

The Power of Proceedings and the Justiciability of Absolutism: The Trial of Charles I Revisited

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Introduction

A trial against a head of state is an incident leading to large-scale public attention and debate. Naturally, this was also the case in 1649 when Charles I, King of England, was on trial for high treason and other major crimes. Even though former English kings had been tried and executed before¹, Charles' I trial is particularly interesting given that it was the first time that an English king was publicly tried and executed by his subjects while he was still in office². Some authors even consider the trial of Charles I to be the precedent for all following trials of heads of state³.

In the 17th century, the legality of the trial was fiercely discussed and provoked some radical reinterpretations of the applicable law⁴. Even today, this debate has not yet come to an end. While some scholars point out the «unique degree of politeness and fairness»⁵ of the trial, others empha-

size the lacking legal authority of the High Court of Justice⁶.

In order to assess the legality of the trial against Charles I, it is crucial to place the trial in its historic context. Thus, this paper provides an overview of the core historic events leading to the trial. Subsequently, the paper discusses the legality of the trial under three of the most critical and most hotly debated aspects: the establishment of the High Court of Justice, the court proceedings, and the sentence of Charles I. Most importantly, this paper argues that the legality of Charles' I trial cannot be assessed from a modern legal perspective. Instead, an adequate evaluation requires a historical view. This paper will focus on analysing sources from the 17th century in order to contribute to the debate concerning the trial's legality.

While all three aspects raise concerns about the legality of the trial against Charles I, the establishment of the court stands out as being particularly problematic. Shortly before and during the estab-

lishment of the High Court of Justice two incidents occurred which are central to determining the legality of the trial. First, the House of Commons was purged by the Army and thus no longer representative, and second, the Act that established the court for the King's trial was passed by the House of Commons without the consent of the House of Lords. This paper argues that these incidents thwarted the lawful establishment of the High Court of Justice and therefore prevented the trial from being legal.

The debate regarding the legality of trials against heads of state is as relevant today as it was 370 years ago. It is striking that today the same issues are discussed as in 1649 during trial of Charles I. When Slobodan Milošević was put to trial in 2001⁷, he used a strategy remarkably similar to the one of Charles I. Milošević, just like Charles I, refused to plead, arguing that the court was not legally established⁸. Considering these similarities, it is important to discuss the trial of Charles I in order to recognise complications and recurrent mistakes. The results of the analysis may raise awareness of critical aspects concerning the court establishment and the legality of trials against heads of state, which are important even today.

1. *Background of the trial*

The trial of Charles I in January 1649 ended the King's agitated and often unconventional reign, which had been characterised by religious quarrels and his constant struggle with Parliament. Charles I dissolved Parliament several times during his reign, and from 1629 onwards ruled for eleven years

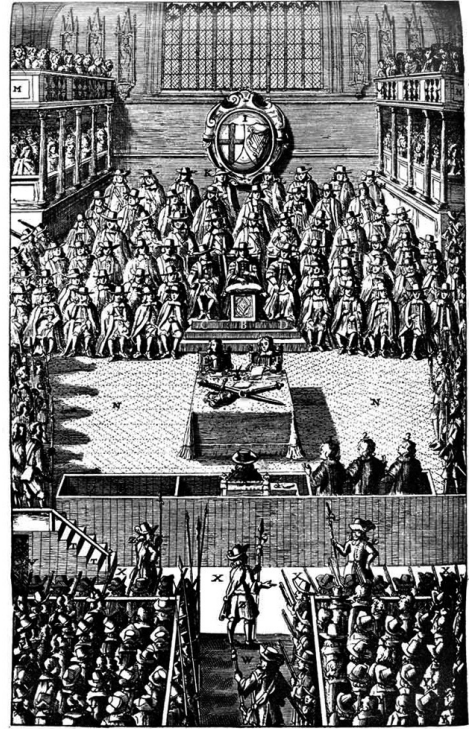
without Parliament⁹ even though the constitutional order had demanded a balance of powers between the Monarch and Parliament since the reign of Elizabeth I¹⁰. Pressing financial shortages and the Bishops' Wars against Scotland forced Charles I to resummon Parliament¹¹. This Parliament, also called the Long Parliament, tried to restrict the Monarch's powers and demanded that Charles I address Parliamentary grievances¹². After Parliament confronted Charles I with the Grand Remonstrance, a document listing all grievances which had occurred during Charles' I reign¹³, the King seriously violated parliamentary privileges by entering Parliament in early January 1642 in a failed attempt to arrest five Members of Parliament¹⁴. As a consequence of the struggle between Parliament and the King, the First Civil War (1642-1646) broke out, which was followed by the Second Civil War in 1648¹⁵. Royalists fought against Parliamentarians over the distribution of governmental powers. The King insisted that his overarching powers derived directly from God¹⁶ whereas his opponents wanted to limit the Monarch's authority and expand the competences of Parliament in return¹⁷. In the beginning of the Civil Wars, the opponents of Charles I did not strive for the King's disempowerment or even execution. In 1642, they declared, instead, that they desired to maintain the «honour and safety»¹⁸ of the King provided that he would change his way of governance¹⁹. The first Civil War ended in 1646. Despite being detained, Charles I was not willing to surrender. His secret negotiations caused a Scottish invasion and royalist uprisings, which led to the Second Civil War²⁰.

After the end of the Second Civil War, the question arose of how to deal with the

King. At that time, some members of the Army promoted a strong anti-royalist attitude and called for rigorous measures against the King. This approach found expression in the «Petition Promoted in the Army» addressed to Lord Fairfax, the army commander²¹. In this petition, New Model Army general Henry Ireton²² and his regiment demanded that everybody should face the same punishment for the same crime regardless of social status²³. Yet, the opinions in the Army were divided and not all men supported the idea of trying the King²⁴.

On the other hand, the Presbyterian majority in Parliament was still willing to negotiate with the King in order to reach a peaceful settlement in the so-called Treaty of Newport²⁵. Nonetheless, the Army was determined to prevent the negotiations before they could lead to success²⁶. Thus, in October 1648, Ireton drafted the Remonstrance of the Army, which denounced the Treaty of Newport and demanded to bring the King to justice²⁷. The Army submitted the Remonstrance to Parliament but Parliament rejected it²⁸. In the beginning of December, the Army marched into London and seized power by purging Parliament on 6 December 1648²⁹. Colonel Pride, officer in the Army and later judge at the King's trial³⁰, was in charge of the operation, which came to be known as Pride's Purge. The Army excluded all Members of Parliament who were still supporting the negotiation of the Treaty of Newport³¹ and thus brought Parliament under its control³². At the end of December, the newly-formed Rump Parliament started to prepare the trial of Charles I³³.

However, a crucial question is why the opponents of the King wanted to bring Charles I to trial at all. The initiators of the



High Court of Justice for the trial of K. Charles I. Printed by H.C., 1684

trial thought that it was vital for the wellbeing of the state and the citizens that the reign of Charles I be brought to an end³⁴. Some of them were convinced that Charles I would never cease to strive for the expansion of his powers, hence a sustainable peace could not be reached³⁵. Even so, rich evidence from the past showed that monarchs had already been deposed in many different ways³⁶. Yet, the anti-royalists chose to put the King on trial, which was unprecedented thus far³⁷ and therefore certainly posed a risk³⁸. One reason why the King's opponents chose a trial was that it gave them the opportunity to demonstrate the rightfulness of their

actions against the King³⁹. Another possible explanation is that the trial was a form of exerting pressure on the King in order to persuade him to give in at the last minute⁴⁰. Even if the King did not capitulate, his opponents could at least demonstrate that the King «had had his chance and he had rejected it»⁴¹. Others also perceived the trial as a chance to take a stand against tyranny in general⁴².

After deciding that the King was to be put to trial, the anti-royalists faced several difficulties. Given that the trial was unprecedented, there was no legal mechanism for bringing a king to court. Hence, it is questionable whether this trial can be called legal at all. In the following section, the three different stages of the trial — the establishment of the court, the legal proceedings and the sentence — will be discussed with special attention to historic sources and their arguments for or against the legality of the trial.

