

## Radicals and Revisionists: Examining the Constitutional Crisis of Charles I

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On January 30th, 1649, Charles I stepped out of his decadent Banqueting House in Whitehall onto a makeshift scaffold before a crowd of silent onlookers. His execution was the culmination of years of warfare and division that consumed England and her territories. Others view the crisis as having links to England's storied legal past. Some viewed it as a violation of the "ancient constitution" and connected Charles' reign to that of the Norman kings of the Middle Ages. This paper seeks to answer the question if the constitutional crisis of Charles' I reign has precedent in England's legal past. It will argue that contemporaries of the period did see Charles' actions as a violation of their constitutional rights as free men of England. This view is not carried by most historians and legal scholars who often discount this notion as being dated or "whiggish." First, this paper will examine the views of contemporaries from the radical Levellers to those of MPs in Parliament. It will be followed by an examination of the historiography covering the period which will weigh the opinions and arguments of historians and legal scholars.

Perhaps one of the most critical voices of Charles I's reign was the English writer William Prynne. A scholar of English law, Prynne wrote several tracts denouncing the actions of Charles I.<sup>1</sup> In many of his tracts, Prynne saw Charles I's actions as direct attacks on the rights of Englishmen as ascribed to them through their constitution. In his tract discussing the levying of ship money, Prynne cites several ways in which the tax violates the rights of Englishmen. Prynne argues that a ruler must maintain the ancient and just rights of their subjects and cannot violate them.<sup>2</sup> He comments on the role of Parliament in the English legal system and states that no law can be made without the full consent of parliament.<sup>3</sup> Furthermore, Prynne uses the Magna Carta to support his argument suggesting that citizens should not have to pay the tax due to the rights ascribed to them by the Magna Carta.<sup>4</sup> Prynne also connects Charles I to the concept of the "body politic" and links it back to the English tradition of Parliament suggesting that "head" cannot survive without support of the "body."<sup>5</sup>

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<sup>1</sup> David Como, *Radical Parliamentarians and the English Civil War*, 47.

<sup>2</sup> William Prynne, *A Humble Remonstrance to His Majesty Against the Tax*, 3.

<sup>3</sup> *Ibid*, 11.

<sup>4</sup> *Ibid*, 12.

<sup>5</sup> *Ibid*, 13.

In the latter half of his tract, Prynne's language begins to differ. He portrays Charles I and his actions to that of a feudal king. Instead of using the term "free born Englishman" Prynne uses words such as "villeins" to describe commoners a term used to describe the feudal peasantry which connects Charles' actions to those of Norman kings.<sup>6</sup> Prynne claims that Charles' actions are restricted by the Magna Carta and the Petition of Right which Charles lawfully agreed to so he must uphold. Prynne again argues that Magna Carta is crucial to England's legal heritage and must be upheld by kings.<sup>7</sup> Prynne concludes by restating his thesis declaring Charles' actions as a violation of the "ancient constitution" which all free Englishmen are bound to.<sup>8</sup> Prynne's tract demonstrates that he viewed Charles I's actions as violations of England's constitution and other precedents from the past. Prynne demonstrates this notion by citing several examples of English legal history such as the Magna Carta, the Norman feudal past, and the important role of Parliament.

Sir Edward Coke was one of England's most notable barristers. Coke had always opposed what he saw as abuse of prerogative from Charles' father James I and battled against the encroachments of royalty through masterful litigation. Although his career was concluding during the reign of Charles I, Coke still fought to limit the power of Charles. *The Petition of Right* enacted in 1628 by Parliament attempted to put an end to Charles' martial rule and forceful taxation. Although it was drafted by several authors, Coke headed the draft committee and is credited as the principal author.<sup>9</sup> The Petition carries with it all the hallmarks of Coke's writing and can be used indirectly to view his opinion. Within the document, there are a number of references to England's legal past. At the start, Coke and his coauthors reference the "Great Charter of Liberties of England."<sup>10</sup> The authors use the famed Lines 39 and 40 to claim that Charles' decision to detain the five MPs is contrary to their rights upheld within the Magna Carta.<sup>11</sup> By evoking the Magna Carta, it is clear that Coke and his coauthors viewed Charles' actions as a violation of their constitutional rights upheld in the Magna Carta.

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<sup>6</sup> Ibid, 15.

<sup>7</sup> Ibid, 14.

