



VINTAGE

# THE TYRANNICIDE BRIEF

GEOFFREY ROBERTSON

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## About the Book

Charles I waged civil wars that cost one in ten Englishmen their lives. But in 1649 parliament was hard put to find a lawyer with the skill and daring to prosecute a King who was above the law: in the end the man they briefed was the radical barrister, John Cooke.

Cooke was a plebeian, son of a poor farmer, but he had the courage to bring the King's trial to its dramatic conclusion: the English republic. Cromwell appointed him as a reforming Chief Justice in Ireland, but in 1660 he was dragged back to the Old Bailey, tried and brutally executed.

John Cooke was the bravest of barristers, who risked his own life to make tyranny a crime. He originated the right to silence, the 'cab rank' rule of advocacy and the duty to act free-of-charge for the poor. He conducted the first trial of a Head of State for waging war on his own people – a forerunner of the prosecutions of Pinochet, Milošević and Saddam Hussein, and a lasting inspiration to the modern world.

## About the Author

Geoffrey Robertson QC is a leading human rights lawyer and a UN war-crimes judge. He has been counsel in many notable Old Bailey trials, has defended hundreds of men facing death sentences in the Caribbean, and has won landmark rulings on civil liberty from the highest courts in Britain, Europe and the Commonwealth. He was involved with cases against General Pinochet and Hastings Banda, and in the training of judges who will try Saddam Hussein. His book *Crimes Against Humanity* has been an inspiration for the global justice movement, and he is the author of an acclaimed memoir, *The Justice Game*, and the textbook *Media Law*. He is married to Kathy Lette: they live with their two children in London. Geoffrey Robertson is Head of Doughty Street Chambers, a Master of the Middle Temple, a Recorder and visiting professor at Queen Mary College, University of London.

ALSO BY GEOFFREY ROBERTSON

*Reluctant Judas*

*Obscenity*

*People Against the Press*

*Geoffrey Robertson's Hypotheticals (Vols. I & II)*

*Media Law*

*Does Dracula Have Aids?*

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## *Chronology*

1599	Birth of Oliver Cromwell
1600	Birth of Charles Stuart
1603	Death of Elizabeth I. James VI of Scotland accepts invitation to reign as James I.
1605	Gunpowder Plot
1608	Birth of John Cooke
1618	Execution of Sir Walter Raleigh
1621–4	Cooke attends Wadham College, Oxford
1624–31	Cooke studies at Gray's Inn
1625	Death of James I. Charles I crowned King of England, Scotland and Ireland. Cooke enrolled as a student at Gray's Inn.
1627	The <i>Five Knights Case</i>
1628	Assassination of Buckingham. The Petition of Right.
1629–40	Personal rule by Charles I, without Parliament
1630	<i>Sir John Eliot's case</i>
1631	Cooke admitted as barrister of Gray's Inn
1633	William Laud appointed Archbishop of

## Canterbury

- 1634 Cooke admitted to King's Inn, Dublin. Joins administration of Sir Thomas Wentworth.
- 1637 Prynne, Bastwick and Burton mutilated and jailed indefinitely by the Star Chamber  
*The Ship Money Case*
- 1638 John Lilburne jailed by the Star Chamber  
Scottish National Covenant opened for signature, Grayfriars Kirk
- 1640 The Short Parliament (April/May)  
Second Bishop's War (July–September)

## Opening of the Long Parliament (November)

- 1641 March Strafford's trial  
July Court of Star Chamber abolished  
November Rebellion in Ireland: slaughter of Protestants  
December Grand Remonstrance
- 1642 4 January Charles attempts to arrest Pym and other MPs  
10 January The King flees London  
15 January Parliament establishes judicial independence

	February	Militia Bill becomes law without royal assent
	June	The Nineteen Propositions, and the King's answer
	22 August	Charles declares war on Parliament by raising his standard outside Nottingham Castle
	October	Battle of Edgehill (a draw)
1643	June	Death of John Hampden
	July	Fall of Bristol (Royalist victory)
	September	Parliamentary alliance with Scottish covenanters
	October	Battle of Winceby (Cromwell's first victory)
	December	Death of John Pym
1644	January	Scots army enters England
	July	Battle of Marston Moor (parliamentary victory)
1645	January	Execution of Laud
	April	Self-denying Ordinance (Cromwell excepted). Fairfax made commander-in-chief of the New Model Army.

