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THE TRIAL AND EXECUTION OF CHARLES I*

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ABSTRACT. *This article challenges the recent interpretation of the trial of Charles I which sees it as an 'extended negotiation', an attempt to achieve a settlement with the king, and depicts the execution as the by-product, contingent and reluctantly undertaken, of the failure of that attempt. This argument was developed by Dr Sean Kelsey in a number of articles, not least one in this journal, and has been embodied in recently published general works on the period. I argue that this revisionist account of on-going negotiation with Charles I up to and during the trial is defective. It relies on an uncritical approach to the evidence, particularly that distilled from newspaper accounts. It misunderstands the significance of several key texts, notably the army's November* Remonstrance, *the Act establishing the High Court of Justice, and the charge against the king. Finally, it emphasizes a unity of purpose among conservative judges eager to do a deal with Charles, and fails to comprehend the force of the army's and Cromwell's insistence on public justice upon 'this man against whom the Lord hath witnessed'.*

At the time of the execution of Charles I, both his friends and his enemies chose to see the fatal blow of the axe as inevitable. The king, or those who ventriloquized on his behalf, argued that the 'cowardly-cruel' men who had instigated and then won the war, recognized that they could not be secure in the fruits of their triumph while he remained alive.[1] The army, in which many of those 'cruel and implacable enemies' held commissions, unsurprisingly offered a different interpretation of their actions, but one that was no less teleological. After much prayer and reflection on the events of the first and second civil wars, they had come to understand 'that the Lords purpose was to deal with the late king as a man of blood', and, electrified by this revelation, 'we were extraordinarily carried forth to desire Justice upon the King, that man of blood'.[2] But these simple formulations could not survive the scientific historical investigation of the nineteenth century. S. R. Gardiner believed that the delay between the army's coup,

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All pre-1700 works were published in London unless otherwise stated.

[1] *Eikon basilike: the povrtraictvre of his sacred majestie in his solitude and sufferings* (1st edn, 1648), pp. 252–3.

[2] *A declaration of the English army now in Scotland* (1650), p. [12].

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the purge of parliament on 6 December, and the execution seven weeks later was significant, and argued that the evidence indicated that negotiations between the king and the grandees of the army and their civilian allies were still in train as late as 25 December. It was Charles's rejection of these terms on that date which led to the determination to destroy the king. Interested scholars generally followed the line suggested by Gardiner, supplementing it with some additional material. One, John Adamson, believed that there was evidence of continuing negotiation as late as mid-January.[3]

But recently the consensus position has been fundamentally challenged. In a series of articles and essays, published between 2001 and 2004, Sean Kelsey has formulated a novel and most intriguing interpretation of the judicial proceedings against Charles I. He has argued that the trial itself was a further continuation of the process of negotiation with the king.[4] Kelsey's confidence in the interpretative power of his hypothesis appears to have been enhanced with each repetition, and evidence discussed tentatively initially became increasingly concrete as it was deployed in later works.[5] The arguments so powerfully advanced by Kelsey have found favour with scholars (and with undergraduates, to judge by recent examination essays) and have been integrated into some of the best recent work of a more general nature. Richard Cust and Michael Braddick both deploy and draw similar implications from the details that Kelsey emphasizes as significant in his account of the trial. Both scholars, though with a slight measure of cautious diffidence, accept Kelsey's overarching hypothesis. Cust cites Kelsey's view that the trial of the king was 'an extended negotiation', and acknowledges that 'there is a good deal in this assessment': Braddick contends that 'for a number of the key players the main purpose of the trial seems to have been settlement, not regicide'.[6]

[3] S. R. Gardiner, *History of the great civil war, 1642–1649* (4 vols., London, 1893), IV, p. 287 (and see ch. 69 passim). David Underdown, *Pride's Purge* (Oxford, 1971), pp. 166–72, supplements Gardiner's account. J. S. Adamson, 'The frighted junto: perceptions of Ireland and the last attempts at settlement with Charles I', in Jason Peacey, ed., *The regicides and the execution of Charles I* (Basingstoke, 2001), pp. 57–61.

[4] In order of publication, the key works are 'Staging the trial of Charles I', in Peacey, ed., *The regicides and the execution of Charles I*, pp. 71–93; 'The death of Charles I', *Historical Journal*, 45 (2002), pp. 727–54; 'The trial of Charles I', *English Historical Review*, 118 (2003), pp. 583–616; 'The Ordinance for the trial of Charles I', *Historical Research*, 76 (2003), pp. 310–31; 'Politics and procedure in the trial of Charles I', *Law and History Review*, 22 (2004), pp. 1–26. Additional discussion by Kelsey can be found in '"A no-king, or a new": royalists and the succession, 1648–1649', in J. McElligott and D. L. Smith, eds., *Royalists and royalism during the English civil wars* (Cambridge, 2007), pp. 192–213; idem, 'The king's book: *Eikon basilike* and the English Revolution of 1649', in N. Tyacke, ed., *The English Revolution, c. 1590–1720: politics, religion and communities* (Manchester, 2007), pp. 150–68.

[5] In 2001 Charles is said to have treated his trial 'as an elaborate negotiation' (Kelsey, 'Staging', p. 72); by 2002 the trial itself is presented objectively in these terms 'an elaborate form of public negotiation' (Kelsey, 'Trial', p. 743).

[6] Richard Cust, *Charles I: a political life* (Harlow, 2005), pp. 448–65, quotation at p. 459; Michael Braddick, *God's fury, England's fire: a new history of the English civil wars* (London, 2008), ch. 20, quotation at p. 564.

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These formulations derive from, and catch the essence of, Kelsey's argument. He has emphasized that 'it was never actually intended that the trial end in regicide at all. Great efforts had been made to ensure that, when the public sessions of the king's trial began, regicide was the least likely outcome of the proceedings … few of the king's judges, if any at all, actually required that the king's blood be spilt.'[7] The judges 'saw the trial as the last chance to preserve the substance … of the ancient constitution'.[8] What their scheme absolutely required was that the king must co-operate with the court, 'a tribunal set up on the sole authority of the rump House of Commons'. If the king recognized the right of the court to try him, he would tacitly acknowledge the sovereignty of the Commons, and would 'in effect … have conceded the abolition of his own negative voice'. He would have removed 'himself as an obstacle to peaceful settlement', and could have been reintegrated into the constitutional structure with a limited, largely formal, role, a 'puppet king'; monarchy would survive, but in a 'radically attenuated form'.[9]

The consequences of this novel understanding of the purposes of the trial for the conventional interpretation of the period as a whole are huge. The dominant figures in the parliament and army appear as far less assured in their convictions, and tentative, uncertain, and divided when Charles refused to co-operate with the scheme that had persuaded them to take the route of putting him on trial. The king emerges not as a martyr, audaciously spurning his tormentors, and refusing to be complicit in the fatuous proceedings of a kangaroo court that could have only one conclusion. Kelsey's king is an astute politician, whose fate was based ultimately on a miscalculation. Charles, keenly aware of the diffidence of his 'milk-toast judges', called their bluff; but could not resist 'the temptation to push his luck'. He overplayed a strong hand and finally exhausted the patience of his judges who moved, reluctantly, to convict and execute him.[10]

The evidence that sustains this major reconceptualization of the purpose of the trial is, however, far from clear-cut. Kelsey insists that 'firm evidence that the trial was envisaged simply as a means to the end of regicide is extremely thin',[11] but is less ready to acknowledge 'the lacunae in the surviving evidence' in relation to his alternative account.[12] The historian is confronted by profound silence on many key issues. Equally, the evidence which is available is often difficult to evaluate. It is marked by wishful thinking, self-interest, selective briefing, spin, and the deliberate promulgation of misinformation.

So how does Kelsey sustain his argument? He provides a powerful critique of the 'traditional' story, dwelling on the conceptual and evidential problems with which it must contend, and develops an alternative account which incorporates and makes sense of these anomalies. He sustains his hypothesis by emphasizing

[7] Kelsey, 'Death', p. 728.
[8] Kelsey, 'Politics and procedure', p. 8.
[9] Kelsey, 'Trial', pp. 586, 592.
[10] Kelsey, 'Death', pp. 744–5.
[11] Kelsey, 'Politics and procedure', p. 4.
[12] J. S. Adamson, 'Frighted junto', pp. 60–1.

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and manipulating particular points from the limited cache of evidence that is available. He focuses particularly upon four issues:

1. That Charles was 'far more use' alive than dead to the Rumpers and army grandees. 'Regicide', Kelsey writes, 'was a terribly bad idea.'[13]
2. That the significant delay between the military putsch of 6 December and the beginning of the formal sessions for the king's trial on 20 January indicates that attempts were being undertaken to negotiate a settlement with Charles, in which his life would be spared in return for a radical restructuring of the role of monarchy in the constitution.
3. That the charges against the king were deliberately understated. Indeed, the charges 'gave Charles a perfect opportunity to clear his own name'.[14]
4. That the trial itself, which was spun-out, as the king was subjected to multiple opportunities to plead (all of which he rejected), indicates the profound reluctance of his judges to proceed to execution.

In respect of the first two points, as we have seen, Kelsey builds on existing scholarship. Both were remarked by Gardiner, and have been developed by David Underdown and Adamson. All three scholars argue that Oliver Cromwell and his political allies in the Lords and the Commons, keenly aware of the dangers that regicide would bring in its train, initially sought to persuade Charles that, if he would accept a significant restriction of royal authority, his life and his crown would be spared. The king's intransigent refusal to do a deal, to accept the destruction of his church and the limited constitutional status of 'a duke of Venice',[15] obliged a change of policy and the resort to trial and execution. For Gardiner and Underdown, the key incident in this story is the visit of the earl of Denbigh to Charles on 25 December with proposals from 'the Junto', and the king's refusal to negotiate with him.[16] Adamson suggests that backroom dealing continued even after this failure: as late as 11 January Cromwell was involved in discussions with the duke of Richmond and a group of moderate royalist peers who were attempting to mediate on behalf of Charles; again, it is suggested that the terms involved the king's life being spared in return for constitutional concessions.[17]

I

Kelsey builds on these interpretations to develop his own assessment of the prolonged search for a negotiated settlement, and the motives for that settlement. But before proceeding to question the most original aspect of Kelsey's work on the trial itself, the evidence concerning these first two legs of his hypothesis will be

[13] Kelsey, 'Trial', p. 593; idem, 'Death', p. 732.
[14] Kelsey, 'Trial', p. 600.
[15] Marchamont Nedham's favoured description; see Adamson, 'Frighted junto', pp. 47, 66 n. 45.
[16] Gardiner, *Great civil war*, IV, p. 287 (and see ch. 69 passim); Underdown, *Pride's Purge*, pp. 171, 172.
[17] Adamson, 'Frighted junto', p. 59.

