

**TYRANNICIDE OR REGICIDE? THE 'ASSASSINATION' OF
CHARLES I IN THE CONTROVERSY BETWEEN MILTON AND
SALMASIUS, WITH A COMPARATIVE ANALYSIS OF THE TWO
TRIALS (1649 AND 1660)**

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The subject in hand is among the best-known, and we have almost nothing new to add to this painful chapter in England's history¹. If I may make any contribution, it is by taking into consideration not only the legal proceedings instigated against the king, but also those against the judges who condemned him. Here then is a comparative analysis of the contradictory discussions occurring during both trials: 1649, against the king, and 1660, against those responsible for regicide. Between these two historic moments, I would like to position the discussion between two contemporary experts in the field, John Milton on the one hand, and Claudius Salmasius (Claude Saumaise) on the other. One of the conclusions of this study aims to pinpoint who is the sovereign, and who represents sovereignty in 17th century Great Britain, the king or Parliament.

The source of law: the divine right of kings or the common law?

The accession to the throne of James I highlights this question in all its gravity². What was the source of the law, the king's will or the common law? Two systems of ideas locked horns, based on two traditions of authority. On the one hand, the ancient tradition, going back to Roman law, which recognised the power to make laws, and which limited the ability of judges to interpret them. It found a defender in Francis Bacon (1561-1623), who even though unsuccessfully put

¹ While British historiography sometimes seems to consider that it has a monopoly on British history, we believe that Continental scholarship can offer a welcome alternative to conventional readings of the civil war period in England.

² From this point on, I will freely draw from the chapter "Puritanism and tyrannicide" of my book *Tyrannie et tyrannicide de l'Antiquité à nos jours*, Paris, PUF, 2001 (referred to hereafter as *T&T*), which readers may wish to consult to gain an overview.

forward a codification of English law. The theories supported by James I fall into this category, which advocate the divine right of kings and the propriety of absolute power. On the other hand, a long-standing tradition, going back to Bracton and Fortescue, is still advocating the superior nature of the law over the will of the sovereign. The advocates of the "Petition of Right" of 1628, with Edward Coke (1552-1634) at their head, favoured the supremacy of the common law, which was the work of reason (*summa ratio*) applied to practical cases from legal precedents³. The principles of the common law, being derived from legal reality, differed from those of natural law, which were theoretical. Inspired by reason and enacted by jurisprudence, the law referred to by Coke was above the will of the sovereign. In such terms, the conflict between Parliament and the new king, the young Charles I, who inherited the throne, remained without an immediate solution. The clash of ideas that ensued regarding the kingdom's vital issues, including the raising of taxes among others, would end in armed conflict.

At the beginning of the Civil War, William Prynne (1600-1669) expressed Parliament's position. He summarised the analogy, inherited from medieval conciliarist theories, between ecclesiastical and civil jurisdiction. He drew a parallel of sorts between papal authority as being subordinate to the Church and monarchic authority as being subordinate to the authority of the kingdom. This is encapsulated in his phrase *rex singulis major, universis minor*⁴. The authority of the king prevails in specific issues, but in terms of issues of general interest, the authority of Parliament overrides that of the king. According to Prynne, the people had the right to defend themselves when faced with an iniquitous king, which would soon become the right to resist tyrants.

The first trial: the grounds of tyranny brought against Charles.

The trial of Charles I brings up questions about tyranny and the legitimacy of regicide. While tyranny was not given as specific grounds for prosecution in the beginning, in the High Court of Justice's basis for prosecution document (which concerned only the crime of high treason) of 6 January 1649⁵, tyranny became the

³ See Jean Beauté, *Un grand juriste anglais: Sir Edward Coke, 1552-1634, ses idées politiques et constitutionnelles, ou aux origines de la démocratie occidentale moderne*, Paris, PUF, 1975 ; J.G.A. Pocock, *The Ancient Constitution and Feudal Law, A Study of English Historical Thought in the Seventeenth-Century* (1957), Cambridge, CUP, 1987 ; Lorenzo d'Avack, *I nodi del potere, La teoria del governo misto nell'Inghilterra del Seicento*, Milano, A. Giuffrè, 1979.