	June	Battle of Naseby (definitive parliamentary victory)
	September	Siege of Basing House
1646	6 February	Publication of <i>Vindication of the Professors and Profession of Law</i>
	12 February	Cooke and Bradshawe represent John Lilburne
	April–May	King surrenders to Scots at Newark
	July	The Newcastle propositions
	August	The King's first answers to the propositions
	September	Cooke marries Frances Cutler, St Olave's Church, London
	October	House of Commons resolves to maintain New Model Army for only six months
1647	January	Scots sell the King to Parliament and withdraw
	February	The King at Holmby House <i>What the Independents Will Have</i>
	May	Parliament moves to disband the Army
	June	Fairfax's regiment refuses to disband; Joyce takes the King into army custody
	August	Army enters London. <i>A Union of Hearts.</i>

	September	Independents secure city government
	October	Putney debates
	November	King escapes from Hampton Court, detained on Isle of Wight (Carisbrooke Castle) Cork Bush Field mutiny
	December	‘Engagement’ between the King and Scots
1648	January	Vote of No Addresses
	February	<i>The Poor Man’s Case</i>
	July	Second Civil War: Scots army under Hamilton invades England
	August	Cromwell vanquishes Scots; Hamilton captured Royalists surrender to Fairfax at Colchester
	September	Parliament begins negotiations with the King at Newport
	October	Murder of Colonel Rainborough; Treaty of Westphalia ends the Thirty Years War on the continent.
	November	<i>Remonstrance</i> of the army
	1 December	The King is moved to Hurst Castle
	5 December	Parliament rejects <i>Remonstrance</i> ,

	determines to treat with the King
6 December	Pride's Purge
16 December	Army Council orders that the King be brought to Windsor
23 December	Commons passes Ordinance for trial of the King
1649 1 January	House of Lords rejects Ordinance
6 January	Commons passes Ordinance, this time as an Act of Parliament
8 January (Monday)	Judges of the High Court convene in the Painted Chamber
10 January (Wednesday)	High Court appoints Bradshawe as President, Steel, Cooke, Dorislaus and Aske as prosecutors
15 January (Monday)	Cooke produces first draft of charge against the King
20 January (Saturday)	Cooke signs and presents charge at the opening of the King's trial in Westminster Hall
22 January (Monday)	Second session of trial
23 January (Tuesday)	Third session of trial

24–25 January	Cooke examines witnesses
27 January (Saturday)	Charles I sentenced to death.
30 January	Execution of Charles I
9 February	King's burial at Windsor Castle <i>King Charles: His Case</i> . Also the King's Book ( <i>Eikon Basilke</i> ) Opening of trials of Duke of Hamilton and other courtiers
13 February	John Milton, <i>The Tenure of King and Magistrates</i> , <i>Mercurius Elencticus</i> No. 56
9 March	Hamilton, Holland and Capel executed
17 March	Act abolishing the office of King
19 March	Act abolishing the House of Lords
2 May	Assassination of Dorislaus
19 May	Act declaring England to be a Commonwealth
May	Leveller revolt in Army put down at Burford
June	Cooke appointed Master of St Cross Hospital
August–October	Cromwell's campaign in Ireland: storming of Drogheda and Wexford
24–26 October	Trial of John Lilburne



1650	1–5 January	John and Frances Cooke survive the storm at sea. <i>A True Relation of the Sea Voyage</i> .
	March	Cooke appointed Chief Justice of Munster
	May	Cromwell leaves Ireland; Henry Ireton appointed Lord Deputy
	June	Fairfax resigns; Cromwell appointed Lord General
	3 September	Cromwell defeats Scots at Dunbar
1651	3 September	Cromwell defeats Charles II at Worcester
	November	Death of Henry Ireton
1652	January	Committee on law reform, chaired by Matthew Hale
	February	<i>Monarchy No Creature of God's Making</i> .
	July	Settlement of Ireland Act
	6 August	Charles II offers amnesty to all, excepting Cromwell, Bradshawe and Cooke
1653	April	Cromwell dissolves the Rump

