

The Court of Star Chamber — A Tudor Creation?

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The various references derived from the Court of Star Chamber¹ which have crept into the idiom of the English language are generally familiar to everyone as conveying a meaning of arbitrary, secretly exercised, and cruel power. We find, for instance, in a typical modern dictionary that the phrase "star-chamber," also used attributively as "star-chamber methods," implies "any tribunal, committee, or the like which proceeds by arbitrary or unfair methods."² The question which first interested me is the general one of what was this Court of Star Chamber which, although abolished by the Long Parliament in 1641, has managed to convey such odious connotations through a period of some three centuries. Would such a court have lasted through nearly one-hundred and twenty years of Tudor rule if it were, indeed, the unpopular and arbitrary creature of the king's prerogative that is pictured for us by the legislation which abolished it³ and by the writers of many standard works on English history? Surely, if the court were all that it was alleged to be, the Tudors would have managed to find something more refined and less obvious—they were never unconscious to the value and power of popular support and they were ingenious in the use of popular institutions.

The picture of the Court of Star Chamber which is apt to form in one's mind after a perusal of the standard textbook employed in a survey of English history is exemplified by the work of Albion and Hall.⁴ The reader gains the impression that the court was established by Henry VII to bring order out of chaos and to help secure the first Tudor on his rather shaky throne. One it had succeeded in its immediate purpose the court is alleged to have settled down into partial oblivion until it was revived by Cardinal Wolsey and augmented for his purposes until it altered into an instrument of tyranny hardly recognizable from its early years and, working only for the Stuarts, it served only to bring in money for the royal coffers and to cut off the ears, slit the noses, and brand the cheeks of the king's opponents, either civil or ecclesiastical.⁵ The major point of this short paper will be to explore only one of the half-truths thus presented; i. e., to attempt to demonstrate that the Court of Star Chamber was not "set up [as] a special tribunal" or "established by the Tudors and given extensive powers unfettered by the common law procedure."⁶

For our purpose here it will be necessary to set the stage by tracing the development of the Court of Star Chamber in the days before the Tudors came to the throne of England, and what came to be known as the Court of Star Chamber was not established by the statute of 3 Henry VII, c. 1 in 1487 as was generally assumed during the seventeenth and eighteenth centuries.

The three main courts of English judicial procedure—the King's Bench, Common Pleas, and Exchequer—had become established, to all intent and purpose, during the reigns of Henry III and Edward I. Although these courts had become relatively formalized, each with its own set of judges and a general area of jurisdiction frequently overlapping with the others, there existed in the King's Council a "residuary royal justice" in the tradition of the original and ancient *Curia Regis*.⁷ As time went on the Council—still the King's Council and representing the remains of the old *Curia Regis*—continued to possess the power to provide justice when the other courts failed to do so and it also possessed a jurisdiction of first instance in that it could entertain whatever causes, civil or criminal, that the king might evoke before it. During the course of the fourteenth century there developed a tribunal technically known as the "King in Parliament" which was really the House of Lords, and which appeared as the highest tribunal in the land. This aspect of the king and his assembly of prelates and barons came to be the tribunal for correcting mistakes committed by the

lower courts but beside it there is detectable another, though more shadowy, tribunal with indefinitely wide jurisdiction known as the "King in Council," and this is not so clearly differentiated from the "King in Parliament" as to make analysis very easy.'

The fact that the Council had undergone a series of judicial exfoliations in the process of giving birth to the various other courts which grew out of it did not prevent it from remaining, in fact, a body of indefinite powers and unrestricted procedures nor had the Council become "exhausted in its ability to create" any further judicial offspring.¹⁰ That the Council continued to exercise these powers is easily enough explained. The system of regular courts did a good job of covering the ground and in them the common law was highly developed and well administered, but major defects remained. For one thing, there was the gradual crystallization of the law in the sense that during the fifteenth century it was difficult to provide any new remedies for new problems except by the intervention of parliamentary statute, and this process was uncommon and inflexible. Also, and most important, common law sometimes worked against the true interests of justice in novel cases since the issuance of new writs valid in the courts had ceased, thus leaving no remedy for those whose troubles did not fall within the recognized forms of action.¹¹ As Maitland put it, "Where there is no remedy there is no wrong."¹² and this is an inversion of the then slowly developing principle that no wrong should be without its remedy. In other words, the common law courts and the High Court of Parliament came to represent the usual and most general operations of justice, but there still resided in the king and his group of regular councillors the old and established concept of the crown as the fountain-head of all justice.

