THE DEATH WARRANT OF KING CHARLES I

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"The Mystery of the Death Warrant of Charles I: Some Further Historic Doubts"

by

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PREFACE

Although constitutional documents as significant as the Bill of Rights are preserved in the care of the House of Lords Record Office, its most famous single document is undoubtedly the Death Warrant of King Charles I. In 1960 the Office published a leaflet containing a photographic reproduction of the Death Warrant, with an historical note, which has proved a best-seller in the HMSO bookshops. The note was based on the 'received interpretation' of the history of the document, generally known to historians in Volume 3 of the S. R. Gardiner's *History of the Great Civil War*. When the leaflet was issued, the help of the British Museum Research Laboratory was enlisted in order to discover whether modern techniques such as infra-red rays would help to reveal what had been written under various subsequent insertions and corrections. Unfortunately, a seventeenth-century knife had scraped away all too effectively the top surface of the Warrant at places where new text had obviously been inserted. Gardiner's general account was therefore left unaltered.

Recently, however, the Death Warrant has been subjected to a further intensive historical investigation, and this investigation, at the very least, casts some doubts on the original Gardiner doctrine concerning the final stages in the trial of the King. It was important to make this new research available for consideration. I am consequently most indebted to its author, Mr. A. W. McIntosh, formerly Professor at the London Graduate School of Business Studies, for his generous agreement to my proposal that it should appear as a Record Office Memorandum. His paper represents an important element in a series of studies he is making into the history of the Trial and we are fortunate to be able to incorporate it in our series of publications.

Maurice Bond
Clerk of the Records

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The Mystery of the Death Warrant of Charles I
Some Further Historic Doubts[1]

The History of the Warrant

Some physical features of the warrant for the execution of Charles I have been the basis for far-reaching deductions about the history of its preparation and signature. G. M. Young summarises the commonly-accepted scenario succinctly and confidently:

> "The death-warrant, as we have seen, was made out to take effect on Saturday [27 January 1649]. It was engrossed on Friday when the first signatures – Bradshaw, Grey, Cromwell and so forth, not more than twenty-eight in all, were appended; and it was addressed to three officers who were named. Two refused to sit. To prepare a new warrant was hazardous because of the twenty-eight some might have refused to sign again. The parchment was therefore scraped, and new dates and names inserted. But the waverers were overawed and hardly by threats, certainly not by violence but by bluster and a fierce determination not very different from either, 21 signatures more were extracted, and the warrant issued on Monday to Col. Huncks, and as substitutes for the recalcitrant pair, Col. Hacker and Lieut.-Col. Phayre."[2]

This picture orginated more than a century ago. W. J. Thoms was Deputy Librarian at the House of Lords, and was therefore one of those who had custody of the death warrant.[3] In July 1872 he had printed in *Notes and Queries* a series of articles which was reprinted with corrections in the same year as a pamphlet entitled *The Death Warrant of Charles the First: Another Historic Doubt*; a second edition appeared in 1880. In this way he first drew attention to the fact that certain words in the warrant were written over erasures which had been made in an earlier version, and that the date specified for the execution was inserted in a space which had been made in an earlier version, and that the date specified for the execution was inserted in a space which had been left blank; in his judgment these alterations are in a different hand from the original.

The text of the warrant, with the alterations identified by Thoms shown by underlining, is as follows:

At the high Co[ur]t of Justice for the tryinge and judginge of Charles Steuart Kinge of England January xx*ix*th Anno D[omi]ni 1648.

Whereas Charles Steuart Kinge of England is and standeth convicted attaynted and condemned of High Treason and other high Crymes, And sentence *uppon Saturday last* *was* pronounced against him by this Co[ur]t to be putt to death by the severinge of his head from his body Of w[hi]ch sentence execuc[i]on yet remayneth to be done, These are therefore to will and require you to see the said sentence executed *In the* open Streete before Whitehall uppon the morrowe being the Thirtieth day of this instante moneth of January betweene the houres of Tenn in the morninge and *Five* in the afternoone of the same day w[i]th full effect And for soe doing this shall be yo[u]r sufficient warrant And these are to require All Officers and Souldiers and other the good people of this Nation of England to be assistinge unto *you* in this service Given under o[ur] hands and Seales

To Colonell Francis Hacker, Colonell Huncks *and Lieutenant Colonell Phayre and* to every *of them*.

