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Upon the death of Queen Elizabeth I in 1603, the lack of an heir born of the Tudor queen resulted in a succession crisis that stirred up "unresolved tensions about the place of the monarchy in the constitution" (Brooks 71). Regardless of whether or not the kingdom of England had reached a constitutional consensus, its new king, the Scottish King James—and, later, his son Charles I—held preconceived notions about their absolute authority as king: a belief that very little could limit their use of royal prerogative based on precedent of the past. If members of the English Parliament at the turn of the seventeenth century had thought that the succession crisis took a toll on their constitutional values, there was no anticipating the critical nature of events leading to the execution of King Charles I by order of Parliament a mere forty-six years after the death of Good Queen Bess.[1]

Repeated proroguing of parliaments, concern over absolute rule, the possibility of subverting the Protestant faith, and the illegality of the king's exploitation of his subjects for financial support forced the major political players of seventeenth-century England to consider the limits of absolute authority of the king over his subjects—particularly, whether or not there was historical precedent for Parliament as a representative body to question it. Ultimately, the constitutional crisis culminating in 1649 can be understood by examining the political, religious, and legal conflicts that arose during the reign of Charles I and the differences between Royalist and Parliamentarian perceptions of the ancient rights of royal prerogative and liberties of the subject through Parliament based on real or imagined precedents. The way in which the Parliamentarian side of this debate viewed the history of England's constitution—as an ancient set of ideals, used to justify their political agenda—did not simply stop at regicide. Although historians who look back at England's past know that such a thing never existed, it is important to understand

[1] "Good Queen Bess" was a nickname given to Elizabeth I by her subjects, suggesting that she committed no wrongs during her reign and ruled within the established laws of England. For a brief discussion on perceptions of the Tudor Queen, see Brooks 70 –71.

how subsequent generations continued to hold onto this belief in an immemorial common law. These precedents, no matter how convincing, are the reasons why nations that have built their governments and laws around the ideological framework of a constitution have idealized the Magna Carta as a symbolic representation of freedom in the face of tyranny. Thus, an examination of the context of the English Civil War is vital to understanding how these differing political, religious, and legal ideologies laid the foundation for the future of not only England's constitutional monarchy but also that of governing bodies around the world.

There are several perspectives from which historians can interpret the causes of the constitutional conflict between King Charles I and his subjects represented in Parliament. In his critical assessment of Revisionist history, specifically of the early Stuart period, Tim Harris recognizes the earlier Whig and Marxist perspectives that describe the English Civil War as an inevitability, the Revisionist movement that pushed back against such claims with a focus on a contemporaneous understanding of events, and Post-Revisionism, which sought to amalgamate the two (Harris 617–620). However, there seems to be a tendency within the historiography on this topic to focus on the existence of a disconnect between the major political players under the rule of the early Stuart monarchs with regards to their conflicting ideologies and understanding of the history of law in England. In The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century, John Pocock draws a similar conclusion about ideologies with the concept of immemorial law:

> The fact is that the common players … came to believe that the common law, and with it the constitution, had always been exactly what they were now, that they were immemorial: not merely that they were very old, or that they were the work of remote and mythical legislators, but that they were immemorial in the precise legal sense of dating from time beyond memory (36).

At the time, this concept of using the precedent of perceived immemorial or ancient law was an argument presented by seventeenth-century royalists and parliamentarian thinkers alike (Pocock 32). Harris argues that some Revisionists tend to highlight the prominent religious conflicts of the seventeenth century and largely disregard this lack of an ideological consensus, instead of viewing the constitutional crisis of the Civil War as a result of several societal factors (Harris 625). He asserts, "conflict led to the articulation of rival ideological positions [that] were already available within the way the English had conceptualized their constitution"

(Harris 222–223). In his examination of the depth of England's political crisis, Christopher W. Brooks explores the close relationship between political, religious, and legal matters of the early seventeenth century. He expresses that temporal and spiritual jurisdictions in England were, in the eyes of contemporaries, running parallel to each other (Brooks 123). Based on these historiographical perspectives, it was the opposing groups' lack of consensus about the appearance of these ideologies in governance of the state, in religious reform, and in legal proceedings that caused such widespread and multifaceted conflict.

