

# *The Lost Right: Redress of Grievances*

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1. The right of redress is embedded in American law by the First Amendment to the United States Constitution, “Congress shall make no law respecting ... the right of the people to petition the government for a redress of grievances.” A short quotation from an act of the Continental Congress should make clear that this right is the most under used, and least understood, right that Americans have.

If money is wanted by Rulers who have in any manner oppressed the people, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility.  
Continental Congress, 1774; **Am. Pol.**, 233.

2. This quotation comes from the “Appeal to the Inhabitants of Quebec” issued by the Continental Congress. Its purpose was to persuade the inhabitants of Quebec to join the pending revolution. Members of this Congress listed their complaints against King George and then enumerated the three great rights of Englishmen, for which Americans were about to contend; the letter was dated October 26 of the year 1774. The first great right, they declared, is the right of self-government; the second great right, which is derived from the first, is the right of redress; the third great right is the trial by jury of one’s peers.

3. When men employ persuasion to gain allies, their struggle is necessarily interpreted as a joint effort to engrave their promises in stone. If a victory is obtained and promises are renounced, the result is a cause of action that gives one side the right to prosecute the other. It is basic contractual law: promises made to gain ratification comprise the contract.

4. Much has been written about the first and third great rights; but scholars, lawyers and judges have failed us on the second. Or, perhaps they have betrayed us.

5. According to the right of redress, as the Founders described it, we have a right to withhold taxes if government violates our rights. But, as American courts describe the right, we must suffer the injury, pay taxes, and then, if we have anything left, sue for redress.

6. The nostrum that taxes are to be paid before redress is asserted by Congress at 26 USC 7421, which states, among other things, “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.” One of the hundreds of cases pertaining to this section declares the nostrum very clearly,

“Pay and sue” rule of this section providing that no suit for purpose of restraining assessment or collection of any tax shall be maintained in any court by any person requires that a taxpayer must first pay an assessment before he seeks judicial review of that assessment. *Westgate-California Corp. v. U. S.*, C.A. Cal. 1974, 496 F 2d 839.

7. By section 7421, the IRS routinely imposes taxes against people that are far beyond their ability to pay. I have possession of official IRS records pertaining to a man that might have grossed two hundred and fifty thousand (250,000) dollars over eight years. He is a critic of government barbarities. Owing to his opinions, the IRS assessed eleven million (11,000,000) dollars against him for those same eight years. Interest alone would amount to something like a million dollars a year – approximately thirty times his annual gross.

8. This tax is impossible to pay; no one would lend money to him so he could pay the tax and then sue to recover. Everyone knows the grasping nature of American judges, and the certainty that they would automatically dismiss the case.

9. Popular fairy tales tell us that American governments are organized to protect American citizens; but section 7421 authorizes the IRS to destroy them with impunity.

10. Something has gone wrong; and, if we desire to recover this lost right of redress, we must understand it. What is a grievance? What are the processes by which to redress one? What is the source that corrupts this right? These are some questions that we will address in this narrative.

11. Many American Founders were sensible of the knowledge that the story of their pending struggle with England would be chiseled in stone. They studied English history, custom and law. Many of them

went beyond and sampled lessons from many lands and many ages; they knew the stage upon which they stood would be viewed by ages to follow – and wanted to be well prepared for the part they were to play.<sup>1</sup>

12. Our task is to examine the procedures relative to the right of redress as it was practiced in England while so many Englishmen emigrated to America. We do this to understand what they brought with them.

13. About the year 1609 English colonies first began to take root on American shores; they brought with them English custom and English law. Accordingly, we will start our search in England of 1604. In that year, religious edicts of James I provided the impetus for the colonization of America by persecuted Englishmen. As we proceed, English roots – not the only roots – of American law and American rights will become clear and well established.

## **1 James I and his Parliaments**

14. In England, the “right” of redress was not a right at all, but a flimsy privilege granted to Parliament while the king was trying to wheedle money out of Parliament.

15. The early events of the first Parliament under James are remarkable in that they present a timid scene that characterized the contest, soon to become furious, that would subsist between king and Parliament – between despotism and rights of man – from that day, to ours and beyond. No other age in the story of man – save the Golden Age of Greece – has contributed more to the cause of liberty than the one we are about to examine. That being the case, it would be appropriate to treat some of those events with some detail.

16. The first Parliament of James met in April of 1604. In writs that summoned the Parliament, he specified that he desired royalists and Anglicans (those subservient to bishops) to be returned to Parliament; and that any nominated contrary to his desires would be imprisoned.

17. The country, however, was in a rebellious mood. In January of that year, James held the Hampton Court Conference where he met with seven hundred puritans and several bishops to try to resolve disputes between the two sides. James became alarmed at what the puritans wanted, and resolved to force puritans to conform to the state religion or drive them from the land; six weeks later, March 5<sup>th</sup>, he issued a proclamation for this purpose – and puritans became the hunted. Despite this, “a great number” of them were returned to Parliament – altho not a majority.

18. Puritans came into England in the 1540’s. In 1566 they separated from the Church of England and began to meet in conventicles, gatherings of five or ten people in private homes, fields or public places. In 1583, Elizabeth appointed Whitgift as archbishop, who began an inquisition of puritans. The following year, the House of Commons began to investigate this inquisition – but Elizabeth thundered it into silence.<sup>2</sup>

19. Despite Elizabeth’s and Whitgift’s efforts, Puritanism grew; toward the end of Elizabeth’s time (1603), the majority of the members of the Church of England was puritan. This led to a split in the Church: puritans (and Calvinists) denied the divine right of kings while the High Church party affirmed it.

20. A secular power was also growing in the kingdom. The Tudors, from Henry viii to Elizabeth, followed a policy of countering the power of the barons (the landed class) by increasing the influence of the smaller gentry and traders. By the time of James, the spirit of liberty and self expression had germinated beyond its full term, and could no longer be restrained. When it finally came forth, it had not the wisdom of Aristotle, Cicero or Tacitus – to name a very few. It did not understand that justice is the natural consequence of friendship; it did not know the boundless power, nor the horrible fury, of men finally unchained; and, worse yet, it had no experience in the common, and so necessary, activities of free men. Under such circumstances, its maturation will always be sad and painful to watch. Still, year by year, it would add to its power and subtract from its ignorance – an endless process, to be sure.

21. While two forces of more opposite character – one sought to impose its delusions on all men, the other to serve them – could hardly be found, they, at least, had a common enemy. These were the forces that were struggling for expression, and that James had to contend with.

22. In 1598, James had published his *The True Law of Monarchies*, in which he formerly declared his version of the divine right of kings, “If a monarch betrays his trust, that is a matter between himself and

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<sup>1</sup> Colburn, *passim*.

<sup>2</sup> Williams, xix, 448, 452.

God who ordained him.... A tyrant [or usurper] may be God's appointed chastisement of a nation; and the proper cure for tyranny is that a nation should give itself, in patience and prayer, to a purer life."<sup>3</sup>

23. Thus, it is the purpose of religion to make slaves of men, whose religious duty is submission to tyranny. We will see many examples of this in the narrative that follows.

24. James opened the first session of this Parliament by sharing his thoughts on tyranny and duty; and then requested a grant of supplies without delay.

25. The House of Commons had heard this language many times before; but, after many centuries of crushing oppression, a mangled spirit of independence was beginning to rouse. James had just been invited by Englishmen to vacate the throne of Scotland and take that of England; they thought he needed a mild reprimand, "Your majesty would be misinformed," they said, "if any man should deliver that the kings of England have any absolute power in themselves either to alter religion, or make any laws concerning the same, otherwise than, as in temporal causes, by consent of Parliament."<sup>4</sup>

26. Over centuries, Parliament evolved to serve two functions: to redress grievances that members had against the king or his ministers, and to grant voluntary supplies (taxes) to the king. That taxes had to be voluntary to be legal had been long settled in England by the statute, *Confirmatio Chartarum*, (Confirmation of the [Magna] Charta) in the twenty-fifth year (1299) of Edward I. This statute abolished all "aids, tasks and prises [sic] unless by common assent of the realm, and for the common profit thereof." By common understanding, all forms of taxes, no matter their name, were comprehended by this statute. "Henry vii, the most rapacious, and Henry viii, the most despotic of English monarchs, did not presume to violate this acknowledged right."<sup>5</sup>

27. Instead of acting on James his request for supplies, Parliament proceeded to debate the role between monarch and Parliament, and who should control elections to fill vacancies in Parliament. James grew impatient and reminded Parliament (1604 June 7) that he wanted supplies. Parliament ignored his request and fairly conveyed the impression that no supplies would be forthcoming until certain grievances were redressed. James seemed to perceive that a dangerous precedent was being revived and sought to defuse it by sending a ridiculous letter to Parliament declaring that he did not need what was not offered to him (June 26). He then prorogued Parliament, 1604 July 7, to November 5.

28. In the meantime a conspiracy was preparing to blow up the Parliament building on the first day of its next session – at a time when the entire royal family and members of both houses would be present. The roots of this plot extended back to the time when Henry viii broke with Rome (1535-9) and established the Church of England. This rupture led to wholesale confiscations of catholic properties and to a near total loss of civil liberties and protections for Catholics – with many suffering loss by rope or axe, fire or tide. By 1604, the misery of Catholics had become so severe that a group of at least thirty resolved on the so-called Gunpowder Plot. The plot was detected and the resulting prosecutions uncovered facts and intended consequences that enraged all non-Catholics. Public opinion, then, allowed king and Parliament to add fury to persecution – as it pertained to Catholics.

29. This fury had good cause. During the reformation beginning with Henry, wealthy Catholic families were ground into dust and just as many obscure non-Catholic families were raised into prominence as Henry distributed confiscations into their hands. These latter families were more than anxious to keep Catholics suppressed, lest they inquire about their former "property."

30. Accordingly, Parliament set to work on a new penal code against Catholics; after a long succession of debates, conferences, and amendments, it became law, 1606 May 27. It contained seventy articles. Among the new oppressions, it (1) restricted their travel and places of dwelling, (2) forbade several kinds of work to them, (3) required their marriages, children and deaths to be licensed by Protestant ministers and (4) subjected their houses and property to arbitrary searches and seizures. There were other proscriptions, with a penalty, attaching to each, ranging from ten pounds per month to loss of two thirds of the offender's property. At that time, fifty pounds per year was a luxurious life style for a peasant.

31. Parliament enacted another act against Catholics which had an effect more insidious than fine or imprisonment. This act imposed an oath of allegiance on Catholics intended to draw a distinction between those who denied and those who admitted the temporal pretensions (*i. e.*, the earthly power) of the pope. Those who denied suffered no penalties beyond those imposed by the aforementioned penal code; those who admitted were liable to an additional penalty of perpetual imprisonment. To these corporeal

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<sup>3</sup> Brett, 15.

<sup>4</sup> Williams, xix, 476.

<sup>5</sup> *Id.* xix, 487.

punishments, this oath had the natural consequence of creating dissensions among Catholics; of dividing friends and splitting families.<sup>6</sup>

32. This session was shortly prorogued (adjourned to a future date) without it voting supplies for James; but, with the anticipation of legalized plunder against Catholics (and puritans), he probably anticipated less need of supplies – and less need of Parliament.

33. Reality, however, fell short of anticipation; or, probably more correctly, the extravagance of James and his favorites ran ahead of expected booty. James had a dilemma: he had to convene another session of Parliament, or he had to raise taxes somehow. Either one was laced with danger. By the practice of over three centuries, Parliament evolved to serve two purposes: to allow a monarch to obtain a voluntary grant of money from his subjects and to afford them an opportunity to redress grievances against the king and his ministers. Thus, every time a king called a Parliament, he ran the risk of having to agree to a restriction of his prerogative, or watching helplessly while Parliament prosecuted one, or many, of his ministers – all as a necessity to receiving new supplies.

34. If a king attempted to raise money by arbitrarily imposing taxes, he would reap taxes but sow hostility, and drive the nation toward civil war.

35. With no eye to the future, James and his ministers decided to attempt an arbitrary tax. They tripled the duty on currants, in violation of the principle that all taxes required the consent of Parliament.

36. Owing to this principle, Bates, an importer of Turkish goods, refused to pay the new duty on currants. He was prosecuted and judges of the exchequer, being creatures of the king, naturally gave judgment for the crown. Two judges of the court gave speeches (no other is extant) more alarming than the decision. Their general tenor declared that the king's power was absolute, thus, rights, liberties and property of Englishmen had no protections against the king – if the king willed it. Immediately after the decision, a book of rates was published (1608 July), by order of James, imposing heavy duties on almost all merchandise.

37. And, to this day, licensed bandits and court historians refer to the Bates decision as if it were rendered by civilized men.

38. The decreasing amount of plunder taken from puritans and Catholics, and the increasing hostility to the new duties on merchandise, compelled James to convene another session of Parliament, 1610 February.

39. Prior to James, the English nation labored under a near total despotism; and any grievances brought forward by previous Parliaments were timid and weakly framed. This was about to change.

40. Members of the House of Commons understood that, if James could arbitrarily impose taxes on imports, he next would impose taxes on their goods and property without their consent. The illegality of these duties was the major concern of the House of Commons; James sent a message to the Commons commanding them to not enter upon the topic of duties. To the invasion against their property, James added another against their speech. The Commons remonstrated, the “freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved.”<sup>7</sup>

41. Parliament proceeded to enumerate several grievances and then focused on the matter of granting James a subsidy in exchange for transferring the “rights” of purveyance and wardship (two forms of taxation) from him to Parliament. The House of Commons, meanwhile, voted to abolish the duties on tonnage and poundage, but the House of Lords rejected this measure. On the same day, 1610 June 10, Parliament objected to forced loans by privy seal as illegal taxes. Altho Parliament had proposed a subsidy and declared many grievances, nothing had been concluded by the time Parliament was prorogued in July. “When Parliament met again in November, the Commons were out of humor. Not a grievance had been redressed.” Parliament became more restive; James grew tired of the word “grievance” and dissolved Parliament, 1611 February 9. This Parliament sat for nearly seven years, without a grievance redressed nor a supply granted – it was a period of exploration and learning, with alarm taking root on one side and a sense of liberty growing on the other.

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<sup>6</sup> *Id.* xix, 480.

<sup>7</sup> *Id.* xix, 488.

## **2 The Second Parliament of James**

42. The second Parliament (1614 April 6) under James was called for the specific purpose of relieving the king's necessities; he opened the session by demanding supplies. The Commons, instead, responded "with one voice" with a vote against the king's prerogative to impose duties at the ports without the consent of Parliament.

43. After several weeks, James demanded again supplies under threat of dissolution. This only pushed the Commons to a greater determination to deal with the question of tonnage and poundage; and James dissolved, June 6, the Parliament, which had sat a mere two months.

44. He committed five members of the House of Commons to the Tower who had been most strenuous in opposition to duties on merchandise. He attempted, thereafter, to supplement his revenue by fines in the Star Chamber.<sup>8</sup>

## **3 The Third Parliament of James**

45. Between the close of the second and the opening of the third Parliament, two developments occurred that revealed the disdain of James for the opinions of Englishmen. During this time, negotiations were begun for the marriage of Prince Charles (soon to be king) and the Spanish *infanta*. The English were still oppressing Catholics, and the thought of one eventually sitting on the throne caused noticeable alarm thru-out the nation. The other development pertained to Frederick, the elector palatine and son-in-law of James. The king of Bohemia died and Catholic powers appointed one of their own as successor. The Bohemians, who were protestant, held that their crown was elective and offered it to Frederick; he accepted. Once more a great battle between Protestantism and Catholicism approached. While James did nothing, the people of England rose to a fever that had long been repressed. James told his subjects he wanted to help Frederick, but privately told the Spanish ambassador not to worry, that his greatest wish was to cement the marriage between Charles and the *infanta*.

46. Shortly thereafter, Catholic powers (Spain and Austria) entered the Palatinate, and the cry to arms was so great that James assembled a paltry force and sent it, but too late. Frederick was defeated; and Bohemia, which had been the refuge for persecuted reformers, fell under the iron heel of Catholic Austria, which was allied with Spain. Puritans regarded this defeat as the greatest disaster since the Reformation by Luther in 1517.

47. The defeat caused great public debate and ill will between James and his subjects. James responded with a proclamation forbidding his subjects to discuss "state matters, either foreign or domestic." All men regarded this proclamation as being issued to please the Spanish ambassador; unruly crowds gathered around his residence, and he was made to feel the necessity to have a guard of soldiers.