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explored in a little more detail. First, the argument that Charles was more use alive than dead. It is argued that the king's execution would locate the focus of royalist loyalties beyond the control of parliament. Charles II would be able to channel the horror that would greet his father's execution throughout Europe. He would have opportunities to attack the regicide regime through Scotland, or through the alliance that Ormond was in process of establishing in Ireland between the Confederate Catholics and pro-Stuart Protestant settlers.[18] Prince Rupert commanded a powerful fleet, and the recent naval alliance between the Dutch and the Confederate Catholics enhanced the prospects of a successful invasion by European mercenaries or by forces from Ireland.[19] Alive, Charles I might be persuaded, as a quid pro quo for his survival, to call off Ormond and the prince of Wales. But in the event of his judicial murder, his heir would be in a position to open 'the can of worms'[20] of British and international intervention. This reading of the situation is not a construct of modern historians. It can be found in the discussions of a number of contemporaries from across the political spectrum: New Model officers;[21] MPs who were generally sympathetic to the broad political agenda of the army;[22] and, unsurprisingly, royalists.

One royalist in particular, Marchamont Nedham, newsletter writer and editor of the royalist paper, *Mercurius Pragmaticus*, consistently emphasized the impotence of the 'frighted junto'[23] at Westminster in the face of the inherent strength of the king's position and has provided much evidence for the interpretations developed by Adamson and Kelsey.[24] Nedham was committed to Charles's survival and to royalist recovery, believing that the international situation would oblige the Rump regime to negotiate; he stressed 'how much their own interest and safety is

[18] The alliance was signed on 17 Jan.; news of this had reached Westminster by the 24th: Adamson, 'Frighted junto', p. 61. [19] Ibid., pp. 43–5. [20] Kelsey, 'Death', p. 732.

[21] The maverick Major Francis White wrote to Fairfax on 22 Jan. a letter, subsequently published as a pamphlet, questioning the king's trial. His tortuous argument largely concerned the legal authority under which the court acted. But he concluded pragmatically: Charles I is 'under your power'; Charles II 'will be able to do you more mischief because he is at liberty'. Gardiner, *Great civil war*, IV, pp. 301–3, quotes extensively from this letter.

[22] Oxford, Bodleian Library (Bod. L.), MS Eng. C.6075: Dr Kelsey believes this commentary on affairs is by a soldier – an anonymous soldier in 2001, who transmutes into a 'member of the Council of Officers' by 2004: 'Staging', p. 88 n. 14; 'Politics and procedure', p. 6. It was, I think, from internal evidence, written by an ex-soldier and current MP. The Bodleian Library purchased the letter with a collection of papers of Sir Francis Russell of Chippenham, and although there is no clear identification, Russell, ex-colonel in the army of the Eastern Association and recruiter MP for Cambridgeshire, answers the description we can create from a careful reading of the paper.

[23] A favoured phrase of Nedham's: see *Mercurius Pragmaticus*, no. 39 (19–26 Dec. 1648) sig. [Eee2], no. 40/1 (a double issue: 26 Dec. 1648–9 Jan. 1649), sig. [Fffv].

[24] My account relies on Nedham's eight newsletters, copied and forwarded to Edward Nicholas by John Lawrans (Bod. L., MS Clarendon, 34, fos. 7v–8v, 12, 12–13v; 17–17v, 17v–18, 72, 72v, 88–88v), and on *Mercurius Pragmaticus*, nos. 36/7 (a double issue: 5–12 Dec. 1648), 38 (12–19 Dec. 1648), 39 (19–26 Dec. 1648), 40/1 (26 Dec. 1648–9 Jan. 1649). Jason Peacey's brilliant 'Marchamont Nedham and the Lawrans letters' (*Bodleian Library Record* (2000), pp. 24–35) is essential reading both on the question of Nedham's authorship of these letters, and on the overlap of their themes with arguments presented in *Mercurius Pragmaticus*.

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bound up in the preservation of his Majesty'. It was, he wrote, 'absurd to imagine' that they would act any other way than that which he saw so clearly as in their self-interest. And he spun or invented his evidence to suggest that that is exactly what they – or at least 'the more rational among them' – were doing, and were continuing to do as the trial got underway.[25] The trial was to be seen as a charade designed to smoke out Levellers and radicals and make them the focus of popular obloquy; the heady rhetoric of blood-guilt was merely 'rhodomont[ade]', 'a form of negotiation with menaces' in Jason Peacey's nice phrase, designed to terrify the king into submission.[26]

Nedham's skill as a journalist and political commentator has been praised in several recent studies, but in the aftermath of Pride's Purge he does not appear at his best.[27] In this period, Nedham is a very unreliable reporter: the purge had deprived him of his mole in the Commons and he was hopelessly ill-informed on army matters. Hence his baseless assertions that the Lancashire militia forces were ready to mobilize on behalf of the king, or that there was a conflict between the radical officers who held Charles in Hurst castle and those sent to bring the king to Windsor.[28] Yet he was reluctant to acknowledge the limitations of his information, or to abandon his pose of omniscience. In consequence, much of the 'evidence' provided by Nedham, and which Kelsey employs enthusiastically, is little more than the hopes of a royalist polemicist grasping at straws. That certainly was John Lawrans's attitude to many of Nedham's more extravagant claims in the covering letters that he sent with Nedham's missives to the exiled court.[29]

Further, while Nedham's take on the bleak international situation that confronted the Rump was subscribed to by commentators of all political persuasions, it was not as universally self-evident or as infallibly correct as he assumed. When the Dutch ambassador, Adriaen Pauw, reported from his abortive mission to his masters in the Hague in early March, it was the *weakness* of the challenges to the regime from both Ireland and from Scotland, where the new king's ostensible supporters were fractured into competing parties, that he emphasized. If unity could be sustained or enforced in England, then the regime 'will easily find the means to get their way in the other two kingdoms'.[30] Reasonable men, then,

[25] Quotations from *Mercurius Pragmaticus*, no. 39 (19–26 Dec. 1648), sig. [Eee4v]; Bod. L., Clarendon MS, 34 fo. 18; *Mercurius Pragmaticus*, no. 40/1 (26 Dec. 1648–9 Jan. 1649), sig. [Fffv].

[26] Newsletter of 4 Dec. 1648, Bod. L., MS Clarendon 34, fo. 8v; Jason Peacey, *Politicians and pamphleteers: propaganda during the English civil wars and interregnum* (Aldershot, 2004), p. 258.

[27] Jason McElligott has surveyed the current of adulation with a jaundiced eye in his *Royalism, print and censorship in revolutionary England* (Woodbridge, 2007), pp. 118–20.

[28] *Mercurius Pragmaticus*, no. 36/7 (5–12 Dec. 1648), sig. [Ccc 4v]; no. 39 (19–26 Dec. 1648), sig [Eeev].

[29] Bod. L., MS Clarendon 34, fos. 8v, 18v.

[30] Pauw's report, with a covering note to the Doge and Senate from Contarini, *Calendar of state papers relating to English affairs in the archives of Venice* (38 vols., London, 1864–1947), XXVIII (*1647–1652*), pp. 90–1. John Dillingham's Dublin correspondent was not fazed by the threats to the regime from within Ireland – the enemy, he reported in a letter of 6 Jan., are 'impotent or cowardly': *The Moderate Intelligencer*, 200 (11–18 Jan. 1649), sig. (Qqqqqqqqqv).

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might read the situation differently – and, as it emerged, they were right to do so.[31] And that raises another issue. Nedham simply could not imagine that the Rump and army did not share his own Machiavellian sense of realpolitik: 'their owne interest' necessarily dominated the actions of the grandees; they were 'so rationall' that it was 'absurd' to imagine they would behave otherwise.[32] But that view was not shared by all commentators. When Thomas Webb, Lord Craven's agent, argued with 'some greate ones' of the army who were determined that Charles and kingship must die together, he was answered not with reason, but, as he sardonically noted, with 'inspiration'.[33]

II

The uncritical reading of royalist polemic that encourages Kelsey to insist on the strength of Charles's position in terms of the international situation also informs his view that the period between Pride's Purge and the beginning of the trial was one of prolonged and positive negotiation to achieve an accommodation with the king. Kelsey's overview of the process suggests frenetic activity in the corridors of power:

> Delegations from each side passed back and forth between Westminster, Windsor and Whitehall at the end of December and into January, with the earl of Denbigh for the parliamentarians and the duke of Richmond for the royalists leading the efforts to broker a settlement. Back-stair dealing was still in evidence even during the king's trial, Charles and his judges keeping open channels for … constructive communication.[34]

Similar language informs Kelsey's earlier, more detailed, accounts of this period: 'avenues' are being 'explored'; 'constructive dialogue' (what could the adjective mean?) occurs; 'shuttle diplomacy' is undertaken in the week of the trial.[35] Most of the evidence upon which this account relies depends on the creative reading of very questionable sources. Initially most of these are of royalist provenance; later they seem to express the simple uncertainties of the London journalists, combined with the concerns of radicals that the king might still escape the deserved penalty of his wickedness. Even if some of the incidents are correctly reported, they cannot sustain Kelsey's argument that behind the scenes negotiation was consistently pursued throughout the preliminaries to the trial and during the trial itself.

Kelsey's account of the Denbigh mission echoes those of other historians, but his argument downplays its significance: it is not for him, as it was for Gardiner and Underdown, the end to the process of negotiation occasioned by the king's

[31] Adamson acknowledges that Nedham's account of the Rump's predicament, at least in relation to the threat from Ireland, was overstated: fears were 'responses to shadows rather than realities' ('Frighted junto', pp. 47–9). Kelsey, in his most recent contribution, '"A no-king or a new"', pp. 207–8, also recognizes the point.

[32] Bod. L., MS Clarendon 34, fos. 17, 18.

[33] Webb to Lord Craven, 12 Jan. 1649, London, British Library (BL), Add. MS 63743, fo. 1v.

[34] Kelsey, '"A no-king or a new"', p. 203.