Jo. Bradshawe
Tho. Grey
O. Cromwell
Edw. Whalley

M. Livesey
John Okey
J. Da[n]vers
Jo. Bourchier
H. Ireton
Tho. Mauleverer

Har. Waller
John Blakiston
J. Hutchinson
Willi. Goffe
Tho. Pride
Pe. Temple
T. Harrison
J. Hewson

Hen. Smyth
Per. Pelham
Ri. Deane
Robert Tichborne
H. Edwardes
Daniel Blagrave
Owen Rowe
Willm. Purefoy
Ad. Scrope
James Temple

A. Garland
Edm. Ludlowe
Henry Marten
Vinct. Potter
Wm. Constable
Rich. Ingoldesby
Willi. Cawley
Jo. Barkstead
Isaa. Ewer
John Dixwell
Valentine Wauton

Symon Mayne
Tho. Horton
J. Jones
John Moore
Gilbt. Millington
G. Fleetwood
J. Alured
Robt. Lilburne
Will. Say
Anth. Stapley
Greg. Norton
Tho. Challoner

Tho. Wogan
John Venn
Gregory Clement
Jo. Downes
Tho. Wayte
Tho. Scot
Jo. Carew
Miles Corbet

Thoms (p.23)[4] deduces from the existence of the alterations that the document was engrossed on a different day from its date (the 29th). He suggests that it would have been just as quick to recopy the whole warrant, but this would have entailed signing and sealing afresh. Some of those who had already signed possibly repented. Two of the three officers named in the first draft must have declined. The word "thirtieth" does not fill up the space left for the date, which would have taken "twenty-sixth" or "twenty-seventh" if necessary. The warrant could not have been drawn up on Saturday the 27th for "uppon the morrowe" is original, and the morrow would have been Sunday. Augustine Garland at his trial in 1660 said he signed "at the day of Sentence" (ie the 27th). "... I am inclined to believe that it was intended to sentence the King on the 26th and execute him on the 27th ... opinions were probably divided, and the execution probably postponed, until a larger number of signatures to the Warrant for it had been obtained." (p. 25) Thoms saw as additional evidence the insertion over an erasure of the words "uppon Saturday last <u>was</u> "; there was not room for this in the original space, and he believed that the original words were "uppon this day was". (pp. 31-2).

Thoms refers (p.27) to the reported episode of Cromwell and Marten on Monday the 29th dabbing each other's faces with ink in the Painted Chamber (the room at Westminster where the Court held all its private sessions), and to the fact that Ewer, the witness who testified to this at the trial of Marten in 1660, said that he "did not see any one set his hand, though I did see a parchment there with a great many seals to it".[5] He draws the conclusion that Marten, 31st on the list of signers, had previously signed and that on the 29th the document was brought to the Painted Chamber to get additional signatures.

The central theory advanced by Thoms received massive support when it was adopted by S. R. Gardiner in the third volume of *The History of the Great Civil War* published in 1891. Gardiner devoted considerable space[6] to defending Thoms's thesis against a critic who had argued that the warrant was really drawn up even earlier, on the 23rd or 24th; after refuting this, he expresses the conclusion that "it had not only been drawn up on the evening of the 25th or the morning the 26th, but had already been signed" by some of the more resolute commissioners, and that "at all events it is capable of proof that those who signed on the 26th were not more in number than twenty-eight, if indeed there were so many" (pp. 582-4). He buttresses Thoms's case by arguing that dissensions in the ranks of the Court had on the 23rd caused a postponement of the final decision to execute the King and that two days of examination of witnesses had been interposed in the intended programme as "a mere device for gaining time" in order to allow Ireton and Cromwell to employ themselves "in steeling the hearts of the weak" (p. 579).

With this weight of authority behind it, it is not surprising that the Thoms-Gardiner theory has held the floor ever since. And yet if a little critical scepticism is applied, even in the presence of Gardiner's great wealth of reading and knowledge and his renowned fine judgment of evidence on points of fact such as this, it is possible for a few "historic doubts" (to use Thoms's own phrase), still to remain.

Did any of the Regicides sign in Advance of Sentence?

There is one central problem. Whatever may have been earlier intentions, dissensions, postponements, or changes of direction, no sentence was actually passed upon the King until the afternoon of Saturday, January 27th. Gardiner himself argues very cogently against a theory advanced by R. Palgrave in 1881, on the basis of very indeterminate statements by Mrs. Hutchinson and by Edmund Ludlow, that a "preliminary sentence" was given on the 23rd and a draft warrant founded on it.