48. Thus, was the temper of the nation when James called his third Parliament, which met 1621 January 30.<sup>9</sup>

49. James needed money. The House of Commons had a long list of grievances and, to purchase time to deal with them, adopted the stratagem of voting a fraction of his request, "and that too, at the very beginning of the session, contrary to the maxims frequently adopted by their predecessors."<sup>10</sup>

50. They went next to redress of grievances, and revived the word "impeachment," which had been unused for nearly two centuries. They first went after mere monopolists. Establishing monopolies was an ancient form of taxation; by this method, a subject would pay a large amount of money, twenty thousand pounds, for example, to the king who would "authorize" the subject to sell wool, for example, in a particular city, or region. This patent would deny all others from the trade and authorize the holder to legally punish any who should compete with him; sometimes the patent would require the king to suppress competition. To recover the "tax" paid to the king, the patentee was allowed to charge whatever price he pleased; it could be two, three or four times what an unfettered market would allow. Parliament aimed at two patents; two men held a patent for gold and silver thread; another man held one for licensing inns and alehouses. The latter used his patent to extort money from proprietors of inns and alehouses and to

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<sup>8</sup> *Id.* xix, 498-9.

<sup>9</sup> *Id.* xix, 504-5.

<sup>10</sup> Hume, v, 85.



vexatiously prosecute those who refused the extortion. The former derived “authority” from their patent to search for any goods or equipment that might be used for the manufacture of gold or silver lace – and even to punish, at their own discretion, any offenders. Many men suffered under these patents; besides, it was found that the patentees even adulterated their product – it being mostly copper. For these oppressions and cheats, the patentees were degraded from knighthood, fined and banished.<sup>11</sup>

51. Parliament next impeached the attorney-general for drafting the patents and for protecting them; he was fined fifteen thousand pounds, which James promptly remitted. A judge was impeached for venality; a bishop for being accessory to a bribe.

52. Parliament reached high on the tree of corruption and brought down Francis Bacon. He was accused of taking bribes in his role of lord-chancellor. He admitted to them but denied they influenced his decisions, “I was the justest judge that was in England these fifty years; but it was the justest censure in Parliament that was there these two hundred years.” Whether he had a sense of greatness or justice about him, he was still fined forty thousand pounds and sentenced to prison – which the king remitted, and released, after a few days.

53. The first Parliament under James was the first where we begin to recognize probing and uncertain efforts to limit the power of the crown and to model a system that would secure and protect the rights of man. We will see this effort become more bold and more certain as we continue with this narrative. We will also see another passion raise its head, an ugly, “outrageous cruelty.” But, when we consider that oppressions of long standing always provoke violence, it would be more appropriate to style this “outrageous cruelty” as a reaction. And, when we consider that most such reactions consist of blind rage; and that the cruelties of Parliament occurred after *some* deliberation and after *some* appearance of due process, perhaps we should style the cruelty of these Parliaments as moderately civilized violence. But let us judge each one on its own merits – at least, as they are reported.

54. One such cruelty concerned a Catholic barrister who, upon the fall of the Palatinate to Spain and Austria, expressed his joy that “Goodman Palsgrave (palsgrave, ruler of palatinate) and Goodwife Palsgrave” were driven from Prague. The House of Commons, without hearing the man, sentenced him to a whipping, a fine of five thousand pounds, and life imprisonment. At least the whipping was remitted by the Commons on the motion of Prince Charles.

55. The remainder of this session was spent in a minor feud between king and Commons. He prorogued Parliament for the summer and then jailed a leading member of the opposition in the House of Commons without giving a reason.

56. During the interval, James attempted to improve his image by voluntarily withdrawing thirty-seven patents that had occasioned grievances. But it only exposed a weakness and Parliament would remember, and would not waste the opportunity.

57. One thing motivated Englishmen more than any other: religious zeal. When Parliament returned, 1621 November 14, it remonstrated against Catholics; it requested aid to the Palatine; it complained of the proposed marriage between Prince Charles and a Catholic princess; it requested that children of Catholics be raised and educated by protestants.

58. These issues touched too close to James who sent a letter to Parliament commanding its members not to meddle in matters of his government or mysteries of state; he informed them that their privileges were derived from his grace and that of his ancestors; and that he would not tolerate any insolence in Parliament. The Commons framed a protestation and recorded it 1621 December 18. They “affirmed that the liberties and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; that the affairs of the king and the state, of the defence of the realm, and of the Church of England, the making of laws, the redress of grievances, are proper subjects of debate in Parliament; that in handling such business every member of the house hath, and of right ought to have, freedom of speech; and that every member hath like freedom from all impeachment, imprisonment, and molestation, except by the censure of the house itself.”<sup>12</sup>

59. When James was informed of the nature of this protestation, he brooded in silent anger for a week; then he ordered the journal of the Commons be brought to him and, with his own hand, tore out the page that contained the rights, liberties and “privileges” of Englishmen.<sup>13</sup> After so violent a breach, he realized that it would be dangerous to allow an inflamed Parliament to sit longer; he prorogued, then dissolved, it.

<sup>11</sup> Williams, xix, 505; Hume, v, 85.

<sup>12</sup> Williams, xix, 508 (the full protestation is given in Hume, v, Note [K], at end of volume).

<sup>13</sup> Hume, v, 92.

He sent six members on a frivolous errand of public service to Ireland as a form of punishment (the expense and loss of time). He imprisoned five other members, including Coke, Pym and Seldon. History knows the first, but, by this time, he is in the fall of his years and will soon fade from view. The other two, Pym and Seldon, are known by too few, and we shall meet them again.

## **4 The Fourth Parliament of James**

60. The fourth Parliament of James met 1624 February 19 and was prorogued three months later. In the early part of its session, it voted James less than a third what he had requested.

61. But, it could hardly be said the money was granted *to* James. The nation wanted war to free the Palatinate from the grip of Catholic Powers. James requested money partly for this purpose and even suggested that Parliament place the money in the hands of a committee appointed by Parliament. And so, Parliament granted money according to these conditions, and only for the purpose of recovering the Palatinate. With these supplies, James levied twelve thousand troops and embarked them on ships for the short voyage to the continent. But, James failed, or omitted, to obtain port privileges on the continent, and these ships had to stand outside port for a long period of time. This resulted in half the troops perishing from a contagion from being crowded in the ships. And half of the remainder was so weak and sickly that they were useless as soldiers. The campaign was a signal failure – depending on the point of view. By appearing to undertake a project desired by the nation and by artful bungling, James managed to kill or maim nine thousand of his most zealous opponents.

62. Here, again, we have an example of Parliament proceeding to grievances first, and then supplies *for the king*. Altho Parliament voted supplies first, they were restricted to a purpose *intended* to redress a grievance of the nation.

63. Parliament then went to other grievances. It passed a law *declaring* monopolies to be against the law of the land, but provided no penalties for establishing them.

64. At all times in our narrative we should keep in mind that there were generally two “parties” in Parliament: royalist, who supported the crown, and the opposition, which was comprised mostly of puritans.

65. The next impeachment shows what happens when a government officer believes the blather fed to peasants. They are told that government protects them from certain destruction by the hands of foreign marauders. What is not explained, at least openly, is that government is comprised of *domestic* marauders, who use the power of the state to protect their loot, and destroy witnesses and victims of their crimes. This true nature of government is concealed beneath thin coatings of sugar, or flowers, or whatever deludes the unthinking – those who cannot perceive beneath a surface. Middlesex must have been one of these unthinking, at least in one direction. He was lord-treasurer under James; he made reforms in the royal treasury, denied extravagant demands against it, and generally made it more sound. He made angry those who fed on the sores and miseries of peasants. They, accordingly, instigated an impeachment against him in the House of Commons, which was mainly prosecuted by the royalist party.

66. He was imprisoned, fined fifty thousand pounds, barred from ever being a member of Parliament, banished from the presence of the court, and made incapable of holding any office in government or church.<sup>14</sup>

67. John Pym sat in this Parliament; these were formative years for the time when he would rise to leadership in the cause of man. We should take note that the record shows no participation by him in the proceeding against Middlesex.

68. Before Parliament could proceed with other impeachments, James prorogued it.

69. During the recess, members were preparing prosecutions against the Duke of Buckingham, the king’s one-time lover and current boon companion to Prince Charles. Before Parliament met again, however, James died, which was probably arranged by Buckingham in order to prevent his prosecution.

70. Parliaments under James examined the powers of dispensation (to enforce or disregard laws as the king pleased); of arbitrary imprisonment; of imposing taxes under the guise of loan or benevolence (a “voluntary” tax or a compulsory service); of pressing and quartering troops; of altering customs and duties; and of granting monopolies.

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<sup>14</sup> Brett, 63.



71. For three centuries prior to James, these issues had never been called into question - Parliaments had slept, or been too servile to voice a complaint. The struggle to walk upright had begun.

## **5 Parliaments of Charles I**

### **6 The First (Williams, xix, 535-8; Hume, v, 156-165)**

72. The first Parliament under Charles met 1625 June 18 and quickly voted two subsidies (one hundred, forty thousand pounds by one account, one hundred, twelve thousand by another) – an amount one tenth of what Charles requested. These supplies, as with those last voted for James, were intended to be applied to the recovery of the Palatinate. And so, again, this grant of supplies is more properly regarded as a measure to redress a grievance of Parliament than a grant of revenue to Charles.

73. Parliament then proceeded to other grievances; they demanded a more strict enforcement of penal laws against Catholics; they complained against pardons given to priests; they remonstrated against the king's chaplain for writing that virtuous Catholics, along with other Christians, are saved from eternal damnation. Such is the manner by which men consume themselves when they imagine a little agitation in their head is the cause of the entire universe.

74. The plague raged in London, and Parliament was adjourned so it could move to Oxford.

75. During the interval, news arrived that inflamed the Commons against the court and Buckingham. Charles had sent seven ships, under the command of Buckingham to the aid of France for the pretence of opposing the Genoese, ally to Catholic Austria and Spain. When they arrived at Diepe, the crew became suspicious that they were to be used for the purpose of suppressing protestants at La Rochelle; the English sailors remonstrated to their commander who immediately ordered the ships back to England. Buckingham, by deceit and misrepresentations persuaded the fleet to return to Diepe. There, every ship was boarded by French sailors, which caused all but one of the English sailors to desert.

76. When Parliament reassembled at Oxford, Charles renewed his appeal for funds, 1625 August 10. Parliament was deaf, and, the following day, proceeded to examine the affairs of Buckingham. To prevent such a dangerous investigation, Charles dissolved Parliament, August 12, without supplies.

77. Charles had to resort to illegal means to raise money: he had to levy and collect taxes without calling the impositions taxes. It was a common problem for English monarchs; and one of the many "solutions" was known as forced loans. These were effected by issuing writs (or privy seals) to certain individuals commanding them to "lend" money to the king. These writs had the status of "proclamations," which were not recognized as law. If, however, a person refused such a writ, he could be prosecuted in the Star Chamber where he could be certain of conviction, and of a fine many times the amount of the "loan" amount.

78. After dissolving this Parliament, Charles issued such writs mostly against those who presumed to think that the granting of supplies should depend on the redress of grievances. With the money thus raised, Charles fitted eight ships of war for piratical raids against Spanish treasure ships returning from America. Ten thousand men embarked on those ships and soon landed near Cadiz. They found cellars of sweet wine and indulged themselves. Spanish troops found them dead drunk and sliced off their ears and plucked out their eyes. The survivors fled to their ships. A contagious disease broke out on one ship and the men of this ship were distributed to all the other ships. Thousands more died before the fleet found an English harbor.

79. One of the main lessons to be learned from history is that a government is perpetually at war with its own subjects. The people of England were hostile toward Spain and favored war; Charles, however, was friendly with the Spanish monarch. It is easy, then, to conclude that Charles and the Spanish ambassador secretly arranged to place a large quantity of wine near Cadiz and that it was intended that English troops would "stumble" onto this wine. They would naturally drink themselves to a condition of stupidity, which would allow the patient Spanish troops to slaughter them easily. The losses Charles inflicted with forced loans on supporters of the principle 'redress before taxes' completed his revenge against a recalcitrant Parliament.

## **7 Second Parliament of Charles I (Williams, xix, 538-547; Hume, v, 166-174)**

80. The money from forced loans was wasted and Charles had to resort to constitutional taxation. He summoned another Parliament to meet 1626 February 6. In the meantime, he nominated several of the most vocal opposition as sheriffs and to other petty offices, to prevent their return to Parliament. But, it was to no effect. Parliament began its work as if there had been no change and no interval between the dissolution of the last and the beginning of this one. One of the early orders of business was to appoint committees to investigate matters relative to war, taxes, religion, administration and to prepare statements of grievances.

81. John Pym was the president of the committee on religion. He brought charges against Montague, the king's chaplain, for writing books seditious to the "true religion." Montague was summoned before the House of Commons and severely reprimanded, because his book tended to confuse true believers. This encouraged the Commons to draw up articles of impeachment against Buckingham.

82. John Eliot advised Parliament to withhold funds till Charles admitted Parliament's right to dismiss a king's minister. The House of Commons provisionally voted three subsidies and three fifteenths (totaling two hundred sixty thousand pounds) but specified that this measure should not be passed into law until grievances had been heard and answered by Charles.

83. This hardly made Charles happy; he again requested supplies (May 26<sup>th</sup>); he reminded the Commons that its privileges derived from his grace, and that the failure to vote supplies would be most injurious to the nation and that, unless Parliament voted supplies, he would have to "try new counsels." Parliament saw dangerous principles expressed in this communication from Charles. To placate the alarm of Parliament, two of the king's ministers sought to moderate his words; one told of the "immense interval between" king and subject, and that the latter owed unconditional obedience to the former; the other minister explained that liberty consisted of compliance with the king's will. Charles then had several opposition leaders arrested. He and his ministers imagined that such treatment would help members of Parliament to see their place in the natural order of the barnyard. Sanctified robbers and their creatures do not think like other men.

84. One of the arrested members had said, "We are free, and must remain so, if the king will preserve his kingdom." The House of Commons declared that it would proceed no further until its privileges were satisfied. Charles alleged these members uttered seditious words; but an investigation found no basis to support the charge, and they were soon released.

85. The House of Commons continued with its investigation of Buckingham and objected to the levying of tonnage and poundage as done without the consent of Parliament. Before this answer could be delivered to Charles, he dissolved Parliament, 1626 June 15.

86. Altho the House of Commons was legally closed, its members drew up a remonstrance and delivered it to the king. The main provisions of it were the following: they declared, "the examination of grievances always preceded the voting of supplies"; they claimed that the power and influence of Buckingham was their chief grievance, and that the last and their Parliament were dissolved to prevent a just investigation of Buckingham; and that the levying of tonnage and poundage was against the consent of Parliament, and, thus, illegal.

87. Charles ordered the remonstrance to be seized and burned wherever it could be found. Thus, Charles sought to shield one man from justice by tearing out the tongue of a nation.

88. Charles followed this act of insanity with an act of tyranny. The first two Parliaments under Charles had voted five subsidies – but had not passed them into law. Nevertheless, Charles levied the five subsidies with the same rigor as if they had been enacted into law. Great numbers of people refused to pay these exactions – and were harshly treated by courts and goalers. Tax farmers went from house to house begging and plundering. The judges of Westminster Hall attempted to persuade people to pay subsidies; while, outside, five thousand voices answered, "A Parliament, a Parliament; else no subsidies!"

89. The clergy was enlisted to make the payment of taxes a religious duty. Dr. Sibthorpe said, in a sermon, that law comes only from the will of a prince; if one commands anything a subject cannot perform – whether contrary to laws of God or laws of nature, "they must suffer the penalty of their disobedience without murmur, complaint or resistance."

90. Dr. Mainwaring preached before Charles that a royal command binds the conscience of a subject to pay taxes and forced loans; that he who resists commits a great sin and is penalized with eternal damnation; and that consent of Parliament is not needed for imposing taxes.

91. But these pious words were spoken mainly to court parasites who expected to feed on the miseries of others. Resistance and oppression continued; tradesmen and artificers were dragged from their homes to prison or forced service in the army or navy; loyal, and licentious, soldiers were quartered in homes of those who refused to pay taxes, or who asserted their rights.

92. Charles made use of these recalcitrant taxpayers, who were forced into the military. A fleet of one hundred ships, loaded with sixty-eight hundred men, was sent, under Buckingham, to aid the Huguenot protestants at La Rochelle, who were being persecuted by French (Catholic) troops. Owing to past treacheries, the people of La Rochelle refused admittance to the English. Instead, Buckingham laid siege to a nearby principal French fort. When further aid *was expected* from England, Buckingham raised the siege and retreated to his ships. A royalist historian describes the retreat as a rout without an enemy. By disorder and confusion, great numbers of English were crowded to death or drowned. Of sixty-eight hundred who left England, less than three thousand returned.

93. Once more, thru the guise of aiding friends of Parliament, Charles and Buckingham had their revenge on Parliament.

## **8 Third Parliament of Charles I (Williams, xix, 547-561; Hume, v, 187-217)**

94. After driving the country to near chaos with despotic government and arbitrary taxes, Charles called his third Parliament, to meet 1628 March 26. He also released above seventy persons from prison who had refused to contribute to the forced loan. Twenty-seven of them were elected to this House of Commons.

95. Charles, as usual, requested that supplies be granted immediately to protect against immediate dangers and relieve current necessities, both of which had been provoked by his royal banditry.

96. The House of Commons began to address grievances; the king, April 10<sup>th</sup>, reminded the Commons “to decide the question of supplies quickly and in preference to all other matters.”

