

From The Meanest Man to King Charles I: The King's Role in the Trial of King Charles I

Introduction:

The House of Commons convened the High Court of Justice to try King Charles I for various high crimes and treason. The High Court of Justice found King Charles I guilty. But the High Court of Justice, it could be argued, was illegitimate and could not try anyone, not even, as Charles I himself said, “the meanest man in England.”

The execution of King Charles I was regicide. There was no precedent of putting a king on trial and Charles I had a good case for his defense. The historiography of King Charles I tends to condemn him. I will start first with the historiographical debate. I will analyze civil lawyer Sir Edmund Pierce's views on the King's role, the views on the King's role expressed by acts of the House of Commons, and the views on the King's role expressed by the King himself, the crowd, and the High Court of Justice.

Historiography on the Trial of King Charles I and the Role of the King:

Scholars in the Whig tradition have supported the Glorious Revolution and have detected the idea of progress throughout English history. G.R. Elton notes how they see in the 17th century growing liberty and how they are “looking only for what has significance in a later age.”¹ Elton also notes that “lawyers are the most ‘whig’ of historians. What matters is the law that survives.”² Samuel Rawson Gardiner is one of these Whigs.

¹ G.R. Elton, *The Practice of History* (London: Sydney University Press, 1967), 19.

² G.R. Elton, *Political History: Principles and Practice* (New York: Basic Books, 1970), 40.

Samuel Rawson Gardiner argued in his praise for Cromwell that “few wished for the revival of the absolute kingship, of the absolute authority of a single House of Parliament, or of the Laudian system of governing the church.”³ Gardiner argued, “There are two foundations upon which government must rest if it is to be secure, the traditional continuity derived from the force of habit, and the national support derived from the force of will. The Agreement of the People swept the first aside, and only trusted the latter to a very small extent.”⁴ Gardiner also noted the religious reasons for the English Civil War, stating:

Hence to the demand for the alteration of the Constitution was added, in addition to a call for ecclesiastical changes, a demand less universally felt, but felt by men of sufficient ability and strength of will to give effect to their resolutions, that Charles I must either bend or break. It was this part of the Revolution which was not accomplished till the deposition of Charles I, which unhappily took the form of his execution. After that there was nothing more to be done which could possibly have any permanent effect.⁵

Despite Gardiner’s opposition to the execution, he admits: “the execution made the difficulties in the way of the establishment of a Republic greater than they had been, it is impossible to deny; but the main difficulties would have existed even if the King had been deposed instead of executed.”⁶

The Whig interpretation of the 19th century would be later replaced by the Marxists of the 20th century. But in the later 20th century, revisionists reexamined the factors that led to the English Civil War and the trial of Charles I.

³ Samuel Rawson Gardiner, *Oliver Cromwell* (London: Goupil and Company, 1901), 315-8.

⁴ Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), li.

⁵ *Ibid.*, li.

⁶ *Ibid.*, li.

One recent revisionist historian, Mark Kishlansky, notes how reexamining primary sources finds that Charles was “open to compromise, personally honorable, and sensitive toward explaining his actions to his subjects.”⁷ He also explained that under the conditions of the Treaty of Newport, Charles would have to “assume blame for the war, abolish episcopacy and accept the sales of the bishops’ estates, forfeit civil and military appointments for twenty years and control of Ireland until the rebellion there was suppressed.”⁸ And after examining the treaty negotiations further, Kishlansky concludes that “all historians agree that it was not Charles who broke them off. It was the army that put an end to the treaty and there is no compelling evidence to suggest that they did so in order to extract better terms.”⁹

C.V. Wedgwood noted “the wide divergence between what people said, and what they were prepared to do to avenge the late King’s death.”¹⁰ The cause of Charles I was not only his cause but “that of all Christian Kings. If they did not wish disorder and rebellion to triumph everywhere, let them hasten to make peace among themselves and come to his rescue.”¹¹

Wedgwood was adept at finding the motivations of individual statesmen. Writing about Cardinal Mazarin, she stated, “If he did not like the new government of England he could see that unequivocal support of the Royalists, besides being expensive, might precipitate an Anglo-Spanish alliance.”¹² Wedgwood amused states: “In the latter half of the seventeenth century there is little evidence to show that the institution of European monarchy was in any way affected by it. It would seem that practical statesmen were right to pay lip service alone to the idea of

⁷ Mark Kishlansky, “Charles I: A Case for Mistaken Identity,” *Past & Present* 189, no. 1 (November 2005): 41-80. *Historical Abstracts with Full Text*, EBSCOhost (accessed October 6, 2016).