On the 27th the High Court of Justice met privately in the Painted Chamber at Westminster at 10 a.m. and discussed and approved the form of sentence and a number of other matters, principally of tactics in the conduct of the fourth and final trial session in Westminster Hall, to which it then adjourned, presumably about noon. The trial session must have been a lengthy one, covering a number of exchanges with the King, an interposed adjournment to the Court of Wards nearby which according to Bulstrode Whitelocke lasted for an hour[7], a long discourse by Bradshaw, the solemn reading of the sentence, and the passing of the sentence by the Court. It is difficult to see how the session could have been concluded before about two-thirty or more probably three o'clock. So the time of the sentence was about the mid-afternoon of the 27th, and the Court adjourned "forthwith" to the Painted Chamber, where it held another private meeting, at which the business included the appointment of a committee "to consider of the Time and Place for the execution of the Sentence against the King".[8]

It is possible to understand that some members of the Court might have been ready to sign a warrant in which some details, say of time or place, might still have had to be inserted or amended, but it is most unlikely that any signatures and seals could have been attached before the actual sentence. Could Bradshaw, Cromwell, Whalley, Ireton, Harrison, and others among the early signers, with the eye of history upon them and conscious of it, have set their names to a statement, not at any time erased or amended, asserting that sentence had been "pronounced against (the King) by this Court to be put to death by the severing of his head from his body Of which sentence execucion yet remayneth to be done", unless the sentence had actually been already pronounced? At a solemn time like that it is not plausible that such men would have committed themselves to a patent lie, and one, moreover, which would be known to be such by a large number of people – the other members involved, and all those concerned with organising the signing and sealing of the document.

The appending of any signatures at any time before sentence on the 27th is in fact a piece of mere speculation. No evidence exists, or at least has not been hitherto produced, of a single signature being appended before sentence. The contemporary anti-revolutionary prints and sermons, very vociferous at the time, have nothing to say about such events. No mention of pre-sentence signatures was made at the later trials of some of the regicides in 1660-62, either by prosecutors or defendants. Several regicides who signed the warrant before Garland (who said he signed "at the day of sentence") were also on trial then – Hardress Waller (11th signatory), Peter Temple (16th), Harrison (17th), Smyth (19th), Scrope (27th), and James Temple (28th) – but no question about the date of the signing was raised by either side. Yet, to the prosecutors at least, signing the warrant before the passing of the sentence, if known or suspected, would have seemed a wicked exacerbation of any already heinous crime. No such occurrence is alleged in any of the later royalist glosses on the proceedings of the Court, such as those, for example, incorporated by Nalso in his reprinting of the text of the Roll in 1684.[9]

Thoms clearly advances the theory of a number of signatures before sentence. He even seems to believe that Garland's "at the day of sentence" meant Friday the 26th; he thinks it was intended to sentence the King on that day, but postponement took place until a larger number of signatures had been obtained. Gardiner does not go so far as this; for him, Garlands' words are a plain statement that he signed on the 27th. He uses this as a basis for stating that "it is capable of proof that those who signed on the 26th were not more in number than twenty-eight, if indeed they were so many" (583-5). If Garland's statement is correct, the "proof" is rigorous; but it is not a proof that anyone at all signed on the 26th. There is no reason that the twenty-eight before Garland might not have signed before him on the 27th, after sentence as the warrant states.

Was there a Danger of some Signatures being repudiated?

The assumption of some signatures before the 27th, so firmly accepted by Gardiner, is not only not borne out by any of the evidence or any of the alterations to the warrant, it is not even necessary to the theory that a first engrossment was later amended, and in particular that dates and names of addressees were changed. It is, however, necessary to the further assumption that the reason for not preparing a new engrossment was that some of the earlier signers might have refused to sign again, having "repented", as Thoms puts it (p. 23), and that, to quote Gardiner, "this extraordinary means" was required to secure "the retention of the signatures already given" (p. 590). This theory is not supported by any evidence, but is derived entirely from the unsubstantiated presupposition that a certain number of the regicides must have been reluctant to sign the death-warrant and ready almost at once to retreat from their action.

There are a number of considerations that cast great doubt on this supposition:

(1) Gardiner himself, referring to the presumed signatories on the 25th or the morning of the 26th, describes them as "some of their more resolute colleagues" (pp. 582-3). If the early signers were some of the more resolute, why should it have been feared that they would renege upon their signatures?