97. Thomas Phillips answered, “What avail useless words about rights and privileges in Parliament if it is speedily dissolved, and nobody secure at any other time of his person and property.” Thomas Wentworth, “Till liberty is secured no new grants must be made.” We will meet Wentworth later; his life will mark a milestone in this unfolding struggle for liberty – but not as we expect.

98. They then declared an *intention* to grant five subsidies, an amount unprecedented; but the redress contemplated by the Commons was also unprecedented.

99. The Commons enumerated accumulated grievances, and proposed a select committee to frame a petition for their redress.

100. The House of Commons certainly did not speak with one voice. There were many members whose interest laid on the side of oppression and demented speech; one example, “it were surely much better for human society to be deprived of liberty than to be destitute of government.” Despite this gabble, the committee, within two months, brought forward a Petition of Rights. Among its many provisions, it declared that taxes without consent of Parliament were illegal; that no person is to be deprived of life, liberty or property without cause and only by judgment of his peers; no troops are to be quartered in private houses; no citizen is to be tried by martial law; there are to be no extraordinary courts (Star Chamber and High Commission, for example); monopolies deprive unfavored men opportunities to earn a living and, therefore, are illegal.

101. The High Commission was the English version of the inquisition: it had jurisdiction over all heresies, and could punish by fine and imprisonment.

102. This Petition was presented to the king, 1628 June 2. He gave an equivocal answer, which did not conform to the assent needed to make it law. He ordered Parliament not to discuss grievances, and declared an intent to dissolve Parliament, June 11.

103. Members of the House of Commons were stunned into silence by the king’s answer; when, at last, they aroused themselves from paralysis, a most uncommon scene occurred in this assembly of men. They must have been conscious of the singular originality of their work, or of the timeless nature of it.

104. One man after another – Phillips and Pym among them – stood to speak in defense of the Petition of Rights and sat down with a body wracked with passion, and a face washed with tears. The elderly and stately Coke stood to speak, but words choked in his throat; he had to sit in order to compose himself; when he rose again, he denounced Buckingham and pleaded the rights of man. A witness said that Coke delivered his words “with solemnity... and an abundance of tears.”

105. There was danger in that collective passion of tears, and Charles dared not contend with it. He assented, in lawful form, to the Petition of Rights, and made it law of the land.

106. Parliament then granted the five subsidies previously promised. Next they prosecuted Mainwaring, who had preached the divine right of kings from his pulpit. He was deprived of his office, fined a thousand pounds and imprisoned; and his sermon was ordered to be burned. Charles remitted the fine and released him from confinement, and elevated him to a higher office from the one he lost. His response did not please Parliament.

107. The House of Commons next sought to cancel commissions issued by Charles to thirty-three men that “authorized” them to concert ways to raise taxes illegally. These were issued a little after writs to summon Parliament; and one authorized a band of a thousand German horsemen to collect taxes in England. The House of Commons again remonstrated against Buckingham; it requested the king to recall his proposal to levy an excise because it was against the Petition of Right, and done without the consent of Parliament. For the same reasons, the house remonstrated against duties on tonnage and poundage.

108. Charles, who saw no contradiction between arbitrary taxation and the Petition of Rights, declared, “you have no more power to take it (tonnage and poundage) from me than I have inclination to give it up.” He then prorogued Parliament to 1629 January 20.

109. With the five subsidies granted by Parliament, Charles prepared another expedition to “aid” the protestants of La Rochelle, a cause always dear to the protestants in Parliament. La Rochelle was currently under siege by French troops. Charles, on May 28<sup>th</sup>, wrote to the authorities of La Rochelle to hold out to the last, “Be assured that I will never abandon you, and that I will employ all the force of my kingdom for your deliverance.” This was promised by a man married to the sister of Louis xiii, and who had treacherously dealt with La Rochelle twice before. Thru lack of memory or reason, protestants still volunteered to “aid” protestants over sea. This letter must have been a factor in coaxing money from Parliament, which was granted two weeks later.

110. Despite complaints of Parliament, Buckingham was to command this fleet of seventy ships, but was assassinated by a disaffected soldier days before it was to sail.

111. When the English fleet arrived at La Rochelle, they found a mole had been constructed across the harbor, which blocked their entry. The English fleet desultorily cruised here and there, fired a few cannon shots and returned home. Thus, did Charles display “all the force of my kingdom.”

112. Still, La Rochelle held out to the last. When French troops entered the town, they found not a horse, dog or cat alive – the people had been reduced to eating leather hides. Of the original fifteen thousand inhabitants, four thousand survived siege and famine. Charles told Parliament what it wanted to hear, and had another revenge against its struggle for liberty.

113. When this Parliament next met, it resumed the work of the former session almost without interruption. The Commons complained of the pardon and elevation of Mainwaring. They declared an intention of investigating two other pious creatures who denounced the authority of Parliament and promoted the absolutism of crown.

114. Oliver Cromwell made his first official appearance in this session and issued a complaint against papacy. He came from a family that profited from Catholic confiscations.

115. The House of Commons, again, turned its attention to the topic of tonnage and poundage. Officers of the custom were required to explain by what authority they had seized the goods of merchants who refused to pay these duties. Barons of the Exchequer were questioned on the like. A sheriff of London was imprisoned for assisting officers of the customhouse. Charles supported all his officers in these complaints, and the quarrel became more intense.

116. On March 2<sup>nd</sup> of the year 1629, Charles sent a command to the speaker of the House of Commons, Finch, to adjourn the house. Several members objected and declared their intent to finish their affairs before adjourning. John Eliot read a motion on tonnage and poundage and then requested the speaker to put it to a vote. Finch refused, saying that he “had a command from the king, and to put no questions.” He then rose to leave. A tumult ensued. Hollis said, “By God, you shall sit still here till we please to close the debate!” By long custom and practice, the king could make, adjourn and unmake Parliament by his will alone; but, here, men were beginning to rise from their knees. Seldon exclaimed, “It

is very blamable that the speaker, a servant of this house, refuse under any pretext to obey. If such obstinacy goes unpunished it will be considered as a precedent, and every speaker may, at any moment, interrupt the business of the house under the pretext of a royal order.”

117. Finch, with “entreaties and tears” still refused to prolong the sitting. This caused Peter Hayman, a relation to Finch, to say, “This brings sorrow over our country and disgrace upon our family. For all evil, nay, our ruin, which may ensue, will appear one day as the consequence of your base conduct, and be spoken of only with indignation and contempt. If, however, the speaker persists in not doing his duty, he must be called to account and another chosen.” These were words of prophecy, as we shall soon see.

118. Finch was pushed back into his chair and held there by Hollis and Valentine. Eliot drew up a protest, which was read by Hollis and passed by the majority – after much confusion and noise. It was, in substance, “That all who should seek to extend or to introduce Roman Catholicism, Arminianism [both of which promoted the absolutism of the crown], or other heretical doctrines, who should advise the levying of tonnage and poundage without consent of Parliament, or who should collect or voluntarily pay these taxes, should be considered as an enemy to his country and a betrayer of the liberties of England.”

119. Charles sent an officer to again order prorogation, but he found the doors locked; Charles then sent a guard to force an entrance, but before it arrived, the house had broken up.

120. Charles appeared before the House of Lords on March 12, accused the “disobedient” members of the House of Commons to be “vipers,” and changed prorogation to dissolution. He then published a declaration intended to prove that several members of the House of Commons had “manifested ill-will, had excited unfounded suspicion, raised useless disputes, proposed injurious innovations” among other acts of insolence. Eliot and Hayman, Hollis and Valentine and six other members were ordered to be arrested, and their effects put under seal.

121. At their trials, Eliot and another denied the authority of Charles to question their words as members of Parliament. The sentence, by the king’s “judges,” imposed, on each of the ten, fines from five hundred to two thousand pounds, imprisonment at the king’s pleasure, and that they should not be liberated till they gave security for their good behavior; and, by “good,” all understood that “servile” was meant.

122. Eliot became seriously ill in consequence of the unhealthfulness of his cell. He wrote a petition to the king, that he might enjoy fresh air. Charles responded, “Not humble enough.” Eliot remained in prison three and a half years, and there died 1632 November 27. “It was for him to suffer as those suffer who see that which their fellows cannot see. Like the Swiss warrior, he had gathered into his own bosom the spear-points of the adverse host. His countrymen would follow by-and-by thru the breach which he had made at the cost of his life.”

123. And so, Charles put an end to an assembly of “senseless zealots and presumptuous fools.” The court party pointed to the divine right of Charles: “it knows nothing of Parliament, upper and lower houses, elections, and speakers, but simply orders the people to obey magistrates.” Clergy and judges would spend the next eleven years in an attempt to crush the spirit that had been germinating in the minds of men over the last twenty-five years – after ages of tortured sleep.

124. The nation would struggle painfully over the next eleven years as it attempted to learn rudiments of the language of rights – even tho it had no voice.

## **9 The Interval, 1629-1640 (Williams, xix, 569-577; Hume, v, 217-268)**

125. Since puritans in Parliament had clearly demonstrated an intent to limit the crown’s prerogative in exchange for supplies, Charles set upon a policy to suppress puritans in order to make them more pliable in the event he should ever call another Parliament. He employed rewards and punishments to obtain this end. By the first he gave places and pensions to certain puritans, who instantly became stout royalists. The Church of England was employed for the second. It needed no prompting; for, both crown and mitre aimed at tyranny. Archbishop Laud instructed the clergy of the Church to magnify royal authority and to disdain or detest puritanical pretensions to a free and independent constitution.

126. In 1634 Charles imposed ship-money on each county. This money was intended for the repair and maintenance of the navy; and was formerly imposed on sea-coast counties. In order to coat this tax



with a glimmer of legality, Charles asked his judges, “Whether, in a case of necessity, for the defense of the kingdom, he might not impose this taxation... and whether he were not sole judge of the necessity?” The judges, who bought their offices from Charles, and served at his pleasure, gave him the answer he wanted.

127. Tax collectors made their rounds and, when they came to the village of Great Kimble in Buckinghamshire, they found that not a farthing had been paid. They found instead, a complaint signed by nearly forty men; the first name on the list was John Hampden. The levy of one pound eleven and six pence was of no consequence to him; the portent was.

128. He was brought to trial, which lasted twelve days. The summary, by David Hume, of the arguments advanced by Hampden and his counselors is rich with maxims, “Where necessity is allowed in one case, it will be invoked in all; Wherever any difficulty shall occur, the administration, instead of endeavoring to overcome it, by gentle and prudent measures, will instantly represent it as a reason for infringing all ancient laws and institutions.”

129. When the king’s judges ruled, no one was surprised, “The Law was only a servant of the king.... Acts of Parliament cannot hinder a king from commanding the subjects, their persons and goods, and, I say, their money too.... No acts of Parliament can make any difference.”

130. By “falsehood and adulation” these judges made Charles absolute, and annulled the Petition of Rights. The nation bided its time, and wrote down names.

131. Shortly after this, Alexander Leighton wrote a fanatical and crazed pamphlet against prelacy (the clergy of the Church of England) and priestcraft (Catholicism). Laud brought him before the Star Chamber and sentenced him to have his nose slit and ears cut-off, to be publicly whipped and to be branded on the cheeks with “S.S.,” for “spreader of sedition.” Since Leighton had two each of nostrils, ears and cheeks, half the entertainment was performed and, a week later, the other half was done; all to the delight of the admirers of uniformity.

132. Prynne, a barrister of Lincoln’s Inn, wrote a thousand-pages quarto critical of a whole catalogue of “pleasures.” He wrote “dancing is the chief honor, plays the chief pleasure of the devil.” This offended the queen, who enjoyed balls and masquerades, attended plays and acted in some. He criticized several innovations of the Church. Laud brought him to the Star Chamber where he was fined five thousand pounds, ordered to stand in the pillory at two places and to lose an ear, and be branded on one cheek at each place.

133. Prynne was stubborn; and apparently called others to his standard. Four years later (1637), he, Burton and Bastwick received the same sentence; but, with regard to Prynne’s ears, he only had to lose what remained of them.

134. Charles, ever desperate for money, imposed illegal excises on soap, salt, candles, wine, leather, coal, butter – and a dictionary of other items. He re-established monopolies for the manufacture, sale and distribution of things of common use. Soap boilers paid ten thousand pounds, agreed to pay eight pounds on every ton of soap – and doubled their prices. Competition was illegal – and would be crushed by the king’s men.

135. In an earlier time, James, the father of Charles, concluded that close quarters of London gave rise to contagion and forbade new building. It was ignored, and the city grew. Charles sent commissioners to assess illegal taxes on “unauthorized” buildings, or, if payment failed, to demolish them. Some owners saved their property by a perpetual extortion. Charles raised some one hundred thousand pounds by this oppression.

136. Men read the Petition of Rights, and wondered what it meant; and added to their list of names.

137. The great mass of humanity is best understood in geological terms. Continents, mountains and rocks move, are built up and worn away in quantities imperceptible to human sense. The great majority of men improve their conditions with the same geological rate of change. Take away the outward appearance of men and we will find habits and beliefs practically indistinguishable from those of twenty thousand years ago. These men are incapable of change; teach them ordinary routines of life, and their capacity for innovation is exhausted. When life requires adjustment, most men would rather die, or kill, than change. From this perspective we better understand what follows.

138. In 1635, canons and liturgy were introduced into the ceremonies of the established church. When they were first read from pulpits, they provoked suspicion of papacy, disorientation and riots. After a riot in Edinburgh, the Scots convened the nobility, gentry, ministers and burgesses, who assumed the authority of the Scottish kingdom. They produced “the Solemn League and Covenant,” which denounced popery, aimed to abolish episcopacy (Church of England) and to establish presbyters (congregations under local control), and pledged members to defend each other.



139. We should take note of this Covenant; for, it will play a major role in the combustion that follows.

140. Charles ordered this convention to disband under penalties of treason; but he was ignored. Charles tried negotiation; but his concessions only exposed weakness, where, by a free man, they would demonstrate strength.

141. Finally, he resolved on the use of arms to subdue the covenanters. They armed themselves in defense, and hostilities followed. Charles had provoked a “necessity,” and, after eleven years, was forced to call a Parliament.

## **10 Fourth Parliament of Charles II (Williams, xix, 577; Hume, v, 269; Durant, vii, 206)**

142. This fourth Parliament of Charles convened 1640 April 13. He wanted twelve subsidies to finance the suppression of the Scottish rebellion. But, John Pym had communicated with the covenanters and found their cause to be similar to Parliament’s. He then persuaded Parliament to deny funds to Charles and to arrange an alliance with those covenanters. The House of Commons proceeded to grievances. It began to exam the behavior of the speaker (Finch) on the last day of the previous Parliament. Next, they went to inquire into the imprisonment and prosecution of Eliot, Hollis and Valentine. They prepared to make ship money illegal. Parliament was determined to confirm the “ancient practice... to give grievances the precedence of supplies.”

143. Charles saw no profit in any of these topics and dissolved Parliament, May 5, a mere twenty-two days after it had convened. He imprisoned three members on the basis they wanted to “examine and censure” his acts – as if Charles was bound to account for his acts to Parliament.

144. It was the custom at this time that, when Parliament met, bishops would convene as a sort of mirror assembly for the purpose of dealing with religious matters. When Parliament was dissolved, this convocation of prelates continued to sit; departing from the usual practice of adjourning with Parliament. This convocation granted a supply to the king from the spirituality. It passed a resolution that ordered the “clergy to teach the people the divine right of kings, [to extricate] that damnable sin of resistance to [kingly and priestly] authority,” and to impose on the people the “etcetera” oath, which was intended to maintain the authority of the Church.

145. These proceedings were regarded as illegal by most men since they were done without the assent of Parliament.

146. The Scottish army then “invaded” England and promised to pay for everything – except for property plundered from Catholic houses. It demanded an English Parliament; and every town received them kindly. Charles opposed them but was troubled by several mutinies provoked by papist officers.

## **11 The Long Parliament (Williams, xix, 581; Hume, v, 285)**

147. Embarrassed by “necessities” provoked by his own ineptitude and folly, Charles called another Parliament – the most momentous assembly of men in the tortured story of man.

148. On the morning of November 9, 1640, Charles arrived privately at the Parliament door – contrary to his usual mode of royal splendor, “One thing I desire of you, as one of the greatest means to make this a happy Parliament, that you on your parts, as I on mine, lay aside all suspicion, one of another.” He did not know what he had done, and imagined an oppressed nation was as short of memory as he.

149. The nation consulted its list of names; an army of petitions arrived at the House of Commons. From the Fleet prison came a petition from Alexander Leighton, who had languished there ten years. Another came from John Lilburne who had been whipped and imprisoned for distributing Prynne’s book; his petition was delivered by Oliver Cromwell. Petitions from Prynne, Burton and Bastwick reached the house. These men were ordered to London; Leighton, mutilated, deaf and blind, crept out of his cell where

he had expected to die; Prynne and a fellow sufferer made a triumphal entry into London. Bastwick entered London with trumpets sounding, torches burning and a thousand horse for his convoy.