⁴ See William Prynne, *The Treachery and Disloyalty of Papists to their Sovereignes, in Doctrine and Practise, Together with The First Part of the Sovereigne Power of Parliaments and Kingdoms*, London, 1643, p.73; for the maxim, see John Hearsey McMillan Salmon, *The French Religious Wars in English Political Thought*, Oxford, Clarendon Press, 1959, p. 7-8.

⁵ *State Trials*, t. 4, col. 990-991: « Introduction. The following brief Account of some Proceedings in Parliament will serve as an introduction to this important Trial: Dec. 23. A committee was appointed to consider how to proceed in a way of justice against the King and other offenders. / Dec. 28. An

main thrust of the act of prosecution of 20 January as pronounced by Solicitor General John Cook⁶, and in the same way, the "capital" part of the sentence issued on 27 January by the Judge, Lord President John Bradshaw. However, from the outset of the trial, the king questioned the legitimacy of the High Court's authority. This is not a minor point, since the entire legal basis for the final sentence depended on the upholding of the laws, on the common law, and on the codification of freedoms acquired by the English people, from the Magna Carta of 1215 to the Petition of Right of 1628. Thus all the claims made by all dissidents, including Puritans, Separatists, Nonconformists, Conformists, Presbyterians, Independents, Levellers, etc. were rooted in these basic texts, although they might have been described differently from one respective programme to another.

However, what had become of this common basis of legality when Oliver Cromwell ordered the "Purge" of Parliament on Wednesday 6 December 1648? "Purge" was a euphemism meaning that certain undesirable parliamentary figures were forcibly excluded from the House of Commons, even imprisoned if they showed resistance. To do this, army soldiers replaced the militia guarding the Commons. From a total of some five hundred members of the House of Commons, one hundred and eighty-six members were barred from taking their seats, and forty-five arrested⁷. These were exceptional circumstances, which demanded exceptional measures, as was said; however, the use of force destroyed *ipso facto* any form of legality or freedom in the highest deliberative institution of the State. Parliament, this vital organ, thus lost its reason for being, since it had become little more than an enslaved instrument in the hands of a military leader. To widespread surprise, after the "purge" executed by Colonel Thomas Pride, Cromwell was quite willing to risk another bombshell. When his son-in-law, Henry Ireton, advanced his request for the king's prosecution, 68 members of this "Rump Parliament"

Ordinance for Trial of the King was read. / January 1, 1649. Declared and adjudged by the Commons, that by the fundamental laws it is Treason in the King of England, for the time being, to levy war against the parliament and kingdom. / Jan. 2. The Lords disagreed to this Vote and east it out, and the Ordinance for Trial of the King, *nemine contradicente*. / Jan. 3. The same vote was again put to the question in the House of Commons, and carried in the affirmative. / Jan. 4. Master Garland presents a new Ordinance for erecting en High Court of Justice for Trial of the King; which was read the first, second, and third time, assented to, and passed the same day. And ordered, no Copy to be delivered. » For the questions treated on 6th to 12th January, see col. 1053-1058 ss. No mention of "Tyranny".

⁶ *State Trials*, t.4, col. 1070-1072: Westminster-Hall, Jan. 20, 1649. "A Charge of High-Treason and other High Crimes exhibited to the High Court of Justice by John Cook [...] doth for the said treason and Crimes, on the behalf of the said people of England, impeach the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a public and implacable enemy to the Commonwealth of England".

⁷ See Underdown 209-212 and 143-163; Walter 250; Walter gives other figures relating to the purge: 47 arrests and 96 exclusions (89). In 1649, in his *Apologie Royale*, Salmasius wrote that Parliament – that is to say the House of "the People's Representatives" – was "miserably sliced apart [...] by the imprisonment of forty-five of its Members & the banishing of one hundred" (« [La Maison des] Deputes du Peuple [...] [a été] misérablement tronçonné [...] par l'emprisonnement de quarante-cinq de ses Membres, & le bannissement de cent », *Apologie Royale*, Paris: Mathurin Dupuis, 1650, p. 784. All subsequent references are to this edition, silently translated into English by Frédéric Herrmann.

accepted, on 6 January 1649, to form the High Court of Justice responsible for judging Charles Stuart, king of England. During hearings, the king therefore had many reasons to request explanations regarding the legitimacy of this High Court.