<sup>8</sup> Ibid, 16.

<sup>9</sup> Harry Potter, *Law, Liberty, and the Constitution: A Brief History of Common Law*, 117.

<sup>10</sup> John Browne, *Petition to Right*, 1.

<sup>11</sup> Ibid, 1.

In order to reinforce their claim, Coke and his fellow authors cite the history of the Magna Carta. There are several references to Edward III's renewal of the Magna Carta and the authors emphasize the renewal being conducted through Parliamentary procedure. The authors also discuss the concept of *habeas corpus* stating that those detained must be brought before a court.<sup>12</sup> The authors again support their argument by citing that Edward III had renewed their rights as mentioned in the Magna Carta twice in his reign lawfully with the consent of Parliament.<sup>13</sup> In examining the Petition of Right, it is clear that Coke and his coauthors viewed Charles' actions as a constitutional crisis that was rooted in England's long developed legal system. This is evident through the several mentions of the Magna Carta and its renewal under Edward III and his Parliament.

John Lilburne was a prominent litigant and Leveller of the Caroline and Interregnum periods. Due to numerous encounters with the English legal system, Lilburne was skilled and knowledgeable of England's legal heritage and often used it to his advantage when defending himself in court. During his personal defense after being detained for seditious libel against Charles I, Lilburne cited several examples of English legal history in order to mount an effective defense. Lilburne cited the Magna Carta, calling himself a free man and stating that he was entitled to freedom through his birthright.<sup>14</sup> Lilburne also lashed back at his detainers comparing the judges to brutish Norman kings.<sup>15</sup> In examining his arguments, it is clear Lilburne viewed Charles' actions as having connections to England's past. This can be seen through his use of language describing the judges of the court as Norman and him an Englishman. In his defense, Lilburne draws on elements of English history to oppose the actions of Charles and his judges. This demonstrates that Lilburne saw Charles' actions as having a connection to the long-term developments in the English legal system.

Opposition to Charles' actions were not only secular. Charles' choice to enforce the Arminian faith through Archbishop William Laud caused a disturbance within the ranks of the Anglican Church. Many openly protested against the Arminian faith in their sermons deeming it a "popish" faith. One of the more outspoken protesters was Henry Burton the rector of St. Matthew

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<sup>12</sup> Ibid 2.

<sup>13</sup> Ibid, 2.

<sup>14</sup> Potter, *Law, Liberty, and the Constitution*, 150.

<sup>15</sup> Ibid, 152.

Friday Street in London. In his sermons, Burton openly protested Charles' Arminian innovations. He stated that innovation in worship was dangerous and began to clash with state officials over the concept of Arminianism.<sup>16</sup> In addition to comments on innovations in religion Burton also discussed innovations in the state itself. Burton viewed Charles' tyranny as threatening both spiritually and secularly. He would comment on matters of the state in his sermons such as the Forced Loan and arbitrary imprisonments.<sup>17</sup>

Although Burton viewed Charles' rule as tyranny, he did not see it as having root in England's past. In a short tract about encroachments of the state, he describes himself as "freeborn" and a subject that prizes his "just liberty" but does not connect it to any concepts or items from the past.<sup>18</sup> Burton demonstrates that not all contemporaries viewed Charles' actions as constitutional violations that can be linked to traditions from England's past. When analyzed, Burton's sermons reveal a feeling of solidarity for those who opposed the actions of Charles I both secular and spiritual. Burton does not explicitly link Charles' actions to legal documents or items from the past demonstrating that not all carried a similar view to that of Coke and Prynne.

In 1628, Charles I detained five MPs in the Famous Five Knights Case. Many MPs within Parliament opposed this action. Richard Cresheld and William Saunders were present in Parliament when Charles I detained the five men. In their accounts describing their reactions to the incident, Saunders and Cresheld share similar views. They comment on how all Englishmen are entitled to liberty and that it is the King's duty to uphold it.<sup>19</sup> They also comment on *habeas corpus* showing concern for the "safety of their bodies."<sup>20</sup> Furthermore, Saunders and Cresheld suggest that no one be imprisoned without a defiant cause and that it violates "the laws of nature."<sup>21</sup> Although it is not explicitly stated, their view discusses some of the key points of the Magna Carta. The mention of the men being imprisoned against one's will is a clear reference to the Magna Carta particularly Lines 39 and 40.<sup>22</sup> It is important to note that Saunders and Cresheld do not root Charles' actions in England's deep legal past. Instead, they make concise allusions to the Magna

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<sup>16</sup> Como, *Radical Parliamentarians and the English Civil War*, 25.