⁸ *Ibid.*, 50.

⁹ *Ibid.*, 79.

¹⁰ C.V. Wedgwood, “European Reaction to the Death of Charles I,” *The American Scholar* 34, no. 3 (Summer 1965): 431-46. <http://www.jstor.org/stable/41209297> (accessed September 21, 2016).

¹¹ *Ibid.*, 437.

¹² *Ibid.*, 445.

avenging the outrage, and to govern their conduct toward its perpetrator by purely practical consideration.”¹³ Wedgwood was a woman at a time when history was dominated by men. One unique perspective that she brought was the fact that she brought a European perspective that contrasts with revisionist Kevin Sharpe about whom one reviewer commented, “This is also English history with a vengeance. Sharpe makes no acknowledgment of the existence of the other kingdoms over which Charles ruled except when their armies chose to encroach into English territory.”¹⁴ One fascinating action Wedgwood took while researching the English Civil War was to “work out the battles on paper, then put her imagination to work as she tramped around the battlefields, if possible in the season when a battle took place.”¹⁵

M.R. Toynbee discusses the legacy of King Charles I’s healing powers, stating “Among the wreaths placed on the statue of Charles I at Charing Cross on 30 January, 1949, there was one inscribed with the single word ‘Hommage’. However much we may differ in our views about the King as a ruler, it seems to me that the evidence as to popular faith in him as a ‘beloved physician’ is sufficient to evoke that modest tribute from all those who are not ashamed to handle with respect the cherished beliefs of their forefathers.”¹⁶ The physician and patient analogy was one of the many analogies in the early modern era used to describe the relationship between the king and the commonwealth.¹⁷

¹³ C.V. Wedgwood, “European Reaction to the Death of Charles I,” *The American Scholar* 34, no. 3 (Summer 1965): 431-46. <http://www.jstor.org/stable/41209297> (accessed September 21, 2016).

¹⁴ Anthony Milton, “The Personal Rule of Charles I,” *History Today*. <http://www.historytoday.com/anthony-milton/personal-rule-charles-i-caroline-captivity-church> (accessed October 31, 2016).

¹⁵ “C.V. Wedgwood,” *The Economist*, March 20, 1997. <http://www.economist.com/node/146154> (accessed October 31, 2016).

¹⁶ M.R. Toynbee, “Charles I and the King’s Evil,” *Folklore* 61, no. 1 (March 1950): 1-14. <http://www.jstor.org/stable/1257298> (accessed September 21, 2016).

¹⁷ R.W.K. Hinton, “Was Charles I a Tyrant?” *The Review of Politics* 18, no. 1 (January 1956): 69-87. <http://www.jstor.org/stable/1404941> (accessed September 21, 2016).

Most historians of 17th century England have not focused on the role of the civil lawyers in the English Civil War or trial of Charles I. The civil lawyers worked in and were supporters of the prerogative and ecclesiastical courts of England. Parliamentarians and common lawyers were opposed to these types of courts and they the side victorious in the English Civil War. The social origins of the civil lawyers should prove of interest to American historians and Marxist historians. Civil lawyers were sons of the lower gentry and professionals. They were a group based on common knowledge and not lineage. Some were even Italians. The one issue that united them was support for the king and an expansive view of his royal prerogative. For French historians they could be compared to Louis XIV's intendants.¹⁸ For Russian historians, they could be compared to Ivan the Formidable's oprichniki.¹⁹ For Whig historians, the study of the civil lawyers may shine light on the reasons for support for authoritarianism. My argument is distinctive in analyzing the influence of the rhetoric and ideas of the civil lawyers in the speeches of Charles I defending himself at his own trial.

Civil Lawyer Sir Edmund Pierce on the Role of the King:

The civil lawyers were an important group of Royalist supporters. Most of their offices and incomes relied on the King. The civil lawyers were also educated in the civil law, which was based on the code of Justinian, a Byzantine emperor.²⁰ Viewing the king as a Byzantine emperor expanded his royal prerogative. Of the civil lawyers, perhaps the most prominent was Sir Edmund Pierce, who wrote several Royalist pamphlets before and during the Restoration. He

¹⁸ Sharon Kettering, "The Intendants of Justice and the Parlement," in *Judicial Politics and Urban Revolt in Seventeenth-Century France: The Parlement of Aix, 1629-1659* (Princeton: Princeton University Press, 1978), 81-109. <http://www.jstor.org/stable/j.ctt13x16b3.10> (accessed March 25, 2017).