150. The House of Commons voted that these men should be restored to their callings and that those judges who had unjustly treated them should pay high damages as compensation, to each of them.

151. Some days before Parliament opened, Pym declared his intention of “removing all grievances and pulling up the causes by the roots.” On November 11<sup>th</sup>, he rose in his place and said that he desired to speak on a matter of the utmost importance. He requested that strangers be excluded and the doors to the house be locked. For three hours he recounted crimes of Strafford, and asked that he be impeached of high treason.

152. Thomas Wentworth began his career in the House of Commons (1628) and demonstrated a foremost position in the cause of liberty; Charles made him earl of Strafford, and he went to the other extreme. Charles appointed him to a position in Scotland; and then in Ireland as governor. In both places, Strafford practiced an undisguised tyranny, and made many enemies.

153. The House of Commons was particularly offended by Strafford. Most men choose evil because they can get wealth and “honor” no other way. Strafford had intelligence, wisdom and competence: he had all that was necessary to succeed in an honest calling; instead, he chose evil because it was evil.

154. Pym carried his motion in the House of Commons. Doors of the house were thrown open and Pym led three hundred members into the House of Lords where they demanded the impeachment and arrest of Strafford.

155. The work of this Parliament had hardly begun. Archbishop Laud was accused of “a design of subverting the constitution and laws of England, and introducing arbitrary and unlimited authority.” He was impeached and arrested.

156. Lord keeper Finch (former speaker of the House of Commons) was impeached; he was a minor offender and the event that made his impeachment memorable was that he, naturally, flew the kingdom.

157. Sheriffs who assessed ship money were declared delinquents (those who have been guilty of some crime, offence, or failure of duty), as were tax farmers and officers of the custom who levied and collected duties on tonnage and poundage. They were fined one hundred and fifty thousand pounds.

158. Judges of the Star Chamber and High Commission were voted to be liable to penalties of law. That is, their victims could seek civil damages against them in the ordinary course of law.

159. Five judges who declared ship-money (regarding Hambden’s trial) “were visited with a just retribution for their servility. They were compelled to give securities to abide the judgment of Parliament, whilst the most obnoxious of them, Sir Robert Berkley, being impeached of high treason, was taken to prison from his judgment seat in the King’s Bench, which struck a great terror in the rest of his brethren then sitting in Westminster Hall, and in all his profession.”

160. Monopolies were abolished and monopolists were made delinquents and expelled from the house.

161. Strafford was convicted of high treason and sentenced to lose his head. Altho he was guilty as charged, his trial was conducted in a manner that embarrasses a man acquainted with rules of due process. With a touch of humanity, or because of disgust of a barbaric practice, the house saved Strafford’s children from forfeiture and corruption of blood; the crown had never done this.

162. Strafford’s execution (1641 May 12) was the first blood of this revolution, and demonstrated its twin passion. While this Parliament is unique in the strides it took for self-government and redress of grievances, it is also guilty of many cruelties and outrages. Perhaps these latter can more properly be regarded as natural consequences of long oppression, which allows no redress for crime. Where men are denied justice, violent measures are their only redress. It is inevitable and natural that the reaction will be violent, inartful and a source of shame for those who look back.

163. Historians have had difficulties determining the justice of Strafford’s conviction. In general terms, he was accused of pursuing a plan to free the king from all restraint, by an unlimited right of taxation and a standing army to enforce such pretensions. Two of the articles against Strafford were that he imposed taxes by his own authority, as lord-lieutenant of Ireland, and quartered troops on those who complained of his oppression.

164. Treason, according to the law of England, consisted of any conspiracy or act that aims at, or results in, harm to the *king*. By this common understanding of treason, Strafford could not have committed treason; for, his actions aimed at making Charles an absolute despot. Strafford *and Charles* were waging war against *the people*, not the king, of England.

165. The difficulty lay in the fact that no law of treason specifically declared such behavior to be a crime. At the time of Strafford's execution, the nation was on the verge of a civil war between royalist and Parliamentary forces. In six years, agents of a victorious Parliamentary army would present to this Parliament 'An Agreement of the People,' which declared sovereignty to lie in the people, among other things. This was the perspective needed by Parliament to convict Strafford of treason with consistency.

166. The story of man with power is the story of folly, irony and cruelty; the story of this Long Parliament and Strafford is no less. Ireland was almost entirely Catholic. When Strafford was appointed governor of it in 1632, he said that he found it in a "state of perfect dissolution" – and this after some four hundred years of barbarous English rule. Elizabeth, for example, had instituted a "final solution" that resulted in the extermination of some three hundred thousand Irish not eighty years before. Strafford wrote, "stronger measures were necessary... [and] ... none but thorough measures can subdue the spirit of the times, and the elevation of the royal powers must be the most important – nay, the sole object of my government."

167. Shortly after Strafford's execution, Parliament abolished the Star Chamber and High Commission; neither king nor bishop now had an instrument by which to enforce their proclamations, which we would probably call 'executive orders.' Other arbitrary courts were abolished.

168. After the dissolution of the last Parliament, the convocation of the clergy continued to sit; it granted money to Charles and made several changes in church matters and instructed the clergy of the Church to conduct a general oppression of the nation, and puritans especially. This Parliament declared the clergy could make no changes without consent of Parliament and imposed fines ranging from five hundred pounds to twenty thousand pounds. A series of bills pertaining to bishops emerged from Parliament; first to restrict, then to abolish them. Later thirteen bishops who participated in the convocation were criminally accused.

169. About this time Parliament voted supplies to compensate both English *and* Scottish armies. Since the latter was the cause for invoking Parliament, Parliament was determined to keep it on English soil until Parliament had completed its agenda.

## **12 Attempted Arrest**

170. The hostility against the king and the fury of Parliament were both beginning to abate; and zealots in Parliament were despairing for motive power. But Charles would rectify this situation, probably out of stupidity.

171. The event we are about to examine is regarded by English historians as the most significant event during the most significant upheaval in English history. It has several roots, and we will take a brief survey of a few of them. One of those roots pertained to the relationship between palace and temple. On 1640 December 11, Parliament received a petition, signed by fifteen thousand people complaining against episcopacy; it called for abolition of "the Government of Arch-Bishops, Lord Bishops, deans, and Arch-Deacons, all its dependencies, Roots and Branches..." (Brett, 161.)

172. A week later, Pym moved for an impeachment of Arch-Bishop Laud. The articles against Laud included the following.

The second article claimed that Laud defended "absolute and unlimited power by preaching, by sermons, and other discourses, printed matter..." Pym coined a maxim in this article: by Laud's efforts, the "Truth of God defends the lawlessness of man."

The third article asserted that Laud "dispenses and distributes justice by *fear and intimidation*..." Here, Pym named the violation before men had named the right – which Americans would lay as a cornerstone of their experiment: the pursuit of happiness.

By the sixth article, Pym declared that "Bishops labor to set king above the laws, and themselves above the king." (Brett, 161)

173. Laud was arrested 1641 March 1<sup>st</sup>, and would remain in prison nearly four years before being led to the block. (Brett, 177-8)

174. Ten days later, the House of Commons passed a resolution to debar the clergy from exercising any judicial function. Two months later, a bill was introduced, by Cromwell and Vane the younger, into the House of Commons to abolish episcopacy. It passed by a vote of 139 to 108, with Pym and Hampden in the majority. (Brett, 181)

175. Shortly after this, the king announced his plans to go to Scotland; the House of Commons appointed several commissioners to accompany the king on his trip, with Hampden being one of them. Parliament then adjourned to October 20<sup>th</sup>. The real purpose of these commissioners was to watch the king's movements.

176. When Parliament reconvened, its first act, 1641 October 21<sup>st</sup>, was to pass a bill to exclude Bishops from the House of Lords; this would remove twenty-six votes that were nearly always cast for the court. Rather than extirpate episcopacy at once, it was thought wiser to tear off one branch or root at a time.

177. Four days later, Pym was attacked with a sick rag. He was handed a package that contained a letter and a rag that had been used as a dressing for a wound, and that was soaked with infectious fluids. The letter warned Pym to shut up or expect a dagger. "Not long after," a man in Westminster Hall, mistaken for Pym, was stabbed to death. Neither the letter writer nor the killer was found. (Brett, 189-190.)

178. On 1641 November 1<sup>st</sup>, Parliament received intelligence the Irish had risen up in anger, nearly a year, to the day, after Pym had suggested a committee to into Irish grievances. Irish Catholics got tired of waiting and massacred thousands of English Protestants; estimates range from four to eight thousands.

179. When Strafford was arrested in November of 1640, the government of Ireland was continued by creatures he had selected. By one artifice, treachery and oppression at a time Strafford, and his creatures, pushed the Irish beyond their endurance. On 1641 December 8<sup>th</sup>, Parliament resolved that the Catholic religion should no longer be tolerated in Ireland. The following February, Parliament made an enactment that must forever embarrass civilized men, "All rebels, as well as their adherents and favourers, shall be wounded, killed, put to death, and annihilated by all means and ways; all places, towns, and houses, where the rebels abide or have abode, or where they have been protected or assisted, shall be plundered, laid waste, pulled down and burned; all the hay and corn in them shall be destroyed, and all the inhabitants able to bear arms shall be killed!"

180. Within the last year, this Parliament had impeached and executed Strafford for doing the same. Before Strafford became governor of Ireland, he held the same position in Scotland. The tyrannical rule that he left there, would later drive the Scots to rebellion and Charles to the necessity of calling and maintaining Parliament. In the rising of the Irish, some men saw Strafford rise from his grave and make one more gift to Puritanism. Strangely do men benefit those they oppress; and reward their benefactors.

181. How should Parliament respond to this Irish violence? If Parliament supplied the king with an army to suppress the Irish, most members of Parliament were fearful that Charles, instead, would use the army against Parliament. Further, many members believed that Charles had encouraged the rebellion as a means to wheedle money, and an army, from Parliament. It was finally resolved to give Instructions to the king regarding the Irish uprising. These instructions, required, among other things, that Charles had to "employ such councilors, ambassadors and other ministers... as the Parliament may confide in, without which we cannot give His Majesty such supplies for support of his own estate..." (Brett, 194.)

182. Thus, Parliament wanted the power of "advice and consent" relative to the king's appointments. Until this grievance was redressed, Parliament would vote no supplies. This was unacceptable to Charles, of course.

183. While Parliament sought to exterminate men over sea, it sought to secure men's rights nearby.

184. Let us paint this irony in greater relief. In the midst of this Irish insurrection, an unprecedented struggle, November 9<sup>th</sup> to the 22<sup>nd</sup>, occurred in Parliament. This was the time of debate on the Grand Remonstrance. This petition, among other things, requested the king to remove bishops from the upper house, and all evil-minded and suspicious persons from his councils, and employ only those who had the confidence of Parliament. This remonstrance contained a list of every complaint that had been leveled against Charles since he took the throne – some two hundred in all; and affirmed that Charles was surrounded by a wicked party that was the cause of all evils. When light failed on the evening of the 22<sup>nd</sup>, candles were brought into the House; and the midnight vote was one hundred and fifty-nine to one hundred and forty-eight in favor.

185. Part of the majority had intended to color Charles as black as possible in preparation for imposing more limitations on his prerogatives. Another part viewed the Petition and Remonstrance as essential for the security of their rights; Cromwell remarked at the end of the sitting that, if the Remonstrance had not passed, he, with many who thought like him, would have sold their property and never seen England again.

186. The greater number of the majority was motivated by religious ideals, and had intended to exterminate all who were not devoted to their nursery tales.

187. After passage of the Remonstrance, a motion was immediately made to print the Bill, which was highly irregular; by long custom, a bill was printed after it received an assent from a king. By this motion, the majority demonstrated its main purpose was to inflame the populace against the king, and give it new hope for additional redress of grievances. Pym's remarks concerning the Remonstrance ended with, "This declaration will bind the people's heart to us when they see how we have been used." And, by "we," he meant the English nation. (Brett, 195.)

188. Passions ran high during the debate on this Remonstrance, and the motion to print pushed them higher. Men drew their swords, and only the calm intervention of Hampden averted bloodshed. Palmer, who was among the minority, made a motion to allow members in the minority to enter their names as protesting the printing. His motion was defeated and, a few days later, the House imprisoned him for two weeks for his part in provoking near-bloodshed in the House. These hot tempers allowed cool heads to persuade the House to withhold its order to print. (Brett, 195.)

189. Here, we only give one example that, when a sect breaks away from its mother superstition, it will demand freedom to practice its folly and allow this freedom to none others. When a man demands for himself what he denies to others, we are kind when we characterize his behavior as folly. When his folly is fortified with power, we are kind to characterize it as cruelty.

190. The king returned to London and a triumphal entry, November 25<sup>th</sup>. People flocked to the streets to cheer his greatness; the Lord-Mayor and City companies turned out in full dress and gave an equal welcome. It was an unusual show of enthusiasm and Charles interpreted it as a sign that popular opinion had turned against Parliament. The next day he dismissed the Parliamentary guard under Essex (trusted by Parliament). Parliament immediately protested and Charles appointed a new guard under Dorset (trusted by Charles). On November 29<sup>th</sup>, an unruly crowd broke into the Palace Yard and shouted, "No Bishops!" Dorset ordered the guard to shoot, but it refused.

191. In the meantime, the House of Commons had appointed a committee to draw up "Reasons for a Guard." Pym reported its finding that Parliament desired "a Guard, under the command of the Earl of Essex.... But to have it under the Command of any other, not chosen by themselves, they can by no means consent...." This caused Charles to dismiss Dorset. (Brett, 198.)

192. On December 1<sup>st</sup> the Grand Remonstrance was presented to the king; he said that he would answer it, and asked that it not be printed.

193. The early days of December brought fresh insults to Charles. On the seventh, Arthur Haslerig introduced a bill that would effectively place land and sea forces under the command of Parliament. This represented a very deep and radical inroad against the king's power; it was hotly debated and a motion to reject it was defeated 158 to 125. On the eleventh, a Petition, bearing twenty thousand signatures, was delivered to the House of Commons in support of Pym's policy to exclude Bishops and Catholics from the House of Lords. On the fifteenth, the House of Commons voted that the Grand Remonstrance should be printed, it would wait no longer for the king's answer. (Brett, 199.)



194. Charles had just returned from Scotland where he had collected information that members of Parliament were conspiring with Scottish covenanters to reform English society for the purpose of making the liberty, rights and property of Englishmen more secure. From Charles' perspective this was treason, and he was determined to bring the conspirators under his heel. In this planned retaliation, Lord Digby was the king's chief advisor.

195. One man that stood in their way was Balfour, the governor of the Tower. He, by refusing a bribe to allow Strafford to escape, had demonstrated opposition to the crown and loyalty to Parliament. December 24th Balfour was removed and replaced by Col. Thomas Lunsford, a friend and companion of Digby; he was "a soldier of evil character and infamous name...a mere desperate tool for any kind of reckless service." He was "a few years before compelled to fly the kingdom, to avoid the hand of justice for some riotous misdemeanor." (Forster, 10, 34.)

196. The strength of the royalist forces laid in northern and western counties. Lunsford belonged to the army of the north, and was deeply involved in plots to bring it up to Westminster to overawe Parliament.

197. Members of the House of Commons knew of Lunsford's character, and, without a dissenting voice, voted to cancel his appointment: the measure was declined in the House of Lords.

198. Lunsford's appointment alarmed the populace. In the last several days of December of 1641, the situation approached a flashpoint. Crowds assembled in the streets around Parliament to deliver petitions, and encourage progress on others.

199. The oppression and cruelty of bishops began to bring fruit. Crowds around Parliament intimidated bishops as they entered or left the House of Lords. Depending on who passed, the crowd would shout "A good lord! A good man! Let him pass!" or, "No bishops! No bishops!" (Forster, 71, 93)

200. At one point, a bishop had his dress torn as he passed thru the crowd.

201. Court apologists described the bishop's torn garment as a near capital offense; officers and ruffians fed by the king went into the streets and attacked crowds of people as they encountered them. Lunsford was one of the leading officers in this campaign. There was one reported killing by this violence, but many injuries. In former ages, such violence by the king's men would intimidate and disperse the crowd; but, in this time, it added fuel to a fire.

202. In response to the crowd, several bishops drew up a protestation and delivered it to the king and House of Lords. They declared their intent to withdraw from Parliament, that its laws were invalid without their participation, and that it should be dissolved.

203. Within half an hour of the reading of this protestation before the House of Lords, the House of Commons sent up an impeachment for treason against its authors; and ten of the twelve were sent immediately to the Tower – the other two were confined in private houses because of their extreme age.

204. In the meantime, crowds became more numerous, and more assertive. After two days of tumults, Charles decided to recall Lunsford's appointment and replace him with another man of equally desperate reputation.

205. But the recall came too late. From our vantage point, it appears that Charles had intended to provoke violence so he could "justify" autocratic measures. But, he had lost control. Each day, violence escalated noticeably; and the people became sensible of their power, and that safety lay in greater demands – not retreat.