In a chapter on the lingering myths surrounding the Magna Carta, Danny Danziger and John Gillingham note that the perceptions of Sir Edward Coke, one of the most notable lawyers and parliamentarians of early modern England, were often misguided, based as they were on the way he "emphasized the notion of the subordination of the Crown to the common law of England" (Danziger and Gillingham 270–271). Pocock's evaluation of Coke and his contemporaries shows their beliefs as a mere continuation of the medieval dependency on custom and *jus non scriptum*, or, in other words, unwritten laws (Pocock 37–38, 51). Despite the medieval tradition of seeing law as custom, even Coke's contemporary Sir Henry Spelman, who managed to distinguish that English law was more of a built-up combination of civil, canon, and common law, questioned Coke's methods: "I do marvel many times that my Lord Cooke, adorning our Law with so many flowers of Antiquity and foreign Learning; hath not (as I suppose) turned aside into this field, from whence so many roots of our Law, have of old been taken and transplanted" (103–104).[2] However, Pocock points out that most members in favour of Charles and the Crown held similar views, comparable to those of the opposition, because the immemorial law was "the nearly universal belief of Englishmen": "The case for the [Crown] was not that the king ruled as a sovereign and that there was no fundamental law, but that there was a fundamental law and that the king's prerogative formed part of it" (Pocock 54–55). This brings us back to Tim Harris' re-evaluation, which argues that the multifaceted causes of the English Civil War were a result of the implications of, and the ambiguities in, England's monarchical system being interpreted in numerous conflicting ways. Therefore, there were a number of issues that arose during the reign of Charles I that forced these ideological differences to the forefront of political, religious, and legal discourse. As

[2] Sir Henry Spelman, as quoted by Pocock.

a result, the major political players of the early seventeenth century were set on a path toward civil war and the murder of their king.

One of the major issues since the beginning of Charles I's reign was that he had continued his father's habit of proroguing Parliament on a regular basis—so much so that it concerned members of Parliament as a potentially fatal abuse of his prerogative (Earl of Clarendon 1:5).[3] During the last reigning years of James I and the early years of Charles I, the Crown had amassed an exorbitant amount of debt and, despite submitting requests for Supply, the king's parliaments were typically non-compliant (Scott 58–59; Earl of Clarendon 1:4–5). Charles reminded them that "Parliaments are altogether in my power for their calling, sitting and dissolution; therefore, as I find the fruits of them good or evil, they are to continue or not to be" (Scott 59). By the Parliament of 1629, Charles had already dissolved three others since the beginning of his reign, and the tension between him and those against his interpretation of royal prerogative in the House of Commons ultimately resulted in the period of Personal Rule—a time in England when he refused to hold Parliament and worked to raise funds without parliamentary consent (Earl of Clarendon 1:4–5). Harris states how it is possible to argue that just because the king had prorogued parliament in England, it did not mean that he was seeking to overthrow the institution entirely. The fact that he was willing to hold parliament in Scotland and Ireland during the Personal Rule suggests that "he was prepared to work through parliaments" as long as they were willing to comply (Harris 623).

As aforementioned, Charles was following in his father's footsteps, and therefore may have strongly associated himself with James I's opinion on the king's prerogative based on precedent and immemorial law as demonstrated in Scotland, where he had been king before succeeding to the English throne. In his True Law of Free Monarchies, James I asserts, "that the king is above the law, as both the author and giver of strength thereto, yet a good king will not only delight to rule his subjects by the law but even will conform himself in his own actions thereunto, always keeping that ground that the health of the commonwealth be his chief law." In order to prove his statements, he depends heavily on the concept of precedent based on kings from times long past who first established the rule of law among conquered peoples and continued to change it as they saw fit (James VI 3–4). As kings of England, rulers also saw themselves as bound to their coronation

[3] To prorogue a Parliament in England was to abruptly dissolve it mid-session.

oaths, which state that they must rule within the established laws of past kings, including those before the Norman Conquest of 1066 (Harris 624). With this in mind, it can be assumed that both Charles I and James I interpreted their dissolutions of parliaments as being within the right of the immemorial laws that govern the rule of an absolute monarch.