¹⁹ Priscilla Hunt, "Ivan IV's Personal Mythology of Kingship," *Slavic Review* 52, no. 4 (Winter 1993): 769-809. <http://www.jstor.org/stable/2499652> (accessed February 12, 2017).

²⁰ There is a debate on whether the Byzantine Empire was a continuation of the Roman Empire. See Peter Garnsey and Richard P. Saller, *The Roman Empire: Economy, Society and Culture* (Berkeley: University of California Press, 1987); and Nigel Rodgers, *Roman Empire* (New York: Metro Books, 2008).

fought for King Charles I in the English Civil War and was knighted in 1645. Pierce was also imprisoned in 1645 and again in 1655. He was given a grant of arms in 1661. Perhaps Pierce's pamphlets along with his service to the King helped him obtain the grant of arms. He was a Master in Chancery, a Justice of the Peace, and MP for Maidstone for most of the 1660s.²¹ Pierce died in 1667.²² Sir Edmund Pierce wrote a pamphlet during the Restoration about England's form of government. *Englands Monarchy Asserted* was a pamphlet published in 1660 that was not very technical but very readable. A literate person from the era who was not well read could most likely understand the main points of the argument. Pierce showcased his bias against the common people early on when he subtly referenced Aristotle's forms of government. The ordinary person would not have been familiar with ancient Greek philosophy. Pierce stated, "It is possible, a People may live happily enough, under...*Monarchy, Aristocracy, or Democracy*, so they have good Laws and good Magistrates. The form in that case, doth not perhaps much add, or diminish; But to prefer any of the two last, before the first, is to deny that faith and experience which all good History hath taught us."²³ Aristotle's three forms of good government are monarchy, aristocracy, and polity. The corrupt form of the polity is democracy or mob rule.

²¹ The Court of Chancery had jurisdiction over trusts, land law, the administration of the estates of lunatics and the guardianship of infants. A Master in Chancery conducted hearings of the cases and reported upon them to the Lord Chancellor. "The masterships in Chancery were the highest positions to which the ordinary civilian careerists usually aspired, and they were the expected reward of those who had become members of the 'bar' of advocates in London." See Brian P. Levack, *The Civil Lawyers in England 1603-1641: A Political Study* (Oxford: Oxford University Press, 1973), 27, 62.

²² Brian P. Levack, *The Civil Lawyers in England 1603-1641: A Political Study* (Oxford: Oxford University Press, 1973), 261-2.

²³ Edmund Pierce, *Englands monarchy asserted, and proved to be the freest state, and the best common-wealth throughout the world. With a word to the present authority, and His Excellency General Monck* (London, 1660), 1. *Early English Books Online*. Web. http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115423. (accessed October 31, 2016).

By invoking Aristotle, Pierce was also implying that under the Puritans the magistrates and laws were not effective.²⁴ The Puritans allowed for very radical ideas to spread during their rule.²⁵ The cosmopolitan and possibly treasonous view of many civil lawyers was shown when Pierce stated that Puritan government would be “such a peece of folly and madness, That any Potent neighbor Prince, may surely have just cause to think that by the Law of Nations he may invade and possess our properties, upon the Title, score, and accompt of Idiotism, Lunacy, or Phrensie.”²⁶ Did William of Orange use this pamphlet as an excuse to invade?²⁷ Also the reference to “the Law of Nations” shows his education in international law.²⁸ Also, by neighbor does Pierce only refer to France? Louis XIV was reigning in a centralized fashion and had eliminated the Huguenots and co-opted the aristocrats to unify the nation. France used the civil

²⁴ The Rump Parliament started on December 6, 1648. In April 1653 Oliver Cromwell threw out the Rump, and in December he was installed as Lord Protector of the realm. This gave the Rump Parliament about four years and three months of ruling. After Cromwell was unable to prevent a Royalist rising in 1655, he divided England into military districts, each under a Major-General, and Commissioners were appointed to raise a new militia and imposed discriminatory tax on Cavaliers to pay for it. In 1660 King Charles II was restored to his throne. Kevin Sharpe argued “Far from being intrinsically weak in 1637, Charles’s government appears to have been stronger than in the 1620s or than that of his immediate predecessors, or successors – Cromwell and Charles II.” Kevin Sharpe, *The Personal Rule of Charles I* (New Haven: Yale University Press, 1992), 953. See David Underdown, *Fire from Heaven: The Life of an English Town in the Seventeenth Century* (London: HarperCollinsPublishers, 1992), 215.