Tyranny plays an important role in the arguments concerning the acquisition of the “capital” sentence. During the last hearing, on 27 January 1649, as previously intimated, Judge Bradshaw compared Charles to Caligula and even to Nero, condemned by the Senate of Rome. He in fact went even further:

Truly, sir, We have been told, « Rex est dum bene regit, Tyrannus qui populum opprimit ». And if so be that be the definition of a *Tyrant*, then see how you come short of it in your actions, whether the highest *Tyrant*, by that way of arbitrary government, and that you have sought to put, you were putting upon the people? Whether that was not as high an act of Tyranny as any of your predecessors were guilty of, nay many degrees beyond it? (*State Trials*, t. 4, col. 1114)

The maxim juxtaposes two sentences, the first of which vaguely resembled the words used by Isidore of Seville, « *Reges a regendo vocati* » (*Etymologiae* 9, 3, 4), when he quoted the ancient proverb: « *Rex eris, si recte facias; si non facias, non eris* »⁸. This was a widely-held former belief that the Lord President probably expressed based on a sentence by Lord Bracton⁹.

Thus it was in the final sentence that the crime of tyranny appeared on top of the list of crimes:

For all which Treasons and Crimes this Court doth adjudge, That the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a Public enemy, shall be put to Death, by the severing his Head from his Body. (*State Trials*, t. 4, col. 1017)

After the execution, great emotion shook England and Europe, and sustained heated debate. John Lilburne, a leading thinker in the *Leveller* movement, immediately denounced the illegality of the trial and the sentence in his *England's New Chains Discovered* (1649), which earned him prison time and a trial. Other voices were raised in protest to denounce the misconduct of the supposed High Court of Justice.

⁸ See Horace, *Ep.* 1, 1, 59-60. Concerning Isidore, see *T & T*, p. 228-33.

⁹ Bracton, III, 9, 3, see *T & T* 256-259. It should be made clear that Bracton, though supportive of the king, was subject to God and the law, and though admitting (“in some people’s view”) that the king may be subject to a trial, did not in any way foresee a sentence which involved capital punishment. See Muddiman, Lagomarsino and Wood, p. 125; for an Anglo-Saxon historiographical model about the historical assessment of the trial, see Hinton, Zaller, Kishlansky and Zarka.

Tyrannicide and regicide in the controversy between Milton and Salmasius.

The most interesting of these debates is perhaps the one that saw two significant adversaries confront each another. Salmasius, who published his *Defensio regia* in mid-November 1649, was one of the most famous scholars of his time, reputed for his skills as a legal expert on the Continent and in England¹⁰. A confirmed reformist, he condemned the episcopate and the papacy as responsible for the Church’s ills. His opinions, characterised by fully-fledged Protestantism both in politics and religion, showed a degree of objective rigour, even when supporting the cause of the sovereign power of kings. The same may be said of the ideas of his adversary, the writer John Milton, and future author of *Paradise Lost* at that time. In February 1651, he wrote a *Pro populo Anglicano Defensio* to defend the cause of the Independents.¹¹ This was an important theoretical system, based on the sovereignty of the people and the right to resistance, going as far as to legitimise tyrannicide. Here he applied the theories that he had just developed in 1649, in *The Tenure of Kings and Magistrates*¹². According to the principles of natural law, Milton stated that in the state of nature, individuals possess innate freedom, and that they confer this upon a greater authority, or even upon a king, via the pact of subjection. In the same vein as Bracton, he declared himself to be for the sovereignty of law, which is the expression of reason and of the will of the people. As such, the people thus conserve the right to elect, to drive out, to keep or to depose a king, even if he is not a tyrant, since the people have the right and the freedom to be governed according to the form of government that they deem best¹³. His lampoon *Εικονοκλάστης* (*Eikonoklastes*, London, 1650)¹⁴ is in the same vein. Milton vigorously responded with ample developments to the anonymous book entitled *Eikón Basilikè: the Portrait of his Sacred Majesty in his Solitude and Suffering*, which had appeared on 9 February 1649.