(2) The identities of those regicides who signed before Garland must be carefully scrutinised if a charge of possible irresolution is to be sustained. True, it is not very obvious that all the early signers were likely to be more resolute than men like Say, Thomas Challoner, Venn, Scott, Carew, and Miles Corbet, who were all among the last twelve to sign; but neither is there any basis for supposing them to be irresolute. The twenty-eight first signers, in order, were: Bradshaw, Lord Grey of Groby, Cromwell, Whalley, Sir Michael Livesey, Bart., Okey, Sir John Danvers, Sir John Bourchier, Ireton, Sir Thomas Mauleverer, Bart., Sir Hardress Waller, Blakiston, Hutchinson, Goffe, Pride, Peter Temple, Harrison, Hewson, Smyth, Pelham, Deane, Tichborne, Edwardes, Blagrave, Rowe, Purefoy, Scrope, James Temple. A distinct impression emerges that social rank, rather than outstanding resolution, provided a strong influence on the early order of signing, up to Blakiston; the only title later than that of Waller is that of Sir William Constable, Bart., who signed in 33rd place.

(3) All of the signers before Garland (like all of the signers after him except Ingoldsby and Challoner) took an even more decisive step than signing the death warrant when on Saturday the 27th they stood up in Westminster Hall to pass sentence of death on the King. Even if they had signed the warrant the day before, as Thoms and Gardiner thought, they had already taken a crucial step of re-affirmation that very afternoon, when it is generally accepted the substance of the warrant was ready for signature, and when the 29th signature, at least, is generally agreed to have been appended before the day was out. Why, after such a momentous commitment, need it have been feared that they would change their determination within an hour or two if the warrant had been engrossed anew?

Against all these profound improbabilities, the argument used is that there is no other possible explanation for the failure to re-copy the whole warrant, which could have been done just as quickly as what was done.[10] It looks a plausible argument only if one is pre-disposed to believe in

the strong reluctance of a significant number of the regicides. It is in fact just as easy to accept that the practice of making corrections on parchment was long-established, that to make them would in this case save time and trouble, and that there need not have been much hesitation about it.

Was there earlier Dissension in the Court?

The use of a parchment with some erasures and amendments has been used, as we have seen, to support the idea that some of the first signers of the warrant must have been reluctant, and ready to reverse their decision. This idea in turn has been carried further back into the week of the trial, to the 24th, by adducing other evidence of dissension and reluctance, even before any signatures are assumed to have been appended. Those earlier events can have no connection with the alterations in the warrant, which on the Thoms-Gardiner hypothesis was first drawn up on on the evening of the 25th or the morning of the 26th, but they have been used to buttress the explanation from reluctance, and it is necessary in any case to disentangle the sequence of events if one is to approach nearer to an explanation of the changes which were undubitably made.

The evidence for an unexpected delay in the work of the Court on January 24th, upsetting the originally expected time-table, runs on the following lines:

(1) It is said that it had been arranged that the final session of the trial should take place on the morning of Wednesday the 24th, but because of dissension about the King's fate, which needed further intense discussion, there was substituted two days of meetings for the examination of witnesses, which was only a device for gaining time.

(2) It is said that Ireton did not attend any of the private meetings of the Court on these days, and Cromwell apparently came late on the two occasions he attended, so they must have been employed "steeling the hearts of the weak" (Gardiner, p. 579).

(3) It is said that the removal of the King on January 24th from Cotton House in the immediate neighbourhood of Westminster Hall to St. James's Palace showed "the sterner members of the Court ... intended that the King should not be heard again, and that sentence should be pronounced on him as contumacious in his absence" (Gardiner, p. 582). They had to change their minds in the debates of the next few days, because of the reluctance of some of the judges to proceed further without giving the King one more chance of pleading for his life.

(4) The opposition is said to have been so strong ("a revolt against the proposal to put him to death as contumaciuos", Gardiner, p. 578) that there had to be an attempt to conciliate it, on the 23rd, by allowing the charge against the King, of being a tyrant, traitor, and murdered, to dwindle, in the mouth of the clerk, to having been guilty of "divers high crimes and treasons". The original charges were restored as the agreed basis of the condemnation of the King on the 25th.

(5) In the absence of any direct evidence from the presumed dissentients, or from anyone else, their membership is guessed by Gardiner (pp. 576-7) to have consisted of some who later, on trial for their lives in 1660, said they sat only with qualms of conscience, some who had persuaded themselves that the result of the trial would be a compromise with the King, as Lowe was alleged (by the royalist Lawrans at

second hand) to have said a month earlier (Gardiner, p. 554), and some who wanted the king's mere deposition.

There are many puzzling ingredients in this account.