²⁵ Many of those radical ideas that hindered Puritan rule included universal suffrage, the removal of licenses for occupations, atheism, and anarcho-primitivism. See Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (New York: Penguin Books, 1991). He is one of the 20th century Marxist historians of the English Civil War mentioned previously

²⁶ Edmund Pierce, *Englands monarchy asserted, and proved to be the freest state, and the best common-wealth throughout the world. With a word to the present authority, and His Excellency General Monck* (London, 1660), 2. *Early English Books Online*. Web. http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115423. (accessed October 31, 2016).

²⁷ William of Orange was the only child of William II, prince of Orange and of his consort Mary who was the eldest daughter of Charles I and who had the role of princess royal of England. He invaded England in the winter of 1688-9 to seize the Stuart crown. The current monarch at the time King James II was William’s uncle. Though the analogy may be weak considering it was important political figures ranging from Whigs to Tories who invited William to invade. The supporters of William opposed James II due to his Catholicism and/or his absolutist government model. See Tony Claydon, “William III and II (1650–1702),” *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn., May 2008 (<http://www.oxforddnb.com/view/article/29450>, accessed November 10, 2016).

²⁸ According to Dutch jurist and theologian Hugo Grotius in *De Jure Belli Et Pacis*, there are three causes of a just war defense, recovery of property, and punishment. An invasion by Louis XIV could be considered defense if Louis was afraid of republicans rising in France. There may be a possible claim of recovery of property if Louis XIV shared any blood with William the Conqueror. An invasion by Louis XIV could also be considered punishment for the regicide of the King. See Jill Lepore, *The Name of War: King Philip’s War and the Origins of American Identity* (New York: Vintage Books, 1999), 107-11, 7, 21.

law and was more of a model for the civil lawyers and James II than the Dutch Republic.²⁹ The Dutch also used the civil law but they had given much less power to the ruler. Pierce also believed that if Louis XIV invaded, then Louis XIV should write down the problems of England so that they can be solved.

Pierce also looked back at 1640 under Charles I before the English Civil War and told the reader: “Let us reflect...upon the Government...as it stood twenty years ago; which though truly Monarchical, yet it did by a frequent Refining of it self upon several occasions (rejecting the evil, and retaining the good of all the known best Governments in the world) raise it self to such a mirror of Perfection, That it became the envy of *Monarchies*, and shame of all *Commonwealths*.”³⁰ The commonwealths Pierce is referencing most likely include the government under Oliver Cromwell and Massachusetts which was founded in 1620. This reference also showcases his wide worldview that is not limited to England but to the world as a whole. The civil law was based on the code of Justinian and it made sense that the civil lawyers would view the king as an emperor—especially as it was codified under several laws under Henry VIII. Colonies were also a way to raise revenue that made the king less dependent on Parliament.³¹ Pierce also believes that the monarchy was not stagnant and was able to adapt. He viewed the Magna Carta and Petition of Right as examples of these adaptations that the monarchy had to adopt.³² The fact that the Magna Carta was affirmed thirty times gave legitimacy to it in Pierce’s mind. Perhaps Pierce

²⁹ Steve Pincus, *1688: The First Modern Revolution* (New Haven: Yale University Press, 2009), 120-42.

³⁰ Edmund Pierce, *Englands monarchy asserted, and proved to be the freest state, and the best common-wealth throughout the world. With a word to the present authority, and His Excellency General Monck* (London, 1660), 3. *Early English Books Online*. Web. http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115423. (accessed October 31, 2016).

³¹ James A. Henretta, “*Salutary Neglect*”: *Colonial Administration under the Duke of Newcastle* (Princeton: Princeton University Press, 1972).