Salmasius’s rejection of the High Court of Justice

The system used by Milton and his fellow republicans such as James Harrington (1611-1677), James Tyrell (1642-1718) and Algernon Sydney (1622-1683), went on to be a long-standing success, but in the short-term, i. e. in the

¹⁰ Salmasius gives a detailed account of the infighting of the various parties and sects (*Apologie* 654). See also Pierre Du Moulin.

¹¹ See for the English text of the *First Defence*, Milton, *Complete Prose Works*, t. 4/1, p. 285-537 and for the English text of the *Second Defence*, t. 4/2, p. 687-825.

¹² See Milton, *Complete Prose Works*, t. 3, “The Style of Milton’s Regicide Tracts,” p. 126-46.

¹³ See Milton, *Complete Prose Works*, t. 3, p. 206. See also Wolfe and Mayfield.

¹⁴ See Milton, *Complete Prose Works*, t. 3, p. 337-601. See Tournu, p. 371-96 on “Tyrannicide”.

historical context of the king's trial, Salmasius' ideas were no less interesting as regards the concept of tyranny. In the same way that the sentence which condemns Charles I as a "tyrant, traitor and homicide", Salmasius agrees that the first prosecuting argument is so serious that it encompasses the other two. Since there was "no worse public evil, or none which is less able to hide than Tyranny" (753), Salmasius wonders at what exact point Charles became a tyrant. In outlining the history of the previous decade, from the origins of the conflict, Salmasius observes that the accusation of tyranny only appears towards the end of 1648, at the beginning of the trial, when the High Court was looking for a legal pretext to justify the capital sentence, which had in effect been decided upon prior to the trial.

How can it be that the King has deteriorated in such a short time, so that he should have suddenly turned from a good King into a Tyrant? [...] If he had truly been such, he should not have been accused so late; and everyone ought to have given this Ruling.¹⁵

This remark refers to a rather clumsy act committed during the trial's proceedings. In fact, the Independents, who wanted the king's head, failed to make sure in their propaganda that the king appeared as a "manifest" tyrant¹⁶ before his prosecution. This omission alone should have dissuaded the Solicitor General from making it the main grounds for prosecution.

Convinced that the members of the High Court had extremely poor cultural and legal understanding, Salmasius concluded, based on the sentence handed down: "They thus did not realize that he was a Tyrant, and gave us to understand, by virtue of this same reason, that they could not know who was the person they sentenced in this name"¹⁷. The author summarises the definition of a tyrant, which originally meant king, and which went on to designate someone who usurps royalty "by force" or who keeps it "by violent means". He discusses many Roman laws, including the *Lex Julia de maiestate*, and above all, the laws of English legal tradition, quoting such authorities as Ranulf de Glanvill (1130-1190), Henry of Bracton and Richard Crompton (active from 1573 to 1599), to show that the true tyrants and the real traitors were those who took the sceptre and the life of the legitimate sovereign. The common law, the royal statutes from Edward III to Henry VIII and Elizabeth only refer to the king and the kingdom in matters of treason and usurpation. No English legal source talks of the Parliament as an institution

¹⁵ Salmasius, p. 762.

¹⁶ One must stress the historical and legal importance of this qualifier "manifest", which is apparently superfluous, considering the legal weight that was bestowed upon it by the famous Bartole de Sassoferrato in his treatise *De tyrano*. It was precisely this term which the monarchomachs, such as Théodore de Bèze (*Du droit des Magistrats*, 1574) and Stephanus Junius Brutus (*Vindiciae contra tyrannos*, 1579), went on to exalt at the crucial moment in the wars of religion to show the legitimacy of tyrannicide. See *T & T*, p. 294-98 and p. 424-42.

¹⁷ Salmasius, p. 765.

possessing sovereignty. The reason for this was that sovereignty and majesty resided in the king and not the Parliament.