Even if some parliamentarians accepted that the monarch was absolute as sovereign of the state, their interpretation of immemorial laws would draw them to the conclusion that Parliament had the ability to ensure the king did not transgress what they saw as the limits to monarchical power. Jonathan Scott argues that proroguing parliament for an extended period of time was not unusual at all, but that "what was new … was government without [Parliament] as a matter of policy" (Scott 59). The Earl of Clarendon Sir Edward Hyde, a supporter of the Crown who eventually served under Charles II, retrospectively wrote about his concern regarding the state of affairs following the multiple dissolutions of Charles I's parliaments before the Personal Rule in his *History of the Rebellion*: "Here I cannot but let myself loose to say, that no man can shew me a source from whence these waters of bitterness we now taste have more probably flowed, than from this unseasonable, unskillful precipitate dissolution of Parliaments" (Earl of Clarendon 5). This statement itself questions whether or not there was historical precedent for the sort of disarray and dissent against the king following similar conflicts between the two legislative bodies. Those like Coke, who believed that Parliament was as old as England itself, were of the firm belief that, in times past, there "were *lawes* and *rules of Justice* devised, within the which (as within certaine Limits) the power of the governors should from henceforth be bounded" (Lambarde 5). In a work called *Archeion* (published in 1635), the Kentish barrister William Lambarde attempts to trace the history of representative government in England to the time of the Anglo-Saxons, when the Germans introduced the "tearmes, *Micel-Gemot*, *Witena-Gemot*, and *Ealrawitena-Gemot*; that is to say, … the *Meeting of the Wise Men*" (Brooks 85–86; Lambarde 243).

In the Laws of Alfred, it is possible to see this sort of consultation assembly in Int. 49.9, when Alfred the Great discusses his reliance on "the advice of my councillors" in the codification of his laws (Alfred 373). On the other hand, Sir Henry Spelman asserts that the origins of parliaments only go back as far as Henry II, because "the very class of freeholders which they represent could not exist in a strictly feudal society" (Pocock 122). Both opposing sides—that of the Crown and his royalists and that of parliamentarians like Coke—tended to think of the English political system as having been set through precedent in the past, but they dis-

agreed on whether the king's power to rule over his people originated from acting through Parliament or his own will. As we shall see, these conflicting ideological positions manifested in matters of religious and legal beliefs and, ultimately, managed to put even more distance between Charles and his people.

Parliamentarians like Sir Edward Coke were not only historicizing institutions like Parliament, but also the Protestant religion itself. In his report of a famous case, Coke asserted "that the Protestant Church of England had existed since the advent of Christianity in the country" and "that the Elizabethan Acts of Supremacy and Uniformity had merely declared the ancient laws of England" (Brooks 121). Jonathan Scott states that parliaments in the early seventeenth century saw themselves as the final barriers of protection between this so-called ancient faith and the encroachment of popery into the realm (Scott 143). Ever since King Henry VIII declared himself Head of the Church of England by act of Parliament at the beginning of the English Reformation, Protestant subjects expected their monarchs to be responsible for the defence of the "true religion" by supporting its ongoing reform away from popery—or, in the eyes of many, the return to its original state—and could be held accountable by the representative body if they failed to do so (Brooks 100). James Morice, an intellectual from the reign of Queen Elizabeth I, perceived kings before the Reformation as having "controlled patronage over the church" and it was figures like Thomas Beckett or Pope Innocent III who interrupted the tradition for King Henry II and King John, respectively (Brooks 100).

