# THE KING AND THE COURT

Establishing the Authority of the High Court of Justice

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"Whereas it is notorious, That Charles Stuart, the now King of England, not content with those many Encroachments which his Predecessors had made upon the People in their Rights and Freedoms, hath had a wicked Design totally to Subvert the Ancient and Fundamental Laws and Liberties of this Nation, and in their place to introduce an Arbitrary and Tyrannical Government."[1] So began the Act of Parliament establishing the High Court of Justice which would try, convict, and execute its justice in the most infamous case in English history. Yet despite its significance, many historians pay little attention to the trial of Charles I.

Much of the historiography surrounding these events focuses either on the events leading up to the trial, that is to say what caused the relationship between Parliament and Charles I to deteriorate to the point of a trial, or upon how the decision to execute the king came about. The trial itself is often nothing more than an addendum to the larger events historians turn their attention to. Perhaps one of the few individuals who has actually devoted serious research into the trial of Charles I is Dr. Sean Kelsey.

Kelsey has written extensively on the matter, often from the social perspective. Throughout his articles Kelsey contends that members of the High Court of Justice did not set out on a course of regicide, but rather came to that unfortunate end due to the manner in which the proceedings unfolded. Even in this most solemn of occasions, politics and backroom deals were as much a part of the trial as the public spectacle that was unfolding in Westminster.



[1] Charles I, *A true copy of the journal of the High Court of Justice, for the tryal of K. Charles*, London, 1684. *Early English Books Online*, 44 of 111, Accessed April 21, 2015 http://gateway.proquest.com.summit.csuci.edu:2048/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:52634:44

Likewise, politics and perception played a significant role in drafting the legislation that would bring the king to trial in the first place.[2]

While perhaps less glamorous than studying the English Civil War as a whole, the trial of Charles I still presents the historian with many intriguing questions. Perhaps the primary question to be answered is asked by the defendant himself: "I would know by what authority I am called hither?"[3] The question is valid, but often overshadowed by the larger debate regarding the power struggles between Parliament and the crown. Even Kelsey avoids the issue, talking instead of the political atmosphere of the High Court of Justice. But by refusing to engage the matter of authority, historians are themselves inadvertently giving legitimacy to the Rump and High Court of Justice. What is needed is a more thorough examination of authority and legitimacy if Charles is ever to have his question answered.

Much of the English Common Law to this point in time was based on tradition and precedent. It is within these two realms that any explanation as to whether or not Parliament did indeed have authority to act can be found. The key questions one need answer are thus: First, can the king be brought to justice, or is he above the law? Second, if the king is accountable before the law, does Parliament have the legal justification to bring a ruling monarch before their body? Finally, if the former be answered in the affirmative, was Charles tried in accordance with English Law? This essay will show that the king was accountable before the law, and that through the customary practice of impeachment Parliament had established a right to bring the

[2] See Sean Kelsey, "The Trial of Charles I," *The English Historical Review* 118, no. 477 (June 2003): 583-616; Sean Kelsey, "The Ordinance for the Trial of Charles I," *Historical Research* 76, no 193 (August 2003): 310-331; and Sean Kelsey, "Politics and Procedure in the Trial of Charles I," *Law and History Review* 22, no. 1 (Spring 2004): 1-25.

[3] "Historic Public Speeches and Writings: Charles I," *British Monarchy Website*, Accessed April 21, 2015 http://www.royal.gov.uk/pdf/charlesi.pdf.

crown to justice. In so doing, Parliament treated Charles just as any fellow Englishman brought to trial in the land.

When the Rump began the matter against Charles Stuart in 1649 it was drawing upon on a long-standing tradition of the King of England being accountable to his subjects. To understand this tradition, one must go back to 1215 when another monarch, John I, faced an uprising of his own. John would capitulate to the barons which rose against him and was forced to sign *Magna Carta* which imposed limitations upon the British monarchy. In clause sixty-one, John provided consent to the baron's proposal that the crown be held accountable to the people and uphold the rights enumerated within the charter:

> "If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security… they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress."[4]

The idea that the king was responsible to his subjects would be expanded upon by the English throughout the next four hundred years.

By the time of Charles I's reign, the English had developed an extensive legal system based, in part, by provisions of *Magna Carta*. The charter provided for the establishment of assize and fixed courts which allowed justice to be brought to and sought out in the shires of the English countryside without having to travel to the king's court.[5] This did not, however, completely eliminate the court which had traditionally followed the king as he traveled his realm.