<sup>17</sup> *Ibid*, 25.

<sup>18</sup> *Ibid*, 26.

<sup>19</sup> Sarah Willms, "The Five Knights' Case and Debates in the Parliament of 1628: Division and Suspicion under King Charles I," 95.

<sup>20</sup> *Ibid*, 95.

<sup>21</sup> *Ibid*, 95.

<sup>22</sup> Potter, *Law, Liberty, and the Constitution*, 72.

Carta. Their views strike comparisons with those of Burton's who did see Charles' actions as concerning but not as deeply rooted in England's past as Coke and Prynne. When their accounts are examined, Saunders and Cresheld show concern for Charles' actions which they believe are rooted in the Magna Carta. Both MPs do not view it as deeply as Prynne and Coke do in their works.

When analyzing a legal case, it is important to look at both sides. Henry Sherfield was an MP during the arrest of the Five Knights in 1628. Unlike his peers, Sherfield supported Charles' actions. In his account describing the event, Sherfield stated that the King should be entitled to a certain level of prerogative over the Parliament.<sup>23</sup> Sherfield then adds to his statement stating that the King is a strong and pious individual who should be allowed as much freedom as his subjects hold, especially when deciding matters of the state.<sup>24</sup> Sherfield then solidifies his argument by touching on the subject of *rex vs. lex*. He insists that the King is the one who makes the law and it is not the laws who make the king.<sup>25</sup> Sherfield's views harken to ideas of absolutism and not that of a constitutional monarchy. His views are not rooted in England's legal past. Instead, he merely comments on Charles' rights as King of England. By examining his opinion Sherfield a royalist does not see any fault in Charles' actions nor does he see it as having any constitutional connections to England's legal past.

The debate over the constitutional crisis of Charles I's reign has carried well into modernity. Instead of Levellers and MPs, historians and legal scholars now contest over the nature of Charles' reign. Harry Potter an English legal historian analyzed Charles' reign in his book *Law, Liberty, and the Constitution*. In his chapters detailing the constitutional crisis, Potter shares similar views to those of William Prynne and John Lilburne. Potter argues that the concept of the "Norman Yoke" where supposedly brutal Norman kings oppressed the Anglo-Saxon majority population resonated with many in the 17th century and was at the forefront of English legal thought.<sup>26</sup> By insisting that Charles' reign had connections to the Norman kings of the 11th and 12th centuries, Potter agrees with the notion that Charles' reign has connection to England's constitutional legal past.

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<sup>23</sup> Sarah Willms, "The Five Knights' Case and Debates in the Parliament of 1628: Division and Suspicion under King Charles I," 94.

<sup>24</sup> Ibid, 94.

<sup>25</sup> Ibid, 94.

<sup>26</sup> Potter, *Law, Liberty, and the Constitution*, 135.

Potter supports his argument by citing indirect examples of how England's legal legacy led to the budding of rebellion in the 17th century. He insists that the "ancient freedoms" provided by England's constitution may have been repressed by oppressive kings but have survived in the hearts and minds of the English people.<sup>27</sup> Potter also discussed the Petition of Right and he deems it the final culmination of years of development and interpretation of the Magna Carta.<sup>28</sup> These arguments prove to be exaggerated and vague when proving his claim. Through his discussion of a glorified legal past steeped in undying tradition, Potter represents a Whiggish interpretation of the mid-seventeenth century. This view is often discounted by most modern historians who see it as far-fetched and outdated.<sup>29</sup> In his work, Potter presents a Whiggish vision of Charles I's reign. He solidifies his argument by comparing Charles I's rule to those of oppressive Norman Kings which confirms the notion of a constitutional crisis deeply seated in England's legal past.