³² The Petition of Right outlawed billeting, martial law, and imprisonment without cause shown. Charles I accepted the Petition not only because he desperately needed subsidies, but also because the judges had assured him that it did not prevent imprisonment at the King’s command. See Kevin Sharpe, *The Personal Rule of Charles I* (New Haven: Yale University Press, 1992), 40-1.

had forgotten about a certain clause of the Magna Carta. The Magna Carta gave license for the barons to make civil war in Clause 61, by stating that the barons can “distrain and distress [the monarch] in all ways possible, by taking castles, lands, and possessions and in any other ways they can, until [the situation] has been put right in accordance with their judgment.”³³ Civil war brings death, destruction, and anarchy. Peasants could not protect themselves against barons and knights with better weapons and training than they have. Soldiers on both sides are liable to fear the worst and destroy the towns of innocent people who are neutral or who support the side of the people razing the town. Overall, the Magna Carta weakens the king and the rights of the people. Pierce also stated, “That no Law hath force to bind, but such as by our own allowance, hath been or shall be established, by the sovereign of the Nation, or else hath been received *ab antique* by the constant usage of the People.”³⁴ The idea of customary law is very similar to common law and its emphasis on experience is opposed to the logic of the civil law. Pierce challenges Massachusetts, the government of Oliver Cromwell, and the Dutch Republic to “shew if they can, the like Liberty and Freedom for their Citizens and Subjects.”³⁵ However, the idea of “*ab antique*” or “of ancient date” also recalls his preference for monarchy because of its success in the past. Looking to the past for answers is the key mark of a true conservative who wants to uphold stability.

Pierce contrasted the Royalists and Parliamentarians with polemic rhetoric. The adjectives he repeatedly used to describe the Royalists are “sober, judicious, rational, and

³³ Dan Jones, *Magna Carta: The Birth of Liberty* (New York: Viking Press, 2015), 215.

³⁴ Edmund Pierce, *Englands monarchy asserted, and proved to be the freest state, and the best common-wealth throughout the world. With a word to the present authority, and His Excellency General Monck* (London, 1660), 4. *Early English Books Online*. Web. http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115423. (accessed October 31, 2016).

³⁵ *Ibid.*, 4.

prudent.”³⁶In great contrast he accused the Puritans of being “upstart Lords and Staesmen” with “little fingers” who are guilty of “Idiotism” and “Lunacy.”³⁷ Pierce set himself up as a contrast with the Puritans. While he was rewarded and able to advance because of his loyalty and intelligence, the Puritans advanced by being greedy, seditious, and committing treason. Pierce here is also showcasing the different views of sex that Puritans and Anglicans have. With the Restoration, many bawdy comedies were written in contrast to the banning of plays under the Puritans. The Puritans had “little fingers” while the “whole loyns of a Free born heir” is “more heavy and weighty.”³⁸ This is implying that the Puritans are sexually impotent while the King is sexually potent making him more fit to rule. The king’s role was to produce an heir. The more male heirs a king had, the safer the line of succession. The sexual potency of the king meant stability for the nation.³⁹ A similar attack was used from the opposite side when King John was called Softsword.⁴⁰ Pierce also attacks the sexual potency of the Puritans when he calls them “State harpies.”⁴¹ Harpies were female monsters in the form of birds with a human face. These multiple references to the ancient Greeks also showcase Pierce’s learning. Pierce attacked the Puritans for other reasons in the essay and defended the monarchy as well. This pamphlet can be

³⁶ Edmund Pierce, *Englands monarchy asserted, and proved to be the freest state, and the best common-wealth throughout the world. With a word to the present authority, and His Excellency General Monck* (London, 1660), 1-2. *Early English Books Online*. Web. http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115423. (accessed October 31, 2016).

³⁷ *Ibid.*, 1-5.

³⁸ *Ibid.*, 4.

³⁹ One of the reasons for the Church of England being created was the failure of Catherine of Aragon to give King Henry VIII a male heir. See G.R. Elton, *The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII* (1959; repr., Cambridge: Cambridge University Press, 1953).

⁴⁰ Opposite side refers to opponents of royal prerogative and power. King John was a capable administrator who increased the revenue of the Crown as opposed to his brother King Richard I. Both King John and King Charles I have been misjudged by history. See Dan Jones, *Magna Carta: The Birth of Liberty* (New York: Viking Press, 2015).

⁴¹ Edmund Pierce, *Englands monarchy asserted, and proved to be the freest state, and the best common-wealth throughout the world. With a word to the present authority, and His Excellency General Monck* (London, 1660), 5. *Early English Books Online*. Web. http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115423. (accessed October 31, 2016).

understood by a modern person, it could probably be understood by any literate Englishman. This would allow the anti-Puritan and pro-Royalist message to spread during the Restoration.