2. *Analysis*

2.1. *Establishment of the High Court of Justice*

During his trial, Charles I wrote down his reasons for declining the authority of the High Court of Justice and why he considered the trial to be illegal⁴³. In the beginning of this document, Charles I made an important statement: a trial cannot be legal unless there is a law that authorises the proceedings⁴⁴. Indeed, the lacking legal basis created a major problem for the opponents of the King. Consequently, the first necessary step was to create such a basis and the House of Commons passed an Act

establishing the High Court of Justice on 6 January 1649. Yet, two incidents question the legality of this Act: the composition of the House of Commons, and the legislative procedure.

a) *Composition of the House of Commons*
On 6 December 1648, Pride's Purge⁴⁵ dramatically changed the composition of the House of Commons. Colonel Pride marched to the House of Commons with roughly 1,000 soldiers⁴⁶, excluded 186 Members of Parliament⁴⁷ and detained 41 further Members⁴⁸. The soldiers only allowed Members of Parliament, who were, in their view, acting for the common good⁴⁹, i.e., who supported the Army. Hence, all Members of Parliament who had voted for the Treaty of Newport were excluded from the House of Commons⁵⁰. Out of protest, some Members of Parliament stayed away from parliamentary sessions even though they had not been excluded⁵¹ so that it was often difficult to reach the obligatory quorum of 40 Members of Parliament⁵².

Given that the Presbyterian majority in Parliament did not support the trial of King Charles I, the Army had to adopt drastic measures in order to pave the way for the King's trial. However, the interference of the Army raised two major issues: first, whether the House of Commons was still a representative body that could make legally binding decisions, and second, whether there was any legal justification for the actions of the Army. The legality of Pride's Purge and its impact on the legal capacity of the House of Commons were fiercely debated in the 17th century, which will be illustrated below.

On the one hand, some authors tried to justify Pride's Purge, albeit with limited

success. John Goodwin, (c. 1594–1665), an Independent minister and passionate opponent of the King⁵³, strongly argued in favour of the Army's actions. Concerning the legislative power, he declared that from a legal point of view, 40 Members of Parliament were entrusted with the same power as 400⁵⁴. Therefore, in his opinion, the House of Commons still was a body that was formally capable of making binding decisions.

Goodwin furthermore gave two main arguments to justify Pride's Purge. First, he argued that the Army's intervention was justified because of popular sovereignty. According to him, the purge of Parliament was legal since citizens who have elected their representatives also have the power to simply dismiss them⁵⁵. Even though the Army had not obtained a mandate by the people to purge Parliament, Goodwin still regarded the actions of the Army as legitimate, given that they had been provoked by the «sovereign necessity for [the] benefit and good» of the people and that there had been «no possibility of obtaining, or receiving a formal call from the people»⁵⁶.

Second, Goodwin considered Pride's Purge justifiable since, according to him, no parliamentary privileges had been infringed. He admitted that it was an undeniable privilege of Parliament that Members of Parliament were not held accountable for their statements made in Parliament and that their free expression should cause them no harm⁵⁷. Nonetheless, Goodwin insisted on the legality of the Army's action by claiming that at the time of Pride's Purge, Parliament had no longer been a real parliament but a «politically dead»⁵⁸ one and thus no longer had any privileges⁵⁹. Furthermore, he argued that Parliament must

not act against the common good of the state. Since Parliament was not pursuing the common good, the Army had every right to interfere⁶⁰.

On the other hand, the King, as well as royalists such as Clement Walker (d. 1651), an English lawyer and parliamentarian⁶¹, condemned the actions of the Army and the infringement of parliamentary rights as bluntly illegal. Walker claimed that «the present visible Government is the Power of the Sword in the hands of Rebels. The Fundamental Government of this Kingdom is destroyed by the remaining faction in the Ho[use] of Commons»⁶². The King himself concluded that Pride's Purge alone would be enough to prove the illegality of his trial⁶³.

The arguments for the legality of Pride's Purge and the lasting ability of Parliament to take legally binding decisions were certainly controversial. Some royalists doubted whether the House of Commons was still a representative body that could act in a legally binding way since, as a result of Pride's Purge, many constituencies were no longer represented at all⁶⁴. Walker therefore argued that constituencies which had lost all their Members of Parliament could hardly be bound by the decisions of the House of Commons if they have had no possibility to influence these resolutions⁶⁵. The two arguments concerning the justification of Pride's Purge are highly questionable as well. In essence, Goodwin's argumentation completely relied on the common good. John Gere (c.1566/1600-1649), a clergyman and royalist who comprehensively commented on Goodwin's writings⁶⁶, clarified that Parliament determined which acts contributed to the common good of a state⁶⁷ and not the Army⁶⁸. Consequential-

ly, the argument that Parliament was acting against public interest and the Army therefore had the right to interfere is invalid according to Geree.

In summary, the interference of the Army excluded almost half of the Members of Parliament⁶⁹ and deprived some constituencies of their representatives. Because of this drastic restructuring and the lack of representation, it is hardly acceptable to still consider the Parliament a body that was able to make legally binding decisions even if technically a quorum of 40 members had the same decision-making power as the whole Parliament. Moreover, the royalists' arguments for the justification of Pride's Purge lose credibility given that the Army replicated and aggravated one of the King's main transgressions by detaining and excluding Members of Parliament. In early January 1642, the King had tried to impeach five Members of Parliament and thus triggered the Civil Wars. In December 1648, the Army excluded 186 Members of Parliament and tried to justify this action as perfectly legal.

Additionally, all attempts to justify the Army's actions relied on the common good, therefore on the assumed telos of the laws. Yet, the opinions on how to achieve the common good inevitably differed. Effectively, Goodwin argued that Parliament lost its privileges because Parliament favoured a different approach towards achieving the common good. This can hardly be regarded as a good reason to breach parliamentary rights. Therefore, the purge of Parliament and the consequent loss of legal decision-making power already thwarted a lawful establishment of the High Court of Justice by means of an Act of Parliament. This made any of the court's later attempts

to give the trial an appearance of legality questionable if not void.

b) Legislative procedure

During the legislative procedure, the composition of the House of Commons was not the only controversial issue. Since the trial of Charles I set a precedent, there was no prior legal basis for the trial. To create the lacking legal basis, the purged House of Commons adopted an Act establishing a court for the King's trial. In spite of this, the legislative procedure was highly questionable, and it is doubtful whether this Act sufficed as a legal basis for the trial.

On 23 December 1648, the purged House of Commons appointed a committee to consider how the King could be brought to justice⁷⁰. Five days later, on 28 December, the committee presented an ordinance to the House of Commons. According to this ordinance, Charles I was to be brought to trial because of high treason⁷¹. On the same day, the first reading of the ordinance took place and the second reading was scheduled for the following morning⁷². On 1 January 1649, the House of Commons passed the ordinance and additionally declared that «it is Treason in the King of *England*, for the Time being, to levy War against the Parliament and Kingdom of *England*»⁷³. One day later, the ordinance was handed to the House of Lords. The Lords rejected both the ordinance erecting the High Court of Justice and the reinterpretation of high treason⁷⁴. The Earl of Northumberland explained the rejective stance of the House of Lords by stating that it was not quite clear who had actually started the Civil War: whether it had been the King or Parliament. He also pointed out that no law existed that declared the actions of the King as high treason⁷⁵.

Despite the reaction of the House of Lords, the House of Commons was unwilling to abandon its plans. Consequently, the House of Commons proclaimed its sovereignty based on the people as the legitimate source of any sovereign power and the House of Commons as the true representative of the people⁷⁶. In addition, the House of Commons stated that «whatsoever is enacted, or declared for Law, by the Commons, in Parliament assembled, hath the Force of Law»⁷⁷.