[4] *Magna Carta* 1215, English translation accessed via British Library, April 25, 2015 http://www.bl.uk/magna-carta/articles/magna-carta-english-translation
[5] *Magna Carta* 1215, clause 7.

Following the death of John I and the ascension of Henry III, a court system was developed to handle the case load typically brought before the court of the king. Two courts were developed: the Court of Common Pleas, and the Court of King's Bench. It is the Court of King's Bench which is of importance, for it is this court that held jurisdiction over matters concerning the monarch.[6]

While the Court of King's Bench dealt primarily with high criminal matters, the court also handled a small amount of civil cases as well. Included in these dockets were cases against the crown. These cases, most commonly disputes over lands, were tried in front of the court which now sat at Westminster and were adjudicated as any other matter. The records, or rolls, of the court remain housed at the British National Archives and are separated in the original by the *rex* rolls, or those cases pertaining specifically to the sovereign.[7] One can clearly see that by 1649, the English had established legal mechanisms through *Magna Carta* and litigation through the Court of King's Bench which allowed the means to hold a king accountable the law. But what of Parliament?

In the century following *Magna Carta* Parliament would establish its right to hold the high officers of the land accountable to the citizenry through Parliament. Under the reign of Edward III in 1326, Parliament began a series of tribunals against crown officers who had abused their powers.[8] These proceedings would become known as an impeachment. In beginning such proceedings, the House of Commons would petition the House of Lords (or sometimes the

[6] Fredrick Bernays Wiener, "Tracing the Origins of the Court of King's Bench," *American Bar Association Journal* 59, no. 7 (July 1973): 754. Accessed April 24, 2015 http://www.jstor.org/stable/25726349.
[7] Information available through summary of file contents for Court of King's Bench records 1200-1600. Accessed April 25, 2014 http://www.nationalarchives.gov.uk/records/research-guides/kings-bench-1200-1600.htm.
[8] See footnote 45 in Craig S. Lerner, "Impeachment, Attainder, and a True Constitutional Crisis: Lessons from the Strafford Trial," *The University of Chicago Law Review* 69, no. 4 (August 2002): 2070. Accessed April 24, 2014 http://www.jstor.org/stable/1600627.

monarch) notifying the Peers that it intended to begin the process of impeachment. It is important to note that in so doing Commons was reflecting the same legal mechanisms used in the criminal courts whereby an individual was brought before the court by warrant or writ. Unlike a bill of attainder in which a legislative body pronounced the guilt of an individual or organization without trial, the impeachment proceedings initiated by Commons would be tried in Lords which came to represent the highest tribunal in the land.[9]

Charles I was no stranger to impeachment proceedings, and by 1649 he had seen many of his advisors brought up on charges by Parliament. Difficulties began almost immediately for Charles when Parliament began proceedings against George Villiers, the First Duke of Buckingham. Charles summarily dismissed the parliament, but the resentment toward the activities of Buckingham remained. By April of 1626, Commons was again considering the matter of the impeachment of Buckingham, and by May of that year presented its articles of impeachment against the Duke to the House of Lords.[10] Perhaps one of the strongest ideas put forward in the proceedings was an argument of John Pym. Pym would argue that the men who served and held offices for the king must resemble the power which had bestowed the office in the first place.[11] Put another way, those who spoke with and acted with the authority and voice of the king, must be just as virtuous and evenhanded in their policies as though the monarch were conducting the business himself.

Of course Buckingham would not be the only member of Charles I's inner circle of trusted advisors to be brought before Parliament on articles of impeachment. Both Archbishop of

[9] Lerner, 2070-2071.
[10] William W. MacDonald, "John Pym and the Impeachment of the Duke of Buckingham," *Historical Magazine of the Protestant Episcopal Church* 41, no. 2 (June 1972): 167-169. Accessed April 27, 2015 http://www.jstor.org/stable/42973344.
[11] MacDonald, 171.

Canterbury William Laud and Thomas Wentworth, Earl of Strafford would find themselves brought before the Peers at Westminster. While the actions taken against and eventual execution of Archbishop Laud was due in large part to the difference in opinion regarding the practices of the Church of England, the trial of Strafford dealt more with the policies and violation of rights that more closely resembled those which Charles would be eventually brought to trial on.