Looking to the Constitutions of Clarendon from the reign of Henry II (1154–1189), it is possible to see how contemporaries in the seventeenth century may have interpreted his control over ecclesiastical courts with those under secular law as an effort to defend immemorial spiritual and temporal law of the Protestant faith (Henry II 718–722). Those opposed to popery and the ceremonial nature of the Arminian faction in the Church—which eventually became Laudian reforms under Charles I—began to worry that the effects of the Counter-Reformation were reaching English shores when King James I focused on building a relationship with the Arminians who were not opposed to a bond with Spain through marriage (Harris 626; Scott 128-29). When it was clear that Charles would not take on the role of protecting the Protestant faith, Parliament used its perceived rights based on historical precedent as a representative body to reprove those who attempted "to extend or introduce Popery or Arminianism" (Beattie and Finlayson 51). Charles did not inherit a kingdom unified under one religious ideology, but rather a church with doctrinal ambiguities that were difficult to pin down (Kishlansky 126–127). However, in continuing to silence Parliament and support Archbishop Laud's

reforms, his attempts to contain the resulting religious conflict by amalgamating these different ideological perspectives within the English Church backfired, and extremist Protestant reformers within parliament would allow their fear of popery to parallel their constitutional struggles between themselves and the Crown (Harris 626–627).

As Brooks points out, the English Church's ongoing struggle with popery is reminiscent of the conflicting ideologies of the ancient constitution in matters of legal practice (Brooks 205). The *Five Knights' Case* of 1627 exemplifies how contradictory secular values of the king's prerogative and the liberties of Parliament could affect legal procedure and ultimately resulted in major conflicts that widened the distance between the king and his subjects. Having already dismissed Parliament in 1626 to suppress the opposition who were in favour of impeaching the Duke of Buckingham, Charles was desperate to raise enough funds to pay for his military campaigns and implemented his plans for his Forced Loan (167). Although there was originally little to no consequence for non-compliance, aside from appearing in front of the Privy Council and being forced to pay a fine, the broad scope of oppositional voices compelled Charles into action (167–168). As the Petition of Right suggests, the consequence for those who refused to pay this non-parliamentary levy involved being "imprisoned, confined, and sundry other ways molested and disquieted … against the laws and free customs of this realm" (Coke 48). Seventy-six men refused to pay the loan and the five squires who were arrested on the king's orders employed the writ of *habeas corpus* in an attempt to guarantee their release and argue against the circumstances.[4]

Parliament wholeheartedly agreed with the Five Knights and saw this as an infringement on the subjects' right to control their own property and to take advantage of the "due process of law," including the right to be judged by their peers for the charges laid against them (48–49). Christopher Brooks argues that one of the most significant statements explaining the ideological differences between the two political entities comes from Sir Francis Ashley, who had this to say in front of the House of Lords during his speech on the *Five Knights'Case*:

[4] *Habeas Corpus* was an extension of the clauses in the Magna Carta that protects a subject's right to legal due process. Writs of *Habeas Corpus* were the defence against unlawful imprisonment, allowing an individual to appear before a judge where they would be made aware of the charges laid against them and be given the chance to stand trial. For more, see Brooks 96–97 and especially 169–170 in relation to the *Five Knights'Case*.

> If the subject prevail, [he gains] liberty but loses the benefit of that state government without which a monarchy may too soon become an anarchy; or, if the state prevail, it gains absolute sovereignty but loses the subjects, not their subjection… but it loses the best part of them, which is their affections, whereby sovereignty is established and the crown firmly fixed on the crown firmly fixed on his royal head (Brooks 175).[5]

In his eyes, the case highlighted the precariousness of the English state and, no matter who won, it seemed as though it could result in irrevocable consequences.