The story of the unexpected cancelling of a planned trial session in Westminster Hall on the Wednesday derives primarily from Mabbott's *Perfect Narrative*, which says:

> "Wednesday, January 24th, 1649
> This day it was expected the High Court of Justice would have met in Westminster Hall, about ten of the clock; but, at the time appointed, one of the Ushers, by direction of the Court (then sitting in the Painted Chamber) gave notice to the people there assembled, that in regard the Court was then upon the examination of Witnesses, in relation to the present affairs, in the Painted Chamber, they could not be there; but all persons appointed to be there, were to appear upon further summons." [11]

The official record of the Court says that, *before the third trial session on the 23rd*, the Court meeting in the Painted Chamber resolved to try once more whether the King would own the Court. He was to be told that there was no further time, and one more request was to be made to him to confess or deny the charge. "If he submit to answer, and desires a copy of the charge", a copy was to be given and the King was to be required to give his answer on Wednesday at 1 p.m. (and this of course would be in Westminster Hall). However, on the Tuesday afternoon in Westminster Hall, the King again refused to recognise the jurisdiction of the Court; the Clerk formally demanded his answer, he refused, and default was recorded. The Court then adjourned once more to the Painted Chamber, where it was decided that though contumacy amounts to mute and tacit confession, they would examine witnesses, "the manner of whose examination was referred to further consideration of the next sitting and warrants were accordingly issued forth for the summoning of witnesses. The Court adjourned itself till the morrow morning at nine of the clock to this place". Although Nalso (op. cit. p. 54) duly reproduces this, he also interpolates one of his own additions in which he contradicts it by saying: " ... the Court did adjourn and intended to meet at Westminster Hall at ten of the clock next morning".

It would be unreasonable to doubt that behind the formal record of decison reached there was great turmoil and debate as the moment of decision approached. But there is no foundation for doubting the official record of specific decisions. So it is most implausibe that, as Gardiner accounts, it "had been proclaimed on the preceding day" that a trial session would take place in Westminster Hall on the 24th. The possibility of such a session was a contingency plan in the event of the acknowledgement of the Court by the King, an event which was unlikely and which did not in fact take place. Mabbott more cautiously simply says it was expected that the Court would sit – and it may be that the contingent possibility of such a full session had been leaked; after all, 63 Commissioners, as well as officers, had been present at the private noon meeting on the Tuesday where such a possibility had been discussed, and information, rumour, and gossip must have been speeding through Westminster and the city like wildfire, and just as erratically.

Dame Veronica Wedgwood holds that up till late on Tuesday evening it was the intention not only to hold another trial session but to sentence the King on Wednesday morning.[12] She justifies this by quoting Nalson's interpolation, but does not refer to the statement in Phelps's minutes. In fact, no sentence had yet been drafted, nor had it yet been officially discussed, or agreed, what the sentence was to be.

It is not at all clear that the examination of witnesses, and the taking of their depositions, was "a mere device for gaining time". A draft of the charge against the King had been presented to the Court by Counsel on January 15th; A committee of ten had on that day been appointed to advise with counsel about it and it was decided that they with counsel would "compare evidence with the charge and would prepare and fit the charge for the Court's more clear proceedings". On the 19th a revised draft of the charge was presented in the Painted Chamber and was read a first time, a second time, and a third time, and referred back for some small amendments. The care with which the charge had been drafted, the way in which it had been ceremoniously approved by the Court, the length of time it had been under discussion, and the solemnity with which it had been presented at the first session of the trial on January 20th – all these circumstances surely preclude any possibility that it was, as Gardiner thinks, abandoned or amended by a casual change in the phraseology used in Court by the Clerk on the 23rd. He was simply summarising the essence of the charges which had been laid.

The charge included the statement that Charles Stuart "hath traitorously and maliciously levied war against the present Parliament, and the people therein represented". It was assumed from the first that it would be necessary to prove those accusations, and in particular the participation of the king in the war, by specific instances and not just by common repute. A great deal of trouble was obviously taken to assemble witnesses to the participation of the King in the war from all over the country, as far as from Cornwall and Northumberland, and even from Dublin and Cork. (They were drawn from all sections of the middling and lower classes of society, including nine gentlemen as well as five husbandmen, and men such as a painter, a smith, a butcher, a maltster, a ferryman, a barber-surgeon, and a scrivener.) At 9 a.m. on the morning of the 24th, 29 witnesses were present and ready to be sworn; further witnesses were summoned, and the total number whose depositions were eventually taken was 33.