Although modern works covering the Caroline era often discount Whiggish interpretations, some historians still latch to this view. David Como, a specialist in radical politics of the Caroline period, also carries a Whiggish interpretation of the period. In his book covering political discourse in the 17th century, Como agrees with the Whiggish interpretation carried by Potter. He attacks the revisionist consensus on the period and argues that the period saw a great number of individuals advocating for their political rights and liberties as prescribed to them through England's rich legal history.<sup>30</sup> When discussing the causes of the Civil War, Como attributes popular debate over "ancient constitutional" laws and political structures as one the prime causations of the conflict.<sup>31</sup> Furthermore, he asserts that period led to a flowering of legal knowledge with greater analysis focused examining the "ancient constitution" and the development of tyranny.<sup>32</sup> David Como's analysis of the reign of Charles I bears similarity to the Whiggish notions presented by Potter in his analysis. This is evident in his discussion of Englishmen recognizing their ancient constitutional rights and using them to discredit royal prerogative.

Many revisionist historians have challenged the Whiggish interpretation of the early 17th century and argue that England was not on a direct path to civil war. In her chapter about the legal

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<sup>27</sup> Ibid, 135.

<sup>28</sup> Ibid, 117.

<sup>29</sup> Graham Seel, *The English Wars and Republic, 1637-1660*, 14.

<sup>30</sup> Como, *Radical Parliamentarians and the English Civil War*, 426.

<sup>31</sup> Ibid, 429.

<sup>32</sup> Ibid, 430.

and political use of the Magna Carta, historian Rachel Foxley argues that Caroline England experienced more ideological conflict than most revisionists agree on.<sup>33</sup> In order to highlight what she calls her “post-revisionist argument,” Foxley utilizes the Magna Carta and analyzes its place in the legal debates of the Caroline era.<sup>34</sup> Foxley argues that the Magna Carta and only the Magna Carta served as a prime legal tool for the Parliament to utilize when arguing against Charles I’s prerogative.<sup>35</sup>

She insists that the Magna Carta possessed the most significant precedent that could be used to counter Charles through its numerous lines covering unnecessary taxation and imprisonment without cause.<sup>36</sup> Like Coke, Foxley explains the legacy of the Magna Carta and suggests that it has been upheld by several of England’s kings dating back to the 13th century.<sup>37</sup> In her concluding arguments, Foxley discusses the impact the Magna Carta had on the ideas of the Levellers. She suggests that the Magna Carta served as the main inspiration for Leveller tracts that put forth ideas of freedom and democracy.<sup>38</sup> Foxley’s arguments bear similarity to those of Como and Potter. Instead of focusing on the longstanding developments, she places weight on the Magna Carta as the key item that the constitutional crisis centered around. Foxley’s piece on the Magna Carta and its role in seventeenth-century legal and political discourse challenges the conventional Whiggish notion that the constitutional crisis can only be understood by examining the longstanding legal developments. Instead, she centers solely on the Magna Carta as the most important motive for change and unrest.

Many Whiggish and post-revisionist historians view the period as a moment when longstanding legal developments flowered into popular rebellion. Legal scholars view the period differently and tend not to characterize it as “constitutional crisis.” David Vande Zande, a legal scholar, argues that the causes of the rebellion of Parliament were contemporary to the period. Vande Zande insists that many litigants and Parliament MPs joined together to push for due process and a recognition of individual liberties and rights.<sup>39</sup> He does agree that these sentiments

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<sup>33</sup> Rachel Foxley, “More Precious in Your Esteem Than It Deserveth? Magna Carta in Seventeenth Century Politics,” 64.

<sup>34</sup> *Ibid*, 64.

<sup>35</sup> *Ibid*, 65.

<sup>36</sup> *Ibid*, 67.

<sup>37</sup> *Ibid*, 69.

<sup>38</sup> *Ibid*, 75.

<sup>39</sup> Daniel Vande Zande, “Coercive Power and the Demise of Star Chamber,” 338.

were built on by past legal traditions, but he suggests that these beliefs were less than half of the cause.<sup>40</sup> Instead, Vande Zande centers his argument around unfair trials and abuse of defendants in Star Chamber. He claims that many of the lawyers and judges of the period began to realize the abuses of Charles' prerogative in the court of Star Chamber which eroded its legitimacy as a court of law.<sup>41</sup> Vande Zande connects this attack on the court as an attack on Charles I's reign as a whole and the legitimacy of his absolute regime.<sup>42</sup> Vande Zande's article presents an argument that counters the Whiggish interpretation of the period. Unlike Potter and Como, Vande Zande argues that much of the opposition was contemporary and can be understood by examining the opposition of lawyers and judges to the encroaching abuses of Charles I.

