydides' life a prolific writer, Hellanicus of Lesbos, published a Chronicle of Athens from the beginning to his own day. The mythical period was not distinguished in treatment from the historical, and the surviving fragments indicate that he ranged widely over Athenian antiquities. His impetus did not come from politics or political debates, and it is decisive for us that no Athenian tried to supersede him for half a century, during precisely the half-century when the political pamphleteering was in full swing, with its polemic about the ancestral constitution. No one was moved to say, I shall try to settle this controversy about the past by a systematic inquiry into the evidence, not even after Herodotus and Thucydides had each in his own way fathered history, and others were continuing to write history. In the Areopagilicus (7.19), Isocrates asked his readers to follow him attentively so that they could choose 'from exact knowledge' between the good ancestral democracy of Solon and the corrupt one under which they were now living. The exact knowledge then turns out to be pages of sententious rhetoric about how the young used to be trained properly and about other such matters, interspersed with very few precise and even fewer accurate
THE USE AND ABUSE OF HISTORY statements about the Solonic constitution. Why did no one counter him by historical inquiry?

My rhetorical question becomes acute when we observe that just about the time Isocrates produced the Areopagiticus, someone named Cleidemus finally replaced Hellanicus with a Chronicle of Athens by an Athenian; that Cleidemus was emulated in the course of a century by five others (collectively known ever since antiquity as the Athidographers); that, though these works look like history and are not devoid of scholarship, they lack the essential ingredient, critical inquiry.82 The Athidographers, Felix Jacoby explained, wrote... on the basis of their own experience (as did the great historians); where this experience ceases they write on the basis of predecessors' narratives, and where such a narrative does not exist, on the basis of the general conception accepted in their circles about the development of the Attic State.83 Isocrates gives us a fair idea of that general conception. Inevitably the ancestral constitution was included in the chronicle, but it was neither the major stimulus nor the central theme; nor did such disagreements as there were among them about the facts of Solon or Cleisthenes rest on anything more substantial than their personal political views. For genuine inquiry, Athens (and the Greeks generally) had to turn to Aristotle and his school, and their interest, as we have seen, though critical, was not historiographical (nor should we exaggerate, because of our interest and because of the accident that only the Constitution of Athens has survived of the 158 such compilations produced by the school, the amount of attention Aristotle was able or wished to give to Athenian constitutional history). In Athens, in sum, the political debate over the ancestral constitution made no significant contribution to the history of historiography.

Neither did the seventeenth-century debate in England, except negatively, unless one holds bogus history and endless talk about the past to be historiography none the less. This is all the more striking because the seventeenth century was a great century in English antiquarian research, little of which had any visible connection with the law or lawyers. Of the tiny number of figures of the time writing legal history, Matthew Hale did not publish his History, Henry Spelman was briefly at Lincoln's Inn but never practised the law, and Robert Brady, Master of Caius, was Professor of Physic. Otherwise, clerics like George Hickes, Thomas Gale or Henry Wharton, or professional antiquaries supported by such institutions as libraries and the Heralds' College or by private patrons—William Dugdale, Humphrey Wanley, Thomas Hearne, for example—were primarily interested not in legal history but in church antiquities, the Anglo-
THE ANCESTRAL CONSTITUTION

Saxon language, local history. The Reformation was a far more significant stimulus to serious research into the documents of the past than the ancestral-constitution debate; that was not the first time in the history of the Christian Church when schism, or the threat of schism, had this consequence.

Paradoxically, the insistence on the unbroken continuity of the common law left the history of English law in limbo. The young Burke complained in the eighteenth century, Bagehot repeated the complaint in 1867 and again in 1872, Maitland in 1904. Reviewing Felix Liebermann's great work in the Quarterly Review, Maitland welcomed it warmly but added a sad note: 'the Anglo-Saxon laws, which henceforward we shall know as "Die Gesetze der Angel-sachsen".

The contrast with the early appearance and unbroken continuity of legal history on the continent has been frequently noticed; the source of the difference will be found in the European struggle between competing legal systems with the revival of Roman law. Nor is that the end of the negative influence of the ancestral-constitution debate: Professor Skinner has very forcefully called attention to the fact that the 'partisan dismissal of the Norman Conquest was to become enshrined as the accepted scholarly tradition. The error was manifest, yet it has only been eradicated by the most polemical revisions of modern scholarship' (my italics).

If I am right in this negative evaluation when one might have expected the reverse, it then becomes necessary to ask what function (in the descriptive, not the normative, sense) critical history, professional history, does perform. Stated differently, given the existence in all human societies of some image of their past, of some identification with it, who wishes to abandon the traditional-mythical, if I may-past for a new non-mythical past, and why? We have seen that those engaged in political controversy in which the ancestral constitution was invoked did not, and that is not a peculiar case.