206. Pym must have been one of those who have the capacity to discern a shadow before the obstruction arrives; the outline before substance. On December 30<sup>th</sup>, he requested the doors of the house to be shut, detailed his anticipation of some dangerous attempt against the liberties or even the existence of Parliament, and then requested a guard of private citizens for the security of Parliament.

207. The following day, Denzil Hollis went to the king and requested a guard out of London under the command of Essex, a man trusted by Parliament. Charles declined this verbal message and requested a written one, which was supplied within hours. And the king gave no answer.

208. The house, nevertheless, set three watches armed with halberds.

209. This was the situation as December gave way to January. The tinder was smoldering, and waited for a breeze.

210. On January the third, the king's messenger arrived at the House of Lords to accuse six members of Parliament of treason: one lord, Kimbolton, and five commoners, John Pym, Arthur Haslerig and John Hampden, Denzil Hollis and William Strode. The messenger then read the articles of treason; there were seven. The first article charged the accused of an attempt to subvert the Government and fundamental laws



by placing “in subjects an arbitrary and tyrannical power over [their own] lives, liberties and estates.” The second article aimed at the authors of the Grand Remonstrance, which cast “many fowle aspersions upon his Majesty” and led to alienation between himself and his “loving subjects.” The fifth article charged them with an attempt to subvert the right and being of Parliament when the House of Commons refused to record a protest, by a minority of the house, against the Remonstrance. The seventh characterized the request for an armed guard for the protection of the House as a conspiracy to levy war against the king. (Forster, 113-4)

211. Kimbolton instantly rose after the charge was read and repelled the accusation and challenged public inquiry into it. Lord Digby was sitting next to Kimbolton while the articles were being read; he had promised the king to move for Kimbolton’s imprisonment as soon as the accusation had been made. But the intensity of Kimbolton’s denial and the hot agitation of other members caused Digby to lose his nerve, lest he be cut to pieces. Digby even pretended surprise, and suggested the king to be ill advised; then “rapidly quitted the house.” (Forster, 116-7)

212. The king’s messenger then proceeded to the House of Commons to read the accusations there. Before this message arrived there, D’Ewes, the scribe for the lower house, entered the house and noticed “crowds of officers and other people scattered in the lobbies and passages in a manner not usual.” Pym gave a speech that day recorded by D’Ewes in half sentences, “One Mr. Buckle,” remarked Pym, “had said the Earl of Strafford’s death must be avenged, and the House of Commons were (sic) a company of giddy-brained fellows.” (Forster, 118-9)

213. After Pym had finished, he and Denzil Hollis were called to the door for urgent messages from their servants; they learned that their (and Hampden’s) papers and other writings (“trunks, study, and chambers”) were sealed up by men sent by the king.

214. This seizure had occurred before the articles of treason were read to the House of Commons. The house, accordingly, declared this seizure of papers to be a grave breach of privilege; and that, if any person should offer to detain or arrest any member of the house, such member had the lawful right to resist such attempt, according to the Protestation signed by every member of the house on the eve of Strafford’s execution.

215. The Upper House joined with the Lower in declaring against the act of sealing up the trunks, papers, and doors, in the private houses of the accused. The House then passed an order to break open those seals and to arrest the two men by whom they were attached. (Forster, 124-5)

216. These events brought house members to an animation of high level. The new Chancellor of the Exchequer (Culpepper) and new Privy Councilor (Falkland) sat for the first time in seats next to the Speaker’s; they uttered not a word against the proceedings. Both had been appointed to their new offices December 30<sup>th</sup>.

217. The house was preparing to send its declaration to the House of Lords when the king’s messenger arrived with the request for the persons of Denzil Hollis, Arthur Haslerig, John Pym, John Hampden and William Strode. By this time, members of the house had mastered the flow of their adrenalin, “a sort of settled and stern composure, contrasting strangely with the agitation that prevailed while yet the threatened blow had not fallen, appears in all the proceedings that immediately followed.” (Forster, 119-122)

218. After the king’s messenger delivered his master’s desire to the House of Commons, he was ordered to wait outside the door while the House prepared its answer. The House responded that it would take into serious consideration the king’s accusation and that the accused members would answer any *legal* charge against them. To impress the king of the House’s sincerity, Culpepper and Falkland, the king’s two new ministers, and two others, were required to deliver the answer to the king.

219. The resolution, made earlier that day by Pym, for a guard for the house was made into an order and promptly executed. The whole House thereby committed the same act of treason charged against five of its members. The House then adjourned to the next day, when it would consider the king’s desire.

220. After the arrest message was delivered, the House of Lords agreed with the lower house to petition for a guard; the king’s answer was handed in several days later, after he left London. Charles proposed two hundred men commanded by a man who would later become commander-in-chief of the royalist forces during the rebellion. (Forster, 115.)

221. When the king learned of the request of the House of Commons for a guard to be supplied by the City, he sent an order to the mayor of London to refuse the House’s request, and to provide, instead, a guard for the royal service to suppress any assembly of people that might be provoked on the following

day, January 4<sup>th</sup>. He then sent summons to the four Inns of Court “to be ready at an hour’s notice to defend his Majesty’s person.” (Forster, 155-6, 161.)

222. On the morning of January 4<sup>th</sup>, all accused members were present in the Lower House. Pym was the first to speak. He conceded that charges constituted treason; and, his remarks allow any reasonable man to draw the conclusion that Charles – not members of Parliament – had committed the treason.

223. Hampden declared that he would be a disloyal subject if he would yield to a royal command that was against the laws of England; he criticized the Church of Rome, to him, “prayers to the Virgin Mary, to angels, to saints, cringing and bowing and creeping to the alter... [were] devilish.” (Forster, 161-6.)

224. After the accused members had spoken, the House resolved on a conference with the House of Lords to inform it that a scandalous paper had been published and that its authors should be discovered and punished. The Lower House also declared the king’s guard at Whitehall to be a grievance; it constituted “a breach of our privilege and an interruption of the freedom of debate.” It was reported that thirty to forty canoneers went yesternight into the Tower at ten of the clock; that days earlier Whitehall (the king’s residence) had been considerably fortified with arms and ammunition; that a “great number of loose debauched fellows” had been recruited to Whitehall, where the king provided “a constant table for their entertainment.” (Forster, 146, 161, 172.)

225. It was midday, January 4<sup>th</sup> of the year 1642. The Lower House adjourned, and would reconvene at one of the clock. During this lunch hour, Lady Carlisle conveyed to Pym the king’s intention to personally seize the five members. Nevertheless, all accused members returned to the House that afternoon. About three that afternoon, a messenger arrived at the House, out of breath. He had run all the way from Whitehall; he reported that the king was approaching the House at the head of a large body of men; estimates range from three hundred to five hundred.

226. The House then voted to “allow” the accused members to absent themselves. Owing to the heated words and excited state of all members, this was thought to be the alternative that would avoid bloodshed.

227. William Strode was one of those accused of treason by Charles. He had been a member of the 1629 Parliament, and had been arrested by Charles at its close. He remained in prison until his election, to the Short Parliament of 1640, set him free. On this day, which threatened him with another imprisonment, he passionately declared his innocence, and that he would remain in his seat, and defend his honor with his blood, if need be. His friends tried to persuade him to leave with the other four, but his relative youth commanded him to stay. He finally had to be forcibly removed by the departing members. As they passed thru the door that led to the water, the king came in by another.

228. Charles entered the main hall and instructed his marauders to wait at the door, and to keep the doors open. As he approached the Speaker’s chair, he noticed that Pym was not in his usual seat – the others were not known to him by sight. His speech was short, and punctuated with several long pauses; betrayal and uncertainty were battling in his mind. Once he had determined that none of the accused was in the House, he closed his speech and began walking from the hall; as he neared the door, the word “Privilege! Privilege!” rang out.

229. A man who witnessed the event remarked that Charles intended the same fate for the five as was suffered by John Eliot – who was arrested without cause, who, naturally, was never shown the cause of his arrest, and who died in the Tower.

230. The five members had gone into London for safety. During the night of January the 4<sup>th</sup>, double guards were posted at every gate of London for opposition to the king. Alarmed cries were heard thru-out the night that the king’s Cavaliers were entering; that they intended to fire the City; and that the king was at their head. Intelligence that the king intended to break into private homes and seize all arms raised the dread and excitement to a deadly level. (Forster, 254-5.)

231. On January the 5<sup>th</sup>, the king visited London to secure the five. The reception on the streets was not favorable; the words, “Privilege to Parliament!” were everywhere thrown into his ears. He gave a short speech at Guildhall before the Common Council of London in an effort to calm the rising tide of apprehension while he demanded the arrest of the accused. To shouts of “Privilege to Parliament,” he lost his composure and shouted, “tryall – tryall!” After this scene, he had supper at the house of Sheriff Garret, where he had invited himself. He was entertained there till three of the clock; he then returned to Whitehall thru streets lined with thousands of people who shouted “Privilege! Privilege!” (Forster, 258-63.)

232. The same day Charles was speaking at Guildhall, the House of Commons had met to decide a response to the attempted arrest. Westminster was the place of their meeting; it was without the walls of London and had no fortifications. Members wanted to move their meetings inside the walls of London,

where the populace was mostly favorable to Parliament. But to make such a change required the consent of the House of Lords and the king. The latter was thought to be impossible. To overcome this obstacle, the House voted to form a committee and instruct it to meet at Guildhall in London. Its duty was to collect more information on the attempted arrest and to consider the means to secure the safety of Parliament. The House then adjourned to January 11<sup>th</sup>, six days hence.

233. The following day, January 6<sup>th</sup>, the committee issued a Declaration that stated that the warrants issued by the king were unlawful; that any who acted under them were “a public enemy to the commonwealth”; and that the House of Commons would defend the just rights and liberties of the subjects and Parliament of England.” (Forster, 274-9, 319.)

234. The attempted arrest much altered men. What was held deep within, rose to the surface. Moderation gave way to fierceness; guarded speech was abandoned, and clear thought displayed. The scabbard was flung away.

235. On the night of January the 6<sup>th</sup>, the watch at Ludgate was alarmed suddenly between nine and ten of the clock, by information that the same desperadoes that accompanied Charles on the visit to the House of Commons, were now preparing to enter the City to seize the five members, “dead or alive.” Rumor said they were to be led by Digby and Lunsford. Sentinels ran from door to door, knocking violently and shouting “Arm! Arm!” Within an hour one hundred and forty thousand men were standing ready to defend six men who the king had accused of treason. (Forster, 322.)

236. The following day, January 7<sup>th</sup>, the Committee had to move its meeting to Grocers’ Hall. There, it deposed many witnesses and participants of the event of Tuesday, the fourth. Several testified, who were among the king’s guard, that they expected a word or signal to begin violence against the entire House.

237. On Saturday, the 8<sup>th</sup>, the king issued a new Proclamation for the arrest of the five members of the House. On the same day, the House Committee voted that the king’s Proclamation was “false, scandalous, and illegal”; that all acts of any persons in defense of Parliament were according to their duty; and that anyone who hindered any such person would be regarded as an enemy of the Commonwealth.

238. The Committee then turned to the issue of who should be placed in charge of the Tower. It was of utmost importance to have someone in the Tower who had the confidence of both the merchants of London and the members of Parliament; for, without such confidence, men would not bring their bullion to the Tower and, by consequence, they would not bring it into the kingdom. (Forster, 333-5.)

239. The next day, January the 9<sup>th</sup>, saw groups of strange men on the streets of London. Large numbers had poured in that morning with a petition “signed by several thousands,” of citizens and merchants, artisans and apprentices, declaring for the protection of the House of Commons in general, John Pym in particular.

240. Four thousand freeholders and squires had ridden up from Buckinghamshire to protect John Hampden, whom they had selected to obtain redress for their wrongs. Weeks earlier they had chosen to refuse the payment of illegal levies – and to risk imprisonment. They brought a petition signed by all, declaring that they were ready to live or die with John Hampden. He probably wrote the petition, and summoned the troops to London. These were the first troops mustered for the rebellion that was rising on foundations laid in these, and earlier, days. (Forster, 338.)

241. January the tenth was the day appointed for the accused members to return to their seats at Committee hearings; the streets around Grocers’ Hall were thronged with people.

242. Pennington began the hearings by detailing his findings as to the unusual fortifications of the Tower done by Charles.

243. A resolution was then debated regarding the illegality of the sealing and seizure of the accused members’ “chambers and studies, writings and trunks”; and about the essence of freedom of speech. They seemed to understand that freedom of speech is the first step toward every redress – whether in the home, in the marketplace, on the frontier; that its suppression is the prime guard of every crime. (Forster, 346-7.)

244. These resolutions had scarcely been voted when a fresh commotion outside the Hall brought new excitement. “A very numerous deputation of sailors and masters of ships brought a petition, signed by a thousand hands, which offered “to defend Parliament by water with muskets and other ammunition in several vessels.” (Forster, 347.)

245. The streets remained crowded all day with people waiting for the return of five members of the House of Commons. Shortly after the seamen left, there came shouts from without louder than any yet heard, and told of the approach of the five. They passed with difficulty, thru the welcomes of many and took their seats. The press and well-wishes of the people were incessant. The Committee suspended its operation and invited several of their number into the Hall. In their own names, and for the rest, they

expressed, in simple words, a desire to guard the Parliament on the morrow. Time was taken to make arrangements as to how best to accomplish this task, and the people departed. There were others that offered assistance, but I have sketched the scene sufficiently. (Forster, 348.)

246. On the afternoon of January the tenth, as the Committee brought its session to a close, Charles had determined to fly. All during that day, messengers had arrived from Grocers' Hall to give him news of events there. For so many weeks or months, he had plotted a great crime; but, unfolding events told him something much worse: that he had committed a great folly. He would be a prisoner the next time he saw London.

247. Tuesday, January the eleventh arrived; this was the day Parliament was to resume. The five members arrived on a barge; both sides of the river were lined with people, the river itself was covered with vessels – all to hail these men. Ordinance sounded, and would continue to sound as Parliament would proceed with its business. A few days earlier, the Committee issued a Protestation calling Englishmen to defend the privileges of Parliament, among other things. This day, thousands of people had attached copies of this Protestation to their muskets and pikes, their hats and shirts. No Roman triumph could match this scene. And, I surmise, no age ever will.

248. The accused entered the House and took their seats; they had chosen Pym to express their humble gratitude. Sir Edward Dering, a royalist member of the House, later wrote to his wife, "If I could be Pym with honesty, I had rather be Pym than king Charles." (Forster, 369-72.)

249. By his flight the previous day, Charles effectively abdicated the throne; this day, the crown, effectively, was given to John Pym.

250. The living force of the building rebellion dwelt in those members of the House of Commons that Charles attempted to arrest. At the time, maybe one Englishman in ten supported Parliament with an intensity just below open rebellion. Had Charles slaughtered members of Parliament, support for Parliament would have multiplied – both in numbers and intensity. If those five members escaped the slaughter, the whole nation would have rallied behind them; and they would have had difficulty restraining the nation from a general slaughter of royalists.

251. Without men, such as Pym and Haslerig, Hampden and Hollis, the English people hardly had a voice. Charles must have known that a slaughter of house members would have given irresistible power and murderous fury to those five members. Since they were not available, he and his troops withdrew from the house, without further incident.

252. By this rash act, Charles pulled the veil and exposed his dedication to tyranny; it was plain to see that, if he could recover his power, he would abolish all concessions he had made, and pursue a bloody revenge; and it was prevented only by the absence of five members and by cool heads that endured the taunts of the king's ruffians. Even moderate royalists became enraged, and went over to the opposition. Once a sword is drawn against a tyrant, a scabbard is useless. Civil war was to follow; and men, on either side, became traitors to the other.

## **13 The Civil War**

253. The civil war itself does not concern us, except for the career of one man, Oliver Cromwell. Until the civil war, he was a relatively insignificant member of the House of Commons. At the outbreak of hostilities, he retired into the eastern counties, and organized militias.

254. Here we should more exactly define the Presbyterian party, which comprised most of the rebels. It was divided, at this time, into three sects: puritan, independent, and Leveller. The first believed in a decentralized church and would tolerate no other sect. Independents differed by allowing toleration to all – except Catholics and prelates (Anglicans). Levellers tended toward communism and pretended a toleration for all. (All collectivists, when they seize power, give toleration to none.) The most numerous sect was the puritan, which controlled Parliament. Cromwell was an independent and little favored by Parliament. But it was soon noticed that Cromwell and his troops never lost a battle, no matter the odds. Royalists were motivated by plunder, their erections and drunkenness. Presbyterians were motivated by none of these; or, perhaps, their opposites. While the zeal of puritans was usually sufficient to overcome royalist forces, the fierceness of independents was implacable, and triumphed over all – even great numbers. Parliament gradually advanced Cromwell to the command of the Parliamentary army, and he soon put an end to the civil war.