Acts of Parliament and the Role of the King:

The Act Erecting A High Court of Justice For The King's Trial was passed by the House of Commons on January 6, 1649. The Act stated that King Charles I “had a wicked design to subvert the ancient and fundamental laws and liberties of this nation, and in their place to introduce an arbitrary and tyrannical government.”⁴² It is interesting that the authors of the act chose to use the word subvert rather than the word destroy. One must also note the separation of arbitrary and tyrannical. This means as a possible defense that King Charles I would have to make the prosecutors prove both. The Act proclaimed that the “high and treasonable offences” of Charles included “the public treasure exhausted, trade decayed, [and] thousands of people murdered.”⁴³ The Act does not specify who murdered whom meaning that they could be held responsible for murder also. Though the laws of war generally do not consider killing an enemy combatant murder.⁴⁴ The Parliament maintained that he was against them and the “kingdom” but is not a king part of the kingdom?⁴⁵ The kingdom is part of the body politic with the king as the head. Without a head, a body and therefore the kingdom cannot survive.⁴⁶ One hundred fifty people are “appointed and required to be Commissioners and Judges” for the hearing, trying and judging of Charles while twenty or more of them would constitute a “High Court of Justice.”⁴⁷

⁴² Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 357.

⁴³ *Ibid.*, 357.

⁴⁴ Jill Lepore, *The Name of War: King Philip's War and the Origins of American Identity* (New York: Vintage Books, 1999).

⁴⁵ Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 357.

⁴⁶ Thomas Hobbes, *Leviathan*, ed. C.B MacPherson (New York: Penguin Books, 1985).

⁴⁷ Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 357-8.

The High Court would be responsible to “proceed to final sentence according to justice and the merit of the cause; and such final sentence to execute, or cause to be executed, speedily and impartially.”⁴⁸ This clever use of language allowed the High Court of Justice to execute the King even if he violated no law. Note the emphasis of “cause” and the fact that “and” is used when sentencing but “or” is used to determine execution. The High Court of Justice kept their word in ensuring that the sentence be carried out speedily. Charles was executed only twenty four days after this Act was passed.

The Charge Against the King was laid on January 20, 1649. Parliament limited Charles’s rule, and stated that he had “a limited power to govern” and was “obliged to use the power committed to him for the good and benefit of the people, and for the preservation of their rights and liberties.”⁴⁹ Note that the good of the people is separate from preservation of their rights. As pointed out above, the Magna Carta gave several rights but it was not for the good of the people. Fighting a war to protect your “rights” is a perfect way to have “thousands of people murdered.”⁵⁰ One must also note the arbitrary nature of Parliament’s use of language. In *The Act Erecting A High Court of Justice For The King’s Trial*, they stated that Charles wished to introduce an “arbitrary and tyrannical government” while in this document they state he wanted “an unlimited and tyrannical power to rule according to his will.”⁵¹ Ruling according to your will is not arbitrary. The Oxford English Dictionary defines arbitrary as “capricious, uncertain, varying.”⁵² But Charles I was not an arbitrary person unlike Henry VIII.⁵³ The king “organized

⁴⁸ Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 358.

⁴⁹ *Ibid.*, 371-2.

⁵⁰ *Ibid.*, 357.

⁵¹ *Ibid.*, 357-72.

⁵² “arbitrary, adj. and n.”. OED Online. September 2016. Oxford University Press. <http://www.oed.com/view/Entry/10180?redirectedFrom=arbitrary> (accessed November 11, 2016).

⁵³ Though Henry VIII was more predictable before his jousting injury.

his day carefully around duties and devotions; he adopted the rigid routine of the controlled personality, from his early rising when he donned his badge of St. George to winding his watch last thing at night.”⁵⁴ The document also states that Charles “traitorously and maliciously levied war against the present Parliament, and the people therein represented.” If England was a kingdom, then is not the king the most important part of the government? Also, not all of the people were represented in Parliament, especially the Rump Parliament. Leaving Royalists and Presbyterians out of Parliament denies a voice to a significant proportion of people in the kingdom. The only possible argument to back their claim that Charles behaved “traitorously” by being involved in “invasions from foreign parts.”⁵⁵ The charge ended dramatically claiming that Charles is “guilty of all the treasons, murders, rapines, burnings, spoils, desolations, damages and mischiefs to this nation, acted and committed in the said wars, or occasioned thereby.”⁵⁶ This holds Charles responsible for the crimes of his supporters, but it was easier logistically to try the King than all of his Royalist supporters.