On 6 January, the House of Commons passed a unicameral Act that listed numerous alleged crimes of the King and erected a High Court of Justice for the King's trial for the duration of one month⁷⁸. The court was equipped with extensive powers in order to facilitate a smooth process. Apart from a detailed listing of its powers «the said Court [was] [...] authorised and required to choose and appoint all such officers [...] and other circumstances as they, or the major part of them, shall in any sort judge necessary or useful for the orderly and good managing of the premises»⁷⁹.

This legislative procedure was deeply questionable because of the lacking consent of the House of Lords. However, one could argue that the legislative procedure could in no way have an impact on the legality of the trial because of the lack of judicial review in the 17th century⁸⁰. Consequently, there was no way to challenge an existing Act of Parliament and courts had to apply these laws without any further inspection⁸¹. Yet, in this case it was not clear whether the ordinance was an Act of Parliament at all. The nature of the Act and the question of whether it could take any legal effect stirred a fierce debate, which will be illustrated in the following paragraphs.

In his writing, Charles I claimed that it was absurd for the House of Commons to pretend to make laws without the consent of the House of Lords or the King⁸². Likewise, contemporaries of Charles I often criticised the lacking involvement of the House of Lords in the legislative procedure⁸³. The author of «The Charge against the King discharged» asserted that an Act of Parliament can only be valid if both Houses consent to the bill⁸⁴. As evidence, he cited Coke's Institutes of Law, where this statement is backed by numerous references⁸⁵. Thus, the core argument of the royalists concerning the illegitimacy of the legislative procedure is the lacking consent of the House of Lords. Consequently, the Act erecting the High Court of Justice is not an Act of Parliament and cannot form the necessary legal basis for the trial.

By exposing this deficiency, Charles I and the royalists certainly pointed to one of the main problems concerning the legitimacy of the trial. However, in this context, it is also worth to contemplate the arguments of the House of Commons. If one considered the declaration of sovereignty of the House of Commons as valid, the Act might take legal effect. Goodwin logically deduced the sovereignty of the people by assuming that a king can only exist if there are subjects he can rule. Thus, the people were a necessary condition for any monarchy to evolve which meant that the people were superior to the king⁸⁶. With these statements Goodwin supported the House of Commons declaration of sovereignty by trying to prove that the real sovereign is not the monarch but the people. As the real sovereign, the people have the right to lay «aside a King or Kingly Government [...] when they have a reasonable cause for it»⁸⁷.

Furthermore, Goodwin resorted again to the telos of the laws in order to justify the effectiveness of the unicameral Act. He asserted that the legislative procedure could only be illegal if it contradicted the fundamental laws of England. He stated that fundamental laws are only those laws which are compelling for the common good⁸⁸. According to his opinion the common good was not endangered by the lacking consent of the House of Lords⁸⁹. Goodwin argued that the law distributing the power between the House of Commons, the House of Lords, and the King had been made under the assumption that these authorities would always be in complete agreement when it came to issues concerning the common good⁹⁰. According to Goodwin, this law was no longer binding once this assumption was refuted, so the unicameral Act did not breach the law⁹¹. However, Goodwin frankly admitted that this interpretation was completely against the wording of the law⁹².

At first glance Goodwin's deduction seems to be logical. Nevertheless, it is not compelling to assume that the people are sovereign only because the monarch is a product of society. Furthermore, even if one regarded the people as the real sovereign that had the power to discharge the monarch, it is extremely doubtful that this House of Commons could be considered the representative of the sovereign people. First, not many people had suffrage⁹³, hence the House of Commons was hardly a true reflection of the people's opinions. Second, the House of Commons had been purged of half of the people's representatives before it declared its sovereignty, which questions the accurate representation of the people even more. Additionally, as stated above, the common good, which

constitutes the core of Goodwin's argumentation, is scarcely suitable to strengthen his arguments. First, the term common good allows numerous interpretations and second, Goodwin uses the common good or the telos to justify a clear breach of the law, which can hardly be considered admissible. Since, for these reasons, the declaration of sovereignty cannot be deemed legal, the Act cannot be regarded as taking any legal effect. As a conclusion, Pride's Purge as well as the legislative procedure made the Act establishing the High Court of Justice illegal, which deprived the trial of Charles I of any legal basis.

c) Staffing of the High Court of Justice

Regardless of its invalidity, the Act of the House of Commons effectively established the High Court of Justice and appointed the King's judges. The first draft of the Act erecting the High Court of Justice intended to nominate three prominent judges, namely Henry Rolle, Oliver St. John, both Chief Justices, as well as Lord Chief Baron Wilde of the Exchequer Court for the trial⁹⁴. However, although these men were opponents of the King⁹⁵, they were in no way willing to serve as judges during the King's trial as they considered the trial to be illegal⁹⁶. As a result, their names were deleted and replaced by less famous judges⁹⁷.

Afterwards, John Bradshaw as Lord President and John Cook as prosecutor took the most prominent roles during the trial. Bradshaw's eligibility for this task was highly disputed⁹⁸. Even today he is sometimes described as an obscure lawyer⁹⁹, but he had expertise as judge and had already exercised several different juristic functions. Most notably, he had been principal counsel of John Lilburne, when Lilburne

successfully appealed to the House of Lords against a decision of the Star Chamber¹⁰⁰. Furthermore, Bradshaw had become Chief Justice of Chester two years before the King's trial¹⁰¹. John Cook, also a lawyer¹⁰², was one of the drafters of the King's charge¹⁰³. He was chosen as solicitor¹⁰⁴ and after the attorney fell ill¹⁰⁵, Cook was appointed as his representative. In this capacity, Cook prosecuted Charles I¹⁰⁶. On 12 January, the High Court of Justice decided that Bradshaw and Cook were to «manage the Tryal against the King»¹⁰⁷. About a week later, the form and the proceeding of the trial were also put under Bradshaw's discretion¹⁰⁸.

In total, the Act erecting the High Court of Justice appointed 135 men to serve as both judges and jurors, although the functions were not clearly divided¹⁰⁹. The judges came from widely differing social backgrounds. Very few noblemen were nominated as judges and none of them were English peers¹¹⁰. A great part of the judges came from the landed gentry, yet some of the judges also came from lower social classes¹¹¹. Besides, many of the men listed as judges had not even been asked for their consent to serve as judges¹¹². It is not surprising that some of them never attended any court sessions and others turned up only sporadically¹¹³. Their absenteeism, however, did not entail any negative consequences for them¹¹⁴.

The staffing of the High Court of Justice raised three core problems, that could affect the legality of the trial: the suitability of the men appointed as judges, the independence of the judges and the very low quorum of 20. The first issue concerning the suitability of the judges is closely linked to the common law principle that a defendant could only be tried by his peers, which dates back to Arti-

cle 29 of the Magna Carta¹¹⁵. From the principle that a defendant can only be tried by his peers two different procedural rules evolved: the trial by jury and the principle that a Member of the House of Lords could only be tried by his fellow Members of the House of Lords, which is known as «peer trial»¹¹⁶. The peer trial was characterised not only by the social class of the jury, but in particular by a specific type of procedure which was quite different from the trial by jury.

These two procedures which had evolved from Article 29 of the Magna Carta gave clear instructions concerning the men who were competent to try commoners and Lords. Yet, there were no provisions on how to deal with the King. Therefore, it was controversial which kind of men were suitable to try the King, i.e., who could be considered as his «peers» according to Article 29 of the Magna Carta. When Charles I heard that he might be brought to trial, he claimed that this was unfeasible because he had no peers and that a trial was therefore impossible¹¹⁷. Bradshaw, Lord President of the High Court of Justice also admitted that Charles' I prominent position as King was problematic and that the King as such did not have peers¹¹⁸. Nevertheless, Bradshaw stated that the King was «major singulis» but «minor universis» and asserted that the law was superior to the King¹¹⁹. Therefore, according to Bradshaw a trial of the King was possible and legitimate.

All the same, this does not solve the problem of which kind of men were fit to try the King. One could argue that, if the Lords could only be tried by peers, i.e., Members of the House of Lords, this should all the more apply to the King. This is supported by the fact that former Monarchs, who had faced some sort of a trial, were tried by

Lords¹²⁰. Even so, not a single English peer served as judge at the High Court of Justice, due to the fact that the Lords did not support the trial of the King¹²¹.