The main conflict between the king and his people in this legal case was the result of misunderstanding as to whether or not his prerogative superseded the confines of common law based on past precedent. During the trial, the counsel for the Five Knights maintained the aforementioned belief in due process and habeas corpus as outlined in the laws of the land, but Attorney General Sir Robert Heath on behalf of the crown took the opposite view, in that it was truly a matter of the king's *absoluta potestas* (absolute power), or the irrefutable law of state (Brooks 170–171). Brooks points out that the legality of imprisonment without cause was also an issue for Elizabeth I, but she was remembered by Stuart contemporaries as having acted with just cause as a trusted sovereign who ruled within the law like her respected predecessors (171). Regardless of whether Charles was trusted, the judgment was delayed and imprisonment was allowed on the basis of Elizabeth's recent precedents of *absoluta potestas* and the legality of a king "'committing a subject without showing cause, for a convenient time'" (171– 172). Royalists believed that the king's prerogative had precedent and, although Charles' supporters made no particular reference to Henry I's Charter for Shire Courts, the king's predecessor's assertion points to the prerogative of the king, regardless of whether the shire and hundred courts from the Anglo-Saxon period were to continue: "For I myself, if ever I shall wish it, will cause them to be summoned at my own pleasure, if it be necessary for my royal interests" (Henry I, "Henry I's Charter for Shire Courts" 433). The Petition of Right ultimately became a rebuttal for those who disagreed with this and what they believed was Charles' presumptuous abuse of prerogative; it served as a reminder to the king of what they deemed to be the constitutional precedent set within the Magna Carta and thus force Charles to confirm certain chapters within that Charter.

With regard to the legality of the Five Knights' imprisonment, Coke cited

[5] Sir Francis Ashley as quoted by Brooks.

chapter 39 of "The Great Charter of the Liberties of England": "No free man shall be arrested or imprisoned or disseised or outlawed or exiled or in any way victimized, neither will we attack him or send anyone to attack him, except by the lawful judgment of his peers or by the law of the land" (Coke 48; Rothwell, "Magna Carta" 320). He confirms the precedent of these rights by referencing King Edward III and his Parliament's confirmation of the statute—something his predecessors had done to some capacity since the Magna Carta's conception (Coke 49). As a result of a similar political crisis over three centuries previous, in 1297 during the reign of Edward I, earls of the King of England's parliament brought forth their own remonstrances and called for the Confirmation of Charters "to have these same charters allowed in all their points in pleadings before them and in judgments—the great charter of liberties, that is, as common law…—for the betterment of [their] people" (Morris 306; Rothwell "Confirmation of Charters" 485). On 2 June 1628, Charles responded that "he willith that right be done according to the laws and customs of the realm" under the impression that he would not "'conclude' himself from committing or restraining a subject" on a case-by-case basis when his prerogative justified it (Coke 50; Brooks 176–77). However, he would soon discover, as Edward I had done over three hundred years prior, that "Any attempt to reinterpret [the Magna Carta's] contents in the Crown's favour, no matter how cogently argued, was bound to create a world of trouble" (Morris 316).

As previously mentioned, Pocock asserts that Coke and his contemporaries, both royalist and parliamentarian, attempted to derive authority from the common law by reconstructing historical precedents "having survived unchanged all changes of circumstance" (Pocock 37). However, this way of thinking was not new, and the differences in their interpretations began to stir trouble as soon as the political system, especially after the king's supposed infringement on the liberties of his subjects during the *Five Knights' Case*, became faulty in practice. If Coke so heavily depended on the fundamental law stated in chapter 39 to defend the right of *habeas corpus* and trial by jury, it is important to underline the sources of precedent that influenced those who penned the Magna Carta itself.

John W. Baldwin suggests that it is possible that John's barons in the early thirteenth-century interpreted the Anglo-Saxon state of law in the time of Edward the Confessor through mid-twelfth-century Latin writings in the Leges Edwardi Confessoris (Laws of Edward the Confessor), which state that "will, violence and force are not right … Right judgment should be done in the kingdom and should be held through the counsel of barons of its kingdom" (Baldwin 32–33).[6] However, he asserts that the more likely frame of reference would have been far less ancient