	July	Barebone's Parliament
	August	Lilburne's last trial
	September	Irish Satisfaction Act: Cooke given lands in Cork in lieu of pension
	December	Instrument of Government: Cromwell installed as Lord Protector
1654		Fleetwood made Lord Deputy in Ireland Opening of Protectorate Parliament
1655	January	Cooke made Recorder of Waterford
	June	Council appoints Cooke as judge of the Upper Bench
	August	Cooke writes to Fleetwood resigning judicial commission to the Upper Bench
	September	Cromwell appoints major-generals to rule counties
1656	August	Ludlow, Bradshawe and Vane carpeted by Council of State for opposing Protectorate
1657	April	Cooke returns to England Cromwell refuses the crown
	November	Henry Cromwell appointed Lord Deputy

of Ireland

1658	September	Death of Cromwell; Richard becomes Lord Protector
1659	April	Army dissolves Protectorate Parliament
	May	Richard Cromwell resigns 'Rump' of Long Parliament reconvenes
	July	Ludlow appointed commander-in-chief for Ireland
	August	Royalist rising led by Sir George Booth, put down by Lambert
	October	Death of Bradshawe Army expels Rump and sets up Committee of Safety
	26 December	Rump returns
1660	1 January	Monck enters England
	10 February	First report of Cooke's arrest
	11 February	'Roasting of the Rump': Londoners celebrate after Monck's meeting with City Council
	21 February	Return of MPs 'secluded' by Pride's Purge
	March	Long Parliament dissolves for elections

April	Lambert surrenders Convention Parliament opens
1 May	Declaration of Breda
8 May	Charles II proclaimed King of England Cooke's deposition taken in Dublin Castle
19 May	Cooke departs under guard for England
29 May	King enters London
7 June	Parliament excepts Cooke from pardon
29 August	Act of Oblivion
September	Pre-trial meetings between judges and prosecutors at Serjeants' Inn
9 October (Tuesday)	Regicides committed for trial
10 October (Wednesday)	Opening day at Old Bailey
11 October (Thursday)	Trial and conviction of Harrison
12 October (Friday)	Trials and convictions of Scroop, Scot, Clement, Carew and Jones
13 October (Saturday)	Cooke and Peters tried, convicted and sentenced Harrison executed
15 October (Monday)	Trials and convictions of Daniel Axtell, Colonel Hacker, William Hulet. John

	Carew executed
16 October (Tuesday)	John Cooke and Hugh Peters hanged, drawn and quartered at Charing Cross. Trials of all remaining regicides
17 October (Wednesday)	Scot, Clement, Scroop and Jones executed
19 October (Friday)	Axtell and Hacker executed at Tyburn
1661 January	Fifth Monarchy rebellion Desecration of corpses of Cromwell, Bradshawe and Ireton
1662	Execution of Corbet, Barkstead and Okey Trials of Lambert and Vane, execution of Vane
1663	Prosecution of Brewster for <i>Speeches and Prayers of the Regicides</i>

For Kathy

# The Tyrannicide Brief

The Story of the Man who sent Charles I to the  
Scaffold

Geoffrey Robertson

VINTAGE BOOKS  
London

*We are not traitors or murderers or fanatics but true Christians and good commonwealthsmen, fixed and constant in the principles of sanctity, truth, justice and mercy, which the Parliament and army declared and engaged for, and to that noble principle of preferring the universality before particularity. We fought for the public good and would have enfranchised the people and secured the welfare of the whole groaning creation, if the nation had not more delighted in servitude than freedom.*

*John Cooke, letter from prison,  
September 1660*

*That afternoon, going through London – I saw the limbs of some of our new traitors set upon Aldersgate, which was a sad sight to see; and a bloody week this and the last have been, there being ten hanged, drawn and quartered . . . After dinner to my Lords, and from there to the Abbey . . . and so to the Crowne in the Palace-yard – I and George Vines by the way calling at their house, where he carried me up to the top of his turret, where there is Cooke's head set up for traitor, and Harrison's on the other side of Westminster Hall. Here I could see them plainly, as also a very fair prospect about London.*

*Diary of Samuel Pepys, 20/21 October  
1660*





Silver Medal, struck in John Cooke's honour by Thomas Simon, 1649 (British Museum, misdated 1660)

## *Preface*

This is the story of an obscure lawyer once called upon to make history. The severed head that spoiled Pepys's pleasant view over London had previously been attached to body parts inspected by John Evelyn, another diarist whose wit has proved congenial to modern times. He gloated 'Oh, the miraculous providence of God!', at the sight of a basket just brought from the gallows to feed the stray dogs at Aldersgate. It contained hearts, testicles and penises, 'mangled, and cut, and reeking', of men hanged, drawn and quartered at Charing Cross. One was John Cooke, for the past decade a judge acclaimed for law reform and for championing the poor, the first to propose a host of institutions we now take for granted, including a national health service and legal aid. Cooke had been executed for demanding the kind of justice that, 350 years later, the world at last would want: the ending of impunity for rulers responsible for making war on their own people.