The High Court of Justice and King Charles I Debate the Role of the King during the Trial of King Charles I:

Charles repeatedly declined the jurisdiction of the High Court of Justice. One informative part of the records of the trial is the timeline that the High Court of Justice provided which starts

⁵⁴ Kevin Sharpe, *The Personal Rule of Charles I* (New Haven: Yale University Press, 1992), 189-90.

⁵⁵ King Charles I did use Irish soldiers. But Ireland was considered to be a Dominion of England like the American colonies. King Charles I was Lord of Ireland. The fear of foreign mercenaries was one of the concerns of James Harrington. He invented a strain of republican thought hostile to the idea of the standing army. Land was the basis of political power. Overtime, landowners had become soft and corrupted. Instead of fighting for the king, they paid the king. The king was then able to pay mercenaries. This meant that he had his own personal army that was independent of the landowners. During the Restoration, King Charles II and King James II developed a professional army on the basis of Louis XIV. See Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 371-73; and Steve Pincus, *1688: The First Modern Revolution* (New Haven: Yale University Press, 2009).

⁵⁶ Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 374.

on January 3, 1648 with the House of Commons resolution to have no one speak to the King and ends on January 4, 1649 with the creation of the High Court of Justice. The narrative of the proceedings of the trial was “Published by Authority, to prevent false and impertinent Relations.”⁵⁷ Yet the person who published it, Gilbert Mabbot, had his “imprimatur often appearing without permission” despite the fact that he was the parliamentary licenser of newsbooks and pamphlets.⁵⁸ The trial ran from January 20, 1649 to January 27, 1649. The fact that the first day of the trial was a Saturday showed how much the High Court of Justice wanted to execute King Charles I. Mabbot noted how Charles I only had twenty guards around him and “not at all moving his hat, or otherwise shewing the least respect.”⁵⁹ In the recorded proceedings, Charles’s first remarks are to a question by the Lord President John Bradshaw. Charles exhorted the High Court of Justice: “Remember I am your king, your lawful king, and what sins your bring upon your heads, and the judgment of God upon this land; think well upon it, I say, think well upon it, before you further from one sin to a greater: therefore let me know by what lawful authority I am seated here, and I shall not be unwilling to answer.”⁶⁰

Lord President Bradshaw responded that he is seated on trial based on “the name of the people of England, of which you are elected king.”⁶¹ Charles then taught Bradshaw that England had never been an elected monarchy but a hereditary monarchy. He also explained that to

⁵⁷ T.B. Howell, ed., *State Trials in the Reign of King Charles the First*, vol. 4 of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period To the Year 1783, With Notes and Other Illustrations* (London, 1816), 993-4.

⁵⁸ Frances Henderson, “Mabbott, Gilbert (*bap.* 1622, *d.* in or after 1670,” *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/37706>] (accessed November 27, 2016).

⁵⁹ T.B. Howell, ed., *State Trials in the Reign of King Charles the First*, vol. 4 of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period To the Year 1783, With Notes and Other Illustrations* (London, 1816), 994.

⁶⁰ *Ibid.*, 995-6.

⁶¹ Note the fact that the title Lord President is used rather than just President. This trial happened before the abolishment of the House of Lords. The fact that he uses the title Lord shows the differences among different factions of the Roundheads. T.B. Howell, ed., *State Trials in the Reign of King Charles the First*, vol. 4 of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period To the Year 1783, With Notes and Other Illustrations* (London, 1816), 996.

constitute a parliament, you need the House of Lords and king along with the House of Commons. Charles showed his religiosity by stating that the High Court of Justice first had to satisfy God and then the country. He then argued “you have shewn no lawful authority to satisfy any reasonable man.”⁶² The term “reasonable man” may remind one of Sir Edmund Pierce’s characterization of the Royalists as “sober, judicious, prudent, and rational.”⁶³ It is also in contrast to Charles thinking that the High Court of Justice could not try him, “nor indeed the meanest man in England.”⁶⁴ After Charles’s remark the court was adjourned.

The popular reaction to the trial of Charles I appeared to favor the trial instead of supporting the King. On Monday January 22, 1649, Gilbert Mabbott noted that “The People in the Hall, as [Charles] went down the stairs, cried out, some ‘God save the King’ and most for ‘Justice.’” Mabbot’s bias may have caused him to hear fewer cries of “God save the King” and “most for ‘Justice’”, but the fact must be remembered that this was an official account commissioned by Parliament. If Mabbott had written the opposite, he may have faced the fate of the purged members of Parliament. But if what Mabbott says is true, then this may weaken Charles’s later argument that the purged Parliament did not have the support of public opinion. Then again, Royalists may not have appeared near the trial for the fear of being arrested. And some of the people in the crowd may have stayed silent out of fear that they may be arrested for support of the King. This fear was justified as the Captain of the Guard was told to “fetch and take into his custody those who make any disturbance.” During the proceedings, Charles was

⁶² T.B. Howell, ed., *State Trials in the Reign of King Charles the First*, vol. 4 of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period To the Year 1783, With Notes and Other Illustrations* (London, 1816), 997.