[35] Kelsey, 'Death', pp. 736, 742, 747.

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intransigence, and he expresses some doubts about its evidential base.[36] But the reading, developed by other scholars, to which he essentially subscribes and which he embroiders, is instructive of the way argument concerning this period proceeds.

On 19 December, according to *Mercurius Pragmaticus*, a deputation of peers including Denbigh visited the army head-quarters. Adamson recognizes that much of Nedham's account of the incident is 'almost certainly fanciful', but insists that the meeting occurred and was designed to discuss proposals to be put to Charles.[37] According to Kelsey, the basic terms which were to be proposed by Denbigh, that the king was to lose his negative voice and the right to summon and dissolve parliament, are set out in the royalist journal, *Mercurius Elencthicus*. In fact, that newsbook makes no mention of Denbigh, and appears to be considering the constitutional consequences of the acceptance of the recently published Leveller *Agreement of the people*.[38]

On 25 December two critical events are said to have occurred. First, the army council 'voted by 6:1 that if the king accepted the terms put to him by Denbigh his life should be spared'.[39] The evidence for this is an account from the ephemeral royalist journal, *Mercurius Melancholicus*, that Henry Ireton moved in the council of the army that Charles should be brought to 'speedy justice'; he was supported by six officers 'very hot for justice', but the meeting was swayed by Cromwell's prudential arguments for keeping the king alive.[40] The newsbook contains no reference whatsoever to the Denbigh mission or to the terms supposedly proffered the king, and the source is hopeless in a number of other respects. In the same number *Melancholicus* reports the wholly spurious information of a rising in Wales on behalf of the king, and that the rulers of Sweden and Denmark have raised twenty-four ships, 10,000 men, and £2m to succour Charles I. All this 'news' was designed to reanimate despondent royalists: 'you that love the King, pluck up your spirits'.[41]

Secondly, on 25 December, Denbigh, bearing the proposals discussed on the 19th, attempted to meet with Charles at Windsor: for this we rely wholly on two

[36] He writes of the terms 'purportedly' offered the king by Denbigh ('Politics and procedure', p. 2) though their reality is assumed later in the same essay (pp. 7–8).

[37] Adamson, 'Frighted junto', pp. 45–7.

[38] Compare, Kelsey, '"A no-king or a new"', p. 204, with *Mercurius Elencthicus*, 57 (19–26 Dec. 1648), p. [547].

[39] John Morrill and Philip Baker, 'Oliver Cromwell, the regicide and the sons of Zeruiah', in Peacey, ed., *The regicides and the execution of Charles I*, p. 30.

[40] For this paper's history, see McElligott, *Royalism, print and censorship*, pp. 108–10, 162–3.

[41] *Mercurius Melancholicus*, 1 (25 Dec. 1648–1 Jan. 1649): the section concerning the army council was reproduced in *The Clarke papers*, II, ed. C. H. Firth (Camden New Series, vol. 54, London, 1894), p. xxx. The six to one proportion, which has now become a fixture of scholarly discussion (Andrew Hopper, '*Black Tom': Sir Thomas Fairfax and the English Revolution* (Manchester, 2007), p. 100; David Farr, *Henry Ireton and the English Revolution* (Woodbridge, 2006), p. 184), appears to be a calculation based on comparing the small group who favoured Ireton's proposal with the number of officers present at the council on 26 Dec.; there is no attendance list for the Christmas Day meeting.

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dispatches of 25 and 29 December by the French ambassador, the president de Grignon. Neither of these letters gives the date of the meeting: Christmas Day is selected because it makes little sense for it to have occurred later.[42] Historians have argued that Charles either refused to see Denbigh or rejected his offers out of hand, but nothing in de Grignon's account suggests the agency of the king. The earl was said to be bringing 'ouvetures', but he and the king simply did not meet. De Grignon found the story utterly mysterious, but considered that it was a typical piece of persiflage orchestrated by Cromwell in his endeavours both to keep troubled conservatives on-side and to retain a pose of personal moderation so that the odium of prosecuting the king would fall on others. It was, thought de Grignon, a prime example of the 'artifice' in which Cromwell excelled.[43]

De Grignon is also the best guide to the next, and more fully evidenced, attempt to negotiate a settlement, 'that which one might perhaps dub "'the Richmond mission"'.[44] In the second week of January, a group of moderate royalist peers who had attended the king during the Newport negotiations, headed by the duke of Richmond, sought to negotiate a deal that would halt the projected trial. The king's future good behaviour in a limited constitutional role would be guaranteed by their lives and estates. Again, Kelsey takes his tone in elucidating this opaque incident from Nedham. The journalist insists that 'its certain' that the army grandees, fearful of the Levellers, were negotiating seriously with the peers; and he predicted a 'new turn of affairs' with prospects of 'ioy to the whole K'dome'.[45] Such uncritical optimism was not generally shared. De Grignon believed that both Richmond and Cromwell knew that discussion would be useless: he thought the propositions were simply window-dressing by both protagonists. Richmond and his friends sought to display their enduring personal loyalty to the king; Cromwell, as ever, was seeking to appear as a reasonable, moderate man, ready to listen to propositions, even though their rejection had been prearranged in the army council, so it would appear that he proceeded 'to extreme courses of action only after he had explored all avenues of accommodation'.[46]

If the two main pillars of the negotiation hypothesis are questionable, little faith can be given either to further moments of Nedham euphoria,[47] or to the dark suspicions and uncertainties of the parliamentary press. The suggestion that Charles was to seek a consultation with three clerical myrmidons of the

[42] Morrill and Baker prefer, without explanation, a date of 27 Dec., 'Sons of Zeruiah', p. 31.

[43] Transcripts of letters from de Grignon to Mazarin and to Brienne, London, The National Archives (TNA), PRO 31/3/89: letters of 4 Jan. 1649, n.s (fos. 58–9), 7 Jan. 1649, n.s. (fos. 62–3). For Cromwell's 'artifice', see the letter of 31 Dec. 1648, n.s. (fo. 52).

[44] Kelsey, 'Death', pp. 740-1.

[45] Bod. L., MS Clarendon 34, fo. 72: Kelsey's fullest account of this incident is in 'Death', pp. 740–1. For a very different account, that I find more compelling, see David Smith, *Constitutional royalism and the search for a settlement, c. 1640–1649* (Cambridge, 1994), pp. 140–1.

[46] De Grignon to Brienne, 21 Jan. 1649, n.s., TNA, PRO 31/3/89, fo. 77v.

[47] For instance, that 'Cromwell and the grandees', troubled by Scots and Dutch representations, were preparing 'to play the other game' and spare the king on 26 Jan. Peacey, 'Marchamont Nedham', p. 31, transcribes this passage.

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Independent interest, Hugh Dell, Hugh Peters, and Thomas Goodwin, was first mooted in the radical newsbook, *The Moderate*, where it was described as part of a devious plan emanating from the city Presbyterians designed to deflect the just vengeance on the king demanded by the godly.[48] The fact that the king's request was picked up in newsbooks published later in the week does not mean that any meeting occurred, and certainly not that it indicates the existence of an ongoing process of negotiation. All that clearly emerges is a busy-body Peters frequently acting as errand boy between the king and his captors.[49]

III

I will now concentrate upon Kelsey's more original contribution, and examine two of his arguments in detail. First, that the charges against the king were deliberately understated. Here Kelsey appears to misunderstand the technical side of the making and substance of the charge. Second, that the prevarication of the court, in the face of the king's refusal to plead, indicates that 'few of the king's judges, if any at all, actually required that the king's blood be spilt'.[50] This argument fails to recognize both the disarray of the more conservative members of the court, and the irresistible insistence of the army to try and execute the king.

Kelsey emphasizes that the formal charge was agreed only after lengthy and dilatory debate among the commissioners appointed to conduct the trial of the king. He insists that this debate was won by those who were identified with the most positively pro-royal 'party' among the commissioners, whose preferred outcome of the trial was a slap on the wrist for Charles, his restoration to the throne, and his subsequent reintegration into the fabric of the ancient constitution. The charge that was eventually agreed, having been 'progressively softened'[51] during the commissioners' deliberations, was minimalist. It was 'a relatively light charge sheet', which would give Charles 'a perfect opportunity to clear his own name'. And Kelsey dwells on the trivial testimony, the 'so-called evidence', that was produced in support of the charge, much of it from 'a rag-bag miscellany' of ex-royalist soldiers – 'a few dozen weak and ineffectual witnesses', 'a handful of nonentities' – swearing they had seen the king armed and in armour at various battles, and that he had been present at the raising of his standard at Nottingham.[52] Finally, Kelsey argues that the charge significantly rejects the opportunity to rake up the ancient scandals – that the king had been complicit in the murder of his father, for instance – that had been undertaken in the *Declaration* issued in justification of the Vote of No Addresses,[53] and that this necessarily

[48] *The Moderate*, 27 (9–16 Jan. 1649), p. [259].

[49] *The Moderate Intelligencer*, 200 (11–18 Jan. 1649), sig. (Qqqqqqqqv); *Perfect occurrences of every daies iournall in parliament*, 107 (12–19 Jan.), p. 802. For Kelsey's reading of this, see 'Death', pp. 742–3.

[50] Kelsey, 'Death', p. 728.

[51] Ibid., p. 740.

[52] Ibid., p. 747; Kelsey, 'Trial', pp. 599, 600; idem, 'Politics and procedure', p. 19.

[53] *A declaration of the Commons … expressing their reasons and grounds of passing the late resolutions touching no farther address or application to be made to the kin* (15 Feb. 1647/8) pp. 12–17.