That such a man should have been torn quite literally to pieces after a rigged trial at the Old Bailey, remains one of English history's most shameful episodes, white-washed by lawyers and ignored by historians. Today, John Cooke is only mentioned as a passing wraith in books which dismiss him as an embittered Puritan fanatic or as a dodgy lawyer prepared to do the dirty work for the rising Cromwell. These caricatures are so at odds with the actual records – his published writings, the transcripts of his speeches and what can be gleaned of his personal life – that fairness requires a belated defence for this bravest of all barristers, who died for the highest principle of advocacy.

The bad press received by 'the regicides' has been attributed to the fact that history is written by winners, and John Cooke's actions have certainly been interpreted by historians with their own agenda

– in the words of W. S. Gilbert’s sentient sentry, ‘either a little liberal, or else a little conservative’.

For Tory writers, the trial and execution of Charles I were straightforward crimes of treason and murder. The Whig historians who refurbished Cromwell’s reputation were inclined to accept the unlawfulness of the proceedings, passing over them quickly with the excuse (attributed to Cromwell as he inspected the King’s corpse) of ‘cruel necessity’. Neither school has bothered about the regicide trial, other than to praise Charles II for confining his vengeance to those who had prosecuted his father. Left-wing authors have preferred to celebrate the Levellers – the journalist-agitators who first suggested that the King should be prosecuted but who went to water (or to the country) when the hard decisions about that trial had to be made, and later forged shady alliances with royalists. It is doubtful whether any English author, even today, can approach the King’s trial without some antagonistic sentiment – it seems so wrong to have cut off the head of the only English monarch who cared about culture.

On the groaning shelves of literature on the English revolution, John Cooke rates only a few mentions – usually as the barrister who acted as the King’s prosecutor. In this role he has been ill-served by twentieth-century accounts which distort an event precisely recorded by skilled law reporters. Editorship of *The Trial of Charles I* in the ‘Notable British Trials’ series (1928) was entrusted to a ranting royalist, J.G. Muddiman. His worst mistakes were exposed in 1964 by Dame Veronica Wedgwood in *The Trial of Charles I* (1964) but this book also has factual errors and a different interpretative bias: Dame Veronica thought the trial a disaster for ‘the good old cause’ and blamed its ‘overzealous’ prosecutor. More recent studies have pointed out that the trial was not the foregone conclusion alleged by its detractors, but have not effaced Wedgwood’s impression. There has been no study of Cooke’s own trial in 1660: curiously, this bloody assize has never been the subject of serious analysis, either by historians or by lawyers. Although most barristers supported Parliament against the King, their Inns of Court have since striven to cover up their republican

past by genuflections to the royal family – especially Gray’s Inn, which today makes no mention at all of Cooke and Bradshawe, its members who did most to change the course of history. Its largest portraits are of Charles I, Charles II and the future Charles III.

My own interest in Cooke began by chance, when I was invited to Gray’s Inn to dispute a paper delivered by Justice Michael Kirby on the 350<sup>th</sup> anniversary of the trial of Charles I. I accepted only because of a long-standing friendship with Michael, whose paper concluded that the trial was ‘by legal standards a discreditable affair’. This seemed indisputable, until I dug out a very old edition of the *State Trials*, purchased in my youth as an investment (foolishly: most of these reports may now be read for free, and without dust, on the internet). I blew away cobwebs and settled down to absorb *The Tryal of King Charles the Firft, accused of treafon and fubverting juftice*. I did know something of the history of criminal law and procedure, and to my surprise I found this trial to be far from discreditable – on the contrary, it appeared for its time as an oasis of justice and fairness, the *most* creditable proceedings that had yet taken place in an age where those accused of treason were usually convicted within a few hours. Defendants were tortured if they refused to plead, and any who offended the judges of the King’s own Star Chamber had their ears cut off and their noses slit. My sense that Kirby and Wedgwood might have got it wrong deepened when I found in my volume a transcript of the trial of the regicides, held eleven years later. The contrast could not have been more marked: if ever a trial was a ‘discreditable affair’, this was it. The defendants had been locked up for months in plague-infected prisons, and were brought to the Old Bailey in shackles and leg-irons to be viciously mocked and abused by the partisan judges of Charles II, who instructed vetted jurors to convict without bothering to leave the jury-box.