When Charles recalled Strafford from Ireland to provide council on the deteriorating situation in England, things had gotten much worse for Charles since the impeachment proceedings against Buckingham. With Scots on the border ready to invade, an empty treasury that would prevent Charles from raising an army, and yet another Parliament which was dismissed without granting duties, Charles had nowhere to turn but to Strafford. In his moment of need it was Strafford who would council the king to take decisive action against the Scots. "You have an army in Ireland you may employ here to reduce this kingdom," Strafford was quoted in saying, and it would be this advice which Parliament would seize upon when it brought forward articles of impeachment against Strafford in 1640.[12]

As proceedings got underway, Commons produced twenty-eight articles of high treason against Strafford.[13] To many, the "here" to which Strafford referenced was none other than England itself. To parliamentarians such as John Pym, "[Strafford's] design was to destroy the laws and liberties" of England.[14] Tradition was not only utilized in formalizing the impeachment process for which Strafford now found himself involved, but was also used to form the substance of the proceedings. Would Strafford be allowed counsel, would he be allowed to call witnesses to testify on his behalf? In each regard precedents were located in which Strafford could be

[12] Lerner, 2063.
[13] Lerner, 2074.
[14] As quoted in Lerner, 2068.

afforded these rights, albeit with some limitations imposed as part of the compromise between Commons and Lords.[15] However the fact remained that the matter would be *tried* before the House of Lords.

It is also in the impeachment of Strafford that another matter of great importance would be resolved: what exactly constituted treason? Statutes from 1352, 1399, and 1553 all addressed the matter of treason, but only the 1352 statute enumerated specific definitions of treason. The managers of the case urged the Peers to adopt a broad interpretation of treason based upon the fundamental laws of England. As Member of Parliament Nathaniel Fines would put it, "If it bee treason to… kill the governor, then sure 'tis treason to kill the government."[16] To counter, Strafford would point to a statute under the reign of Edward VI which required the testimony of two witnesses to support a charge of treason.[17] In the end, Lords would side with Commons' broader interpretation of treason.

While Parliament maintained the right to impeach high officers, it is important to note that a trial still took place. One might suspect that given the animosity that existed between Parliament and the crown at this point in time that the impeachment proceedings were highly politicized. While it was impossible to avoid politics all together, the evidence clearly shows that the Lords took their roles of judge and jury quite seriously, acting only within the bounds of the law and ruling in matters which were clearly supported by law. In all three of the major impeachment proceedings – those against Buckingham, Laud, and Strafford – the Lords would not render a guilty verdict. While Buckingham met an unfortunate early demise, the impeachment proceedings against Laud and Strafford would be dropped and bills of attainder

[15] Lerner, 2073.
[16] Ralph Verney, Notes of Proceedings in the Long Parliament 54 (Camden Society 1845) quoted in Lerner, 2080.
[17] Lerner, 2084.

passed in their place because Commons was aware the Lords were unlikely to convict based on the evidence presented.[18] Perhaps even more surprising is that Charles gave royal assent to the bills, allowing the executions to go forward and giving at least partial justification to the actions of Parliament.

It would be the remnants of this same Parliament that Charles I would come to face at his own trial. When a pro-royal pamphlet circulated at the start of the Long Parliament, it sought to answer "what type of parliament would please the king?"[19] Neither the author nor Charles were likely satisfied with the Parliament they received. Seven years later Charles sat before the Court of High Justice and listened as the acting Attorney General John Cooke read the charges.

> "The king has attempted... to erect and uphold in himself an unlimited and tyrannical power, to rule according to his will and to overthrow the rights and liberties of the people . . . and hath traitorously and maliciously levied war against the present Parliament and the people therein represented."[20]

Yet Charles remained adamant that Parliament had no authority to bring this charge against him. Charles would remain true to his word prior to the trial "That if any such Charge of Impeachment should be exhibited against him… then he would not give answer thereto."[21]

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[18] Lerner, 2094.
[19] A. J. B. *VVhat kind of Parliament vvill please the King; and hovv vvell he is affected to this present Parliament*. London, 1642. *Early English Books Online*. Accessed March 26, 2015 http://gateway.proquest.com.summit.csuci.edu:2048/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99859560.
[20] Robert and Marilyn Aitken, "The King Who Lost His Head: The Trial of Charles I," *Litigation* 33, no. 3 (Spring 2007): 56.
[21] Anonymous. *A declaration of the Lords and Commons assembled in Parliament, concerning the tryall of the King; and the bill of attainder and charge against him, in the name of Charles Stuart, impeaching him of high treason, for breach of covenant with his people. And a list of the names of the judges, lords, commons, colonels, officers of the Army, and aldermen of the city of London, who are appointed as commissioners to try his Majesty, and to give sentence against him at VVestminster; vvith the time of his comming to tryall, and a message to the kingdom, touching the same. Also, the further and finall resolution of the Army, touching the person of the King, their resolution touching the government of this kingdom, their summons to the Prince of VVales, and the Duke of*

Oddly, Charles references and acknowledges the right of Parliament to bring proceedings of impeachment yet simultaneously declares it to be "Arbyttary [sic] and unlawful."[22] This leads one back to the original premise asked at the beginning of this essay: by what authority was Charles, King of England, tried?