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entailed 'by implication' a 'reversion to the doctrine of evil counsel'. Commissioners were 'reinstating' parliament's initial, 1642, contention that their military action was designed to rescue the king from the pernicious influence of those who 'had conspired … to poison his relationship with his loving subjects'.[54]

But this transformation, accomplished by insisting, in the absence of any direct evidence, that, 'in other words',[55] the charge reverted to the old doctrine of 'evil counsel', is unconvincing. Even if Kelsey's suggestion that the king was being offered a relatively modest charge sheet, easily ducked, is correct, a reversion to any notion that he or his judges might shift responsibility on to the shoulders of evil counsellors does not follow. But this raises a more important question: is Kelsey's account of the genesis and development of the charge adequate? Clearly, Kelsey is right to highlight the significant debate, lasting several days, among the commissioners on the charge against the king. Some of the commissioners certainly wanted a much fuller charge, perhaps along the lines of the Commons' 1648 No Addresses *Declaration*. Colonel Thomas Harrison was reported to have encouraged his colleagues to denounce Charles's record: 'Gentlemen, it will be good for us to blacken him what we can: Pray let us blacken him.'[56] But, despite Harrison's intervention, it is far from clear that the radicals uniformly sought to use the charge to denounce the king and that it was the moderates among the commissioners who wanted the skeleton indictment that was eventually decided upon. Kelsey argues that the radical lawyer, John Cook, who conducted the prosecution, was responsible for the initial presentation of a lengthy, denunciatory charge. But this entails rejecting Cook's categorical insistence during his own trial in 1660, that he opposed 'a voluminous and long Charge', and argued that all that was 'requisite' was 'what was expressed in the Act for the Trial'.[57] Kelsey finds this statement 'highly unlikely',[58] but it was not challenged by Cook's prosecutors at the Restoration.[59] Kelsey's argument in part depends upon his understanding of Cook's *King Charls his Case*, published a week after the execution, which he reads as a simple elaboration of the points that Cook would have incorporated in the charge, if he had been given free range in the latter's creation. Cook's own comments on the work are a corrective to this: it was 'for the most part' the speech he intended to deliver at the bar, and, as Sir Edward Coke had shown in prosecuting Essex and Raleigh at the turn of the century, it was within the prosecutor's remit to embroider the limited and technical language of the indictment and launch a torrent of abuse at the accused. But Cook's *Case* is a complex palimpsest, as much a dialogue with his 'ingenuous reader' as an

[54] Kelsey, 'Trial', p. 599; idem, 'Politics and procedure', p. 15.

[55] It is a phrase used in introduction of the contention in both Kelsey, 'Trial', p. 599 and idem, 'Politics and procedure', p. 15.

[56] *An exact and impartial accompt of the indictment, arraignment, trial and judgment (according to law) of nine and twenty regicides* (1660), p. 44.

[57] Ibid., p. 119.

[58] Kelsey, 'Politics and procedure', pp. 16–17.

[59] A point made effectively by Geoffrey Robertson, *The tyrannicide brief: the story of the man who sent Charles I to the scaffold* (London, 2005), p. 392 n. 16.

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argument in the court; it includes 'additional opinion' concerning the murder of King James, the loss of Rochelle (this from Cook's own humiliating experience as a resident of Geneva at the time), and 'the Blood of Ireland'. Sometimes Cook seems more aware of the audience for the book than of the commissioners before whom he was ostensibly pleading in the court: his account, he notes, has been constructed so that the reader will not be obliged 'to buy that again which he hath formerly met with', particularly in parliament's earlier declarations.[60]

The shorter, more succinct, charge was ultimately determined upon, though whether this was a victory for the conservatives seems unlikely. This conclusion is reinforced if we consider the substance of the supposedly 'minimal' indictment. When Nedham reported the initial moves to bring the king to trial, he appended the comment of one of the commissioners, reported to him by a friend, that the charges would be such that the king 'could clearly acquit himself of'.[61] Nedham imagined that the accusations would be those listed in the Grand Remonstrance and the *Declaration* for the Vote of No Addresses, and he argued that the king had already cleared himself of many of these charges. The trial would enable him to exculpate himself fully, and the scandal of making those gross slanders would fall on the Presbyterian party that had dominated the Commons, but which was now purged from it. Nedham's airy speculation need not detain us, but his view that the king could answer an indictment that rehearsed the history of his turpitude throughout his reign should. For that path, despite Harrison's enthusiastic support, was *rejected* in committee. The commissioners ultimately agreed with Coke that the charge should closely follow the Commons' legislation that empowered them. It is that legislation upon which we must concentrate.

The legislation, sent from the Commons to the Lords on 2 January, and then repeated with minor modifications after the Lords' rejection of the drafts and the Commons' assertion of their sovereignty in response, had two prongs. First, the Ordinance – later Act – which established the court, naming commissioners and empowering them to act; this was read and discussed several times between 26 December and 2 January.[62] Second, a resolution, that emerged fully fledged on the floor of the House on 1 January, that 'by the fundamental Laws of this Kingdom, it is Treason in the king of England, for the time being, to levy war against the Parliament and Kingdom of England'.[63] The preamble to the Ordinance/Act hardly suggests an intention to save the king after a show-trial.

[60] John Cook, *King Charls his case: or an appeal to all rational men concerning his trial at the High Court of Justice* (1649), p. 11.

[61] The lawyer–MP, Nicholas Love's reported comment is, unsurprisingly, a favoured mantra for Kelsey ('Staging', p. 76; 'Death', p. 734; 'Politics and procedure', p. 13).

[62] *Journals of the House of Commons* (*CJ*), VI (1648–51), pp. 104, 105, 106, 107. Kelsey, in 'Ordinance', a nice piece of detective work, sets out the legislative process, and draws attention to the differences – mostly in the list of commissioners – between the original Ordinance and the eventual Act.

[63] *CJ*, VI, p. 107. When this resolution was issued on the sole authority of the Commons on 3 Jan. the language was changed slightly: it was declared to be 'High Treason' for the king to levy war against the 'Parliament or Kingdom'. *CJ*, VI, p. 110.

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'Whereas it is notorious', it begins, that Charles 'hath had a wicked designe totally to subvert the antient and fundamentall lawes and liberties of this nation. And in theire place to introduce an arbitrary and tiranicall government', and that 'besides other evill ways and means to bring this designe to passe hath prosecuted it with fire and the sword'.[64] Given this language, it is unsurprising that, describing the enactment, John Rushworth called it 'an Ordinance of Attainder' – a legislative condemnation of the king, rather than an establishment of a neutral court.[65]

The significance of the declaration that 'it is Treason in the King of England, for the time being, to levy war against the Parliament' has been missed by many commentators, perhaps because some contemporaries get it wrong: both Rushworth and Bulstrode Whitelocke read it as relating to a king 'for the time to come', that is, not as an ex post facto law applying immediately to Charles.[66] This alternative language found favour with the Lords on 9 January, as they rather pathetically sought to remind the lower house of their existence and to reintegrate themselves into the constitutional process following the Commons' assertion of their sole sovereign authority as representative of the people.[67] And if there had been an intention to restore Charles with serious restrictions on his freedom of action, the alternative formulation made sense. But, in fact, it is the bald declaration that is paraphrased in the Act, and is repeated in the charge: Charles 'hath Traitorously and maliciously levied war against the present Parliament and the People therein represented … and upon or about the four and twentieth day of August … [1642] … at the County of the Town of Nottingham, where and when he set up his standard of war': there then follows a list of battles at which Charles was present. And the witnesses, Kelsey's rag-bag miscellany, saw him there: theirs was not 'indirect and circumstantial evidence'.[68] The king was in armour, 'his sword drawn in his hand', distributing regimental colours, encouraging his soldiers.[69] The Commons' definition of what constituted treason was novel, but they sought to deploy the old law surrounding the offence to the unprecedented circumstances. One aspect of treason, traditionally, had been levying war against the king.[70] And the intention to levy war, in the opinion of the lawyers, could be inferred from proof that the accused raised his standard, or was seen in arms or in coat-armour. The 'minimal' charge was not 'easy to beat'.[71] It was a lean, tautly constructed indictment: the king had encouraged men to fight against parliament, and had led them into battle. And doing so was 'treason by the fundamentall laws

[64] J. G. Muddiman, *The trial of King Charles the First* (Edinburgh, 1928), p. 193 (transcribed from the journal of the proceedings of the commissioners).

[65] John Rushworth, *Historical collections of private passages of state* (8 vols., 1659–1701), VII, pp. 1376, 1378, 1380.

[66] Rushworth, *Historical collections*, VII, p. 1380; Bulstrode Whitelocke, *Memorials of the English affairs* (4 vols., Oxford, 1853), II, p. 487.

[67] *Journals of the House of Lords* (*LJ*), X (1648–9), p. 642.

[68] Kelsey, 'Politics and procedure', p. 3.

[69] Muddiman, *Trial*, pp. 214–22.

[70] D. Alan Orr, 'The juristic foundation of regicide', in Peacey, ed., *The regicides and the execution of Charles I*, pp. 117–33, esp. pp. 118, 125, 127–8.

[71] Braddick, *God's fury, England's fire*, p. 571.

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of this kingdom': the king would have had no room to 'plead a defence of evil council'.[72] The charge is a body-blow, not a slap on the wrist. And it could be argued that Charles had already acceded to the substance of it. In November 1647 parliament had insisted that, as a prelude to negotiation, the king must withdraw all his declarations declaring the men at Westminster rebels. This demand was revived when new negotiations were begun in the summer of 1648, and in late September Charles agreed to assent to a bill that both withdrew his proclamations and acknowledged that parliament had 'been necessitated to undertake a war in their just and lawful defence'.[73] Almost immediately royalists expressed doubts about the king's concession: it 'reflects upon himself … and involves us by a harsh consequence in the guilt of all this bloodshed'.[74] In the immediate aftermath of Pride's Purge, a royalist casuist painfully insisted that Charles's acceptance of the bill could not be used 'as any Imputation of Guilt in His Majestie himselfe'.[75] But radicals had quickly drawn precisely that inference. An early October petition from Yorkshire insisted on the need for the execution of justice, 'especially upon such as have polluted the land with Blood, his Majesty having confest himself and his party to be guilty thereof'; on 19 October Ireton's regiment insisted that Charles was 'guilty of all the blood-shed in these intestine wars … by his own confession'. The radical journalist, Gilbert Mabbott, denounced the royalists as 'drunk with the blood of the Saints, and have confest themselves guilty'.[76]

The idea that the trial was an elaborate piece of theatre in which the king was being offered every opportunity to save himself cannot be sustained from consideration of the legislation or the charge. Charles was backed into a corner – or had painted himself into one. The language and substance of the accusations could *only* admit a finding of the king's guilt. In these circumstances, Charles's refusal to plead, his refusal to acknowledge the jurisdiction of the court, makes sense.

Kelsey's insistence that 'when the public sessions of the king's trial began, regicide was the least likely outcome of the proceedings'[77] cannot be sustained in the light of the charge he was expected to answer. The associated statement, 'few of the king's judges, if any at all, actually required that the king's blood be spilt', is questionable on similar grounds. But the latter also invites discussion of Kelsey's account of the politicking in the process of establishing the court and of subsequent manoeuvres within it. Here he both overemphasizes the unity of purpose among the more conservative members of the court, and underplays the

[72] Cust, *Charles I*, p. 453. [73] Gardiner, *Great civil war*, IV, pp. 31, 36, 214.