It might have been argued that in spite of the all the extensive preparations that had been made to assemble the witnesses, it was not strictly speaking necessary to call them and take their depositions since the King was not trying to rebut the charge, was denying the authority of the Court, and was to be charged with contumacy. Contumacy, however, was not a substantive crime for which a King, or anyone, could be sentenced to death. Refusal to plead or to speak was by long-established precedent something that was taken *pro confesso*, "mute and tacit confession", as the Court's minutes put it, and the charge as laid was therefore the crime of which the accused would stand convicted. It would be natural to hold to the idea that had been implicit in all the preparations for the trial, that if the King were to be condemned for a traitor and for levying war against Parliament, it would be necessary to have on the record specific proofs of what was alleged.

The time occupied by the examination of witnesses was not merely a delaying device; there were good reasons for the activities of those two days spent on it.

It is not easy to draw very strong conclusions from non-attendances or lateness of Cromwell and Ireton in the Painted Chamber on the 24th and 25th, as Gardiner tries to do (p. 579), deducing their absorption at this time in the task of "steeling the hearts of the weak". It is true that Ireton is not on any of the three Painted Chamber attendance lists for those days; but he was not in any case one of the most assiduous attenders at such meetings – he attended only 11 out of the 18 which have attendance lists. He was likely at most times, not especially now, to be deeply engaged in behind-the-scenes planning, organising, and lobbying. Gardiner says Cromwell is in 11th place in the list for one of those meetings, and in 18th for another, and therefore probably arrived late. (He might have appeared to strengthen his case if, instead of following the sequence as printed in Nalson, he had been able to use the lists in the official Roll, where the sequence of recorded attendance shows

Cromwell as 9th at one of the meetings, and 22nd at the other; but he was 19th out of 47 present, and 22nd out of 46.) In fact Cromwell, although he was frequently listed either second, after Bradshaw, or fourth after Bradshaw, Say and Lisle, was actually listed once 36th, once 9th, once 25th and once 24th, on occasions other than those two days. It is impossible to detect an order which could reflect an order of appearance at the meetings, which in any case would involve a difficult clerkly feat.

Gardiner argues that it was at one time (as late as the 24th and possibly up to the morning of the 26th) the intention of the leaders in the Court that the King should not be heard again, and that the sentence should be pronounced against him as contumacious in his absence (p. 582). Against this it has already been urged that the sentence could never have been for contumacy as such, and no draft or discussion of the sentence is known to have proposed this; contumacy was to be taken as a confession of the charge, and the sentence was to be linked to the charge. But even if the King were to be convicted of being contumacious, this could not justify a sentence "in his absence".

The evidence adduced by Gardiner for the intention to sentence "in his absence" consists of no direct record, but of two deductions:

(1) The King's removal on the 24th from Cotton House in the immediate vicinity of Westminster Hall to St. James's Palace. Such a move seems to have little significance. Wedgwood (op. cit. p. 166), referred to a later transfer of the King from Whitehall to St. James'' (on Sunday the 28th) says: "The purpose of this repeated shifting of his place of imprisonment is obscure ... probably it was to foil any attempt at rescue which might have been plotted had he stayed for long in one place". On the 24th, the date of the final session in Westminster Hall had not yet been fixed. In any case, St. James's Palace was not far away. Charles had been brought from Windsor on January 19th to St. James's Palace. On the morning of the 20th, he was carried from St. James's in a sedan chair, and then by water, to Cotton House, to await the opening of the first session of the trial in Westminster Hall. On the 30th, the King *walked* from St. James's Palace through St. James's Park, under armed guard, to his place of execution in Whitehall.

(2) The plan to condemn the King in his absence was claimed not to have been abandoned till the morning of Friday the 26th, because on that day "a clause [was] added to the sentence then adopted from the report of the Committee, to the effect 'that the King be brought to Westminster to-morrow to receive his sentence'. By far the most probable hypothesis is that this addition was called forth by the reluctance of some of the judges to proceed further without giving the King one more chance of pleading for his life". (p. 582) The record for the 26th, as set out in the Roll, gives a different impression. It runs:

> "The Draught of a sentence against the King, is according to the votes of the 25th instant, prepared, and after several Readings, Debates, and Amendments, by the Court thereupon,
>
> Resolved ... That this Court do agree to the Sentence now read.
>
> That, the said Sentence shall be engrossed.
>
> That, the King be brought to Westminster tomorrow, to receive his sentence".