To answer this we return once more to *Magna Carta* and the sixty-first clause. By bringing charges of treason against Charles, Parliament was acting within the guidelines of the provision of the charter which allowed for redress of grievances for offences against the people of England and transgressions of the provisions of *Magna Carta* itself. Among the several rights which Charles was accused of violating, perhaps the violation of clause 39 was of greatest concern:

> "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."

The Rump would argue that through repeated transgressions whereby Charles illegally seized members of Parliament who spoke out against the crown and its officers, that the monarch had violated both clauses thirty-nine and forty of *Magna Carta*.[23] Because the king had violated these two clauses, Parliament was within its right to bring the king before its body for redress.

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*York; and a declaration concerning the Duke of Gloucester.* London, 1649. *Early English Books Online*. Accessed March 26, 2015 http://gateway.proquest.com.summit.csuci.edu:2048/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99864751.

[22] Ibid.

[23] Clause 40 prohibited the denial or delay of justice.

Because the sixty-first clause also mentioned officers of the crown, it was the provision from which impeachment proceedings were also deemed lawful. If officers of the crown could be – and regularly were – held responsible for violating the rights and well-being of the people of England, then could not one argue that the same form of justice be applicable to the king as well? Similarly, as Pym alluded to in the trial of Buckingham, officers of the crown are expected to conduct themselves as if they were the monarch himself. If one is acting with authority and force of law of the monarch himself, then how could the officer be accountable to Parliament under impeachment, yet the monarch not?

The English had a long history of precedent to show the king was not above the law. For four centuries preceding the trial of Charles I, the crown had faced suit in the Court of King's Bench. If the king could be brought before a court in civil matters, then surely he too could be brought before a criminal tribunal.

Yet the High Court of Justice was a court of Parliament's creation, but that does not mean it is any less legitimate. The entire legal system whereby different courts were created to try different matters of jurisprudence was a creation of Parliament after all. Following the guidelines set forth in *Magna Carta*'s clause seventeen, courts would not be held at fixed locations. But those courts did not suddenly spring into existence when John affixed his seal to the charter;[24] those courts were the creation of Parliament. Charles himself provided the royal assent to the Habeas Corpus Act of 1640 in which Parliament eliminated the Court of Star Chamber.[25] By accepting the act, Charles was also reaffirming the legality of the action: Parliament *did* have the

[24] It is a commonly held misconception that the charter was signed. There are no signatures, the signatories affixed their respective seals pressed in signet wax.
[25] "Charles I (r. 1625-1649)," *The Official Website of the British Monarchy*. Accessed April 21, 2015 http://www.royal.gov.uk/historyofthemonarchy/kingsandqueensoftheunitedkingdom/thestuarts/charlesi.aspx.

authority to create and abolish courts of particular jurisdictions within the realm. The High Court of Justice was a special tribunal to be sure, but it followed the privilege and tradition of previous parliamentary authority.

Finally, when one examines the proceedings at Westminster, one finds that Charles was tried in accordance with accepted practice of the English Common Law. This essay began with the indictment against the king; the defendant was notified of the charges against him and repeatedly given an opportunity to defend himself. It is important to note that Charles chose not to mount a defense, but was afforded the occasion to do so. The precedent set forth in the impeachment of Strafford and the bill of attainder against him allowed the court to consider the matter of treason against the people of England in a broader sense, but the fact remains the case was still tried. Ironically, the protections offered by *Magna Carta* from persecution by an overzealous monarch, were now being applied to the monarch himself. No freeman was to be denied his rights or standing without judgement of a jury, and here Parliament sitting as the High Court of Justice would be jury for the king.

After full consideration of the customs, tradition, and precedents employed by Parliament in the trial of Charles I, one must question just how radical the Rump was in bringing the king to justice. Charles was afforded every right of an Englishman, but both custom and precedent had shown that even a king was beholden to the laws of the realm. Parliament, acting with its customary powers of impeachment and of power to create courts in the judiciary, was free to create the High Court of Justice. While the decision of the court to execute a sitting monarch certainly had no precedent, it undoubtedly had the authority to sit and hear the matter of Charles Stuart.