Despite the absence of Lords, it is striking that the trial of the King shows several parallels to peer trials. First, it is noteworthy that at the trial of Charles I, the roles of judge and jury were not divided, as it was the case at peer trials where the Lords served as both, judge and jury¹²². Second, the peer trial was characterised by exaggerated legal ceremonies¹²³ and strict observance of social rank and title¹²⁴. Following this tradition, Charles' I trial was full of legal self-portrayal and the anti-royalists never ceased to address Charles I as King of England, not even at the King's execution¹²⁵. Third, most peer trials took place in Westminster Hall¹²⁶, which was also the stage that was chosen for the trial of the King. This creates the impression that the opponents of the King tried to transfer procedural principles from the peer trial to the trial of the King in order to compensate the lack of peers.

Another problem was the independence of judges. Even though the independence of judges was only acknowledged in the Act of Settlement in 1700¹²⁷, Sir Edward Coke, a remarkable English judge, had already called for independence of judges in the first half of the 17th century¹²⁸. It is difficult to determine the degree of independence of the judges at the King's trial. On the one hand, they were preselected and appointed only for the trial of King Charles I. On the other hand, none of the judges were punished or had to fear negative consequences because of absenteeism. Therefore, it seems that the judges had at least some independence and scope for decision-making.

Apart from the question of independence, another important aspect concerning the judges of the High Court of Justice is the low quorum. The votes of only 20 members of the court sufficed to sentence Charles I to death¹²⁹, which raises concerns about a biased sentence. Compared to an ordinary jury consisting of 12 members or the 20 to 35 judges at a peer trial¹³⁰, this quorum does not seem to be unreasonably low. Nonetheless, in relation to the total number of 135 appointed judges, the quorum is somewhat disproportionate. Arguably, the total number of judges was only so high to impress the public and to underscore the importance of the trial¹³¹. Or possibly the quorum was this low given that some of the judges were serving in the Army while others were living far away from London and thus were unable to attend the sittings of the court¹³². Even if these explanations were correct, this does not alter the disproportion between the total number of judges and the number of judges necessary to sentence the King. Less than 15 % of the judges were able to proceed to sentence, which gives rise to the suspicion that the drafters of the Act establishing the High Court of Justice and nominating the judges wanted to ensure by all means that the judges could pass judgement.

2.2. *Court proceedings*

The Act of 6 January 1649 established the High Court of Justice for the duration of only one month¹³³. The first session of the court was held in private in the Painted Chamber of Westminster Palace on 8 January¹³⁴. Throughout the first few private sessions, the court discussed organisation-

al matters. The judges had to decide on the chronology of the trial and allocate the responsibilities¹³⁵.

In total, the High Court of Justice sat on 16 days whereby several sessions were held publicly at Westminster Hall¹³⁶. These public sessions constituted the actual trial. It is remarkable that the trial was open to the public without restricting the audience¹³⁷. As a result, some incidents occurred when audience members expressed their displeasure during the court sessions¹³⁸. But even if the trial in general was public, the judges often withdrew to the privacy of the Painted Chamber between the public sessions in order to discuss the further procedure.

On 20 January, the King appeared in court for the first time. Only then did he learn about the accusations levied against him¹³⁹, which complied with the court practice in the 17th century¹⁴⁰. Drafting the charge had been quite a challenge given that the responsible committee could not agree on the scope that the charge should have. One reason for this disagreement was that the wording of the Act erecting the High Court of Justice was insufficiently clear about the reason why exactly the King should be put to trial¹⁴¹. Some of the drafters of the charge, including Cook, wanted to phrase the charge as broadly as possible and comprise every (alleged) crime of the King during his reign¹⁴². The purpose of this approach was to depict Charles I in the most negative way¹⁴³. Others wanted to formulate the charge in a very restrictive way¹⁴⁴, possibly in order to allow a settlement with the King¹⁴⁵. The restrictive approach largely prevailed, so the final charge only encompassed the crimes of Charles I during the time of the Civil Wars.

Even though the scope of the charge was limited, the accusations were severe and wide-ranging¹⁴⁶. Charles I was accused that «out of a wicked Design [he had tried] 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 People» even though he was, according to the law, only provided with limited powers¹⁴⁷. Moreover, Charles I was charged with having «Traiterously and Maliciously Levied War against the present Parliament, and the People therein represented»¹⁴⁸. He was not only accused of waging war against his people but also of maintaining and even renewing the war¹⁴⁹. The charge claimed that with these actions the King had only pursued his «Personal Interest of Will and Power, [...] against the Publick Interest, Common Right, Liberty, Justice and Peace of the People of this Nation»¹⁵⁰. The charge concluded that Charles I, as the cause of war, was to be held responsible «for all the Treasons, Murders, Rapines, Burnings, [...] Dammages and Mischiefs to this Nation acted and committed in the said Wars, or occasioned thereby»¹⁵¹. Thus, Charles I was charged «as a Tyrant, Traytor, Murderer, and a Publick and implacable Enemy to the Commonwealth of England»¹⁵².

It is interesting, though, that these accusations were not actually discussed in the courtroom. The King did not acknowledge the authority of the court and therefore bluntly refused to plead. The plea of the defendant was vital for the opening of the procedure¹⁵³ and because of Charles' I refusal, there was no elaboration on the alleged crimes. Instead, the key issue discussed during the hearings was whether the court had the authority to try the King.

Throughout his trial, Charles I enquired several times about the source of authority of the High Court of Justice but Bradshaw could not be persuaded to give a satisfying answer during the court proceedings. This happened despite the declaration of the King that he would be willing to plead and thus get involved with the trial if he received a satisfying answer to his question concerning the source of authority¹⁵⁴. Instead, during a session in the Painted Chamber, Bradshaw was instructed to prevent any further inquiries of the King concerning the authority of the court¹⁵⁵. In the following session, Bradshaw informed Charles I that his requests were considered contempt of court¹⁵⁶.

Finally, the King's unwillingness to plead led to his conviction given that his refusal to plead was taken as a guilty plea¹⁵⁷, which seems strange from today's perspective. However, this proceeding completely complied with the court practice in the 17th century¹⁵⁸. Hence, Charles' I fate was sealed, even though he had not pleaded and his alleged crimes had never been discussed in court. Charles I was sentenced to death on 27 January 1649, less than a month after the first session of the High Court of Justice¹⁵⁹. The execution of the King took place on 30 January in front of the Banqueting House¹⁶⁰.

Despite some incidents during the proceedings which might seem peculiar from today's view, the trial itself was not particularly problematic since the court procedure of the 17th century was followed. Additionally, the court proceedings had some remarkably positive features, for example the publicity and the fact that the judges granted the King several chances to plead. This proves all the more that the core problem concerning the legality of trial of Charles I

was the illegal establishment of the High Court of Justice.

2.3. *Sentence*

Even though the court practice was followed and the death sentence was the necessary consequence of the preceding events, one last doubt regarding the legality of Charles' I trial exists, since some authors raise concerns about the legality of the death warrant¹⁶¹. Traditionally, it has been argued that the death warrant had already been prepared and signed by some of the judges before the passing of the sentence¹⁶². This would mean that at some point of the trial the outcome was already preordained. The theory that the death warrant was prepared and signed in advance is backed by the fact that the death warrant has several erasures and corrections. For example, the phrase which indicates Saturday, 27 January as the day of the passing of the sentence was clearly altered¹⁶³. According to this theory the reason for correcting the death warrant, instead of drafting a new one, was that some of the judges had already signed the death warrant and would not have been willing to sign it a second time¹⁶⁴. Consequently, in order to not lose any signatures, the death warrant was corrected.