For this reason, the crime of leze-Majesty or of this treason, which is otherwise known as felony, can never be committed against Parliament, considered separately, that is to say as composed only of its two Houses. As such, it does not possess Majesty which resides only in the person of the King, and as a result, there is no reason to convict criminals of leze-Majesty, no more so than the people, as long as he is not Sovereign.¹⁸

However, "the modern Parliament of England could not but have committed this crime" of leze-majesty when it assumed itself as majesty in its "insolent Statutes", accusing those who took arms against him of treason "according to fundamental Laws". "But where will they show me the fundamental Laws of the Kingdom which ordered that of which they try to persuade us?"¹⁹ It was but a vain pretension of the "modern" Parliament to wish to assume sovereignty, something which it could not have aspired to, even if it were "a true Parliament and not this ghost which today goes by that name"²⁰.

Salmasius' conclusion deals with the "politics" of the Independents, who were convinced that "any Royal government of any condition whatsoever, is a Tyranny, and they hold the best of Kings as Tyrants, since they can suffer none of them"²¹.

By Tyranny they understood the Royal government. From that observation, we can conclude in all likelihood that when they defamed King Charles calling him a Tyrant, going on to kill him on the pretext of this crime, it is not because he reigned tyrannically, but simply because he was King, and that according to their maxim, anyone who bears the name of King is a Tyrant, and worth being killed for no other reason.²²

In the identity of the tyrant-king, Salmasius believed that he had found the essential element of the Independents' strategy to set up a trial with the purpose of seizing power and assuming sovereignty. But though Charles may have been accused of tyranny, in *de facto* and legal terms, he was not a manifest tyrant.

In their Politics, King and Tyrant mean and are one and the same thing. Why else would he have appeared to be a Tyrant to the Independents alone, and not to the rest of his subjects? Why would the other English Presbyterians not have called him a Tyrant too? Hence why did not the Scots, who support as they do the Presbyterians, also impose this bad name upon him? We must thus conclude that

¹⁸ Salmasius, p. 779.

¹⁹ *Ibid.*, p. 780.

²⁰ *Ibid.*, p. 784.

²¹ *Ibid.*, p. 785.

²² *Ibid.*, p. 785-786.

he was only a Tyrant according to the ruling of this cursed Sect, which also passes every King off as a Tyrant.²³

However, Charles' honour remained intact, "since by calling him a Tyrant, they recognize that the person they put to death was the King"²⁴.

Salmasius now got to the heart of the issue. In truth, concerning "these good Saints who breathed sedition & lit the touchpaper of rebellion", "who established them as sovereign Judges, and heads of the People? Was it the people itself? Was it Parliament? Was it the King?" – he wondered rhetorically. In fact, they were the "Tyrants, both in terms of usurpation and administration"²⁵. Regardless of the Commonwealth which they wished to establish, be it "Popular or Military", Salmasius could not understand why they "created a Military State rather than a Popular one". And if they really wanted "a free State", "who has ever seen freedom under the Empire of weapons and soldiers?" "But where did these ignorant animals learn this Politic?"²⁶

However, he did not lose "the hope of seeing those who committed this major crime, would one day feel the flails of God's vengeance"²⁷. Salmasius' wish did not take a long time to come true. Admittedly, he was not alone in his hatred of Cromwell's military regime, whom he does not name, furthermore, calling him the "Prince of the Independents", "Pontiff of divine Independence"²⁸.

The second trial: Who held sovereignty in Great Britain in the seventeenth century?

Eleven years after the king's sentencing, 29 of the 80 members of the High Court, including a number of Oliver Cromwell's partisans († 1658), were arrested and taken to court. In effect, regicides were not included in the amnesty which Charles II had proclaimed in Breda on 4 April 1660, prior to his return to England. The judges of 1649 were in turn judged according to the "statute of the 25th year of Edward III's reign", with the declaration that "it is a crime of high treason to imagine and meditate upon the death of the King"²⁹. This completely waived the

²³ Salmasius, p. 786.

²⁴ *Ibid.*, p. 787.

²⁵ *Ibid.*, p. 822.

²⁶ *Ibid.*, p. 823.