The judicial aspect of the "King in Council" had to forego its powers of correcting the errors of lower courts as early as 1365 when the Court of Common Pleas refused to accept a reversal of its judgment on the ground that the Council did not have this jurisdiction.¹³ The remaining powers of original jurisdiction, both civil and criminal, which it continued to exercise also became the subject of sporadic attack from parliament as, for example, in certain statutes of 1331, 1351, 1354, and 1368.¹⁴ These enactments, which were restrictive rather than abolitionist, had little immediate effect on the Council and the first two Lancastrian kings kept receiving petitions from the commons protesting the judicial jurisdiction of the Council but these were refused the royal assent. The more or less constitutional rule of the Lancastrians kept the powers of the Council from being used too oppressively and the parliament gradually tended to cease its protests although the above series of statutes became ignored rather than repealed. These were later to be resurrected in the seventeenth century struggle between the Stuarts and parliament since English law, neither then nor now, recognizes any such thing as an obsolete statute.

During this same period, the fourteenth century, we note, paradoxically, other enactments which tended to support the judicial aspect of the "King in Council." In 1351 the Statutes of Provisors and Praemunire began a series of important anti-Roman legislation and in 1363 the parliament ordained that offenses against these statutes were to be answered before the Council and punished by the Council.¹⁵ This would seem to indicate the sentiment of the time in desiring that justice concerning these laws be done promptly and without the hedging formality of the regular courts. Similar sentiments may be deduced from an act of 1388 concerning the Statute of Laborers in which justices who failed to hold their quarterly sessions were to be punished by the Council.¹⁶

Skipping into the fifteenth century we must consider one more act which illustrates the appeal of a tribunal not chained to a formalized procedure and which seems to point out the admission by parliament that the Council did have some areas of jurisdiction in which it could, and should

operate. Following Jack Cade's Rebellion in 1453 and coincident with English reverses in France the parliament granted by statute the validity of the Council's jurisdiction over persons indicted for riots, oppressions, and extortions and went even beyond this in decreeing severe punishment for contempt of writs issued by the Council which covered such cases." A marked similarity in scope will be noted between this act of 1453 and the later act of 3 Henry VII, c. 1 which was so long presumed to have established the Court of Star Chamber in 1487.

In general, then, by the beginning of the Tudor rule in 1485 it would appear that parliament and the common law advocates were jealous of the judicial scope of the Council and tried, on the one hand, to restrict this jurisdiction while, on the other hand, they waved the Council on in dealing with matters considered to be of grave and immediate importance, and they recognized that instances of "too great might on the one side, too great unmight on the other, or . . . other reasonable cause" could be, properly, dealt with by the Council. At the time of the accession of Henry VII he found himself with a Council which possessed a very unlimited judicial authority in matters both civil and criminal and, back of that, various unrepealed parliamentary statutes which both restricted and recognized this conciliar jurisdiction. It is not easy to decide whether Henry's Council had judicial functions which were legal or not, but this is beside our present purpose and it is clear enough that the Council was exercising this jurisdiction and acceptance of the fact was widespread.

Following the death of Edward IV the realm was in a turmoil and after Bosworth Field the surviving barons were trying, as always, to regain and augment their ancient rights and privileges in any way they could. In short, by 1487, when the so-called Star Chamber Act was passed, conditions were quite similar to those already mentioned during the time of Henry VI in 1433 when the act specifically recognizing certain judicial actions by the Council was made. After setting forth that certain offenses and disorders are entirely too common—namely, the practice of livery and maintenance by the nobility, misconduct and malfeasance of sheriffs, perjury, subornation of juries, riots, and unlawful assemblies—the act of 1487 goes on to empower certain members of the Council, in conjunction with others, to summon, judge, and punish persons accused of involvement in these offenses. Specifically the Council members so designated were the Chancellor, the Treasurer, and Keeper of the Privy Seal—or two of them, at least—who were to call in conjunction with them a bishop and a temporal lord, who were able to be members of the Council, plus the two Chief Justices, or substitute justices in their places. The justices are not specified as being members of the Council.

The great controversy which was to rage over the legality of the Court of Star Chamber a hundred years later centered mainly on the points that the court had been created by this statute and had habitually exceeded the powers given it by this statute and exercised those powers through judgments handed down by persons not specified by the statute. The proponents of the Court of Star Chamber argued, on the other hand, that this statute of 1487 was not the real foundation of the court, but that the court was merely exercising an ancient jurisdiction inherent in the concept of the "King in Council" and it turns out that they were right all along. When, however, the court was abolished in 1641 the former and erroneous opinion rode in with the Roundheads and was enacted into law by the statute of 16 Charles I, c. 10.