In a famous, angry and, strictly speaking, irrelevant digression, Thucydides (6.54-9) demolished the official view of the tyrannicides of 514 B.C., in order 'to show that the Athenians are no more accurate than the others about their own tyrants and the facts of their own history'. (By 'the others' he probably meant Hellanicus' recently published Chronicle of Athens.) Thucydides was historically correct, as Herodotus had been on this particular point, but he made little impact on either the popular or the official view. In this or any other respect: historical allusions by the fourth-century orators were vague, inaccurate, easy and familiar. Isocrates was perhaps the worst offender, but not the only one: Demosthenes was 'extremely careful
THE USE AND ABUSE OF HISTORY

not to claim for himself more knowledge than he expects his hearers to possess.  

One must have sympathy with Demosthenes. The traditions he and his fellow-orators were invoking-and I speak of tradition only in this more restricted sense-were more than a common past or common memory, they were 'a common interpretation of the past'. What Thucydides was demanding of the Athenians was that they abandon a common interpretation of the tyrannicides, an interpretation that had become for them the myth of their collective hostility to tyranny and their collective passionate devotion to freedom, their 'Whig view of history'. In its place he offered unpleasant facts: that the tyrannicides were motivated by nothing higher than a squalid homosexual affair, that the liberators of Athens from tyranny were the Spartans, not the Athenians themselves -their 'Norman yoke'. Demosthenes might have said, with a most distinguished Regius Professor of History in this University, 'we must congratulate ourselves that our ... forefathers ... did not resurrect and fasten upon us the authentic Middle Ages'.

A critical inquiry, professional historiography, is thus a potential danger to the 'sublime and powerful unhistoricity' of tradition. It is also terribly complicated: it piles up data, documents, events beyond number, it impedes what Professor Barnes happily called 'structural amnesia', it offers too many partial explanations (when it does not refuse to explain altogether), it may undermine a common interpretation of the past and therefore the social bonds that are fortified by a common identification with the past. It threatens to render the past unusable. Not the least of the complications is in the very idea of an historical process. Individual memory works with concrete occurrences and a variety of associations among them. The sense of personal identity and continuity does not require more than OAF that. Nor do the myths of the past. 'In popular usage,' Marc Bloch noted, 'an origin is a beginning which explains. Worse still, a beginning which is a complete explanation.' Simplicity is equally the key to the popular success of Oswald Spengler and Arnold Toynbee, for all the bulk of their writing; each in his own way produced 'a universal, unified world history organized around a simple general principle or law-the principle of cycles in Spengler, and a mixture of the cyclical principle with the law of challenge and response in Toynbee'.

Much as professional historians may dislike it, that success is an important fact of our time. Some have found refuge in mandarinism-Professor Oakeshott with his distinction between the practical and the historical past, who will not allow us to read history backwards.
or to use the word 'cause' in our discourse. Professor Elton in so far as he asserts that the 'main service' of the historian's activity 'lies in its essence', though he then qualifies by adding that 'it would certainly be untrue to suppose that history can teach no practical lessons'; Ernst Gassirer who provides us with a good analogy from a comparable field: 'It is beyond the power of philosophy to destroy the political myths. A myth is in a sense invulnerable. . . . But philosophy can do us another important service. It can make us understand the adversary', and many others, not all of whom have been so explicit about their view of the matter. I do not wish to underestimate or denigrate the search for the truth for its own sake or what Professor Elton calls the 'cultural role' of the historian—he contributes to the complex of non-practical activities which make up the culture of a society. I do not even insist that the latter be high culture; there is a place for history as entertainment, as gossip and trivia. But if one rejects the Oakeshott distinction, the question earnestly imposes itself whether we are in fact accomplishing much. In his Inaugural, Lord Acton announced that ever since the Renaissance 'the historian has obtained an increasing ascendancy' over men. The inquiry into the ancestral constitution raises doubts. The time has perhaps come, in the considerable introspective activity now being carried on among (and about) historians, to add to the questions, What is history? What is historical explanation? a third, What is the effect of the study of history? I might rephrase it, Cui bono? Who listens? Why not?

Mr Vice-Chancellor, my ancestral piety, at any rate, can scarcely be faulted. Without straining in the least, I have invoked by name twenty-five Cambridge men, a few admittedly still too young to qualify as proper ancestors. I close with the twenty-sixth, Hugo Jones, whose premature death a year ago was such a bitter loss to Cambridge and to the international world of historical learning. I will not dwell on the personal loss, after fifteen years of close cooperation and friendship. Today's lecture would perhaps not have interested him much: he always preferred to study institutions rather than ideas about them. But he would surely have agreed that ancient history is a practical subject.*

* The most recent study of the Athenian debate over the patrias politeia - K. R. Walters, "The "Ancestral Constitution" and Fourth-Century Historiography in Aliens", American Journal of Ancient History i (1976) 129-44 – suffers from the failing already noticed in my account (nn 8, 10, 14, 1G) of assuming that behind the Greek i.\’rizions there always lay specific ancient documents and precise information.