In contrast, A. W. McIntosh presents a different approach on how to interpret the making of the death warrant. According to him, it is highly unlikely that any of the judges had signed the death warrant before the passing of the sentence on 27 January 1649¹⁶⁵. This theory is supported by the fact that no historic source mentions the possibility that the death warrant had been

signed prematurely¹⁶⁶. Furthermore, during the trials of the regicides after the Stuart restoration, this issue was neither raised by the plaintiffs nor the defendants¹⁶⁷. McIntosh also refutes the proposition that some of the judges were probably not willing to sign the death warrant a second time. Firstly, it is hard to believe that the judges who were the first ones to sign were less convinced of the righteousness of their cause than the ones who signed the death warrant in the end¹⁶⁸. Secondly, it seems that the order of the first signatures is dependent on social status and not on anything else¹⁶⁹. Thirdly, there are cases of judges who withdrew from their position during the trial without having to fear any negative consequences¹⁷⁰, which means that no judge had to sign the death warrant against his will. In addition, McIntosh points out that correcting documents instead of rewriting them was common practice and thus it is possible that nobody considered it necessary to draw up a new death warrant¹⁷¹.

In light of these arguments, the greatest doubt, i.e. that the death warrant was signed before the passing of the sentence, can be eliminated. Nonetheless the fact that the death warrant was altered remains, as well as the uncertainty regarding the content of the text before the corrections were made. At the least, McIntosh demonstrated that it is not compelling to interpret the erasures as negatively as large parts of the literature have so far.

3. Perception of the trial

As shown above, an immense effort was expended on making the trial appear le-

gal. In addition, many of the men trying the King were convinced of the righteousness of their cause. For example, Cook, the prosecutor of the King, praised the trial as «the most Comprehensive, Impartial, and Glorious piece of Justice, that ever was Acted and Executed upon the Theatre of England»¹⁷² and called the High Court of Justice «an habitation of Justice, and a royal Palace of Principles of Freedom»¹⁷³.

Despite the staging of the King's trial as perfectly legal, the trial was far from obtaining universal consent. Royalist writers perceived the trial to be obviously illegal and lamented the execution of the King in works with telling titles such as «*Englands black tribunal being the Illegal Tryal of King Charles I. of Blessed Memory*»¹⁷⁴ and «*The Famous Tragedie of King Charles I. Basely Butchered by those who are, Omne nefas proni patare pudoris inanes crudeles, violenti, importunique tyranni, [...], perversi, perfidiosi, foedifragi, falsis verbis infunda loquentes*»¹⁷⁵.

Generally, C. V. Wedgwood states that the majority of the ordinary people did not want the King to be executed¹⁷⁶. In the years following the execution of Charles I, a real martyr cult emerged elevating the dead monarch¹⁷⁷. This bears witness to the public consternation and shock caused by the King's trial and execution. In fact, the «anniversary of Charles's execution became a date of commemoration in the liturgical calendar of the Anglican Church»¹⁷⁸, which was only abolished by Queen Victoria I¹⁷⁹.

The reaction in continental European countries was equally divided. Only a few European countries supported the trial of King Charles I. For example, some of the Swiss cantons approvingly took notice of the downfall of English monarchy¹⁸⁰. Similarly, the Swedish chancellor, Axel Oxen-

stierna, affirmed that the English people got rid of a great tyrant¹⁸¹. The majority of the European states, however, condemned the trial of the Monarch¹⁸². Nevertheless, their disapproval was not strong enough to take drastic measures. In general, many European states prioritised their important trade relations with England and were willing to condone the radical changes in English government and policy¹⁸³. There was indeed only one European country, Muscovy, which completely broke off all diplomatic relations with England in the aftermath of the King's trial¹⁸⁴.

4. *A final comment on the legality*

The purpose of this paper was to investigate the legality of the trial of Charles I, which set a precedent and therefore probably influenced later similar trials. This paper distinguished three central constituents that are necessary to assess the trial's legality: the establishment of the High Court of Justice itself, the court's proceedings, and the court's sentence. A key finding that emerged from the detailed analysis of historical sources is that the trial was especially problematic with regard to the establishment of the court, which made any of the court's later attempts to give appearance of legality void. Specifically, the Army's seizure of power by purging the House of Commons of opponents effectively inhibited Parliament from passing legally binding Acts. In addition, the House of Lords' opposition was simply overruled by the now-reduced House of Commons, which further invalidated any legitimate legislative power of Parliament. As a result, the

House of Commons was incapable of creating any legal basis for the establishment of the High Court of Justice and the trial of the King, which in itself renders the trial illegal.

Admittedly, the opponents of the King's power-hungry politics faced a crucial problem. The legal system in the 17th century was not designed to solve the conflict between Parliament, the Army, and the King and provided no way of holding the King accountable for his actions. Consequently, it was almost inevitable that Parliament would reinterpret or breach laws in order to bring the King to justice. Hence, it is all the more remarkable that the opponents of the King tried to follow existing rules and conventions in order to justify their actions and maintain some semblance of legality, for example, by choosing the symbolic Westminster Hall as a chamber for the proceeding or by imitating trials by peers.

The opponents of the King often resorted to natural and divine law or the telos of the laws in order to conciliate the conflict between their actions and the law and to integrate their approach into the contemporary legal system. Paradoxically, not only the opponents of the King but also the royalists often used ideas of divine law to back their arguments against the Army's actions. Interestingly, there seems to have been a broad consensus between royalists and anti-royalists concerning the content of divine or natural law. According to both parties, the overall objective of divine or natural law is the common good and the freedom of the people. Even so, there is strong disagreement about what actually constitutes the common good and which methods ensure successful achievement of the common good. The anti-royalists

considered the execution of the King as the only possible way to ensure the freedom of the people¹⁸⁵ whereas Charles I and the royalists were convinced that true liberty can only be granted by the King¹⁸⁶. This illustrates that determining the legality of the trial against Charles I by using teleological arguments or reasoning based on natural or divine law is practically impossible. At least, this discussion shows the immense margin of interpretations natural law arguments offer and that it is strongly influenced by the reasoning of the person interpreting the law.

From today's perspective, the purpose of the anti-royalists' actions, i.e., trying the King and holding him accountable, is creditable and comprehensible. Nevertheless, in order to pave the way for the King's trial, the Army was willing to adopt the most drastic measures and heavily breach the law, which inhibited a legal establishment of the court. Today, trials of heads of state are widely accepted and considered necessary even though they are not uncontroversial. Interestingly, defendants in modern state trials use arguments that are highly reminiscent of those put forward by Charles I and his supporters. For example, when Slobodan Milošević was tried by the International Criminal Tribunal for the former Yugoslavia (ICTY) he argued that the tribunal was not created lawfully¹⁸⁷ and based his defence on the illegitimacy of the ICTY¹⁸⁸. Likewise, when Saddam Hussein was tried in 2005 by the Iraqi High Tribunal¹⁸⁹, he stated: «Neither do I recognise the body that has designated and authorised you, nor the aggression because all that has been built on false basis is false»¹⁹⁰. Hussein thus made clear that he was not willing to recognise the authority of the court¹⁹¹.

This demonstrates that the establishment of courts for trials of heads of state is a key issue even today. The trial of Charles I further clarifies that no matter how comprehensible or even noble the motives for a trial of a head of state might seem, the trial can only be regarded as justifiable and lawful if no fundamental principles of law are breached in order to pave the way for the trial.