[74] Anonymous letter from the Isle of Wight, to 'My Lord', reprinted in *Mercurius Pragmaticus*, 27 (26 Sept. – 3 Oct. 1648), sig. [Nnv].

[75] *Reasons and grounds of his majesties answere to the first proposition* (1648): Thomason dates this work as 11 Dec. 1648.

[76] Rushworth, *Historical collections*, VII, p. 1290 (and see p. 1270); *The true copy of a petition promoted in the army* (1648), p. 4; *The Moderate*, 14 (10–17 Oct. 1648), sig. [Ov]. This issue is well examined in Kelsey's '"A no-king or a new"', pp. 194, 197–8, 201, but he fails to relate the implication of his discussion to the issue of the charge. [77] Kelsey, 'Death', p. 728.

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determination of the key players in the army. Kelsey writes easily of 'parties' among the judges,[78] divided initially over the settlement to be proffered to the king once he had accepted the court's jurisdiction, and later by the question of the appropriate response by Charles's absolute refusal to plead to the charge. I am not persuaded that the evidence supports these assumptions. The radicals of the army and their civilian allies made all the running. Those who opposed the direction of their 'secret plots and contrivances', their 'violence and bloody designe', were disorganized, confused and leaderless.[79]

IV

Many of those offered the opportunity to participate in the trial appear to have been wholly oblivious to the opportunity to save the king that Kelsey insists it provided. On 25 December Nedham assured his readers that the conservative intentions of those behind the policy of putting the king on trial were clear from the names of those nominated to draft the legislation, 'moderate men', headed by Whitelocke and Sir Thomas Widdrington. Unfortunately, no one informed the two lawyers of Nedham's insistence upon the significance of their appointment, and, upon receiving a summons to attend the committee's first meeting, both men hastily decamped to Whitelocke's country house.[80] Those appointed as commissioners by the Act failed to turn up at all, or drifted away during the preliminary meetings or during the process itself. Sir Thomas Fairfax, famously, attended only the initial meeting of the commissioners: such behaviour makes nonsense of a recent suggestion that he 'led the faction' seeking to limit the charges levelled at Charles.[81] Algernon Sidney attended pre-trial meetings of the commissioners on 13, 15, and 19 January, then retired to the country, arriving 'unexpectedly' at Penshurst on the 22nd. At the Restoration, he recalled how he had defied Cromwell, John Bradshaw and others in the committee who were promoting the trial, insisting that the king could be tried by no court, and that nobody could be tried by *this* court, and in doing so had provoked Cromwell's devastating retort, 'I tell you, wee will cut off his head with the crowne upon it'.[82] We may not believe the whole story, but it is clear that in Sidney's pristine assertion of juridical propriety, or more simply in his precipitate flight to Penshurst, there was no hint of any awareness that he was rejecting an opportunity to save the king by co-operating on the tainted tribunal. Thomas Lister was named in the Act when he was in the country; he attended the pre-trial committee twice, and then the first session of the court: finding that the intention was to destroy the king, he

[78] Kelsey, 'Trial', p. 593.

[79] *Historical Manuscripts Commission* (*HMC*), 7th Report (London, 1879), pp. 129 (petition of William Heveningham, 1660), 150 (petition of William, Lord Monson, 1661).

[80] Bod. L., MS Clarendon 34, fo. 17. Whitelocke, *Memorials*, II, pp. 484–5.

[81] Hopper, '*Black Tom*', p. 102.

[82] R. W. Blencowe, ed., *Sydney papers* (London, 1825), pp. 54 (earl of Leicester's Journal), 237 (Algernon Sidney to his father, the earl of Leicester, 12 Oct. 1660).

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'altogether disliked the same and came away leaveing the Court sitting'.[83] Lister was seeking to avoid prosecution for his life at the Restoration, but his actions suggest the basic truth of his account: again, there is no suggestion that participation in the trial might have saved the king.

Similar exculpation was attempted by a number of members of the court who did participate more actively in the trial.[84] The MPs, Lord Monson, Robert Wallop, and Sir Henry Mildmay had been present at some of the early trial sessions, but did not attend when the king was convicted and refused to sign the death warrant. All claimed in 1660–1 that they had attended the trial only, as Monson expressed it, 'if possible to prevent that horrid murder by wyning of others to oppose it', and, failing in this, 'withdrewe with a great abhorrence of it'.[85] Nicholas Love, Edmund Harvey, and William Heveningham, who failed to sign the death warrant, and Thomas Waite and John Downes, who did sign it, had, they claimed, protested when Bradshaw moved to sentence on 27 January, and Downes, in the session *in camera* that Bradshaw agreed to in response to these public interventions, sought to persuade the court to listen to the king's suggestion for a conference concerning a political settlement with the Lords and Commons.[86] But, while Love, Waite, and Downes all claimed at the Restoration to be making a final attempt to save the king, there is not a hint that they were acting as a concerted 'group'[87] following a common strategy. Indeed, Downes emphasized that no one seconded him in the discussion following the temporary adjournment; others were 'much unsatisfied, yet durst not speak'. And then, in a pathetic coda to his attempt to justify his failure and his damning signature to the death warrant: 'I did my best; I could do no more: I was single, I was alone.'[88]

V

The army has conventionally been seen as the actor most unwaveringly committed to the trial and execution of the king. The army's institutional commitment was

[83] *HMC*, 7th Report, p. 121: 1660, petition of Thomas Lister. Lister did not attend the court again after the first public session of 20 Jan.

[84] A. W. McIntosh ('The number of the English regicides', *History*, 67 (1982), pp. 195–216) is suspicious of some of these self-serving claims, and rightly points out the inconsistencies in the 'abject recantation' (p. 213) being retailed in the circumstances of the Restoration trials: I am less generally sceptical, but the key point is that none of those so desperately begging for mercy claimed to be part of a *co-ordinated* effort to save the king.

[85] *HMC*, 7th Report, petitions of Lord Monson (p. 150), Sir Henry Mildmay (p. 150), Robert Wallop (p. 151).

[86] For Downes, see n. 88 below: for Heveningham, Love, and Waite see their petitions to parliament in *HMC*, 7th Report – Love, p. 119; Heveningham, pp. 86, 125, 129, 158; Waite, pp. 156–7. For Harvey, compare BL, Add. MS 37344, fo. 251 – Whitelocke's account of 29 Jan., omitted from the printed *Memorials* – with *Exact and impartial accompt*, p. 142. The circumstance that led Bradshaw to adjourn the court and the discussion that followed is nicely described in C. V. Wedgwood, *The trial of Charles I* (London, 2001), pp. 135–8.

[87] Kelsey, 'Politics and procedure', p. 23.

[88] For Downes, see *A true and humble representation of Iohn Downes Esq* (1660); *Exact and impartial accompt*, pp. 259–61; *HMC*, 7th Report, pp. 158–9, affidavits supporting Downes's petition to parliament.

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clear: Charles must be publicly tried, convicted, and executed. But it must be acknowledged that the evidence for this – or any – interpretation of attitudes within the army is often opaque. It was difficult to extract much inward information out of the head-quarters (as Nedham's flights of fancy suggest). Historians should take to heart the warning of the French agent, de Grignon: the army's 'intentions are so concealed that it is difficult to get to the bottom of them'.[89]

Kelsey, in his challenge to the role traditionally assigned to the army, develops a two-pronged critique. First, he interrogates the language of the documents that emanate from the army to suggest that they are more clouded, less suggestive of an ineluctable drive and commitment to regicide, than is usually assumed. Second, he attempts to provide a history of army discussion designed to show a considerable degree of uncertainty among the officers, and that options were being kept open to and through the trial.

Central to Kelsey's re-evaluation of documents emanating from the army is his analysis of the *Remonstrance*, drafted by Ireton, approved in principle by the council of officers on 16 November, and presented to parliament with some minor amendments four days later. Traditionally it has been argued that this document 'demanded unambiguously' that Charles should be brought to justice,[90] but Kelsey challenges this interpretation. 'If Henry Ireton believed in November … that Charles must die', he writes, 'he had a hard time saying as much.'[91] The *Remonstrance*, for Kelsey, 'encapsulates' Ireton's 'personal ambivalence' and that of the grandees. This is argued by emphasizing first that the demand for justice against the king is expressed 'guardedly and largely by implication only'.[92] Second, this 'oblique reference' is buried in a lengthy, dense, and complex document. Finally, contemporary reports that purported to provide synopses of the document omit all 'explicit reference' to the possible punishment of the king.[93]

Kelsey's reading of the *Remonstrance* is not tenable. Twice in the concluding section in which the army's demands are laid out, which seems perfectly clear both in style and substance, Ireton insists in virtually identical words that 'the Person of the King may and shall be proceeded against in a way of justice for the blood spilt'.[94] The more tortuous prose of the body of the text is suffused with a distrust of Charles, contempt for his dissimulation and prevarication, shock at the absence of any remorse for his actions. There can be no negotiation with, certainly no restitution to power of, a man who has 'obstinately' sought to employ

[89] De Grignon to Mazarin and to Brienne, 21 Dec. 1648, n.s., TNA, PRO 31/3/89 fo. 40v.

[90] Morrill and Baker, 'Sons of Zeruiah', p. 29. So Ian Gentles sees the *Remonstrance*, 'the masterplan for the army's actions', as categorically committed to the king's condemnation: *The New Model Army in England, Ireland and Scotland, 1645–1653* (Oxford, 1992), pp. 274, 276.

[91] Kelsey, 'Death', p. 730.

[92] Kelsey, 'Ordinance', p. 313 and n. 13.

[93] Kelsey, 'Politics and procedure', p. 5 n. 13.

[94] *A Remonstrance of his excellency Thomas Lord Fairfax … and of the generall councell of officers held at St Albans the 16 of November, 1648* (1648), pp. 61, 62.