In his article covering the Trial of Charles I, legal scholar Sean Kelsey takes in both perspectives when analyzing the prosecution's arguments against Charles I. Kelsey agrees that by trying the King England was experiencing a constitutional revolution. He argues that prosecutors were adamant about sovereignty from royal oppression and the ability for the monarchy to uphold their liberties.<sup>43</sup> Through his examination of prosecutor John Cook's notes, Kelsey does not explicitly link the constitutional revolution as having long standing connections to England's past. Instead, he highlights how Cook linked his case against Charles to more contemporary events.<sup>44</sup> He explains how Cook often cited cases that highlighted Henry VIII's tyrannous actions and neglected to highlight the issues of Charles' father James I.<sup>45</sup> Kelsey also explains how Cook in his case painted Charles as a tyrant who was bent on controlling and subduing the English people. Kelsey links Charles numerous charges of illegal taxes and unlawful imprisonments but does not compare Charles to a Norman king or discuss the Magna Carta.<sup>46</sup> Kelsey's piece on the Trial of Charles takes into account both Whiggish and revisionist perspectives. However, he does not agree with the notion that the mid-seventeenth century constitutional crisis can be understood due to long standing traditions and instead links the causes of the crisis to issues contemporary to the period.

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<sup>40</sup> Ibid, 338.

<sup>41</sup> Ibid, 340.

<sup>42</sup> Ibid, 346.

<sup>43</sup> Sean Kelsey, "King Charles and His Case: The Intended Prosecution of Charles I," 61.

<sup>44</sup> Ibid, 71.

<sup>45</sup> Ibid, 63.

<sup>46</sup> Ibid, 71.



The constitutional crisis of 1625-1649 can only be understood by examining England's long term legal developments from the Anglo-Saxon period to the reign of James I. Contemporary accounts of the period support this notion with some harkening back to Anglo-Saxon and Norman rule. Radical Levellers like John Lilburne and William Prynne support this notion in their tracts against Charles' absolutist actions. In drafting the Petition of Right, Coke too looked back to the Magna Carta and its constant revisions under numerous medieval kings to solidify Parliament's claim against Charles. This view was not shared in solidarity with other Englishmen. MPs Richard Saunders and William Cresheld believed Charles' actions were a simple overstep of his prerogative and violations of *habeas corpus*. When examined, the views of Charles' supporters link his rule to the divine right of kings and support the notion of the King as the great lawmaker.

Historians view Charles' constitutional crisis in several interpretations. The Whiggish perspective carries with it many of the same radical views as Prynne and Lilburne by arguing that it only can be understood by taking in tNiche long-standing developments in England's legal system. Historians like Como and Potter paint images of a longstanding resentment of oppressive monarchs by the English populace and argue that the period was the flowering of legal thought and debate. Legal scholars take a more revisionist perspective when compared to the views of Whiggish historians. They argue that Charles' constitutional crisis can be understood by simply looking at the period itself and the various abuses of Charles' reign. Both Kelsey and Zande place emphasis on issues contemporary to the period such as unlawful detainment and illegal taxation. They insist that these issues have no long-standing connections to events of the past. Although the legal debates of the Caroline era are long over, many constitutional battles are still fought between radicals and revisionists.

### Works Cited

Browne John. *Petition of Right*, London: John Gyles Press, 1642.

Como, David. *Radical Parliamentarians and the English Civil War*. Oxford: Oxford University Press, 2018.

Foxley, Rachel. "More Precious in Your Esteem Than It Deserveth? Magna Carta in Seventeenth Century Politics." in *Magna Carta: History, Context, and Influence* edited by Lawrence Goldman, 61-78. London: University of London Press, 2018.

Kelsey, Sean. "King Charles and His Case: The Intended Prosecution of Charles I," *The Journal of Legal History*, 39:1 (2018): 58-87.

Potter, Harry. *Law, Liberty, and the Constitution: A Brief History of Common Law*. Woodbridge: The Boydell Press, 2015.

Prynne William. *A Humble Remonstrance to His Majesty Against the Tax*. 1641.

Seel, Graham. *The English Wars and Republic, 1637-1660*. London: Routledge Press, 2005.

Vande Zande, Daniel. "Coercive Power and the Demise of Star Chamber." *American Journal of Legal History*, 50:3 (2008): 326-349.

Willms, Sarah. "The Five Knights' Case and Debates in the Parliament of 1628: Division and Suspicion Under King Charles I." *Constructing the Past*, 7:1 (2006): 92-100.