255. Our focus is to examine the right of redress. We will, accordingly, turn our attention to a most singular redress of grievance. For forty years, Parliament repeatedly attempted to establish the principle that every form of taxation required the consent of Parliament; to reform the constitution and laws of England in order to secure the rights, liberty and property of Englishmen; and to provide remedy for gross violations. Charles heard not; he constantly levied taxes that had never been imposed by Parliament – or that had been forbade; he routinely ignored laws intended to protect English property – which, sometimes, he had ratified only days earlier. His lies and frauds pushed a nation beyond its limits of patience. Near the end of the civil war, men complained that the “land had been defiled with blood, and could not be cleansed but by the blood of him who shed it.”

256. Accordingly, the House of Commons appointed a High Court of Justice and nominated one hundred and thirty-three commissioners to try Charles for treason, for waging war against Parliament, and the people. So strange was this prosecution that scarce more than seventy commissioners sat at one time.

257. Charles, like all other monarchs, had been educated to the perspective that he had a divine right to lie and plunder; and that his victims had a divine obligation to submit to his oppression. Armed with the blessings of his priests, Charles and his brigands had destroyed countless people; he and his court were no different from any others. In his eyes, he had been prosecuted by farm animals. His mistake laid in not perceiving that English farm animals were evolving, before his eyes, into rational creatures.

258. It is common for those who cut new trails to undertake work that is later abandoned, or refined – sometimes beyond recognition. Were it not for the early steps of pioneers, we would still be living in caves and eating roots. We allow errors to the pioneer that we do not allow to others.

259. Altho the prosecution against Charles involved irregularities and omissions, his conviction was just. And he remained blind to the end; on the scaffold, Charles remarked, “contempt for the rights of the sovereign had been the true cause of the miseries of the people... [and]... people ought to have no share in the government.” Most of Europe, trained up in the art of worshipping dandies and pirates as father figures, watched in stunned disbelief as a nation struck off the head of its king. Never before had a nation murdered a tyrant with a semblance of law – rather than by a dagger in the night, or poison in his cup.

260. The grandmother of Charles, Mary, queen of Scots, also died on the block. She too was tried by a panel of commissioners. She too was convicted of treason. But, Mary was the monarch of a foreign nation, and was judicially murdered by Elizabeth in order to secure the latter’s crown; the people of England had small part in it.

261. Charles got no money from this Long Parliament, except at high cost. When Parliament voted supplies, the intent was usually to redress grievances: the money, for example, voted by Parliament for the support of the Scottish army was intended to keep it on English soil and Parliament in session until its agenda was completed.

262. The only money that Charles received was at the cost of a concession that effectively destroyed his throne. While he was agonizing over whether or not to assent to the execution of Strafford, a Lancashire knight offered to lend six hundred and fifty thousand pounds to Charles on condition that he assent to a law that would require the consent of both houses of Parliament before it could be prorogued or dissolved. He assented to this law (1641 May 11) and, the next day, Strafford lost his head. Charles, then, was powerless to stop Parliament from work that, eventually, would bring the same fate to him.

263. While this Parliament is famous for bringing monarchy under heel, we should not conclude that its work represented a more secure protection of rights for the people in general. It is true that many of the grievances were framed in the language of rights and protection of them; the results, however, were different.

264. All during the civil war, Parliament imposed unprecedented taxes, and spent them without control; committees never brought in their accounts. Parliament pretended to aim at liberty while it plundered with unmatched rapacity; members “interlarded all their iniquities with long and fervent prayers, saved themselves from blushing by their pious grimaces, and exercised, in the name of the Lord all their cruelties on man.”<sup>15</sup>

265. At the opening of hostilities on the field, Parliament began an oppression against fairy tales and fables not approved by Parliament. As non-Catholics were plundered and violated for eight hundred years prior to Henry viii; so Catholics were equally treated by him. His daughter, Mary, reversed him, and sent nearly three hundred protestants to the stake or block in three years – not counting those who died of various causes in prisons. Under Elizabeth, James and Charles, Anglican bishops persecuted Presbyterians

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<sup>15</sup> Hume, v, 500-1.



and Catholics. So now Anglicans and Catholics would take their turns under this Parliament of puritans. Under orders of Parliament, dogs of persecution removed religious idols, statues were smashed, organs demolished, pipes melted into bullets, stained-glass windows broken, inscriptions effaced, ornamented pavements pulled-up, theaters closed, traveling forbade; the figure of the cross was not tolerated.

266. The puritan minister Stephan Marshall gave marching orders to the puritan soldier, “What soldier’s heart is not appalled at the thought of piercing little children in a conquered city or of holding them up by the legs and dashing their heads against the wall. But if this work is done to avenge God’s church (the Presbyterians) upon Babylon (the Church of England), happy is he that taketh the little ones and dasheth them against the stones.”<sup>16</sup>

267. The army of Parliament proceeded to follow the good minister’s orders at several places in three kingdoms.<sup>17</sup>

268. Parliament established a committee in each county that equaled or exceeded the tyranny of the Star Chamber.

269. Between the years 1645 and 1647, this Parliament burned two hundred women.<sup>18</sup>

270. In 1648, Parliament pushed a bill to make non-belief, according to the favored fairy tales and fables a capital crime; other lesser sins with lesser penalties were also proposed.

271. Laws against papacy were strengthened. Instead of waiting for proof of dissent, Parliament ordained that mere suspicion was sufficient to seize Catholic property. Catholic priests were subject to the loss of all their property and to a capital punishment. But still, English persecution was mild compared to what dissenters on the continent had to suffer. Only one Catholic priest was executed under these laws; when other priests were similarly threatened, Parliament chose, instead of death, to sell them as slaves to buyers in the West Indies. Lay Catholics suffered less barbarously; they would lose civil liberties and two thirds of their property, and were denied certain occupations. All suffered, both high and low. A Catholic serving maid, an orphan, during seventeen years of servitude, had managed to save twenty pounds. An informer had found where she had deposited her money, and agents of Parliament took thirteen pounds, thirteen schillings and eight pence. So voracious are assemblies of men.

272. In March of 1652, this nameless girl applied for relief, and found none. So blind, so deaf and so utterly without humanity is bigotry.<sup>19</sup>

273. And still, this Parliament made unprecedented strides in limiting arbitrary power and giving examples of what grievances men might redress. But it was only concerned with grievances in which its members had an interest, or which were necessary to maintain public support. All others were discouraged, suppressed or persecuted. Catholics and Anglicans, for example, had no voice; hence, no redress. When the army, which had won the war, petitioned Parliament for arrears and indemnity, Parliament declared them to be “enemies of the state.”

274. Yes, the Long Parliament brought down monarchy; but the search continued for the hand that would draft the rights of man.

275. These oppressions of the Long Parliament are related to illustrate that rights of man are never secure in the hands of an assembly of men. When men exercise power, they first use it to redress *their* grievances. Next, they turn it to their own enrichment – to the disadvantage of all others; for, what use is an arbitrary instrument but to use it arbitrarily?

276. It remained to Americans to transfer this right of redress from an assembly of men to the people – at least on paper. It remains for us to turn it to practice.

### Parliaments of Cromwell

(Williams, xx, 1-192; Hume, vi, 59-107)

277. The principle, that grievances must be redressed before taxes, is clear, and established. In the years that followed the execution of Charles, every Parliament adhered to this principle – even those hand picked by Cromwell, Charles ii and James ii.

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<sup>16</sup> Williams, xx, 29.

<sup>17</sup> *Id.* xx, 39, 100, 118.

<sup>18</sup> Durant, vii, 163.

<sup>19</sup> Williams, xx, 133-4.



278. The qualifications for Cromwell's first Parliament assured that only the most pious would be returned to Parliament. When they met at Westminster, they devoted nearly the entire first day to "pious exercises." Rather than submit problems to rational debate, these members sought solutions in long and loud sermons or prayers. The Lord answered their entreaties and told them to bring forth the kingdom of Christ. They were to close schools and universities; for, prayer and revelation made education unnecessary. The common law was to be abolished and Mosaic law established; sinners – that is, men of commerce – were to be extirpated from the kingdom.

279. Some members of the House of Commons became alarmed at its proceedings. Thomas Sydenham gave a blistering speech critical of the proposals of what seemed to be the majority, "Their [the majority] purpose was to take away the law of the land, and the birthrights of Englishmen, for which all had so long been contending with their blood, and to substitute in their room a code, modeled on the law of Moses, and which was adapted only for the nation of Jews." (Williams, xx, 140.)

280. He moved that the continuance of Parliament, "as now constituted," would be hazardous to the commonwealth, and that it should dissolve itself. His motion was immediately seconded, and debate followed; it became heated, and gave indication of becoming long. Suddenly, the speaker left his chair and broke up the sitting. He, and about forty others, proceeded to Cromwell's offices and delivered into his hands a signed resignation of the powers they had received from him. This act of abdication remained open for three or four days until it exhibited above eighty names, a majority of the whole assembly. The dissolution was made effective 1653 December 12 – the day of Sydenham's speech; and saved the nation from further embarrassment. This Parliament of Saints sat for five months and resolved on nothing but its end.

281. Cromwell had called and "dissolved" his first Parliament as commander of the army. He was shortly thereafter made protector.

282. His second Parliament was called under more worldly qualifications; electors had to have real or personal estates of two hundred pounds. Papists, prelates and royalists were excluded. This Parliament opened with a discussion as to where sovereignty lay. When Cromwell saw this Parliament tending to place sovereignty in the people, he dissolved it, nine days after it met.

283. What happened next is probably one of the greatest ironies in history. Cromwell was one of the more central figures in defeating and executing a king for imposing taxes without the consent of Parliament. Cromwell had called two Parliaments and got no supplies from either. He then proceeded to collect taxes without the consent of Parliament.

284. He imposed an income tax on royalists, on the theory that those who threaten a nation should pay for its defense – a theory that deserves much attention (see *American Inquisition*). His taxes provoked tax rebellions that were put down with force. Peter Wentworth refused to pay a direct tax in the county. He was fined and distrained; he sued to recover. He reminded Cromwell of his own words, “the subject who yields to an illegal impost is more the enemy of his country than the tyrant who imposes it.” Coney withheld duties on imports; he and his counsel were imprisoned for questioning Cromwell’s authority to levy taxes. A civil war seemed to have taught men nothing. (Williams, xx, 162-3.)

285. Still, Cromwell needed money. He summoned another Parliament and designed it to exclude republicans; some were removed by imprisonment, others by criminal prosecutions, and, of course, Catholics and royalists were again excluded.

286. He attempted to neutralize Arthur Hazlerig, a fiery republican, by giving him a peerage, which qualified him for the House of Lords. But Hazlerig went, instead, to the House of Commons.

287. Despite Cromwell’s manipulations, court candidates were rejected wholly in some counties, partly in most. When members began to assemble, Cromwell forcibly excluded nearly one hundred on pretexts of immorality or delinquency (most of the excluded members were deists; Cromwell detested them because he could not control them with fairy tales). This mock Parliament voted four hundred thousand pounds for Cromwell, but it could make no decision as to how to collect it; the intent never became law. This Parliament eventually settled on Cromwell a revenue of one million, three hundred thousand pounds. But it was a self-serving vote. A catalogue printed at the time reported that of three hundred fifty to four hundred members of the House of Commons, some one hundred and eighty-two members “were sons, kinsmen, servants, and otherwise engaged unto, and had places of profit, offices, salaries, and advantages, under the protector, sharing annually among them out of the public money the incredible sum of one million sixteen thousand three hundred and seventeen pounds, sixteen shillings, and eightpence.”<sup>20</sup>

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<sup>20</sup> *Id.*, xx, 168.

## **14 Parliaments of Charles ii (Williams, xx, 232-284; Hume, vi, 242-281)**

288. The protectorate exhausted the nation of its patience, and the people called for the son of their slain king.

289. The general assessment of Charles ii is that he was utterly without ambition, “never was there a mind on which both services and injuries left such faint and transitory impressions.”<sup>21</sup> In his early years, his only concern was to supply his royal wienie with masturbation dolls. Parliament was reluctant to provide for this service. So Charles had to turn to other sources for revenue. He first married Catherine of Portugal and squandered the dowry of five hundred thousand pounds; he then sold Dunkirk to France for five million livres. It is reported that Charles had seventeen mistresses; to finance them he turned to Louis xiii for money. He also wanted Louis to finance a standing army to suppress his English subjects. A motive for seeking the aid of Louis was because Charles did not like Parliament examining how he spent his money.

290. Parliaments under Charles ii were mostly royalist. Owing to losses suffered by them under the Long Parliament and the Protectorate, they were anxious to return the favor to puritans and republicans. At the time, Dutch provinces were administered under republican principles and offered a more tolerant refuge to religious dissenters than did England. Rather than wage open warfare against domestic protestants, Charles and Parliament provoked a war with the Dutch. Parliament granted two and a half million pounds for this purpose, and Charles and his courtiers sat back and giggled while Dutch protestants butchered English protestants.<sup>22</sup>

291. When men fail at reason, we throw their bodies into a common grave – they are so numerous; and remember them with a page of crime and folly, which some men call history.

292. After the great fire of 1666 and while the Dutch war raged, royalists and Anglicans in Parliament took revenge against puritans by passing the so-called Five-Mile Act. By this act, all in holy orders who had not subscribed to the Act of Uniformity were required to take an oath of non-resistance to any act of the king – howsoever illegal – and of non-interference in the government of church or state. In default, they were forbidden to dwell, or come, unless upon the road, within five miles of any corporate town, or any other place where they had been ministers. An attempt was made to impose this oath of non-resistance on the whole nation, but a small majority defeated it.

293. The five-mile Act supplemented the barbarous Conventicle Act, which forbade, any meetings of five or more persons, whether in a public place, an open field or a private house. To assure compliance, a provision was included to encourage “all persons to be employed in the execution” of the act. A pack of informers was unkenneled. Spies crept into homes; men knew not who their friends were. Violators were fined and informers rewarded. Troops were quartered in homes of dissenters. The insignificant became wealthy and the insolent violated with impunity.

294. While Parliament was almost entirely Anglican (and, hence, royalist), Charles and his brother, the duke of York, favored Catholicism. The bigotry of Parliament against puritans was exceeded only by its bigotry against Catholics, and this led to a major rupture between Parliament and throne.

295. The major reason for this bigotry was hardly based in fairy tales. For more than eight hundred years, the Church of Rome dominated and plundered the English isles. By the time of Henry viii, it is estimated that Rome owned nearly one quarter of the kingdom. When Henry broke with Rome, he began a process by which Catholic property was transferred to the king and his (or her) favorites. This breakup was the origin of great wealth for many English families. Oliver Cromwell’s parents, for example, became wealthy from the plunder of Catholic property. These families were most anxious to keep Catholics oppressed, lest they recover their power and take revenge on those who held title to property formerly possessed by the Church of Rome.

296. In September of 1673, the duke of York (the future James ii) espoused Maria D’Este, sister to the duke of Modena, a princess of fifteen years of age, and a Catholic. This was intolerable to Parliament; for, any child of the union would be raised a Catholic and would be a potential heir to the throne.

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<sup>21</sup> *Id.* xx, 232.

<sup>22</sup> Hume, vi, 242, 252.

Parliament complained; Charles said it was too late and refused to interfere. The House of Commons then voted a standing army to be a grievance and would vote no more supplies for it unless the protestant Dutch refused all reasonable offers of peace. Charles saw nothing in these measures that he liked, and resolved to prorogue Parliament, “with that intention he came unexpectedly to the house of peers, and sent the usher to summon the Commons. It happened, that the speaker and the usher nearly met at the door of the house; but the speaker being within, some of the members suddenly shut the door, and cried, *To the chair, to the chair*; while others cried, *The black rod is at the door*. The speaker was hurried to the chair; and the following motions were instantly made: That the alliance with France is a grievance; that the evil counselors about the king are a grievance; that the duke of Lauderdale is a grievance, and not fit to be trusted or employed. There was a general cry, *To the question, to the question*: But the usher knocking violently at the door, the speaker leaped from the chair, and the house rose in great confusion.”<sup>23</sup>

297. Charles prorogued this Parliament to give his brother leisure to finish his marriage; he still wanted money, however, and had to convene another session. He requested money; but, Parliament was in a bad mood and declared the king’s guards to be dangerous to the liberty of Parliament – as they were not authorized by Parliament (hence, a body of men not authorized by the people would be dangerous to the liberty of the people); Parliament took steps toward a more rigorous test act (which denied public office, in church and state, to dissenters, especially Catholics); an investigation was begun into the affairs of the cabal of ministers surrounding Charles.

298. Charles, who favored Catholicism, regarded the conflict with Holland as a war against the religion and liberties of his own subjects rather than as a war against a foreign enemy. As a consequence, most of the nation hated the war with Holland and, owing to their anti-papist sentiments, favored war with France. These circumstances facilitated a secret treaty between Charles and Louis xiii, where Louis would subsidize Charles to make him independent of Parliament and to forestall war between the two kingdoms.

299. Charles saw he could get no supplies from this session and made peace with the Dutch; he adjourned Parliament, 1674 February 28, and collected five hundred thousand crowns from Louis.