from the judicial reforms of John's own father, Henry II, as outlined in Glanville's *Treatise on the Laws and Customs of England*. In this particular document, the writ of novel disseisin—legal action for a plaintiff to reclaim his dispossessed land—was proposed as a measure to protect against "anyone therefore unjustly and without a judgment has dispossessed another of his freehold," whose disputes would be adjudicated by "twelve free and lawful men" (Glanville 475). Despite the potential lack of antiquarian precedent in the more recent sources, the fact that those laws of Edward the Confessor were consistently referenced in post-conquest legislation—especially by Henry, I who declared that "shire courts and hundred courts shall meet in the same places and at the same terms as they were wont to do in the time of King Edward, and not otherwise"—was enough to allow Coke and his contemporaries to "[derive their version of the common law's] authority from its having survived unchanged all changes of circumstance" (Henry I, "Henry I's Charter for Shire Courts" 433; Pocock 37). Just like the barons who drew on these precedents in response to King John becoming too involved in overseeing the law in his own courts, parliamentarians acted in a similar way in an attempt to oppose Charles I's tendency of trying cases like that of the *Five Knights' Case* and others in prerogative courts (Baldwin 'Due Process in Magna Carta' 34–35).

While these significant legal consequences for the common law from Charles' non-parliamentary taxation appeared to have been dealt with in the Petition of Right during the 1628 Parliament, Charles' ongoing collection of princely dues raised similar concerns about precedent for royal prerogative over the rights of Parliament. Despite the lack of parliamentary consent, Charles freely collected financial subsidies of tonnage and poundage from traders and merchants and continued to try those who refused to comply based on the fact that these duties and taxes had been awarded to the king for life since the fifteenth century. To him, that was precedent enough to justify their collection; the king dissolved parliament in response to their attempt to counteract this policy through their Protestation of the House of Commons in 1629—ultimately accusing "whoever shall counsel or advise the taking and levying of the subsidies" as being "a capital enemy to the Kingdom and Commonwealth" (Beattie and Finlayson 51) on the grounds that this was yet another infringement on their liberties outlined in Edward III's *Statutum*

[6] From *Leges Edwardi Confessoris* as quoted in English by Baldwin. The original Latin is as follows: "Voluntas vero et violentia et vis non est ius … Debet iudicium rectum in regno facere et iustitiam per consilium procerum regni sui tenere."

de Tallagio non concedendo (Rothwell, "Confirmation of Charters" 486–487) and the more recent Petition of Right (Coke 48). The king, in turn, used his Declaration to assert how the Crown had "permitted many of our high prerogatives to be debated" and accused them of being ungrateful by "[wasting] much time in such proceedings" when supply was so urgently needed to fund the defences of the realm. He made claims that the supply was put toward "payment of our fleet and army" so that "the narrow seas may be guarded, commerce maintained, and our kingdom secured from all foreign attempts" (Charles I "The King's Declaration Showing the Causes of the Late Dissolution" 10 March, 1629' 52–53). This vast difference in opinion on non-parliamentary taxes between Charles and his opposition in the 1629 Parliament caused a rift between the two; the disagreement was such a detriment to their political relationship that it eventually led to the period of Personal Rule, when he had foregone the confines to which he had been bound by an unbending and mistrusting House of Commons.

The Crown was in need of extra funds by 1629, but the debts that accumulated during the Personal Rule from exorbitant personal spending, the severity of threats from the Thirty Years' War, and the increase of the Dutch threat were immense (Kishlansky 120–121). As a result, Charles sought to exploit sources of revenue that were more clearly within the Crown's legal rights to collect by reintroducing ancient dues that were historically guaranteed to the monarch by precedent—even those that had fallen into disuse. Some of these included Ship Money, Forest Laws, and refusing knighthood at his coronation or the birth of his heirs (119–120). These "fiscal expedients" were based on a paper written in 1629 by Sir John Borough, the keeper of the records in the Tower, who outlined that "Edward I had exploited the royal forests and financed wars through the distraint of knighthood" (Brooks 193). As an even earlier example, William I (1066–1087) introduced the Norman concept of the New Forest Laws after the successful Conquest, and it was not until the reign of Henry III (1216–1272) that the Charter of the Forests in 1225 made the Forest Law limited in scope, but even then it fell within the king's prerogative to collect fines for any infractions (Henry I, "Henry I's Coronation Charter" 402; Rothwell "Confirmation of Charters" 488). Brooks suggests that the main explanation for these non-parliamentary taxes, especially the forest laws, was that they "were unquestionably outside, or completely apart from, the competence of the common law, set and enforced solely by the will of the king," and "although it is clear that some of [the defendants] consulted lawyers, it was quickly ruled that [they] could not have recourse to the common-law courts"