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every resource of 'force, police or fraud' to retain his power and prerogative.[95] In the course of this denunciation, Ireton several times glances at the issue of bringing the king to justice. The king has rejected the clear message of the providential victories that have brought him so low, victories that were in 1648 'as full and more glorious (if possible) then before … as if God would thereby declare his designing of that Person to Justice'. Parliament is warned that by not bringing Charles to trial, though he is 'through the hand of God in your power to do justice upon' they appear to uphold 'Court maxims' of the king's immunity from prosecution.[96] In a philosophical excursus on the nature of royal power, Ireton considers an ostensibly hypothetical case of a putative tyrant who, having been foiled in his first attempt to impose by 'force upon his trusting people' an 'absolute tyrannicall power', then makes a further military attempt to restore his claimed 'exorbitant and unlimited powers'. Such a man 'must needs be the authour of that unjust warre, and therein guilty of all the innocent blood spilt thereby', he concludes. Ireton then considers if this is not the case with Charles, and appeals to 'the story and evidence' to assert the relevance and applicability of his general discussion to the case in point. Perhaps, he suggests, if the king could prove that he was not motivated by self-interest, or that his enemies were, then 'let him … be acquitted in judgement, and the guilt and blame be laid where else it is due'. Kelsey makes much of this concession, but it is utterly clear that Ireton is not intending any possible exculpation for Charles. 'But if indeed', Ireton argues, the king has behaved along the lines of the abstract model set out – which is, of course, a foregone conclusion, the model being entirely distilled from Charles's behaviour – then divine mandate and public justice require a judicial trial and 'judgment executed against him'.[97]

The message of the *Remonstrance* is clear. Those who read the text, or heard it read, did not miss its significance. The moderate MP, Sir Roger Burgoyne, thought the work 'tedious', but recognized that the 'drift of it was to execute justice upon the k[ing]'.[98] The outlying regiments and their local allies, to whom copies of the *Remonstrance* were sent and who were encouraged to express their concurrence with its demands, if these 'shall close with what God hath been pleased to sett on your Harts',[99] knew what was expected of them. Within a month of the army's letter being sent into the provinces, John Dillingham published a petition in response to the *Remonstrance* from the 'lovers of Justice and freedom in Glamorgan' with some diffidence. He feared his readers 'may loath

[95] Ibid., pp. 18, 25.

[96] Ibid., pp. 19, 47–8.

[97] Ibid., pp. 21–4: this is a particularly opaque passage, and others have misunderstood it – see Gentles, *New Model Army*, 275. David Farr's gloss on this passage emulates Ireton in its tortured prose – but his conclusion, that the authors of the *Remonstrance* were convinced of the king's guilt and believed he should be executed, is surely right: Farr, *Henry Ireton*, pp. 145–50. Glenn Burgess also argues that the *Remonstrance* made it 'clear' that the 'king was to be brought to justice' *British Political Thought, 1500–1660* (Basingstoke, 2009), pp. 260–3.

[98] Burgoyne to Sir Ralph Verney, 20 Nov. 1648, BL Film 636 (Claydon House Letters), reel 9.

[99] Oxford, Worcester College, Clarke MS 16, fos. 16, 19v.

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twice-sod Coleworts, and of this kind neer 100 have been printed'. The Welshmen certainly echo the common themes of this extensive output – settlement upon 'foundations of freedom' and the 'execution of justice upon capitall offenders'.[100] Another burst of petitions from 'the honest Party', from 'publick spirited persons', in mid-January as the trial got under way, reiterated these points: they demanded 'Justice upon the Principal causers' of the war, and affirmed their 'full compliance with the Remonstrance of the Army'.[101]

Kelsey's final suggestion that contemporary synopses of the document fail to provide 'explicit reference … to capital punishment of the king'[102] is also misleading. Dillingham's statement 'that the king be brought to justice, as the capital cause of all' seems categorical enough, as do two of the newsbooks published by Robert Ibbotson, which simply downloaded Ireton's language. 'That the capital and grand Author of our troubles, the person of the king may be speedily brought to justice, for the treason, blood and mischiefe he is therein guilty of.'[103] One of the first responses to the presentation of the *Remonstrance* to the Commons, the messily printed, potboiling little pamphlet, *The articles and charge of the army exhibited in parliament*, began its analysis with the same phrase.[104]

On 28 December 1648 a helpful 'Abridgement' of the *Remonstrance*, of a dozen rather than seventy pages, was published 'for the better Understanding, Remembrance and Judgement of the People'. Ostensibly this was issued 'by the Appointment of the Lord Generall, and his Generall Council of Officers'.[105] This tract provides a synopsis of the text of the *Remonstrance*, surrounded with appropriate and dense citations, mostly scriptural, designed to validate the key points of Ireton's text – the army's decision to intervene to frustrate the treaty; his contractual account of government; the appropriate attitude towards the hypocrite Charles. The obligation to bring the king to trial, and to execution, is certainly not impenetrably buried here; it is particularly emphasized. The reader is invited to reflect upon Joshua 11:17 – Joshua slays thirty-one Canaanite kings; Judges 3:21 – Ehud assassinates King Eglon of Moab; Judges 8:21 – Gideon cuts down the kings of Midian; 2 Kings 14:19–21 – the deposition and killing of Amaziah.

[100] *The Moderate Intelligencer*, no. 197 (21–8 Dec. 1648), sig. (Nnnnnnnnn).

[101] Rushworth, *Historical collections*, VII: petitions from Devon (pp. 1390–1), from the Isle of Wight and south coast garrison towns (p. 1394), from North Wales (p. 1395).

[102] Kelsey, 'Politics and procedure', p. 5 n. 13.

[103] *The Moderate Intelligencer*, 192 (16–23 Nov. 1648), sig. (Hhhhhhhhh2v); *Perfect occurrences of every daies iournall in parliament*, 99 (17–24 Nov. 1648), p. 737; *Packets of letters from severall parts*, 36 (21 Nov. 1648), p. 2.

[104] *The articles and charge of the army exhibited in parliament against the king's majesty* (1648), pp. 2–3, first pagination. Thomason acquired this work on 22 Nov.

[105] *An abridgement of the late remonstrance of the army* (1648), title page: the work was signed by Rushworth, as had been the *Remonstrance*, but it does not use exactly the same formula. The publisher, Lawrence Blaiklocke, besides fronting the long-running weekly newspaper, *A perfect diurnall of some passages in parliament*, had a small business in 'official' publications: most recently, he had been employed by the army to disseminate *The lord general's letter* (1 Dec. 1648) demanding the immediate payment of £40,000 by the City of London. The *Abridgement* has, I think, an army provenance, but may not have had the approval of the general council that it claimed.

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The classic blood-guilt texts, Genesis 9:6 and Numbers 35:33 are rehearsed; so too are the potent words of Psalm 149:8, 9, in which the 'saints' are enjoined 'To bind their kings in chains and their nobles with fetters of iron. To execute upon them the judgment that is written.'[106] This abstract of the *Remonstrance* can hardly be said to omit 'all explicit reference … to regicide'.[107]

Authorship of the *Abridgement* has been attributed to Hugh Peter, presumably because the texts cited were powerfully deployed in this period by the army's favoured religious commentator and spokesman.[108] Intriguingly, Peter's use of one of these texts in a sermon preached on 21 January is emphasized by Kelsey in his revisionist reading of the army's constitutional agenda: 'To bind their kings in chains and their nobles with fetters of iron.' This, Kelsey insists, is 'a text far better suited to plans for a limited Restoration rather than regicide';[109] it provides 'the perfect encapsulation of the objectives of a limited oligarchic revolution'.[110] But this reading neglects both the context of the passage, and the contemporary circumstances in which Peter employed it.

On 22 December Peter preached the Fast-Day sermon before the Lords and Commons at Westminster. Nedham was told that the sermon focused on the army's divine commission to lead God's people from bondage by a pan-European 'rooting up of Monarchy'. Men who had attended the sermon and later witnessed against Peter recalled similar gross flattery of the army and denunciation of the king – the 'oppressor of the people'; 'murderer, tyrant and traytor'. The soldiers were compared to the suffering Christ; the king became 'the great Barabbas at Windsor'; the comparison was designed to encourage parliament, the Sanhedrin of the nation, to 'bring the king to condigne, speedy and capital punishment'.[111]

On Sunday 21 January, after the first day of the trial, Peter preached in Whitehall to the commissioners who were holding a solemn fast. On this occasion he chose the text, 'binding their kings in chains', which, for Kelsey, imports an injunction to the judges to seek a constitutional settlement that placed severe restrictions on the king's authority, but stopped short of regicide. This was not how his handling of the text was understood by his audience. He almost certainly employed the immediately adjacent verses – 'to execute vengeance', 'to execute upon them the judgment written'.[112] Further stroking of the soldiers was accompanied by discussion of blood-guilt and of regicide. This was, Peter exulted,

[106] *Abridgement*, the marginal glosses on pp. 8, 10. [107] Kelsey, 'Death', p. 731 n. 15.

[108] Martin Dzelzainis, in his 'Anti-monarchism in English republicanism', in Martin van Gelderen and Quentin Skinner, eds., *Republicanism: a shared European heritage* (2 vols., Cambridge, 2002), I, pp. 27–41. Dzelzainis attributes the *Abridgement*, on which he provides a useful commentary, to Peter on the strength of a suggestion made to him by Austin Woolrych (p. 34 n. 9).

[109] Kelsey, 'Death', p. 747. [110] Kelsey, 'Trial', p. 608; idem, 'Death', p. 745.

[111] *Mercurius Pragmaticus*, 39 (19–26 Dec. 1648), sig. [Eee 4]; *Exact and impartial accompt*, pp. 165–6.

[112] Ibid., p. 167: the witness, Chase, reported that the 'bind their kings' phrase was 'part of his text', and that Peter commented on the entire psalm, with its succession of injunctions to 'praise ye the Lord'.

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'the Day that I, and many Saints of God besides, have been praying for these many years'.[113] The radical newspaper, *The Moderate*, which was firmly committed to the king's trial and execution, remarked that Peter 'made amends' for the other two preachers, Joshua Sprigge and Thomas Foxley, whose counsel was of prudence.[114] On the following Sunday morning, Peter reverted to his text, cited in full, in a sermon in St James's chapel. He left no doubt of his meaning on this occasion, combining his text from Psalms with the terrible prophecy of Isaiah (14:18–20) upon the king of Babylon, 'thou art cast out of thy grave like an abominable branch … because thou hast destroyed thy land and slain thy people'. Texts, we know, are labile, texts are malleable. But it is hardly credible that on 21 January Peter employed Psalm 149 as an encouragement to his auditors to do a deal with the king, and, a week later, as a gloating overture to the execution of 'the poor wretch'.[115]

The *Remonstrance*, then, was the dominant foundation-text for the army and its allies. But was it any more than, as Nedham thought, 'rhodomontade' designed to terrify the king into compliance, and then to be abandoned? Kelsey agrees with Nedham. For him the army, despite its public pronouncements, was seriously divided over the key issues of the trial and execution; and its apparent tergiversations betray a serious attempt by some of the major players, notably Cromwell, to achieve a settlement in which monarchy and Charles I would survive. Both points require examination.