²⁷ *Ibid.*, p. 849.

²⁸ *Ibid.*, p. 673.

²⁹ Edward III, year 1352, "Statute of Treason": "If a man compasses or imagines the death of our lord the king, of our lady his consort, or of their eldest son and heir; or if a man violates the king's consort, the king's eldest daughter being as yet unmarried, or the consort of the king's eldest son and heir; or if a man makes war against our said lord the king in his kingdom, or [...]"; in *The Statutes of the Realm*,

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legal principle, *Nihil efficit conatus, nisi sequatur effectus*, as the first judge, Orlando Bridgman, recalled at the opening session on 9 October 1660³⁰. To justify this waiver, he underlined that:

In the Case of the King, his Life was so precious, that the Intent was Treason by this Statute. The Reason of it is this, In the Case of the Death of the King, the Head of the Commonwealth that's cut off; and what Trunk, and inanimate Lump, the Body is when the Head is gone, you all know. (*State Trials*, t. 5, col. 988)

During the hearing on 11 October 1660, prosecutor Edward Turner explained what parricide and regicide were.

Gentlemen, Parricide and Regicide differ not in nature, but in degree. Parricide is the killing of the father of one, or a few persons; Regicide the killing the father of a country [...] The imagining and compassing the death of our late sovereign, is the treason to which we shall apply our evidence; this being, both by the common-law, and by the statute of the 25th of Edward the 3d, the principal treason to be enquired of. (*State Trials*, t.5, col.1017)

Thomas Harrison, Charles I's attendant and one of his judges, talked in his statement of "the motive of conscience" and of his duty of strict obedience to the "parliament of England", that is to say "the houses of England assembled at the Parliament", "which was at that time the supreme authority".

I humbly conceive that what was done, was done in the name of the Parliament of England, that what was done, was done by their power and authority; and I do humbly conceive it is my duty to offer unto you in the beginning that this Court, or any Court below the High-Court of Parliament, hath no jurisdiction of their actions [...] This that hath been done was done by a Parliament of England, by the Commons of England assembled in parliament; and that being so, whatever was done by their commands of their authority, is not questionable by your lordships, as being (as I humbly conceive) a power inferior to that of the High-court of Parliament. (*State Trials*, t.5, col. 1025)

The Lord Chief Justice for his part objected to the fact that the Commons of England "are only one of the chambers of the parliament". He continued by rightly posing the institutional question that a degree of confusion had reigned during the Cromwellian period:

vol. 1, London, 1910 (rpt. 1963), p. 319, cited in *Sources of English Constitutional History*, Section V, nr. 62, (f).

³⁰ See *State Trials*, t. 5, col. 988. The *regula juris* is: *Non efficit conatus nisi sequatur effectus*. [see Jur / Coke in Campbell Black 1252]; *Cogitationis poenam nemo patitur* (Ulpian, l. 18, Digeste, de poenis 48, 19); *Propositum in mente retentum nihil operatur* (*Regula Juris*); *Factum lex, non sententiam notat* (lex 43 § 12, de ritu nuptiali).

You pretend the Parliament's authority, and when you come to speak of it, you say the Commons of England. They were but one house of Parliament. The Parliament, what is that? It is the King, the Lords, and the Commons. I would fain know of you where ever you red, by the light you say you have in your conscience, that the Commons of England were a Parliament of England, that the Commons in Parliament used a legislative power alone. Do you call that a Parliament that sat when the House was *purged*, as they call it, and was so much under the awe of the army, who were then but 40, or 45 at most? Then you say it was done by authority of them. You must know where there is such an authority, (which indeed is no authority,) he that confirms such an authority, he commits a double offence; therefore consider what your Plea is.³¹

At this point, a full-scale war was being waged between two teams of English legal traditions and common law specialists. Each represented the leading edge of two doctrines which faced each other, one new (Thomas Harrison, John Cook and the other regicides), the other traditional (those who then judged the regicides). As such, do these two points of view have the same standing? Or is one right, and the other wrong? It is up to the historian to decide. We need only consult the Parliament's spokesperson against James I, the legal scholar who, at the beginning of the seventeenth century was considered as *the* authority in all matters of common law and English legal traditions: Edward Coke, author of three volumes, *The Institutes of the Lawes of England*, (1628), the leading thinker of the supporters of the superiority of law over the authority of kings³². Paradoxically, it was Judge Mallet, who, when faced with the *risqué* affirmations of Thomas Harrison during the same hearing on 11 October 1660, deferred to Edward Coke's authority to protect the regal authority of Charles I, when in fact the self-same Coke had often been cited against the regal authority of James I, the champion of the divine right of kings.