- ¹ W.L. Sachse, *England's "Black Tribunal": An Analysis of the Regicide Court*, in «Journal of British Studies», XII, n. 2, 1973, pp. 70 f.
- ² C.V. Wedgwood, *The Trial of Charles I*, London, Penguin Books, 2001, p. 9.
- ³ G. Robertson, *The Tyrannicide Brief. The Story of the Man Who Sent Charles I to the Scaffold*, New York, Pantheon Books, 2005, p. 3; Laughland, *A History of Political Trials* cit., p. 28.
- ⁴ Cf. Legislative procedure: Goodwin's arguments for popular sovereignty as justification of a unicameral Act.
- ⁵ G. Robertson, *Trial of Charles I: The Regicides' Defence*, in «The Australian Law Journal», LXXIII, n. 8, 1999, p. 590.
- ⁶ M. Kirby, *Trial of King Charles I: Defining Moment for our Constitutional Liberties*, in «The Australian Law Journal», LXXIII, n. 8, 1999, p. 584.
- ⁷ A. Krischer, *Die Macht des Verfahrens. Englische Hochverratsprozesse 1554-1848*, Münster, Aschendorff Verlag, 2017, p. 1.
- ⁸ Robertson, *The Tyrannicide Brief* cit., p. 362.
- ⁹ J.E. Safra, J. Aguilar-Cauz (edited by), *The New Encyclopaedia Britannica. Macropaedia*, Chicago, 2007, p. 60.
- ¹⁰ U. Müßig, *Constitutional Conflicts in Seventeenth-Century England*, in «Tijdschrift voor Rechtsgeschiedenis», LXXVI, 1-2, 2008, p. 28.
- ¹¹ Safra, Aguilar-Cauz, *The New Encyclopaedia Britannica* cit., p. 60.
- ¹² Ivi, pp. 60 f.
- ¹³ Robertson, *The Tyrannicide Brief* cit., p. 61.
- ¹⁴ Safra, Aguilar-Cauz, *The New Encyclopaedia Britannica* cit., p. 61.
- ¹⁵ Ivi, pp. 61 f.
- ¹⁶ Wedgwood, *The Trial of Charles I*, cit., p. 11.
- ¹⁷ *Ibidem*.
- ¹⁸ Ivi, p. 10.
- ¹⁹ *Ibidem*.
- ²⁰ Ivi, p. 12.
- ²¹ Fairfax's nomination as commander of the New Model Army: I.J. Gentles, *Fairfax, Thomas, third Lord of Fairfax of Cameron*, in H.C.C. Matthew, B. Harrison (edited by), *Oxford Dictionary of National Biography. From the earliest time to the year 2000*, Oxford, Oxford University Press, 2004, vol. 18, p. 935.
- ²² I.J. Gentles, *Ireton, Henry*, in Matthew, Harrison (edited by), *Oxford Dictionary of National Biography*, cit., vol. 29, p. 345.
- ²³ Officers and Soldiers of the Regiment under the Command Commissary General Ireton, *The True Copy of a Petition Promoted in the Army*, 1648, pp. 5f.; cf. also S.R. Gardiner, *History of the Great Civil War*, London, The Windrush Press, vol. 4, 1987, p. 227; Wedgwood, *The Trial of Charles I* cit., p. 20.
- ²⁴ S. Kelsey, *Staging the Trial of Charles I*, in J. Peacey (edited by), *The Regicides and the Execution of Charles I*, Basingstoke, New York, Palgrave, 2001, p. 74.
- ²⁵ D. Lagomarsino, C.T. Wood, *The Trial of Charles I. A Documentary History*, Dartmouth, University Press of New England Hanover and London, 1989, pp. 3 f.; Robertson, *The Tyrannicide Brief* cit., p. 115.
- ²⁶ Wedgwood, *The Trial of Charles I* cit., pp. 26 f.
- ²⁷ Lagomarsino, Wood, *The Trial of Charles I* cit., p. 4; D. Underdown, *Pride's Purge*, London, George & Allen Unwin, 1985, p. 124 f.; Wedgwood, *The Trial of Charles I* cit., p. 30.
- ²⁸ Underdown, *Pride's Purge* cit., pp. 126, 133.
- ²⁹ Gardiner, *History of the Great Civil War* cit., pp. 270 ff.; Robertson, *The Tyrannicide Brief* cit., p. 118; Gardiner, *History of the Great Civil War* cit., pp. 270 ff.
- ³⁰ I.J. Gentles, *Pride, Thomas*, in Matthew, Harrison (edited by), *Oxford Dictionary of National Biography*, cit., vol. 45, p. 337.
- ³¹ S. Kelsey, *Politics and Procedure in the Trial of Charles I*, in «Law and History Review», 22, n. 1, 2004, p. 1.
- ³² Underdown, *Pride's Purge* cit., p. 163.
- ³³ Kelsey, *Politics and Procedure in the Trial of Charles I* cit., p. 2; Underdown, *Pride's Purge* cit., pp. 170 f.
- ³⁴ L.J.[J.] Sirico, *The Trial of Charles I: A Sesquicentennial Reflection*, in «Constitutional Commentary», XVI, n. 1, 1999, p. 59.
- ³⁵ Gardiner, *History of the Great Civil War* cit., p. 291; Wedgwood, *The Trial of Charles I* cit., p. 12.
- ³⁶ For an account on the fates of former English monarchs cf. Sachse, *England's "Black Tribunal": An Analysis of the Regicide Court* cit., pp. 70 f.
- ³⁷ Laughland, *A History of Political Trials* cit., p. 21.
- ³⁸ Kelsey, *Staging the Trial of Charles I* cit., p. 74.
- ³⁹ Ivi, p. 75.
- ⁴⁰ *Ibidem*; against the perception of the trial as an extended negotiation cf. C. Holmes, *The Trial and Execution of Charles I*, in «The Historical Journal», 53, n. 2, 2010.
- ⁴¹ Kelsey, *Staging the Trial of Charles I* cit., p. 76.
- ⁴² Ivi, p. 75.
- ⁴³ Imprinted in S.R. Gardiner, *The Constitutional Documents of the Puritan Revolution 1625-1660*, Oxford, Oxford University Press, 1979³, pp. 374 ff.; J. Nalson, *A True Copy of the Journal of the High Court of Justice for the Trial of K. Charles I. As it was read in the House of Commons, and attested under the hand of Phelps Clerk to that infamous Court*, London, Thomas Dring, 1683, pp. 47 ff.; V. Stater, *The Political History of Tudor and Stuart England. A Sourcebook*, London, Routledge, 2002, pp. 145 ff.
- ⁴⁴ Nalson, *A True Copy of the Journal of the High Court of Justice for the Trial of K. Charles I* cit., p. 47.
- ⁴⁵ For an account of *Pride's Purge* from the 17th century cf. C. Walker, *Anarchia Anglicana: or The History of Independency. The Second Part*, 1649, pp. 29 ff.
- ⁴⁶ Underdown, *Pride's Purge* cit., p. 143.
- ⁴⁷ Ivi, p. 212. The numbers differ widely depending on the source.