VI

Kelsey's emphasis on a kaleidoscope of 'parties'[116] among the king's judges has already been questioned. To my mind, only the military phalanx among the commissioners behaves in a way that warrants such nomenclature. That is not to say that the officers were unanimous in their individual responses to the political developments in the aftermath of Pride's Purge and at the time of the trial. Col. Charles Fleetwood's mysterious disappearance from both parliament and the council of the army in this period suggests his unease with the direction in which things were going.[117] Considerable thought was given to the nomination of the officers as commissioners for the trial of the king,[118] yet even vetting at this point

[113] Ibid., pp. 167, 168 – testimony of Mr Chase, and of Thomas Tongue.

[114] *The Moderate*, 28 (16–23 Jan. 1648), p. [271].

[115] *Exact and impartial accompt*, p. 167 – testimony of Thomas Tongue.

[116] Kelsey, 'Trial', p. 593.

[117] Fleetwood played no public role after the conclusion of the second civil war; he returned to the Commons only in May 1649. Sir Charles Firth and Godfrey Davies, *The regimental history of Cromwell's army* (2 vols., Oxford, 1940), I, pp. 94–6; Underdown, *Pride's Purge*, pp. 373, [391].

[118] I believe, against Kelsey in his 'Ordinance', that the lists of commissioners that circulate in the press in the first week of Jan. 1649, and which are significantly different from the names in the Ordinance rejected by the Lords on 2 Jan., are from an official source, not merely 'a mixture of "selective briefing" and more or less inspired guesswork' (p. 315). A version of the original document had been received in the north well before the newsbooks – the first, published on 2 Jan., could not

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did not secure complete unanimity. Major-General Skippon kept away both from the council of the army and from the trial; General Fairfax's single, reluctant, appearance with the trial commissioners at its first meeting was a focus of much discussion in the press.[119] Col. Richard Ingoldsby played no role in the trial, turning up only for the final denouement, when he joined the tribunal to convict the king and then signed the death warrant. Lieutenant-General Hammond attended the public sessions of the trial assiduously and affirmed the sentence on 27 January. But it may be significant that he missed the final proceedings on the 29th and did not sign the warrant. The officers were not entirely of one mind, then, but those who were troubled, like Fairfax, contented themselves with distancing themselves from events and with silence. The only public protest from a member of the council of the army was from Major Francis White.[120] The bulk of the officers who participated in the army council and who served as judges acted as a solid bloc, regular in their attendance at the pre-trial meetings of the commissioners, assiduous at the trial itself.

To show that the officers acted in consort is not, of course, to prove that they were ineluctably dedicated to the execution of the king. Before addressing this issue directly, it is worth analysing some of the evidential problems, already noted generally, concerning the army's collective actions in December and January.

On 14 January the council of the army, continuing their debate on the Agreement of the People, were treated to a tirade from Captain George Joyce. The specific issue under discussion – the authority of the magistrate in religious matters – was quickly abandoned, and Joyce, speaking in the name of 'God's people', accused the army leaders of attempting 'to shifte off that [work] which the Lord hath called you to'. He diagnosed a 'spiritt of feare' upon the grandees, who, instead of employing the power given them by God to drive through a revolutionary programme, 'the greatest worke of righteousness that ever was among men', were seeking to slough off responsibility to 'the men att Westminster, or the Parliament soe called'. In addition to dickering with MPs, the grandees were also 'studying to please' the Presbyterian ministers. In consequence, a 'jealousie … is

have arrived by 6 Jan., when Thomas Margetts uses the document's language of the commissioners forming a 'jury' and complains – 'a little disobligement' – of the absence of representatives from the northern brigade (BL, Add. MS 21417, fo. 24). Some of the latter were incorporated in the Ordinance (and carried forward into the subsequent Act). If the document has some official provenance (and the point is disputable), then the alterations to the list of officers between it and the Ordinance is significant: four colonels were struck from the list (Edward Cook, Robert Saunders, Philip Twisleton, Nathaniel Rich – the last of whom had expressed some diffidence concerning the direction of events in the council of the army on 29 Dec.) (see *Clarke papers*, ed. Firth, II, p. 153; Kelsey, 'Ordinance', pp. 318–20); they were replaced by Lieutenant-General Hammond, Major-General Lambert, Cols. Lilburne and Overton, and Lieutenant-Colonel Goffe.

[119] Not all the military commissioners who failed to attend the trial were necessarily hostile to the direction of policy: Desborough, Lambert, and Overton had important posts in the localities that kept them in, respectively, Yarmouth, Pontefract, and Hull.

[120] See above, n. 21. It is significant that White's letter to Fairfax was only published two months after it was written: Francis White, *The copies of severall letters contrary to the opinions of the present powers* (1649), pp. 1, 4.

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begotten in God's people'.[121] One of the latter, Harrison, answered Joyce.[122] He began by acknowledging that he too had been troubled that the army's policies appeared 'to putt power into the hands of the men of the world when God doth wrest itt out of their hands'. But he considered that, in the absence of a categorical divine mandate for a new scheme of government, it was important that the army act in a way that would answer those who berated the soldiers as self-serving hypocrites, whose only 'businesse is to establish ourselves'.[123] The soldiers must show that they were prepared to co-operate with others in forging a settlement. The concern for the reputation of the army, and the attempt to open lines of communication to others in the construction of a settlement, is typical of many aspects of army tactics in these months. And it has a number of consequences for the nature of the evidence and thus the way in which we read the period.

First, the facade of negotiation and conciliation that the army maintained, and the sheer difficulty of acquiring reliable information, spawned a good deal of very suspect commentary in December–January 1648/9. Commentators, inspired by hopes or fears generated by their political convictions or simply trying to market tracts and journals, spun the limited and opaque information that came their way or invented it with more or less imagination. This process is apparent among both royalists, like Nedham as we have seen, and radicals[124] hopeful of, or troubled by, the prospect of a deal with Charles. Second, some army figures, notably Cromwell, played a preponderant role in this process of bridge-building, and commentators were encouraged to imagine serious substantive policy divisions among the high command. Clearly different modes of approach, different tactics, were adopted by Cromwell and Ireton. Ireton seemed the more implacable and driven of the two men; his father-in-law was more slippery and apparently more conciliatory. The French ambassador recognized the differences between the two men, but saw them as superficial, seldom the product of serious policy disagreements. On 21 December de Grignon reported that Cromwell preferred to hold the trials of the duke of Hamilton and the English lords caught up in the second civil war before commencing proceedings against the king, while Ireton favoured the opposite course of action. But he saw this as a minor issue, 'only' a matter of tactics. Both generals were hostile to the king, both were to be feared; but he acknowledged, and warned against, Cromwell's greater 'artifice'.[125] De Grignon

[121] *Clarke papers*, ed. Firth, II, pp. 181–3.

[122] Ibid., II, pp. 183–6.

[123] This was an issue that troubled the army council. On 29 Dec. the officers solemnly asked Elizabeth Poole, the Abingdon prophetess who had been brought before them, how they could answer the 'aspertions' of those who argued that they were wholly motivated by 'our own ends' (Elizabeth Poole, *A vision, wherein is manifested the disease and care of the kingdome* (9 Jan. 1649), p. 2).

[124] The letters to his colleagues in London from the radical administrator of the northern army, Thomas Margetts, who was deeply fearful that the army council would 'fall off' and do a deal with the king, are the best example of this (*Clarke papers*, ed. Firth, II, p. 70 (letter of 13 Dec.); Oxford, Worcester College, Clarke MS 114, fo. 178, letter of 30 Dec.), but similar fears were, if more obliquely expressed in radical journals, like *The Moderate*: see above, n. 48.

[125] De Grignon to Mazarin, 31 Dec. 1648 n.s., TNA, PRO 31/3/89, fo. 52.

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was, I think, right. The man whose attitudes are described so well by John Morrill and Philip Baker, the man whose contempt and distrust for Charles burns through his letters, both public and private,[126] was not seriously engaged in the kinds of negotiation so naively hymned by Nedham.

Cromwell's smooth, manipulative approach was experienced by many players in this period, not least by Whitelocke. From 18 December, Cromwell flattered and stroked Whitelocke and his colleague, Widdrington. They were invited to intimate and private discussions where Cromwell encouraged them to come up with proposals that would promote the return of MPs who had kept clear of the house after the purge, and to develop an alternative constitutional model. The two lawyers spent most of 22 December in Whitelocke's study, busily drafting the document that Cromwell had proposed. Next day, to their horror, they found themselves named to the committee to prepare the legislation for the trial of the king.[127] Ian Gentles's view that Cromwell was keeping two potential opponents 'harmlessly busy' is surely correct.[128] The same is true of the various discussions inaugurated by the army with the Presbyterian clergy in December and early January. By 17 January the ministers bitterly complained that the army was interested only in co-opting others, not in meaningful discussion: the justice of the army's proceedings was non-negotiable, and 'we were only invited to contribute our assistance in prosecution of what you had undertaken'.[129]

The bridge-building policies ultimately favoured by the leaders of the army, and resented by Joyce, were very largely a matter of spin. But they had some important practical consequences. Most obviously, it was decided, contrary to Ireton's initial preference, to purge parliament rather than dissolve it outright, and to co-operate with those MPs prepared to tolerate this gross affront to their privileges.[130] Less carefully considered in the historiography is the fact that having kept parliament in being, the army leaders eventually invited it to pass the legislation establishing the court and nominating the judges for the trial of the king, rather than taking full responsibility for this themselves. In mid-December the latter was still a possibility. On 15 December the council of the army ordered that the king be brought to Windsor 'in order to the bringing of him speedily to justice', and appointed a committee to 'consider of the best ways and grounds' to achieve this end.[131] Despite the view of some MPs that

[126] Morrill and Baker, 'Sons of Zeruiah', particularly pp. 24–32: they cite Cromwell's Preston letter to the Commons – 'they that are implacable and will not leave troubling the land may speedily be destroyed out of the land'; and the devastating retort to Hammond, when he suggested that some good might come from negotiation with Charles: 'good! From this man against whom the lord hath witnessed' (pp. 26, 29).