The 1487 act of Henry VII has come down to us in the Parliament Rolls with the title "Pro Camera Stellata" along with the subtitle "An Act Giving the Court of Star Chamber Authority to Punish Divers Misdemeanors"¹⁹ and yet nowhere in the act do the words Star Chamber appear. Neither do they appear in a judicial interpretation of the act in 1493²⁰ nor in the act of Henry VIII in 1529²¹ which praised and amended that of 1487.

Furthermore, when Caxton printed the statutes of Henry VII's first three parliaments he gave this act the title "Giving of Liveries."²³ These marginal titles, later printed and so instrumental in effecting the long lived confusion between the Court of Star Chamber and the Council committee established by the act, have been the subject of research by A. F. Pollard whose findings are discussed in the *English Historical Review*.²³ It is adequately demonstrated that these titles were an interpolation in later ink and it was not until 1563 that any statute appears which definitely connected the Court of Star Chamber with the act of 1487.²⁴ It may be positively stated that the confusion between the two could not have preceded 1533.²⁵ If, then, the act of 1487 was meant to establish a court of star chamber, or even to establish any connection with the Star Chamber as a meeting place of the Council, this fact has been most effectively concealed by the contemporary legal sources.

It may be clearly shown that the Council was accustomed to meet in the Star Chamber before 1487—as early, in fact, as 1453²⁶—and it is largely because the Council met in the Star Chamber that some, at least, of the difficulties arise which surround the Court of Star Chamber. When we recognize the great part played by the Council in the pre-1487 English government we have in hand the really important key to this problem of inconsistencies and dual identity. That is to say, the powers seemingly exercised by the Court of Star Chamber by virtue of the act of 1487 are almost indistinguishable from those which the Council had always possessed and continued to exercise.

Let us ask ourselves two questions at this point about the act of 1487. Why would Henry VII and his advisors, in a time of disorder and unrest, obtain legislation which might actually restrict the area of operations of the Council? Why set up a small committee of members of the Council to deal with specific offenses which, while serious, were few in number? Again, if we study the act, we see that it does not in any way restrict the powers of the Council in favor of the Lord Chancellor and his half-dozen colleagues, nor does the act in any way limit the jurisdiction of the Council proper to those offences mentioned. In short, the act merely sets up, legally and in a clear manner, that certain offenses can be dealt with by certain members of the Council assisted by certain judges. It does not say anywhere that the Council has lost, sacrificed, or given up any rights, powers, or areas of jurisdiction. Then, too, while the act empowered seven members of the Council to investigate and hear certain specified causes there was no novelty in the work to be done, nor were these seven councillors given any novel powers. Sanction was given by the parliament to the customary conciliar procedure of examining defendants by oath and of issuing writs and summons by privy seal—that is to say, a practice common and disliked during the Middle Ages had added to it the force of statute law.

Henry VII was not creating out of nowhere a new court with a new jurisdiction. The rather large and vague body of men who formed Henry's whole Council were inclined to ignore such laws against livery, maintenance, oppression and the like and might not be expected to enforce these against themselves, or even others. By handing auxiliary powers in these matters to a small body of permanent officials—the whole Council probably numbered around fifty²⁷—Henry made it more certain that such laws would be enforced, and even among his own advisors.

The confusion of identity, then, would seem most reasonably to come at that point where the powers and functions of the tribunal of the 1487 act were overlapped by ancient ones of the Royal Council. The association of this committee of 1487 with the whole Council at a time of greatly increasing conciliar activity should make it plain enough to us why the men of 1641 thought they were abolishing a court created for specific purposes in 1487, when actually they were dealing with an institution in-

famous in their eyes because it combined the features prescribed in the act of 1487 with other less desirable legacies of the Middle Ages.

The statute which abolished the court did so on the grounds that it had habitually exceeded its statutory powers, not because it had hewed to the bounds set up in 1487, and because the judges associated with the court were not the ones mentioned in the act but were about any of the officials of the king who could qualify as members of the Council; only if they believed the Court of Star Chamber was established by that act can the wording of its abolition make sense.

The difficulties connected with a study of the Court of Star Chamber do not end with a realization of the fact that, once the committee's usefulness more or less ended with the accomplishment of its purposes, its powers tended to again fuse with those of the Council. The relationship of the Court of Star Chamber with the Council and with the later Privy Council is a subject in itself, but we have, I believe, examined sufficient evidence to answer the very general question initially posed; namely, what was the origin of Court of Star Chamber? Simply, too simply perhaps, it was nothing more nor less than "the King's Council sitting in the Star Chamber at Westminster and attending to conciliar and administrative business as well as judicial work, in accordance with the lack of specialization as to function then prevailing."²³

Further, it seems apparent that the old debate over the origin of the court should end and the opinion that the Court of Star Chamber was a special tribunal set up by Henry VII in 1487 can be regarded as dead by all but the writers of textbooks whose royalties are still coming in. In addition, it is no longer necessary to suppose that the 1487 act had any relevance to the Court of Star Chamber and the older, though often brilliant, attempts to integrate the two²⁴ need no longer confuse the student who notes the loose ends necessarily left hanging in mid-air. Whatever may or may not be said about the importance or significance of the Act "Pro Camera Stellata," it seems quite clear that it should not be spoken of as the origin of the Court of Star Chamber.