- Underdown explains precisely how he achieves this result: cf. pp. 208 ff.; 220. Walker is also referring to 41 detained Members of Parliament on 6 December as well as about 160 Members who were excluded and 40-50 Members who withdrew voluntarily. Walker, *Anarchia Anglicana: or The History of Independency* cit., p. 31. Chafetz refers to roughly 200 excluded Members (J. Chafetz, *Impeachment and Assassination*, in «Minnesota Law Review», n. 2, 2010, p. 381) whereas Aitken indicates that in total only about 100 Members of Parliament were detained or excluded. (R. Aitken, M. Aitken, *The King Who Lost His Head: The Trial of Charles I*, in «Litigation», XXXIII, n. 3, 2007, 55).
- ⁴⁸ Underdown, *Pride's Purge* cit., p. 147, in the following further Members were detained so Underdown refers in total to 45 imprisoned Members.
- ⁴⁹ Ivi, p. 141.
- ⁵⁰ Lagomarsino, Wood, *The Trial of Charles I* cit., p. 4; Robertson, *The Tyrannicide Brief* cit., p. 118.
- ⁵¹ Underdown, *Pride's Purge* cit., p. 210.
- ⁵² Walker, *Anarchia Anglicana: or The History of Independency* cit., p. 34; Wedgwood, *The Trial of Charles I* cit., p. 92.
- ⁵³ T. Liu, *Goodwin, John*, in Matthew, Harrison (edited by), *Oxford Dictionary of National Biography*, cit., vol. 22, pp. 819 f.
- ⁵⁴ J. Goodwin, *The Obstructors of Justice. Or A Defence of the Honourable Sentence passed upon the late King, by the High Court of Justice*, London, Printed for Henry Cripps, and Lodowick Lloyd, 1649, p. 35.
- ⁵⁵ J. Goodwin, *Right and Might well met. Or, A briefe and unpartiall enquiry into the late and present proceedings of the Army under the Command of his Excellency the Lord Fairfax*, London, Printed by Matthew Simmons, for Henery Cripps, 1648, p. 13.
- ⁵⁶ Ivi, p. 14.
- ⁵⁷ Ivi, p. 27.
- ⁵⁸ Ivi, p. 28.
- ⁵⁹ Ivi, pp. 27 ff.
- ⁶⁰ Ivi, p. 27.
- ⁶¹ D. Underdown, Walker, Clement, in Matthew, Harrison (edited by), *Oxford Dictionary of National Biography*, cit., vol. 56, p. 820.
- ⁶² Walker, *Anarchia Anglicana: or The History of Independency* cit., p. 37.
- ⁶³ Charles' I reasons for declining the trial in: Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 49.
- ⁶⁴ Walker, *Anarchia Anglicana: or The History of Independency* cit., p. 32.
- ⁶⁵ *Ibidem*.
- ⁶⁶ G. Kenneth, *Geree, John*, in Matthew, Harrison (edited by), *Oxford Dictionary of National Biography* cit., vol. 21, pp. 951 f.
- ⁶⁷ J. Geree, *Might Overcoming Right. Or a cleer answer to M. John Goodwin's Might and Right well met*, London, Printed for Robert Bostock, 1649, p. 25.
- ⁶⁸ Concerning the question who shall decide upon the common good and the interpretation of fundamental laws cf. U. Müßig, *Coke's Tales about Sovereignty*, in «Journal of Constitutional History / Giornale di Storia Costituzionale», n. 34, 2017 pp. 42 ff.
- ⁶⁹ At the time of Pride's Purge the House of Commons had 507 nominal Members. Yet, 18 seats were vacant. Cf. Underdown, *Pride's Purge* cit., p. 209.
- ⁷⁰ Anon., *Journals of the House of Commons. Volume 6, 1648-1651*, London, HMSO, 1802, vol. 6, pp. 102 f. Lagomarsino, Wood, *The Trial of Charles I* cit., p. 15.
- ⁷¹ Anon., *Journals of the House of Commons* cit., p. 105; Lagomarsino, Wood, *The Trial of Charles I* cit., pp. 15 ff.; R. Lockyer, *The Trial of Charles I. A contemporary account taken from the memoirs of Sir Thomas Herbert and John Rushworth*, London, The Folio Society, 1959, pp. 70 f.
- ⁷² Anon., *Journals of the House of Commons* cit., p. 105; Lagomarsino, Wood, *The Trial of Charles I* cit., p. 15; Lockyer, *The Trial of Charles I* cit., p. 71.
- ⁷³ Anon., *Journals of the House of Commons* cit., p. 107; Gardiner, *History of the Great Civil War* cit., p. 288; Lockyer cites the text passage as following: «it is Treason in the King of England for the time to come to levy War against the Parliament and Kingdome of England», Lockyer, *The Trial of Charles I* cit., p. 72.
- ⁷⁴ W. Hund, *Journals of the House of Lords*, London, HMSO, vol. 10, 1647/48, pp. 641 f.; Gardiner, *History of the Great Civil War* cit., p. 289.
- ⁷⁵ Gardiner, *History of the Great Civil War* cit., p. 289; Lockyer, *The Trial of Charles I* cit., p. 75.
- ⁷⁶ Anon., *Journals of the House of Commons* cit., p. 111; Lagomarsino, Wood, *The Trial of Charles I* cit., p. 22.
- ⁷⁷ Anon., *Journals of the House of Commons* cit., p. 111; Lagomarsino, Wood, *The Trial of Charles I* cit., p. 23.
- ⁷⁸ Amongst others the Act is imprinted in Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., pp. 1 ff; Gardiner, *The Constitutional Documents of the Puritan Revolution 1625-1660* cit., pp. 357 f.; Lagomarsino, Wood, *The Trial of Charles I* cit., pp. 25 ff.
- ⁷⁹ Act erecting a High Court of Justice in Gardiner, *The Constitutional Documents of the Puritan Revolution 1625-1660* cit., p. 258.
- ⁸⁰ Robertson, *The Tyrannicide Brief* cit., p. 163.
- ⁸¹ Ivi, pp. 162 f.
- ⁸² Charles' I reasons for declining the trial in: Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 48.
- ⁸³ Cf. e.g.: W. Prynne (1648), *A Declaration and Protestation of the Peers, Lords, and Barons of this Realme, against the late Treasonable Proceedings, and Tyrannicall Usurpations of some Members of the Commons House, who endeavour to subvert the Fundamentall Laws*

- and Regall Government of this Kingdom, and enslave the People to their boundlesse Tyranny instead of Freedom.
- ⁸⁴ Anon., *The Charge Against the King discharged. Or The King cleared by the people of England, from severall Accusations in the Charge, delivered in against him at Westminster-Hall Saturday last, Jan. 20. by that high Court of Justice erected by the Army-Parliament; which is here fully answered in every particular thereof*, London, 1648, p. 14.
- ⁸⁵ E. Coke, *The Fourth Part of the Institutes Of the Laws of England. Concerning the Jurisdiction of Courts*, London, Printed by M. Flesher for W. Lee and D. Pake-man, 1644, p. 25. Amongst others Coke refers to records (e.g., Vid. 14 R 2. no. 15 & 13 H. 4. no 25); and books (e.g., 4 H.7.18.b.p touts les Justices. 7 H. 7. 14 & 16. 11 H. 7. 27. A. Brook prerogative 134).
- ⁸⁶ Goodwin, *The Obstructors of Justice* cit., p. 11.
- ⁸⁷ Ivi, p. 12.
- ⁸⁸ Ivi, p. 39.
- ⁸⁹ *Ibidem*.
- ⁹⁰ *Ibidem*.
- ⁹¹ Ivi, pp. 39 f.
- ⁹² Ivi, p. 40.
- ⁹³ N. Johnston (2013), 'The History of Parliamentary Franchise: Research Paper 13/14', pp. 6 ff. <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP13-14#fullreport>>, September 2018.
- ⁹⁴ Sachse, *England's "Black Tribunal": An Analysis of the Regicide Court* cit., p. 71; Wedgwood, *The Trial of Charles I* cit., p. 95.
- ⁹⁵ *Ibidem*.
- ⁹⁶ Sachse, *England's "Black Tribunal": An Analysis of the Regicide Court* cit., p. 71.
- ⁹⁷ Wedgwood, *The Trial of Charles I* cit., p. 95.
- ⁹⁸ For examples cf. Sachse, *England's "Black Tribunal": An Analysis of the Regicide Court* cit., p. 72.
- ⁹⁹ Aitken, Aitken, *The King Who Lost His Head: The Trial of Charles I* cit., 55.
- ¹⁰⁰ S. Kelsey, *Bradshaw, John, Lord Bradshaw*, in Matthew, Harrison (edited by), *Oxford Dictionary of National Biography*, cit., vol. 7, p. 239.
- ¹⁰¹ *Ibidem*.
- ¹⁰² W. Prest, *Cook, John*, in Matthew, Harrison (edited by), *Oxford Dictionary of National Biography*, cit., vol. 13, p. 110.
- ¹⁰³ Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 9.
- ¹⁰⁴ *Ibidem*.
- ¹⁰⁵ Ivi, p. 21.
- ¹⁰⁶ Ivi, 23; Wedgwood, *The Trial of Charles I* cit., p. 10.
- ¹⁰⁷ Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 13.
- ¹⁰⁸ Ivi, p. 25.
- ¹⁰⁹ Gardiner, *History of the Great Civil War* cit., p. 289; D.P. Klein, *The Trial of Charles I*, in «Journal of Legal History», XVIII, n. 1, 1997, p. 9.
- ¹¹⁰ Wedgwood, *The Trial of Charles I* cit., p. 97.
- ¹¹¹ Ivi, pp. 96 f.
- ¹¹² Ivi, p. 97.
- ¹¹³ For an overview of the attendance of the attendance list in Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., pp. 129 ff.
- ¹¹⁴ A.W. McIntosh, *The Mystery of the Death Warrant of Charles I: Some Further Historic Doubts*. House of Lords Record Office Memorandum No. 66, p. 13; the original document is not paginated thus the pages of the pdf-document are indicated. <<https://www.parliament.uk/documents/deathwarrantmemo66.pdf>>, September 2018; Wedgwood, *The Trial of Charles I* cit., p. 102.
- ¹¹⁵ C.R. Lovell, *The Trial of Peers in Great Britain*, in «The American Historical Review», LV, n. 1, 1949, p. 70; A. Dickey, *The Jury and Trial by One's Peers*, in «Western Australian Law Review», XI, n. 3, 1974, p. 206.
- ¹¹⁶ Ivi, p. 208.
- ¹¹⁷ Anon., *A Collection of Declarations, Treaties, and other Principal Passages concerning the Differences betwixt King Charles I. and his Two Houses of Parliament. Clearly Manifesting the Justice of His Cause. His Sinceritie in Religion. His Constant Endeavours for Peace*, London, Printed by James Flesher for R. Royston, 1662, pp. 671 f. cf. also Wedgwood, *The Trial of Charles I* cit., p. 32.
- ¹¹⁸ W. Cobbett, *Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanours*, London, 1809, vol. 4, p. 1009.
- ¹¹⁹ *Ibidem*.
- ¹²⁰ Sachse, *England's "Black Tribunal": An Analysis of the Regicide Court* cit., p. 71. Sachse states that only at the trial of Lady Jane Grey commoners might have been part of the court.
- ¹²¹ Sachse, *England's "Black Tribunal": An Analysis of the Regicide Court* cit., p. 71.
- ¹²² Lovell, *The Trial of Peers in Great Britain* cit., p. 76; Dickey, *The Jury and Trial by One's Peers* cit., p. 209.
- ¹²³ Krischer, *Noble Honour and the Force of Law* cit., p. 71.
- ¹²⁴ Ivi, p. 76.
- ¹²⁵ Wedgwood, *The Trial of Charles I* cit., p. 10.
- ¹²⁶ Krischer, *Noble Honour and the Force of Law* cit., p. 70.
- ¹²⁷ A.T. Denning, *The Independence and Impartiality of the Judges*, in «The South African Law Journal», LXXI, n. 4, 1954, p. 348.
- ¹²⁸ Ivi, p. 346.
- ¹²⁹ Act erecting a High Court for the King's Trial in Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., pp. 3 f.
- ¹³⁰ Lovell, *The Trial of Peers in Great Britain* cit., p. 75.
- ¹³¹ Ivi, p. 98.
- ¹³² Robertson, *The Tyrannicide Brief* cit., p. 141.
- ¹³³ Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 4.
- ¹³⁴ Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 5; Gar-