300. The next session met 1675 April 13. Charles requested supplies, as usual; but Parliament went first to grievances, as usual. The House of Commons attempted impeachment of several ministers; but they had bribed enough members to cause the articles to be thrown out. The House of Lords undertook to make a more rigorous test act (the non-resistance bill). By this bill it would be traitorous to take arms or to make resistance against the king for any reason whatsoever. If the king wished to dine on one of his subjects, the latter was to sit passively while he was roasted alive. This bill was hotly debated in the House of Lords for seventeen days, with the king attending every day; it passed by two votes. Its supporters knew it would be rejected by a large majority in the House of Commons, and never sent the bill there. The House of Commons had brought a bill to make it treason to levy taxes without authority of Parliament. Charles, seeing no profit in such defeats, and, without supplies, prorogued Parliament, June 9<sup>th</sup>.

301. When Parliament met again, 1675 October 13, it granted three hundred thousand pounds for the building of twenty ships of war, with the money strictly supervised by Parliament; these ships were to be used against Catholic France, but Charles would later use them against protestant Holland. Both houses then entered into a dispute as to whether a subject could sue a member of Parliament; neither house could extricate itself from this trivial matter. Charles prorogued (November 22) Parliament for fifteen months, for which he received five hundred thousand crowns from France. Louis was so pleased at the long interruption that he granted Charles an additional one hundred thousand pounds per year.

302. Three months later Charles and Louis concluded a secret treaty by which Charles would receive one hundred thousand pounds per year and neither would enter into any engagement but by mutual agreement and both would give aid to the other in case of any rebellion in their respective dominions. Louis was happy to make Charles independent of Parliament; Charles had good reason for the non-resistance bill.

303. During this interruption, ministers liberally bribed members of Parliament so that, when it met again, 1677 February, it granted six hundred thousand pounds to build war ships. This appropriation did not go into the Treasury; so Charles still wanted money. The House of Commons voted an address requesting the king to enter into a treaty of friendship with Holland; this angered Charles so much that he prorogued Parliament. He then demanded an additional one hundred thousand pounds from Louis for this service. He also informed Louis that, if the pension were regularly paid, he would lengthen the

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<sup>23</sup> *Id.*, vi, 281.

adjournment from July to the following April. The pension was timely paid, and the grievances of Parliament had to wait till April.

304. The remaining years of the reign of Charles were repetitions of earlier years with blood on both sides becoming hotter. Charles, and many members of Parliament, continued to take pensions from Louis. Parliament attempted numerous times to redress grievances – without success; and, Charles received no more supplies from Parliament. A reason this Parliament had difficulty in redressing grievances was that those guilty were of the same party as members of Parliament – a difficulty the puritan Long Parliament did not have. Both court and Parliament furiously persecuted Catholics in England and protestants in Scotland.

#### End of the Second Long Parliament (Williams, xx, 280-292; Hume, vi, 350-355)

305. Before there can be a right of redress, there must be a right of access.<sup>24</sup> If there is no information or evidence of a grievance, it is impossible to identify a grievance, and, hence, redress, also, is impossible. In final months of 1678, Montague, ambassador to France, laid before Parliament a letter he had received from the lord-treasurer Danby. This letter was written during negotiations at Nimeguen for a peace among England, France and Holland. The offending language included, “In case the conditions of peace shall be accepted, the king expects to have six millions of livres a year for three years, from the time that this agreement shall be signed between his majesty and the king of France; because it will probably be two or three years before the Parliament will be in humour to give him any supplies after the making of any peace with France; and the [French] ambassador here has always agreed to that sum; but not for so long a time.”<sup>25</sup>

306. This project was so obnoxious to Danby that the king had to subjoin to the letter, by his own hand, “This letter is writ by my order, C. R. [Carolus Rex].” With this notation, Danby was willing to affix his name to the letter and send it to Montague.

307. Such clear evidence of the treason of Charles had the natural effect of inflaming the House of Commons. Its members brought articles of impeachment for treason against Danby – even tho his reputation and the king’s notation indicated him to be an unwilling tool. By this prosecution, the House of Commons had hoped to force more disclosures concerning the long-suspected financial transactions between Charles and Louis. This prosecution became more intense and portended nothing but ill for Charles. The prosecution of his father had been founded on a failure to enforce and comply with several laws of the kingdom, and on the imposition of taxes without the consent of Parliament – mere trifles compared to crimes of the son. There had been only one prosecution of a king of England for treason, and this mostly royalist Parliament was fast approaching the tenor of that earlier Long Parliament. The building fury of this Parliament was sensible to Charles, and he dissolved it, 1678 December 30<sup>th</sup>.

308. Thus, came to an end the second Long Parliament (1661-1678), “the most loyal Parliament that had ever met in England.”<sup>26</sup>

309. If there were any Parliaments in English history that could be expected to reverse the long-established custom of “redress before taxes,” this would be the one. And yet, the custom held fast. This Parliament was mostly royalist, its members had lost property, places and family members under the first Long Parliament (1640-1653) and Protectorate. Monarchy was restored by members of this Parliament; and, when they first met, it was impossible they should have grievances against the king. Their grievances were against puritans and regicides; they quickly voted money and enacted oppressions against these dissenters in order to redress their grievances, perpetrated *by these dissenters* – in exact conformity with our custom. It is the nature of autocracy to oppress enemies and insult friends, who then become enemies. It took Charles only a few months to turn the most Loyal Parliament in English history into a hot bed of insurrection. The few times that this Parliament voted money for the court were done under conditions most odious to Charles – and for purposes of redressing grievances.

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<sup>24</sup> The right of access is founded in natural law and is more comprehensive than the so-called Freedom of Information Act and Privacy Act, which are privileges extended to aliens by the American Congress. See Appendix A.

<sup>25</sup> Hume, vi, 351.

<sup>26</sup> Williams, xx, 290; Hume, vi, 353.

310. Owing to misgovernment and necessities, he still wanted money; and he had to call another Parliament – hoping it would be less furious than the one he had just dispersed. But tyrants never seem to allow into their calculations that a desire for revenge is a natural reaction to oppression.

311. When Parliament was summoned, it ignited a contest over the whole country that was “fierce and obstinate beyond example.... Dissenting preachers, who had long hidden themselves in quiet nooks from persecution [– under the Five-mile and Conventicle Acts –] now emerged from their retreats, and rode from village to village, for the purpose of rekindling the zeal of the scattered people of God. The tide ran strong against the government. Most of the new members came up to Westminster in a mood little differing from that of their predecessors who had sent Strafford and Laud to the tower.”<sup>27</sup>

312. They resumed the impeachment of Danby. In a clumsy attempt to prevent this proceeding, Charles issued a pardon to Danby *before his trial*, by which Charles conceded his complicity – and stupidly gave Parliament another grievance. Danby defended himself by pleading this pardon. The House of Commons treated the pardon with contempt and proceeded with the impeachment. Apparently, members of the House of Commons knew that Danby was only a scapegoat: he was committed to the Tower, and released and exonerated five years later. The treason of Charles remained a secret; the machinery, law and procedures to compel disclosure of crimes had not then been developed – and still haven’t.<sup>28</sup>

## **15 Grievances of James ii**

313. Charles ii died in 1685, and was probably poisoned by order of his brother, James. On the evening of 1685 February 1<sup>st</sup>, Charles, in the midst of revelers and gamblers, chatted and toyed with three women. He did not feel well. His rest that night was broken. When he arose the next morning, his attendants noticed immediately that his speech was indistinct and slurred. His face turned black; his eyes turned in his head; he staggered and fell. This was no illness.<sup>29</sup>

314. It is difficult to say whether the poison or the cure killed him. When it became clear that something was wrong with Charles, his physicians immediately set to work: his veins were lanced, and he was “bled largely”; cupping glasses were applied to his shoulders; his hair was shaved in order to raise blisters on his scalp; plasters of pitch and pigeon dung were applied to his feet; hellebores (any of poisonous or medicinal substances obtained from plants in the buttercup family) were blown up his nostrils to induce sneezing; antimony and sulfate of zinc were poured down his throat to make him vomit; and strong purgatives and a brisk succession of clysters (enemas) were given to him to clear his bowels. There were many people who would have benefited from his death – and they did not want to trust poison alone.<sup>30</sup>

315. He was succeeded by his brother, James ii. Here, details would be repetitious. Suffice it to say that hardly an act of James was consistent with law or custom, according to English standards. The natural son of the former king, the duke of Monmouth, led an abortive rebellion; he was captured and convicted of treason. The cruelty of James even visited the helpless and ignorant. To show support for Monmouth, a schoolmistress recruited girls under ten years of age to march in his progression. The king’s men seized these children and turned them over to the queen’s maids of honor, who extorted ransom from their parents.<sup>31</sup>

316. Monmouth was more popular than competent: he drew a sympathetic axe man, whose hands were so reluctant that it required five strokes to sever Monmouth’s head from his body.

317. Cruelty appointed cruelty. Two of the king’s implements, Col. Kirke and judge Jefferies, traveled thru the rebellious counties and demonstrated the maxim that a tyrant’s favorite is a creature that has neither reverence for justice nor sense of shame.

318. They held mock trials that sent hundreds to the gallows, and other instruments of death. When the legs of rebels quivered in their last agony, Kirke ordered the drums to strike up; he would give music for their dance of death.

319. Kirke had a taste for pleasure. He conquered a beautiful woman by promising to save her brother (husband, friend or father) from the gallows. After he was finished with her, he led her to a

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<sup>27</sup> Williams, xx, 290.

<sup>28</sup> See Appendix A.

<sup>29</sup> Williams, xx, 309-310.

<sup>30</sup> Durant, viii, 287.

<sup>31</sup> Williams, xx, 363-6.



window, where she saw the lifeless remains of her brother swaying in the breeze. The story is probably a fiction. It is related to show the brush that powerless people use to paint the cruelty they suffer.

320. It took less than three years for James to alienate the nation – even his own army.

321. The act that triggered his downfall was the so-called Declaration of Indulgence, which combined relief from suffering with totalitarian procedures. Since the restoration of monarchy (1661), puritans were persecuted by court, Parliament and Church of England; Catholics suffered under Parliament and the Church – the court generally refrained from this.

322. By this Declaration, James annulled a long series of statutes pertaining to religious matters; he suspended all penal laws against all non-conformists; he authorized Catholic and protestant dissenters to perform worship publicly; he forbade anyone to molest others on account of religion; he abolished all test acts. It gave immediate relief to millions by a totalitarian procedure: the exercise of legislative/judicial powers by one who constitutionally held neither. He offered to replace one yoke with another. Those who suffered hardly took time to deliberate on this fine distinction. Who could blame them?

323. This Declaration was not popular with either Parliament or the established Church. James ordered his priests to read this Declaration from their pulpits; ninety percent refused. Bishops of the Church of England relied on the Test and other religious Acts to maintain their power; the Declaration took fire and sword from their hands. So long as Parliament and court were butchering non-conformists, bishops were happy. Anglican doctors preached an absolute doctrine of non-resistance; it was the religious duty of the subject to be roasted alive without a struggle – if the king so desired. This doctrine of passive obedience seemed perfectly sound when dissenters burned; however, many flaws appeared when bishops lost their privilege of the faggot. For, how could they tolerate a prince who would not allow them to persecute “non-believers”?

324. Several bishops remonstrated and carried a petition to James. He ordered them to prison and to trial. As they were carried to the Tower, large crowds of sympathizers gathered; guards and officers of the Tower received them kneeling – and drank to their health, against orders.

325. They were charged with criticizing government and exposing mal-administration. James packed the court and jury – to no avail. The bishops were acquitted, which operated to convict James “of a conspiracy to maintain usurpation by oppression.”

326. The dispute between king and bishops effectively disarmed the king; the season for “invasion” was come.

### William and the Declaration of Rights (Williams, xx, 309-10, 363-6, 391-403, 414-415)

327. The prince of Orange was invited to “invade” England and overthrow James: William had wed the eldest daughter of Charles ii, Mary, who was next in line of succession to the throne after her father. William came, and declared that his main intentions were to procure a free Parliament and to protect the right of redress of grievances; he disclaimed any interest in religious bigotries that animated so many English.

328. James thought to oppose the “invasion.” For three years, he had imposed Catholic officers on his army, which caused a general, and invisible, mutiny in his army. James was uncertain as to the loyalty of his army, and decided to test it. He chose a regiment that was considered as the most manageable. Those who would not pledge to support the Declaration of Indulgence were called upon to lay down their arms. The whole regiment, with the exception of two officers and a few Catholic soldiers, placed their arms on the ground. This remarkable scene informed James that his situation was hopeless, and, within a few months, he fled the island. The revolution was effected without bloodshed, except for a dozen or so casualties in an accidental skirmish.

329. A free Parliament was called, and fruit came forth from soil in which earlier Englishmen had sown – and nourished with their blood. In 1647, officers of the victorious Parliamentary army presented an Agreement of the People to Parliament in which it was declared sovereignty originated from the people; thus, implying that society was ruled by a contract between people and ruler. Cromwell attempted to introduce the principle that a “constitution” should be established first, *then* a government organized under it. In 1654 he summoned a Parliament for which the persons so chosen should not have the power to alter government as then settled in one single person and a Parliament. This Parliament met and immediately began to examine this principle. Cromwell dissolved the Parliament after only nine days, explaining there should be something “fundamental, unalterable.”

330. Some thirty-five years later, the Parliament called by William (known as the convention Parliament) declared that there is an original contract between people and king. Parliament then fell into the trivial matter of whether to use “forfeit, abdicate, or vacant” relative to James’ flight. After spending some weeks on this issue, William summoned several members of Parliament to encourage them to hasten the process of determining who should wear the crown; and that, if they did not desire to place regal powers equally in his hands and in Mary’s, he would wind-up his affairs in England and return to his responsibilities on the continent; for, he did not want to rule by the grace of apron strings.

331. This unusual avowal prompted Parliament to frame a “constitution” – elementary by our standard – which is known as the Declaration of Rights.

332. It opened with a complaint of wrongs the nation had so long contended to correct, and, had so recently suffered under James. He had usurped the legislative power, and treated the right of petitioning for redress as a crime; he had oppressed the church; he had levied taxes and maintained a standing army in peacetime – both without the consent of Parliament; he had violated the freedom of elections; he had appointed as judges fiends from hell, summoned corrupt juries and penalized independent jurors; he had imposed excessive bail and fines; inflicted barbarous and unusual punishments; he had caused estates of men to be sold *before*, or without, lawful convictions.

333. Parliament then declared a delegation of authority and a reservation of rights. The king would have no dispensing power (*i. e.*, he must observe and enforce *all* laws – not just those that pleased him); there would be no taxes, nor standing armies, except by consent of Parliament; the right to petition would be protected; free elections guaranteed; freedom of debate in Parliament would not be infringed; and, every Englishman would have a right to a trial by jury.

334. The purpose of this Declaration was to more precisely define the rights of Englishmen, and more narrowly restrict the prerogatives of the crown than previously had been done in England. It was read to William and Mary in the presence of both houses. At the conclusion, William was asked if he would accept the crown limited by this Declaration; he accepted in his own name and in that of his wife.

335. And so, the English set-up a milestone in human liberty that had been building for more than eighty years on English soil. The milestone was not all of English origin, of course; if it were composed of a thousand pebbles, perhaps a few scores of them were gathered from English soil; the rest came from other lands – France, Germany, Switzerland, Rome, Athens – and other ages. It was an elementary sign, and far from complete; by the time it had been set up in England, oppressed Englishmen had been carrying its pebbles to America for eighty years, and would build another.

336. Perhaps Americans would have erected their milestone sooner had it not been for a fateful mistake of Charles I. In 1626, Arthur Hazlerig, John Hampden, Oliver Cromwell and John Pym had embarked on a small fleet of eight ships for the purpose of emigrating to America – but Charles forbade them to leave. Several events have been narrated concerning the last three men, and it would be appropriate here to list a few regarding the first. Hazlerig first appears in our contest as one of the five members of the House of Commons that Charles attempted to arrest in 1641. This necessarily implies that he, by that time, had established his reputation as one of the leaders of the republican party. He was active in the civil war; and later became a thorn in the side of Cromwell when the latter sought to betray the principles for which so many had fought.

337. Without these four men, the Long Parliament would have had no fire, no soul and no direction; if there had been a civil war, there would have been no Cromwell to win it; Charles would have continued to rule over a prostrate country, and would have died the death of most kings.

338. It is always interesting to speculate as to how the stories of men would change had certain events not happened. Perhaps we can say that, by this careless decision of Charles, England won a measure of freedom sooner than otherwise and provided a more complete example for Americans. We can say with certainty that Charles paid for this decision with his life. No one was more influential than Cromwell in bringing Charles to the block; the warrant that ordered his execution contained fifty-nine signatures. Cromwell’s was third on the list.