It is clear that the last resolution is not an addition to the sentence on the King, but the necessary settling of the time when the sentence would be passed upon the contumacious King. It was always unlikely that such a public and unprecendented

> arraignment, the noise of which was ringing over the kingdoms and over Europe, would be brought to a hole-and-corner climax, without the presence of the accused, as though the Court were afraid to face him. As to what was in the minds of any of the Commissioners about giving the King "one more chance of pleading for his life", who can tell? 62 were present to take the resolutions that have been quoted; the next day, 67 condemned Charles to death.

To return to the claim of a departure from plan on the 23rd and 24th, it is open to question whether there was a settled plan to depart from. It is fairly clear from the records that within a broad forward course the Court tended to decide its future actions from day to day. Even when it reached the start of the trial on the 20th, it was only at the last minute, that very morning, that it decided various points of procedure in conducting the case and dealing with the King, including the appointment of two "vice-presidents" (Say and Lisle) to assist Bradshaw. After that they were deciding their future actions according to the events of the day, and particularly the actions of the King, with no fixed time-table except that they knew that by the terms of the Act which set them up they had to conclude their assigment by one month from the 6th of January.

In considering the extent and consequences of differences in the Court in mid-course of the trial it must be remembered that any Court members who at the last stage shrank from condemnation of the King were freely able simply to withdraw from the scene. In fact, nine Commissioners who attended at least one session of trial in Westminster Hall stopped attending at some stage in the crucial week ending January 27th. They were John Browne, James Challoner, Sir James Harrington, Francis Lascelles, Thomas Lister, William Lord Mounson, Sir Gilbert Pickering, and Robert Wallop.[13] No harm or disfavour appears to have happened, or been threatened, to any of those who so withdrew from the final act.

The classical picture of the effects of Court dissension on the sequence of the trial has been here questioned. There can be no question, however, that great debate was going on in political circles in London at this time, and that strongly divergent views were being expressed about how the final denouement should be approached. In those climactic days, debate in familites and groups, as well as in anxious minds, must have been fervent and agonising.

This heated atmosphere enveloped the active members of the Court; they were the focal centre of it all. Direct outside pressures on them were also strong. These would come upon them individually from old friends and colleagues in Parliament and in church congregations, corporations, and regiments. They also came collectively and fairly publicly from the represenatives of such men as the Scottish Commissioners and the Dutch ambassadors, who were in London lobbying hard for the King's life.

One might think that a central point of discussion would be the form of punishment of the King, and the pros and cons of some form of deposition as an alternative to execution. But little has survived on the record about argument for or against this alternative outcome. It may well be that in the eyes of the active members of the Court the untrustworthiness of the King had now been so overwhelmingly demonstrated that the case for leaving him alive on any conditions or in any place had no strength left. It may be that by now no milder sentence was conceivable.[14]

In any case, there is no evidence for any violent or dramatic disagreements among those who chose to remain on the scene of the Court's activities. Post-Restoration allegations of threats and coercion, made in self-exculpation by men threatened with death, have no support in the contemporary records. Men with powerful minds and purposes, and with powerful argumentative

abilities, would carry more weight than others, and would influence the opinions and actions of others, as happens in all deliberative bodies; but in this place and at this time, in the enviroment of a divided movement, a divided country, and no settled constitution, they had no weapons of coercion.

The Sequence of Events

The speculations about postponement of a sentencing session on the 24th, about intentions to pass sentence *in absentia*, and about dissensions in the Court, do not themselves contribute towards explaining why the death-warrant was, as claimed, prepared on the evening of Thursday the 25th or the morning of Friday the 26th, and subsequently altered at some unspecified time but presumably between the afternoon of Saturday the 27th, after sentence, and the morning of Monday the 29th. Before pursuing the range of different possible explanations, it would be well to set down the sequence of relevant events, as closely timed as the record allows, even at the expense of some repetition.

On the afternoon of Thursday the 25th, after a long day's meeting occupied in reading the depositions of 33 witnesses and having them confirmed by the deponents in open court, and after adjourning for an hour, the Court sat privately with an attendance of 47 (46 listed, plus Thomas Challoner who was not listed but presented a report from a committee which had been appointed to secure papers from the House of Lords). It passed a number of votes "as preparatory to the sentence against the King", but not to be finally binding on the Court (probably because of the relatively small attendance at this meeting), to the effect that

- the Court will proceed to sentence of condemnation
- the condemnation will be for a Tyrant, Traitor, and Murderer and a public enemy to the Commonwealth of England

And - This condemnation shall extend to death.

However, the Court, "in order to that part of his sentence, which concerned his execution, thought fit to defer the Consideration thereof to some other time". They also ordered a draft of a sentence "grounded upon the said votes" but "with a Blank for the manner of his Death" to be prepared by a committee of seven.

