

THE TRIAL OF CHARLES I (1649)

ACT ERECTING A HIGH COURT OF JUSTICE FOR THE TRIAL OF CHARLES I

WHEREAS it is notorious that Charles Stuart, the now King of England, not content with those many encroachments which his predecessors had made upon the people in their rights and freedoms, hath had a wicked design totally to subvert the ancient and fundamental laws and liberties of this nation, and in their place to introduce an arbitrary and tyrannical government, and that besides all other evil ways and means to bring this design to pass, he hath prosecuted it with fire and sword, levied and maintained a civil war in the land, against the Parliament and kingdom; whereby the country hath been miserably wasted, the public treasure exhausted, trade decayed, thousands of people murdered, and infinite other mischiefs committed; for all which high and treasonable offences the said Charles Stuart might long since justly have been brought to exemplary and condign punishment; whereas also the Parliament, well hoping that the restraint and imprisonment of his person, after it had pleased God to deliver him into their hands, would have quieted the distempers of the kingdom, did forbear to proceed judicially against him, but found, by sad experience, that such their remissness served only to encourage him and his accomplices in the continuance of their evil practices, and in raising new commotions, rebellions and invasions: for prevention therefore of the like or greater inconveniences, and to the end no Chief Officer or Magistrate whatsoever may hereafter presume, traitorously and maliciously to imagine or contrive the enslaving or destroying of the English nation, and to expect impunity for so doing; be it enacted and ordained by the Commons in Parliament and it is hereby enacted and ordained by the authority thereof that Thomas, Lord Fairfax, Oliver Cromwell, Henry Ireton [* * * 135 names in all], shall be and are hereby appointed and required to be Commissioners and judges for the hearing, trying and adjudging of the said Charles Stuart; and the said Commissioners, or any twenty or more of them, shall be, and are hereby authorised and constituted an High Court of Justice, to meet and sit at such convenient time and place as by the said Commissioners, or the major part of twenty or more of them, under their hands and seals, shall be appointed and notified by public proclamation in the Great Hall or Palace Yard of Westminster; and to adjourn from time to time, and from place to place, as the said High Court, or the major part thereof meeting, shall hold fit; and to take order for the charging of him, the said Charles Stuart, with the crimes and treasons above mentioned, and for receiving his personal answer thereunto, and for examination of witnesses upon oath (which the Court hath hereby authority to administer) or otherwise, and taking any other evidence concerning the same; and thereupon, or in default of such answer, to proceed to final sentence according to justice and the merit of the cause; and such final sentence to execute, or cause be to executed, speedily and impartially.

And the said Court is hereby authorised and required to appoint and direct all such officers, attendants 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. And Thomas, Lord Fairfax, the General, and all officers and soldiers under his command, and all officers of justice, and other well-affected persons, are hereby authorised and required to be aiding and

assisting unto the said Court in the due execution of the trust hereby committed. Provided that this Act, and the authority hereby granted, do continue in force for the space of one month from the date of the making hereof, and no longer. (*Passed the Commons, January 6, 1648/9. Rushworth viii. 1379.*) <http://home.freeuk.net/don-aitken/ast/c1b.html#210>

EXCERPTS OF CHARLES' DEFENCE AT TRIAL, JANUARY 20 – 27, 1649

“I would know by what power I am called hither ... I would know by what authority, I mean *lawful*; there are many unlawful authorities in the world; thieves and robbers by the high-ways ... Remember, I am your King, your *lawful* King, and what sins you bring upon your heads, and the judgement of God upon this land. Think well upon it, I say, think well upon it, before you go further from one sin to a greater ... I have a trust committed to me by God, by old and lawful descent, I will not betray it, to answer a new unlawful authority; therefore resolve me that, and you shall hear more of me.

I do stand more for the liberty of my people, than any here that come to be my pretended judges ... I do not come here as submitting to the Court. I will stand as much for the privilege of the House of Commons, rightly understood, as any man here whatsoever: I see no House of Lords here, that may constitute a Parliament ... Let me see a legal authority warranted by the Word of God, the Scriptures, or warranted by the constitutions of the Kingdom, and I will answer.

It is not a slight thing you are about. I am sworn to keep the peace, by that duty I owe to God and my country; and I will do it to the last breath of my body. And therefore ye shall do well to satisfy, first, God, and then the country, by what authority you do it. If you do it by an usurped authority, you cannot answer it; there is a God in Heaven, that will call you, and all that give you power, to account.

If it were only my own particular case, I would have satisfied myself with the protestation I made the last time I was here, against the legality of the Court, and that a King cannot be tried by any superior jurisdiction on earth: but it is not my case alone, it is the freedom and the liberty of the people of England; and do you pretend what you will, 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.