[127] Whitelocke, *Memorials*, II, pp. 478–81; Ruth Spalding, ed., *The diary of Bulstrode Whitelocke, 1605–1675* (Oxford, 1990), pp. 226–7.

[128] Gentles, *New Model Army*, pp. 297–8.

[129] *A serious and faithfull representation of the judgements of the ministers of the gospell within the province of London* (17 Jan. 1649), pp. 2–3.

[130] Underdown, *Pride's Purge*, chs. 5 and 6.

[131] *Clarke papers*, ed. Firth, II, p. 132: it may be significant that the seven members of the committee were not heavy hitters in the council.

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the army should do 'their most dirty work' themselves, responsibility was eventually sloughed off to the Commons.[132] Inventive journalists were still attempting to imagine the kind of charge that the soldiers might formally issue at the point where the Commons appointed their own committee (23 December), and considered and approved the legislation that emerged from it (28 December–1 January).[133]

The army was, of course, making much of the running concerning the trial from the background it had chosen to occupy. It was the general council that issued instructions for the king's imprisonment at Windsor, and made the significant order that the king should no longer be served 'upon the knee, and that all ceremonies of state to him be left off'.[134] Those of its officers who were MPs were involved in the creation of the legislation, and then with some of their military colleagues in the early meetings of the commissioners for the trial. In these latter, they seem to have maintained a common policy, as in the discussion of the location of the trial, and the ancillary issues that sprang from this. Kelsey infers 'serious differences of opinion' among the commissioners concerning the trial venue: should it be at Westminster, in full public view, or a more private process at Windsor, maximizing opportunities for behind-the-scenes manoeuvre? His analysis overstates the disagreements among the commissioners,[135] but the resolution of the issue pretty clearly displays the army's position. On 10 January, the commissioners appointed a small committee, none of them soldiers, to consider 'all circumstances' concerning the king's trial.[136] They appear to have met the next day, but found the determination of the place of the trial 'a businesse of great weight' and so put it off.[137] After their report to their colleagues on the 12th, their committee, reinforced with seven new members, was ordered to reconsider the question, and next day their preference for Westminster Hall was reported

[132] Whitelocke, *Memorials*, II, p. 480.

[133] There are at least five such documents: (1) *The resolution of his excellency the Lord General* (14 Dec. 1648) – a spoof, in which the 'dangerous Articles of Impeachment against the King' are taken from the works of William Prynne; (2) *Heads of the charge against the king, drawn up by the generall councell of the armie* (24 Dec. 1648) – Gentles, followed by David Farr, has argued that this is 'an Ireton document': its appearance and publication history do not suggest that it has any official provenance, and it is largely a cut-and-paste job from the *Remonstrance* (Gentles, *New Model Army*, p. 300; Farr, *Henry Ireton*, pp. 185–6). There were two further 'Army' charges published on 29 Dec.; (3) *The charge of the army and counsel of war*; and (4) *Articles exhibited against the king*, both published on 29 Dec. The last of these spurious productions appears on 4 Jan., *The manner of the deposition of Charles Stewart*, p. 2.

[134] *Clarke papers*, ed. Firth, II, pp. 144–7; Whitelocke, *Memorials*, II, p. 485.

[135] Kelsey, 'Trial', pp. 594–7, befogs the issue by a complex discussion of the proclamation of the court's time and place of its first public meeting – formally announced as in the Painted Chamber. As busy men – MPs, officers, city officials – their preliminary meetings were bound to be held at Westminster. The actual venue of the trial was another matter, and, as Kelsey demonstrates from newsbook accounts, still thought to be an issue. The initial decision did not preclude, under the terms of the legislation, the opportunity to adjourn the court to another location.

[136] Muddiman, *Trial*, pp. 199–201.

[137] *The Moderate Intelligencer*, 200 (11–18 Jan. 1648), p. [1838]. Dillingham writes this as an account of a full meeting of the commissioners. But his date, 11 Jan., and the nature of the issue suggest a report of the sub-committee's deliberations.

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and accepted at the plenary session of the commissioners. The seven new members consisted of one radical MP, one leader of the city revolutionaries, and five army officers – Sir Hadress Waller, Edward Whalley, Harrison, Cromwell and Richard Deane. The necessary alterations to Westminster Hall were specified, a committee appointed to supervise them, and work began on the transformation of the space on 16 January, before the legislation to adjourn the Hilary term had been passed.[138] The attempt by the Lords, with the timid connivance of Whitelocke and Widdrington, to delay the issue of the writs adjourning the term by refusing to seal them, and thus provoke a constitutional discussion, was simply bulldozed aside.[139]

We are now in a position to tackle the last 'anomaly' to which Kelsey attributes significance in his revisionist account. Why was the trial spun-out? Why was the king given multiple opportunities to plead? Does this indicate the profound reluctance of his judges to proceed to execution, and their hopes that, even at this ultimate moment, negotiations might be resurrected? Such a hope may have been held by a few of the judges, and the army may have been sensitive to the need to keep them on side for as long as possible. But the essential issue is the army's commitment to a full-blown trial, in which Charles's crimes would be exposed in the full glare of publicity and justice seen to be done, with maximum propaganda potential. This was the line taken by the army's allies, civilians, and soldiers, in their petitions affirming their enthusiasm for, and their 'full complyance' with, the *Remonstrance* and for the subsequent political developments, 'that mighty work'.[140] It was for this reason that elaborate arrangements were made for the thorough reporting of the trial.[141] The king's refusal to plead disappointed these hopes. It resulted in the multiple attempts to persuade the king to play the role assigned for him. Failing that, it led to the attempt to get the evidence of Charles's guilt into the public domain. For Kelsey, the proceedings on 24 and 25 January, when the witnesses against the king were examined, are simply a further attempt to delay the trial, and are indicative of serious uncertainties and misgivings among the judges as to the way forward in the face of Charles's intransigence. But the committee charged with responsibility for preparing the evidence does not easily configure as the 'milk-toast judges', who, according to Kelsey 'dawdled through' the evidence.[142] It was dominated by a solid wedge of eleven colonels from the council of the army, and, of the five MPs joined with them, only

[138] *Perfect occurrences of every daie iournall in parliament*, 107 (12–19 Jan. 1649), p. 802.

[139] *CJ*, VI, pp. 119, 121, 122; *LJ*, X, p. 646; *Perfect occurrences of every daie iournall in parliament*, 107 (12–19 Jan. 1649), pp. 802–3, 804; *A perfect diurnall of some passages in parliament*, 288 (15–22 Jan.), p. 2302.

[140] *The Moderate*, 30, p. [293], petition from Worcestershire, received 25 Jan.; Rushworth, *Historical collections*, VII, p. 1395, petition from North Wales, received 19 Jan. And see David Scott's telling analysis of the petitions from the northern counties: 'Motives for king-killing', in Peacey, ed., *The regicides and the execution of Charles I*, pp. 148–50.

[141] Jason Peacey, 'Reporting a revolution: a failed propaganda campaign', in Peacey, ed., *The regicides and the execution of Charles I*, pp. 161–80, at p. 162.

[142] Kelsey, 'Death', pp. 744, 747.

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two were clearly associated with the inchoate policies of moderation and compromise.[143]

VII

Kelsey has produced a compelling, holistic account of the two-month period that culminated in the execution of the king. He builds creatively on the work of other scholars to show that the removal of the king was recognized as dangerous, and to emphasize that for three weeks or more after the army's eruption at Westminster, attempts were still being made to persuade Charles to accede to a limited constitutional role. But he fundamentally transcends current scholarship in his suggestion that the wheeling and dealing continued during the trial, and that the trial was itself a key element in that continued process of negotiation. His argument is threefold. That if the king recognized the right of the court to try him, he would tacitly acknowledge the sovereignty of the Commons, and would 'in effect … have conceded the abolition of his own negative voice'; that he could then have been reintegrated into the constitutional structure with a limited, largely formal role, a 'puppet king'; and that monarchy would survive, but in a 'radically attenuated form'. This is powerful and original.[144]

But I do not believe that it is right. There is nothing to support the existence of an organized party in the Commons or the High Court whose members were committed to saving the king, and much to refute it – both the legislation establishing the tribunal and the formal charges that its members devised against Charles assume that his guilt is 'notorious'. The evidence rehearsed by Kelsey and his predecessors to prove attempts to negotiate with the king after Pride's Purge is opaque. It is an unstable amalgam of the wishful thinking of ill-informed royalist commentators and the fears of radicals that the march to justice might be interrupted. Both these strands take their inspiration from Cromwell's manoeuvres designed to keep up a facade of moderation and potential compromise, essential once the army had decided to co-operate with its uneasy supporters in the Commons who survived the purge. And the delays in bringing the king to trial and the multiple opportunities to plead that were offered to Charles, which Kelsey sees as supporting his hypothesis, may have a similar origin. Cromwell saw the need to hold together as broad a consensus as possible behind the trial option. Charles should be convicted in an open forum and the public view; justice should not go by default.

The traditional understanding of the role of the army – its own understanding, and that of those who refused to participate in the trial – is also more compelling than Kelsey's alternative, in which the grandees are prepared to negotiate desperately with the king to secure some kind of monarchical settlement. The army was dedicated to the principles of the *Remonstrance*, 'that the Person of the King may and shall be proceeded against in away of Justice for the blood spilt'; they

[143] Muddiman, *Trial*, p. 213. [144] Kelsey, 'Trial', pp. 586, 592.

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believed that if they failed to act, like Saul with Agag, God would punish them. When Downes made his timorous and isolated attempt to interrupt the process of sentencing, Cromwell crushed him: Charles was 'the hardest hearted man upon the earth'; an attempt to back off from judgement would result only in 'a mutiny in the army and the cutting of throats'.[145] The traditional account of Charles's performance at the trial is also much to be preferred to Kelsey's suggestion that the king was a gambler who, presented with a strong hand by the timidity and uncertainty of his judges, was too confident and overplayed it. Once the trial began, Charles knew that he was doomed. He refused to give his enemies the pleasure of rehearsing his manifold evils in a formal trial. He sought to represent himself as the defender of the rights of his people against tyranny. It was a command performance of great courage and efficacy.

[145] Downes, *True and humble representation.*

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