John Cooke struck me as a pivotal figure: he was at the centre of both the trial of Charles I in 1649 and the trial of the regicides in 1660: the prosecutor of the King now prosecuted by the King’s son, courageously arguing that it had not been treason, but professional

duty, to accept the tyrannicide brief. The events in which he participated are, of course, the stuff of countless histories of the English civil war, interregnum and Restoration. My reason for offering a new reading of them is that John Cooke's arguments resonate today in ways that historians have not appreciated. For example, the King's trial may now be seen as the earliest precedent for trials of modern heads of state – political and military leaders like Pinochet and Milosevic, who attempt (just like Charles I) to plead sovereign immunity when arraigned for killing their own people. Cooke's case against the King was the first modern legal argument against tyranny – based (as Bush and Blair might more credibly have based their case against Saddam Hussein) on a universal right to punish a tyrant who denies democracy and civil and religious liberty to his people. In contrast, the trial of the regicides deserves to be stigmatised as 'victors' justice', a barbaric act of royalist revenge to satisfy the blood-hatred of Charles II who (according to Evelyn) personally attended Cooke's disembowelling.

This was a transitional time, when post-Renaissance minds could be moved by the poetry of Shakespeare yet approve the most savage torture in the interests of public order. It was a time when the rooted English obsession with social rank was briefly challenged by men from Cromwell's favourite constituency, 'the middling sort' of tradespeople and lesser gentry. Cooke, a poor farmer's son, was able to rise above the social caste first noted, at the time of his entry to Oxford University, as 'plebeian'. Although the occupations and preoccupations of mid-seventeenth-century society are long gone, it is the lawyers (and the prostitutes) who have changed least. Barristers were as numerous, comparatively, in London in 1640 as they are today, located in the same places – the Inns, the courts and Parliament – where they still study, think and argue by the same plodding mix of precedent and principle. Their ethics, their practices and their attitudes are more highly developed, but their peculiar and indulged professional vices remain: a genteel interest in money, patronage through old boy networks and political preferment, a social exclusivity and a calculated deference to the wealthy and the well-connected. It is possible, even in today's Inns of Court, for

ghosts to walk into reasonable focus. I write this in my flat overlooking the Middle Temple, where the famous equestrian portrait of Charles I, attributed to van Dyck, now hangs. Charles II came to a feast in the Temple in 1661 to honour his own Solicitor General for prosecuting his father's judges. Legend has it that on some such occasion the King became so drunk that he could not stand for the loyal toast, and said to the Masters of the Bench, 'remain you also seated, both tonight and hereafter.' Today, we still obey him.

No life of Cooke has been attempted before. There are no surviving records of the man amongst his family and friends, other than in the much-edited memoirs of Edmund Ludlow, the Puritan MP who fled to Switzerland in 1660 to escape royalist revenge. Even the prolific genealogical websites are bereft of any reference to his wife, Frances, or to his assumed second marriage or to the death of his young son or to Frelove, the daughter who made life anew in the colonies. But his conduct of the King's trial and courageous self-defence at his own trial have been fully transcribed, and amongst the Thomason tracts – an exhaustive collection of the pamphlet literature of the period – are some half-dozen lengthy booklets which Cooke wrote between 1646 and 1652. There is an account of the speech he made on the gallows, and the affecting last letters written to his wife ('let us not part in a shower . . . God hath wiped away all tears'), and to his baby daughter, Frelove – moving enough for Charles II's government, which did not question their authenticity, to prosecute all who dared print them. There are, alas, few contemporary documents to provide details of his judicial work in Ireland where the public records of the period were destroyed in a fire in 1922. No one has sought to draw together the strands of the remarkable, indeed sensational, life and death of Britain's most radical lawyer.

In doing so, I am conscious of having tiptoed across historical minefields. But my reading of events that turn so much on trials and their procedures and beliefs about constitutional rights has been informed by a long professional life as a trial lawyer. My sense of what was really happening at the Old Bailey, the Inns of Court and