Sir – addressing prisoner Harrison – the king is the father of the country, '*pater patriae*', so saith sir Edward Coke. He is *caput reipublicae*, the head of the Commonwealth. Sir, what have you done? Here you have cut off the head of the

³¹ *State Trials*, t. 5, col. 1026-1027. Mr. Annesley, one of the purged members of "this *corrupt majority*, as they called it", intervened to add a detail which is in fact of considerable historical importance: the purge took place on the same day that the majority of the House of Commons had decided to send its resolution to the Lords to approve the Treaty of the Isle of Wight as a basis for pacification with Charles I. He added: "All those that had a mind for peace, that minded their duty, and trust, and allegiance to their King, were seized on by this gentleman [Pride] and his fellows. When this was done, what did he and those fellows do? They sat and put a check upon all those that should come in. None must come in but those that would renounce their allegiance and duty to their king and the people, for whom they served, and then declared against that Vote which had been passed upon debate of twelve or fourteen hours; and then to call this an House of Commons, nay, the Supreme authority of the Nation, he knows is against laws of the land. (*State Trials*, t. 5, col. 1028)

³² See *The Selected Writings of Sir Edward Coke*, Steve Sheppard (ed.). They are available individually as PDF files: vol. 1 (p. 1-520), vol. 2 (pp. 521-1184), vol. 3 (p. 1185-468). These also contain *The First Part of the Institutes of the Lawes of England: Or A Commentary upon Littleton, Not the name of the Author only, but of the Law it self*.

whole Commonwealth, and taken away that was our father, the governor of the whole country. This you shall find printed and published in a book of the greatest lawyer, sir Edward Coke. I shall not need, my lord, to say more of this business. I do hold the prisoner's plea vain and unreasonable, and to be rejected. (*State Trials*, t. 5, col. 1030)

Another elucidation, and perhaps the definitive one in this domain, came on this same 11 October 1660, from Mr. Hollis, another judge, who in turn addressed Thomas Harrison. This would be the final summons:

The Parliament are the Three Estates: I must not be admitted that one House, part of the Parliament, should be called the Supreme Authority. You know what the Rump that you left did, what laws they made. Did you go home to advise with your country that chose you for that place. You know that no Act of Parliament is binding but what I acted by King, Lords, and Commons: and now as you would make God the author of your offences, so likewise you would make the people guilty of your opinion; but your Plea is over-ruled. (*State Trials*, t. 5, col. 1028-1029)

Once it was established, in this second hearing, that the House of Commons was not in itself a Parliament, that it could not have supreme authority and even less represent a High Court of Justice, the issue was not raised in further hearings. On 13 October 1660, in the deed of prosecution in respect of those charged, including John Cook³³ and Hugh Peters, the Lord Chief Justice recalled the position of the king of England whose authority "excludes any sharing":

We now that the king, in his politic or natural capacity, is not only *salus populi*, but *salus reipublicae*. The law hath taken care that the people shall have justice and right; the king's person ought not to be touched; the king himself is pleased to judge by the law; you see he doth by law question the death of his father; he doth not judge it himself, but the law judge it. Mr. Peters knows very well he subscribed the 39 Articles of Religion; look upon them that were confirmed in 1552, and upon those articles that were confirmed in 13 Elizabeth; the king is there acknowledge to have the chief power in these nations; the meddling with the king was a Jesuitical doctrine.³⁴

³³ John Cook of Grays Inn, leading prosecutor was author of a justification of the trial: *King Charles 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. With an additional opinion concerning the death of King James, the lots of Rochel, and, the blood of Ireland*, 1649, Peter Cole, for Giles Calvert (London). About this author, see Robertson in the bibliography.