(Brooks 195–196). Even in his Personal Rule, Charles attempted to maintain a sense of legality by exploiting fines that had not been claimed since times outside of living memory. Regardless of his own precedent for exerting royal prerogative over Parliament, the opposing interpretations of such precedents in support of the liberty of the subject through Parliament provoked a similar reaction to some of his previous infringements on the chapters in the Magna Carta.

Charles may have been able to successfully exploit those fines, but as soon as he overstepped tradition with the way he collected Ship Money, his parliamentary critics began to voice their concerns. Just like the Forest Law, Ship Money was his princely right to collect from coastal towns in times of immediate danger so that he could protect the British Isles via naval forces. Elizabeth I had done the same with little to no protest, but, as previously mentioned, contemporaries imagined her to have done so within the confines of the law. Charles and his council, on the other hand, devised an extension of the lawful tax to include inland areas during the 1620s and decided to implement it across the country on the basis of emergency during the Personal Rule, when he had to raise funds without the help of Parliament (Brooks 201). However, Brooks observes that the Crown's inability to pay debts made it much easier for contemporaries to distinguish between his asking permission to finance personal assets as opposed to assets gained for the common good of the realm (Brooks 192). Moreover, it was also difficult to determine what exactly constituted an imminent danger worthy of this tax and Oliver St John believed that "the circumstances of the 1630s did not amount to a state of war … including the obvious fact that the courts had not been forced to shut" (Brooks 204). Calling this bluff, members of legal councils for those who refused to pay argued that it was a breach of both the Magna Carta and the Petition of Right, which stated "that from thenceforth no person shall be compelled to make any loans to the King against his will" (Brooks 203; Coke 48). Speaking in defence of the king, Attorney General Bankes appealed not only to precedents for royal prerogative from the Anglo-Saxon period, but also the laws of God and nature to justify Charles' divine right to absolute power (Brooks 205-206). While the defence of the subjects concluded that these non-parliamentary taxes infringed their rights within the Magna Carta and the Petition of Right, which in their eyes represented an ancient common law, the Crown argued that it was for the very same reason that they had the right to exploit those taxes in the first place.

Through the examination of the lack of ideological consensus between the Crown and his subjects through Parliament, one may see how the constitutional crisis of 1649 was the result of these and other political, religious, and legal

conflicts leading to, lasting through, and continuing after the English Civil War. Repeated proroguing of Parliaments forced the major political players to consider the limits of the king's absolute authority and whether there was historical precedent for Parliament as a representative body to question it. Concerns over absolutist rule and the possibility of popery subverting the Protestant faith forced even more conflicting ideologies to the surface and resulted in a search for precedent to protect the recent advances brought by the Reformation. Finally, regardless of a nearly universal consensus in the antiquity of the English common law, this was not enough to avoid conflicting opinions on how law was practised in order for the king to exploit his subjects for financial gain. Ultimately, when it came to the practice of governing the state, these differing perceptions of the ancient rights of royal prerogative and liberties of the subject through Parliament were too much for the established English constitutional system to bear. Regardless of their validity, these precedents—bolstered by documents like the Magna Carta and the Petition of Right—would continue to influence the development of constitutional philosophies and practices beyond the events described in this paper. Moving forward, it is important to remember that history—no matter how long ago—can be a powerful tool in shaping the future.

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