⁶³ Edmund Pierce, *Englands monarchy asserted, and proved to be the freest state, and the best common-wealth throughout the world. With a word to the present authority, and His Excellency General Monck* (London, 1660), 4. *Early English Books Online*. Web. http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115423. (accessed October 31, 2016).

⁶⁴ T.B. Howell, ed., *State Trials in the Reign of King Charles the First*, vol. 4 of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period To the Year 1783, With Notes and Other Illustrations* (London, 1816), 1089.

told “In the Name of the People of England Answer, either by way of confession, or negation *pro confesso*.”⁶⁵ Note that the people of Scotland are not named. And note that the House of Commons is monopolizing the idea of representing the people. This was also shown when after Charles was executed, they abolished the House of Lords and the office of king. “*Pro confesso*” is a decree entered by a court based on a defendant’s default and the presumption that the allegations are confessed. The High Court of Justice also enjoined him “And therefore you are to lose no more time, but to give a positive Answer thereunto.” In response to the House of Commons trying to monopolize the idea of representing the people, Charles responded, “I stand more for their Liberties. For if power without law may make laws, may alter the fundamental laws of the kingdom, I do not know what subject he is in England, that can be sure of his life, or any thing that he calls his own.”⁶⁶ Without the King, there is no law. And without law there is disorder. The High Court of Justice has no basis in law and was creating laws that altered the fundamental laws and nature of England.

In the final session of the High Court of Justice, Charles knew that he faced death. The final session of the High Court of Justice occurred on Saturday January 27, 1649. It did not meet on Wednesday, Thursday, and Friday because the Painted Chamber of Westminster Hall had to be refigured to seat the witnesses that would testify against King Charles I. Knowing that he faced death Charles exclaimed “all things have been taken away from me, but that, that I call more dear to me than my life, which is my conscious and honour.”⁶⁷ The second to last statement the King made to the High Court of Justice was “I say this Sir, That if you will hear me, if you

⁶⁵ T.B. Howell, ed., *State Trials in the Reign of King Charles the First*, vol. 4 of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period To the Year 1783, With Notes and Other Illustrations* (London, 1816), 999.

⁶⁶ *Ibid.*, 1000.

⁶⁷ T.B. Howell, ed., *State Trials in the Reign of King Charles the First*, vol. 4 of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period To the Year 1783, With Notes and Other Illustrations* (London, 1816), 1005.

will give but this Delay, I doubt not but I shall give some satisfaction to you and all here, and to my People after that; and therefore I do require you, as you will answer it at the dreadful Day of Judgment, that you will consider it once again.”⁶⁸ The High Court of Justice declined Charles’s religious appeal and his chance to speak. There is no hesitancy when they refuse to let him speak again and instead bring in various witnesses to testify against him.

Conclusion:

The civil lawyers and King Charles I understood the role of the king more than the High Court of Justice. The High Court of Justice executed King Charles I on January 30, 1649 despite their lack of knowledge of the role of the king. They believed that it was an elected position when there was no such precedent in England. They also did not understand that without a king, there could be no law because the king made law. And without law, there would be no justice. King Charles II would later take posthumous revenge on Oliver Cromwell, John Bradshaw, and Henry Ireton when he ordered their bodies to be exhumed and displayed in chains all day on the gallows at Tyburn.⁶⁹ The fact that some of the Parliamentarians who opposed Charles I and thought he was a traitor later brought back his son Charles II to rule suggests that the trial of Charles I was a failure.

⁶⁸ Ibid., 1008.

⁶⁹ Daniel Gordon, “From Act to Fact: The Transformation of Suicide in Western Thought,” *Historical Reflections/Réflexions Historiques* 42, no. 2 (June 2016): 32-51. P. 38 French ordinance of 1670, suicide was one of only four crimes others treason, rebellion, and dueling for which a corpse was to be put on trial. This may remind one of placing the corpses of Cromwell and the other regicides up for display on the Tyburn.