## **16 The Nature of the Right of Redress**

339. There are many other examples, than I have given, of Parliament withholding taxes until the redress of grievances, that occurred in the time period between the beginning of English colonization of America and the American Revolution. I have very briefly narrated those that are most clear, most doubtful and that pertain to issues most familiar to American ears. To list every example would be a most interesting work – both to write and to read; but, for my part, it would be a repetition of work that others have done. For your part, if you desire an understanding of the American experiment, you should at least study the history of England from 1604 to 1689; a better understanding would require a study that begins with the reign of Henry viii. And, if we carry our search back to the reforms of Cleisthenes of Athens in the year 508 before the current era and then forward to Aristotle’s ethical and political works, we will understand the timeless nature of our work.

340. Now that we have examined the right of redress as it was practiced in England, we will assemble various elements of it, so we may understand the additions added to it by Americans.

341. First, the English right of redress was held by Parliament, which could extend it to others as circumstances pleased Parliament. Catholics, for example, never had access to this right. As royalists and Anglicans on one side and Puritans on the other side alternated in the possession of power, the other had no right of redress. If a member of a proscribed group was so foolish as to send a petition to Parliament, he risked fine or imprisonment. Even close affinity was sometimes not sufficient to allow redress. When the victorious Parliamentary army, composed mostly of republicans and independents, petitioned Parliament for payment of arrears and indemnity for injuries caused during the civil war, puritans in Parliament declared supporters of the petition to be enemies of the state.<sup>32</sup>

342. The most we can say about the right of redress, as it was practiced in England is that it provided redress for crimes committed by the king for the powerful few; there was no redress for crimes *committed by Parliament* for anyone.

343. Second, before the powerful few would be granted an opportunity to redress their grievances, it required suffering by the many, who would *never* get an opportunity to redress *their* grievances – unless it served an interest of Parliament.

344. Time after time, when Parliament began to address issues that threatened to expose crimes of the court – or deprive it of a long-held arbitrary power, the king would prorogue or dissolve Parliament to prevent exposure or encroachment. The only moderating effect on the king was the temper of the nation. If the nation was approaching civil war, the king would allow Parliament to proceed with its redress in order to not elevate the level of public rage. In other words, unless the nation was buried under a mountain range of grievances, no redress was possible; and, when, as a last resort, the king had to call a Parliament, only those grievances that interested members of Parliament would be redressed. All other grievances would *never be redressed*.

345. Third, since the right of redress was only held by Parliament – and since Parliament only existed by the will of the monarch, the right, itself, was a nullity but by the grace of the king. By this contrivance, the king and his ministers could reduce a nation to an economic stone age and a religious torture chamber before he would have to give slight operation to this right of redress. And then, the king and his ministers would only have to give redress for only one grievance for every thousand on which they received immunity.

346. American Founders were born English subjects, and made significant improvements regarding the right of redress. Those that orchestrated the American Revolution were well versed in English, Greek and Roman history; they learned from David Hume, John Locke and Algernon Sidney, Tacitus and Livy, Aristotle and Herodotus. Many of the paragraphs of the letters and essays written by American Founders were almost direct quotations from these giants from the past. And, each one told our Founders that assemblies of men are not to be trusted with the rights of man. English Parliaments in the time of our narrative contributed a few insights into the nature of man’s rights, but little, or no, protection. Every one of them sought furiously to oppress and plunder dissenters. Toward the end of the first Long Parliament, the army repeatedly called for its dissolution and for a new Parliament. But, Parliament resisted such calls; wanting, instead, to prolong its session in order to enrich its members from the confiscations and forfeitures occasioned by its “laws.”

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<sup>32</sup> Williams, xx, 49-50.

347. The main lessons to be learned from these Parliaments are two: each Parliament clearly and repeatedly demonstrated the principle of ‘redress before supplies’; and, each gave examples of wrongs that may be considered grievances.

348. The American version of the right of redress includes several improvements over the English version. We start by examining the language of the founders.

349. **The Continental Congress**, “If money is wanted by Rulers who have in any manner oppressed the people, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility.”<sup>33</sup>

350. **The First Amendment**, “Congress shall make no law respecting ... the right of the people to petition the government for a redress of grievances.”

351. The first improvement consists of recognizing that the right lies in the hands of “the people” – not an assembly of men.

352. The second improvement made the right operate against “the government”; that is, against *all branches* of “the government.” The English version of the right operated against judges and tax-collectors, bishops and governors, king and ministers; that is, against judicial and executive (*i. e.*, military) branches of government – but not the so-called legislative branch.

353. Further, the Continental Congress declared that this right was the means by which “the public tranquility” was to be maintained. Fifteen years later, the Constitutional Convention would declare that one of the major purposes of the federal government was to “insure domestic tranquility.” Thus, wherever the right of redress is violated, we have a double grievance: a denial of justice, and incitement to riot.

354. In England, grievances embraced every kind of wrong – whether based on nursery tales or the law of nature. The class of grievances that takes our attention falls under the heading of a design, whether drawn by one or many, to subvert the constitution and laws of the country. Under this heading, all officers of government were liable if they strayed from their oath of office. Redress reaches all: a king was sent to the block; two others were murdered before Parliament deposed or sent them to the block; a fourth fled. Judges were imprisoned and fined heavily for bribery, for cruel and unusual punishments, for sentences against the law of the land, or against a law of Parliament; Judge Jefferies was imprisoned and murdered in his cell, probably to save his brothers on the bench the embarrassment of a judge being sent to the block, and sliced into a hundred pieces – he was so hated.

355. Levies and seizures of property, and convictions pertaining to taxes not authorized by Parliament resulted in imprisonment, heavy fines and loss of office for judges and sheriffs, officers of the custom and tax farmers.

356. Promoting and imposing the nostrum of the divine right of kings were done at the cost of fines, imprisonment, loss of office and loss of head.

357. Ministers and officers of the army were prosecuted for quartering troops in private homes, and for maintaining standing armies in peacetime.

358. Ministers of the king were penalized for authorizing and protecting monopolies, and for the purpose of inducing such ministers to disclose information.

359. A king was beheaded for waging war against Parliament; for imposing taxes without the consent of the nation; and for violating the right of redress.

360. These are some of the grievances that American settlers brought from England. We look to these examples only to suggest directions and possibilities that we may pursue; for, if we rely on precedent for authority, we will be limited by the lunacy, violence and cruelty of dead bandits and bigots. When James I reminded Parliament that its privileges derived from his grace, its members passed a Protestation declaring their rights and liberties; this incensed James so much that, with his own hand, he tore a page from the house journal that contained the Protestation. Another king ordered a similar declaration to be seized and burned. Members of Parliament, who spoke effectively for the rights of man were routinely imprisoned, tortured, fined and murdered. One king came within a word of ordering the massacre of the entire House of Commons. Parliaments that threatened to uncover too many royal crimes were silenced by prorogation or dissolution. Hampden’s ship-money trial was presided over by twelve judges; two of them gave judgment in his favor – their opinions are “lost.” The opinions that praise the yoke of slavery still exist.

361. When Parliament argued with James I over the status of Parliament’s liberties and jurisdictions, Parliament described them as deriving from their “birthright and inheritance.” James, however, described

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<sup>33</sup> Journals of the Continental Congress, 1774 October 26.

them differently, “your privileges were derived from the grace and permission of our ancestors and us (for most of them grow from precedents, which shows rather a toleration than inheritance)”<sup>34</sup>

362. By these and other methods, Great Robbers and Great Dandies destroy precedents, and prevent them from being established – and stop them from being transmitted to posterity.

363. If we are to secure our rights, we must rely on innovation and laws of nature and of reason. To rely on precedent is to oppress posterity with the ignorance or chains of their fathers; and, what man, with the title of father, can do such?

364. I have related the right of redress as it was practiced in England not to provide any authority for the right under its American name. We don’t need such authority. The language in the “Appeal to the Inhabitants of Quebec” should be sufficient. For those who need more, let us turn to an all-encompassing document: The Declaration of Independence. There, fifty-six men listed grievances of a nation, and appealed for redressed to the world. They had petitioned previously to their king; but he, and his ministers, did not listen.

365. From the first of their petitions to the last, Americans withheld their money. And then, during the Revolutionary War that followed, they withheld their money, while they sought redress. In other words, *the essence, the soul, of the Revolution was a struggle to redress grievances before granting supplies*.

366. This describes every particle, every component, of the American Revolution. Viewed from this perspective, every American bureaucrat and every judge who promotes the nostrum, “pay then sue,” commits a most fundamental kind of treason. Contemplate this vista for a few minutes, a few days, and see kind of solution your thoughts bring to you.

367. The procedures used by Parliament to effect redress included investigation, prosecution and every kind of fine and punishment. And so, the right of redress, in its *active* form, is merely a particular application of the general right to litigate. In England this privilege was granted only to Parliament, and only by the grace of the monarch.

368. The right of redress, in its *inactive* form, consists of merely withholding taxes. While Americans have this right and owing to the bandit mentality of American tax-takers, it is hardly advisable, that anyone exercise the right until after substantial measures to remove one’s property from the reach of “legal” bandits.

369. In America, both the right and the means to protect it are specifically reserved to the people in the federal Constitution. The right is reserved in Amendment One, “Congress shall make no law respecting... the right of the people... to petition the government for a redress of grievances.”

370. The means is reserved by at least two provisions in Article iii, section 2, [a] “The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States... [and] [b] to controversies to which the United States shall be a party.”

371. Both the right and the means are reserved absolutely, without qualification of any kind. Amendment One states that, “Congress shall make *no law* respecting....” Article iii, section 2 contains no qualifications whatsoever relative to the subsections quoted. If Congress makes any law respecting the right of redress, it can only be declaratory of an existing right or remedy if it is to pass constitutional challenges. Such a law could not be mandatory – it could only suggest.

372. The American judiciary is routinely represented as a mechanism whose purpose is to check abuses by the executive and legislative branches of government. But a court system is a passive instrument; it can do nothing until someone comes forward with a complaint. From the start to the end of due process, nothing happens unless a wronged party moves a court to action.

373. Thus, American courts are the means by which “the people” may use to vindicate their rights *and* to keep governments within their limits. From this perspective, we see that Article iii, section 2 is both a *qualified* grant of jurisdiction to federal courts and an *absolute* reservation of the right to litigate. While some rights are reserved with qualifications in the Bill of Rights, there is none whatsoever pertaining to the rights reserved by Amendment One and Article iii, section 2.

374. The Founders properly understood that the judiciary was an instrument to be used by “the people” to check abuses of government, and used such arguments to gain ratification of the Constitution.

Limitations [and rights] ... can be preserved in practice no other way than thru the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the

<sup>34</sup> James I, *Proceeding and Debates* (of the House of Commons), vol. ii, 317-27; quoted in Brett, 48.



constitution void. Without this, all the reservation of particular rights or privileges would amount to nothing.

When courts void acts of legislature, it does not mean courts are superior to legislature: it means people are superior to both. Hamilton, *Federalist No. 78*; Kurland, vol. iv 142-3.

375. These quotations from the *Federalist Papers* are more authoritative than Supreme-Court decisions. The *Papers* were instrumental in gaining the ratification of the federal Constitution, and are thus generally regarded as part of the Constitution. American courts routinely examine the *Federalist Papers* in order to discern what particular provisions of the Constitution were intended to accomplish. The collection of *Federalist Papers*, in other words, was one of the building blocks upon which the Constitution was erected. Supreme-Court decisions have no such status: federal courts are creations of the Constitution; they had no part in the making of it. Their decisions have the permanency of icicles of winter. Cold wind makes them, they cling to tree branches for a season, then melt away as the warm sun arrives.

## **17 A Root of Perversion**

376. The American conception of the right of redress clearly derives from English law. The Continental Congress could hardly have used words more clear when it declared, “the people... may retain it [their money] until their grievances are redressed.”

377. I have shown that the sequence of ‘redress before taxes’ was well established in English law at a time when great numbers of Englishmen traveled to America. They brought with them English history and English law: they brought with them the principle of ‘taxes with consent’; the unlawfulness of ‘troops quartered in private homes,’ of ‘cruel and unusual punishments’; a collection of rights, such as redress, speech, assembly and trial by jury. The Magna Charta is universally represented as the origin of American founding documents, which, themselves, were merely refined versions of earlier English documents - such as the Petition of Rights (1628), Agreement of the People (1647) and Declaration of Rights (1689). We would expect American courts to rule, in cases of redress, according to principles as developed and practiced in England – and yet they rule just the opposite, that taxes must be paid before redress.

378. Where do American courts derive authority for such a ruling? Did it materialize out of thin air? From fairy tales? For decisions of American courts to be lawful, they must be founded on, and consistent with, constitutional principles; otherwise, courts engage in law making, or constitution amending – either of which would constitute a grievance.

379. Where does the perversion, ‘taxes before redress,’ come from?

380. This perversion is clearly explained in the Jewish law of taxation; there are “several talmudic references... for the widely accepted custom that a person appealing against a tax assessment has first to pay as assessed before the legal hearing could take place.”<sup>35</sup>

381. Lest I should be challenged on the applicability of this quotation to my narrative, I should observe that men “appeal... a tax assessment” because they believe it to be illegal. My narrative of English Parliaments is rich with examples of grievances founded on illegal taxes.

382. The Jewish law of taxation pertains to taxes collected by Jews for the king or imposed on Jewish communities by the king – there is no taxation by consent of the people in Jewish law. Further, Jews have been favored tax collectors for kings and priests for more than twenty-five hundred years, a profession that I expose in *Fires that Cry*. And so, to understand this perversion of ‘taxes before redress,’ it would be instructive to briefly review the nature of kingly power.

383. The essence of monarchy is that the king owns everything under his dominion: he owns everything that breathes and everything that doesn’t. People possess property under a monarch by his grace alone, and this grace is usually purchased by service in the king’s army. Thus, the land is divided and distributed to captains and officers of the king’s army. Monarchy, in other words, consists of nothing less than a military occupation of the land, and every transaction on it is subject to military law.

384. Since a king owns everything under his dominion, he merely has to speak to lawfully dispose of his property. Thus, if a king imposed a tax on land, he imposed it on his own land; and whoever occupied

<sup>35</sup> *Encyclopedia Judaica*, xv, 846; see also, *id*, 842 and 864.

the land was obligated to pay the tax into the king's treasury. The landholder was merely an officer in the king's army, and was obligated to obey his commander-in-chief.

385. A tax, then, being a part of the king's property, was legally presumed to be in the possession of the king before and after its assessment. Since the landholder, or landless subject, had privileges only by the will of the king, he was required to pay over the tax before he could contest the assessment – or redress a grievance.

386. Rabbis wished to preserve this advantage; it was “a custom according with the Law of the Torah,... that the king was presumed to be in possession of the tax [demanded] of each individual and therefore also the community wishes to be presumed in possession, to be defendants and not plaintiffs... with regard to the rule that the burden of proof is on the person who seeks to recover from another ... for thus it [the community lorded over by rabbis] will at all times have the upper hand.”<sup>36</sup>

387. Thus, the theory, that a ‘tax must be paid before redress,’ rests on the presumption that society is organized as a monarchy; that all people living therein exist by grace of an autocrat – whether one man or an assembly of men (for example, a legislature, a party, a bar association). In America, such presumptions constitute grievances. The first duty of any office is to uphold the constitution. When men take an oath to uphold a constitution, they are required to perform according to the *entire* constitution without reservation, without bribes.

388. A monarchy presumes a military occupation of the land; and, constitutional law and military law are mutually exclusive.<sup>37</sup>

389. When men embrace presumptions contrary to the constitution from which they derive their authority, the nature of the grievance is treason, a design to subvert the constitution and laws of the country.

390. Further, the nostrum ‘taxes before redress’ is a “custom according with the Law of the Torah.”<sup>38</sup> The Torah

consists of the first five books of the Old Testament. The Law of the Torah, then, is the code of Moses. Thomas Sydenham remonstrated against this code of Moses in the Parliament of Saints and declared it to be dangerous to the constitution of England and liberties of Englishmen. His remonstrance led to the voluntary dissolution of that Parliament. Americans erected a barrier between church and state; thus, an American judge or bureaucrat that relies on the perversion ‘taxes before redress’ invokes a “custom according with the Law of the Torah,” and violates a constitutional barrier. He also adheres to a design to subvert the constitution and laws of the country. Both of which are grievances.

391. History is a river that flows thru time. Tribes, nations, and, sometimes, solitary men are its tributaries; some contribute much to this river; some little; some, for want of a voice, have passed entirely from our memory. No one knows its source – and may never know it; no one knows its destination – and can never know it.

392. Books are the vessels that ply the waters of this river, and are the means by which knowledge, hope, and despair are transmitted from age to age. Most of them carry the refuse and failed experiments of our species; a few, so very few, carry the wisdom and treasures of time past. The tributary that we have examined is comprised of wide categories of men; some evil, some good, some both. From most of these men we only learn the consequences of arming delusion with power; a few of them carry names that – if nature would allow – we would choose for our fathers.

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<sup>36</sup> *Id.* 863.

<sup>37</sup> See *Invasion of the Admiral*.

<sup>38</sup> *Id.* xv, 863.

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