³⁴ *State Trials*, t. 5, col. 1145. During the reign of Edward VI in 1552, the *Forty-Two Articles* were written under the supervision of Archbishop Thomas Cranmer. During the reign of Elizabeth in 1571, Article 37 of the *Thirty-nine Articles of Religion* reads: "Of the Civil Magistrates. The Queen's Majesty hath the chief power in this realm of England and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not nor ought to be subject to any foreign jurisdiction."

The Independents, along with the Jesuits, are in error when they claim to reduce the king's sovereignty by sharing it with other institutions or with the people.

This was the opinion expounded in a certain milieu, close to that which had been recently presented by Robert Filmer in his *Patriarcha* (composed at the end of the 1640s, but published in 1680) regarding the position of the Jesuits and the Calvinists (Bellarmine and Calvin), who claimed that "the people have the power to depose their prince"³⁵.

As for tyranny, this was not brought up during the regicides' trial. However, it was not long before it once again took centre-stage in discussions³⁶.

Conclusion

On 30 January 1661, Charles II of England had Oliver Cromwell's body exhumed, hanged and then decapitated. Here is the official document describing the exhumation. This is the record, as published in the newspapers of the day:

January 30th, 1660 o.s. [*old style*] The odious carcasses of O. Cromwell, H. Ireton, and J. Bradshaw drawn upon sledges to Tyburn, and being pulled out of their coffins, there hanged at the several angles of that triple tree till sunset. Then taken down, beheaded, and their loathsome trunks thrown into a deep hole under the gallows. Their heads were afterwards set upon poles on the top of Westminster Hall.³⁷

To return to questions of method, of which mention was made at the beginning, we may express a historical judgment with absolute peace of mind. Whether we apply to the sources the synchronic or the diachronic method of analysis, as we just did during the examination of the two trials, of 1649 and 1660, the result is the same: we are dealing here with the **assassination** of Charles Stuart. This verdict relies on the sentence given by an English court in peacetime, by judges who scrupulously applied the legal procedure of English laws and common law in force in the 17th century. These experts expressed their findings against other English legal scholars, that a military power had been raised to the rank of judges, and whose opinion was subject to the imperatives of a state of war: *silent enim leges inter arma* (Cicero, *Pro Milone*, 4.11). In addition, the judges who in 1660 re-examined the so-called "trial" of 1649, based their judgment taking into account

³⁵ See Filmer, Ch. I, § 1.

³⁶ See Zaller and Farneti.

³⁷ Tangye, p. 212. See also Chateaubriand, *Les Quatre Stuarts*, chap. Le Protectorat, in *Œuvres complètes*, t. 13, p. 285.

both the laws of the country and the legal principles of the highest representative of common law, and the most prestigious interpreter of English Laws, Edward Coke, who, in peacetime, and well before the civil unrest of the Cromwellian era, had taken a stance, which if not anti-monarchist, was at least protective of English legal traditions, threatened by the absolutist wishful thinking of James I.

In other circumstances, and at other times, as was the case one century later, for example in revolutionary France, John Milton's ideas and conclusions, which were expressed in his treatise *Defensio populi Anglicani* (1651), would be enthusiastically received as propaganda, as shown by the success of the summary published anonymously by Mirabeau (*Doctrine de Milton sur la royauté, d'après l'ouvrage intitulé, Défense du peuple Anglais*, 1789), an exaltation of "popular sovereignty". But this, concerning the end of the 18th century, should not be used in retrospect to assess events occurring in another era, and even less so in the previous century. We cannot put in the mouths of the people living around 1649 ideas which they could not have formulated (or else only like people of the seventeenth century writing under the impact of civil war). In the same way, the fact that official English historiography should have subsequently absorbed these events into a national history far above contradiction, preferring to talk of Cromwell's Revolution than the Great Rebellion (1640-1660: but for the most rigorous historians, doubt remains), must not distract from the historian's judgment, wishing to avoid anachronism, on a tormented but fascinating chapter of Great Britain's history in the seventeenth century.

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