- diner, *History of the Great Civil War* cit., p. 293.
- ¹³⁵ Cf., e.g., Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 9.
- ¹³⁶ Cf. overview in *ivi*, pp. 129 ff.
- ¹³⁷ *Ivi*, p. 26.
- ¹³⁸ Gardiner, *History of the Great Civil War* cit., p. 299; Lockyer, *The Trial of Charles I* cit., p. 81.
- ¹³⁹ Wedgwood, *The Trial of Charles I* cit., p. 129.
- ¹⁴⁰ Robertson, *Trial of Charles I: The Regicides' Defence* cit., p. 591.
- ¹⁴¹ Kelsey, *Politics and Procedure in the Trial of Charles I* cit., p. 11.
- ¹⁴² *Ivi*, p. 12.
- ¹⁴³ *Ivi*, p. 14.
- ¹⁴⁴ *Ibidem*.
- ¹⁴⁵ *Ibidem*.
- ¹⁴⁶ The charge is imprinted in Gardiner, *The Constitutional Documents of the Puritan Revolution 1625-1660* cit., pp. 371 ff.; Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., pp. 29 ff.; Stater, *The Political History of Tudor and Stuart England* cit., p. 145.
- ¹⁴⁷ The charge against the King in Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 29.
- ¹⁴⁸ The charge against the King in *ivi*, p. 30.
- ¹⁴⁹ *Ivi*, p. 31.
- ¹⁵⁰ *Ibidem*.
- ¹⁵¹ *Ivi*, p. 32.
- ¹⁵² *Ibidem*.
- ¹⁵³ J.H. Langbein, *Torture and the Law of Proof. Europe and England in the Ancien Régime*, Chicago, University Press of Chicago, 1977, p. 75; Wedgwood, *The Trial of Charles I* cit., p. 95.
- ¹⁵⁴ Nalson, *A True Copy of the Journal of the High Court of Justice for the Tryal of K. Charles I* cit., p. 36.
- ¹⁵⁵ *Ivi*, p. 39.
- ¹⁵⁶ *Ivi*, p. 44.
- ¹⁵⁷ *Ivi*, p. 56.
- ¹⁵⁸ Cf.: A. McKenzie, *This Death Some Strong and Stout Hearted Man Doth Choose: The Practice of Peine Forte et Dure in Seventeenth- and Eighteenth-Century England*, in «Law and History Review», 23, 2005, p. 280; J.H. Baker (edited by), *The Legal Profession and the Common Law. Historical Essays*, London, The Hambledon Press, 1986, p. 283.
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- ¹⁶⁰ Gardiner, *History of the Great Civil War* cit., p. 321.
- ¹⁶¹ Gardiner, *History of the Great Civil War* cit., pp. 316 ff.; Wedgwood, *The Trial of Charles I* cit., pp. 173 f.
- ¹⁶² Amongst others: Gardiner, *History of the Great Civil War* cit., pp. 316 ff.; Wedgwood, *The Trial of Charles I* cit., pp. 173 f.
- ¹⁶³ McIntosh, *The Mystery of the Death Warrant of Charles I: Some Further Historic Doubts* cit., p. 16, <<https://www.parliament.uk/documents/parliamentary-archives/deathwarrantmemo66.pdf>>, September 2018.
- ¹⁶⁴ Gardiner, *History of the Great Civil War* cit., p. 316; Wedgwood, *The Trial of Charles I* cit., p. 174.
- ¹⁶⁵ McIntosh, *The Mystery of the Death Warrant of Charles I: Some Further Historic Doubts* cit., p. 7, <<https://www.parliament.uk/documents/parliamentary-archives/deathwarrantmemo66.pdf>>, September 2018.
- ¹⁶⁶ *Ibidem*.
- ¹⁶⁷ *Ibidem*.
- ¹⁶⁸ *Ivi*, p. 8.
- ¹⁶⁹ *Ibidem*.
- ¹⁷⁰ *Ivi*, p. 13.
- ¹⁷¹ *Ivi*, p. 9.
- ¹⁷² J. Cook, *King Charls his Case: or, an Appeal to all Rational Men, Concerning His Tryal at the High Court of Justice. Being for the most part that which was intended to have been delivered at the Bar, if the King had Pleaded to the Charge, and put himself upon a fair Tryal*, London, Giles Calvert, 1649, p. 5.
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- ¹⁷⁴ Anon., *Englands Black Tribunal Being the Illegal Tryal of Charles I. of Blessed Memory. Together with the Tryal of Col. J. Penruddock and Mr. Hugh Grove, who were beheaded for the Royal Cause*, London, Printed at the sign of the three Pidgeons in Bedford Street in Covent Garden, 1674.
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- ¹⁷⁷ Cf.: A. Lacey, *Elegies and Commemorative Verse in Honour of Charles the Martyr 1649-60*, in J. Peacey (edited by), *The Regicides and the Execution of Charles I*, Basingstoke, New York, Palgrave, 2001. There are also sources comparing Charles I to Jesus Christ e.g.: Anon., *The Life and Death of King Charles the Martyr. Parallel'd with our Saviour in all his Sufferings. Who was murdered (before His own Palace at Whitehall) the 30th of Jan. 1648*, London, 1649.
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- ¹⁸² *Ivi*, pp. 250, 254.
- ¹⁸³ *Ivi*, p. 251.
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