FOOTNOTES

¹For a more complete discussion of the origin of the Court of Star Chamber see Marvin M. Lomax, "The Court of Star Chamber under Henry VII and Henry VIII" (unpublished thesis, University of New Mexico, Albuquerque: 1964).

²*The New Century Dictionary*, ed. by H. G. Emery and K. G. Brewster. Vol. I (New York and London: D. Appleton-Century Co., 1936), p. 1827.

³Act of 16 Charles I, c. 10, cited by Rudolph Gneist, *The History of the English Constitution*, trans. by P. A. Ashworth (London: William Clowes and Sons, Ltd., 1891), p. 555. See also, *Statutes of the Realm*, Vol. V (ed. by the Record Commission, London: 1810-28), pp. 110-111.

⁴W. P. Hall and R. G. Albion, *A History of England and the British Empire* (New York: Ginn and Co., 1946).

⁵*Ibid.*, pp. 328, 340.

⁶*Ibid.*, p. 239.

⁷*Ibid.*, p. 315.

⁸C. P. Patterson, *The Administration of Justice in Great Britain* (Austin, Texas: 1936), p. 26.

⁹F. W. Maitland and F. C. Montague, *A Sketch of English Legal History* (New York and London: G. P. Putnam's Sons, 1915), p. 114.

¹⁰J. F. Baldwin, *The King's Council* (Oxford: the Clarendon Press, 1913), pp. 64-68.

¹¹F. W. Maitland, *Equity and the Forms of Action at Common Law* (Cambridge: the University Press, 1954), p. 303.

¹²*Ibid.*, p. 299.

¹³*Yearbooks of Edward III* (Rolls Series), Vol. III, 39 Edward III, f. 14 cited in F. W. Maitland, *The Constitutional History of England* (Cambridge: the University Press, 1926), p. 216.

¹⁴*Statutes of the Realm*, Vol. I, 5 Edward III, c. 9, p. 267; 25 Edward III, stat. 5, c. 4, p. 321; 28 Edward III, c. 3, p. 345; 42 Edward III, c. 3, p. 388.

¹⁵*Ibid.*, 38 Edward III, stat. 2, c. 2, pp. 386-87.

¹⁶*Ibid.*, II, 12 Richard II, c. 10, pp. 58-59.

¹⁷*Ibid.*, 31 Henry VI, c. 1, pp. 361-63.

¹⁸Sir Harris Nicholas, *Proceedings and Ordinance of the Privy Council*, IV, 61, cited by Maitland, *op. cit.*, p. 219.

¹⁹*Statutes of the Realm*, Vol. II, 3 Henry VII, c. 1, pp. 509-510.

²⁰A. F. Pollard, "Council, Star Chamber, and Privy Council under the Tudors," Part II, "The Star Chamber," *English Historical Review*, XXXVII (October, 1922), 520.

²¹*Statutes of the Realm*, Vol. III, 21 Henry VIII, c. 20, p. 304.

²²Cora Scofield, *A Study of the Court of Star Chamber* (Chicago: University of Chicago Press, 1900), p. 10.

²³*supra*, note 22.

²⁴*Statutes of the Realm*, 5 Elizabeth, c. 9, cited and discussed by J. R. Tanner, *Tudor Constitutional Documents, A.D. 1485-1603*, (London: Cambridge University Press, 1930), p. 250.

²⁵C. G. Bayne and W. H. Dunham (ed.), *Select Cases in the Council of Henry VII* (London: Selden Society, 1958), p. xxvii, cited by G. R. Elton, *The Tudor Constitution* (Cambridge: the University Press, 1962), p. 160, note 7.

²⁶E. R. Turner, *The Privy Council of England in the Seventeenth and Eighteenth Centuries, 1603-1784*, Vol. I (Baltimore: the Johns Hopkins Press, 1927), p. 36 citing *Patent Rolls*, 32 Henry VI, 20: *Paston Letters*, ed. Gairdner, i. 336.

²⁷G. R. Elton, *The Tudor Revolution in Government* (Cambridge: the University Press, 1959), p. 33, note 4.

²⁸Turner, *op. cit.*, p. 35.

²⁹I. S. Leadam, *Select Cases in the Court of Star Chamber*, Vol. I (London: Selden Society, 1903), pp. xxv seqq.