I do not know the forms of law; I do know law and reason, though I am no lawyer professed: but I know as much law as any gentleman in England, and therefore, under favour, I do plead for the liberties of the people of England more than you do; and therefore if I should impose a belief upon any man without reasons given for it, it were unreasonable ... The Commons of England was never a Court of Judicature; I would know how they came to be so.

It was the liberty, freedom, and laws of the subject that ever I took – defended myself with arms. I never took up arms against the people, but for the laws ... For the charge, I value it not a rush. It is the liberty of the people of England that I stand for. For me to acknowledge a new Court that I never heard of before, I that am your King, that should be an example to all the people of England, for to uphold justice, to maintain the old laws, indeed I do not know how to do it.

This many-a-day all things have been taken away from me, but that that I call more dear to me than my life, which is my conscience, and my honour: and if I had a respect to my life more than the peace of the Kingdom, and the liberty of the subject, certainly I should have made a particular defence for my self; for by that at leastwise I might have delayed an ugly sentence, which I believe will pass upon me ... Now, sir, I conceive that an hasty sentence once passed, may sooner be repented of than recalled: and truly, the self-same desire that I have for the peace of the Kingdom, and the liberty of the subject, more than

my own particular ends, makes me now at least desire, before sentence be given, that I may be heard ... before the Lords and Commons ... If I cannot get this liberty, I do protest, that these fair shows of liberty and peace are pure shows and that you will not hear your King.

<http://www.royal.gov.uk/pdf/charlesi.pdf>

HIGH COURT OF JUSTICE PRESIDENT BRADSHAW'S STATEMENT TO CHARLES AT THE CONCLUSION OF THE TRIAL

'there is a contract and a bargain made between the King and his people, and your oath is taken: and certainly, Sir, the bond is reciprocal; for as you are the liege lord, so they liege subjects ... This we know now, the one tie, the one bond, is the bond of protection that is due from the sovereign; the other is the bond of subjection that is due from the subject. Sir, if this bond be once broken, farewell sovereignty! ... These things may not be denied,

Sir ... Whether you have been, as by your office you ought to be, a protector of England, or the destroyer of England, let all England judge, or all the world, that hath look'd upon it ... You disavow us as a Court; and therefore for you to address yourself to us, not acknowledging as a Court to judge of what you say, it is not to be permitted. And truth is, all along, from the first time you were pleased to disavow disown us, the Court needed not to have heard you one word." The Clerk to the Court concluded with the sentence 'this Court doth adjudge that he the said Charles Stuart, as a Tyrant, Traitor, Murderer

and Public Enemy to the good people of this Nation, shall be put to death, by the severing his head from his body'. Bradshaw refused to allow the King to speak in Court after sentence (as a prisoner condemned was already dead in law), and the King was led away still protesting. "I am not suffered to speak; expect what justice other people will have."

<http://www.royal.gov.uk/pdf/charlesi.pdf>

ENGLISH BILL OF RIGHTS (1689)

An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown

Whereas the Lords Spiritual and Temporal and Commons assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did upon the thirteenth day of February in the year of our Lord one thousand six hundred eighty-eight [old style date] present unto their Majesties, then called and known by the names and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing made by the said Lords and Commons in the words following, viz.:

Whereas the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom;

By assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without consent of Parliament;

.....

By levying money for and to the use of the Crown by pretence of prerogative for other time and in other manner than the same was granted by Parliament;

By raising and keeping a standing army within this kingdom in time of peace without consent of Parliament, and quartering soldiers contrary to law;

By causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law;

By violating the freedom of election of members to serve in Parliament;

.....

And excessive fines have been imposed;

And illegal and cruel punishments inflicted;

.....

All which are utterly and directly contrary to the known laws and statutes and freedom of this realm;

And whereas the said late King James the Second having abdicated the government and the throne being thereby vacant, his Highness the prince of Orange (whom it hath pleased

Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal and divers principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal being Protestants, and other letters to the several counties, cities, universities, boroughs and cinque ports, for the choosing of such persons to represent them as were of right to be sent to Parliament, to meet and sit at Westminster upon the two and twentieth day of January in this year one thousand six hundred eighty and eight [old style date], in order to such an establishment as that their religion, laws and liberties might not again be in danger of being subverted, upon which letters elections having been accordingly made;

And thereupon the said Lords Spiritual and Temporal and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare

That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;

That the pretended power of dispensing with laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal;

.....

That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;

That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;

That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;

That election of members of Parliament ought to be free;

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;

.....

And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently.