At a meeting which started at 1 p.m. the following day, Friday the 26th, with 62 present, the draft of the sentence was presented, debated, agreed, and ordered to be engrossed. (Note that this was not the death-warrant.)

At a meeting at 10 a.m. the following day, Saturday the 27th, the engrossed sentence was read and agreed. At the following trial session in Westminster Hall, with 67 present, the sentence was passed and "the whole Court stood up and owned it". The sentence as pronounced includes the statement that Charles "... shall be put to death by the severing of his head from his body". (Since the drafting committee had been instructed on the 25th to leave a blank for the manner of death, this decision must have one of the amendments inserted at the debate on the sentence on the afternoon of the 26th, before the engrossment. This is a matter of some significance since the engrossed death warrant also contains the phrase, unamended, and not inserted later, "to be put to death by the severing of his head from his body".) At a further meeting of the Court, "forthwith" after the Westminster Hall session, with 64 present, a committee of leading army officers was appointed "to consider of the time and place for the execution of the sentence" against the King.

The next meeting of the Court was on the morning of Monday, January 29th, with 48 listed as being present. The official account says that a report was approved from the committee on the time and place of execution, which were to be "The open street before White-Hall" and "The Morrow, the King having already notice thereof". The last addition shows that at least the decision about time had already been informally taken at some time between the afternoon meeting on Saturday and this early morning meeting (it started at 8 a.m.) on Monday. The minutes in the Roll then say that the Court "ordered a warrant to be drawn for that purpose, which said warrant was accordingly drawn and agreed unto, and ordered to be engrossed; which was done, and signed and sealed accordingly, as followeth ...". It is to be noted that this is the only statement of fact, in the series now quoted, of which the accuracy has been questioned. Even here, it could be argued that what was here referred to was the drawing, approving, and engrossing of the warrant in its final form.

Implications of the Thoms-Gardiner Hypothesis

In the light of this sequence of events, the Thoms-Gardiner hypotheseis, incorporating the idea that the warrant was drawn up on the evening of the 25th or the morning of the 26th calls for the assumption that at that time it was planned to hold the final sentencing trial on the 26th, and the execution on the 27th, and that this decision was changed at the meeting on the 26th and the warrant therefore had to be amended (Gardiner, pp. 582-3).

This implies that in spite of the proceedings at the meeting on the 25th, which included decisions that their resolution about a sentence extending to death should not be finally binding on the Court, and that a blank should be left in the sentence for the manner of death – in spite of this, some one or some group proceeded to draft and engross a death warrant saying that sentence had already been pronounced and that the manner of death was to be by the severing of his head from his body. This was done (and, according to Thoms and Gardiner, twenty-eight signatures and seals were appended to it) before the opening of the meeting of the Court in the Painted Chamber the next day, the 26th. Gardiner thought that this meeting was in the morning (p. 581); he had to envisage time being allowed for a planned open meeting of the Court later in the day to sentence the King for contumacy in his absence. Actually, the meeting on the 26th was held at 1 p.m. Time had been allowed for the summoning and the attendance of a larger number than the 47 present the day before (special summonses to members who were in and about London had been decided upon at the meeting on the 25th); time had been allowed for an inevitably lengthy meeting for the finalising of the sentence; but no time had been planned for any additional Westminster Hall session, with or without the King's presence.

The Warrant and its Amendments

One way through the tangle of suspect hypotheses and speculations which enmesh this subject seems to be to take each erasure on the death-warrant in turn and to try to analyse every possible deduction that might be made from it.

(a) *Heading, line 2. "ix"*

The final date was that of Monday, the day before the execution. Since "xx" and "th" were in the original (the latter above the line) and not erased the only possible figures that could have underlain "ix" in the original are "iv", "v", "vi", "vii", "viii", or "x". Single digits – "v" and "x", and three or four digits – "vii" and "viii", are less likely because of space,

although "vii" is not impossible; however, "vii" (Saturday) is not possible if the phrase "uppon the morrowe" was in the original (it is not over an erasure), since "the morrowe" would be Sunday; and "viii" is quite impossible, being Sunday itself. "iv" (Wednesday) is most improbable, and is specifically ruled out on the Thoms-Gardiner theory. "x" (Tuesday) is not utterly impossible; the alterations might have been made for the purpose of advancing the date of execution, not to postpone it; but there is no plausible historical hypothesis that would account for this, and the space consideration is against it. So we are left with "vi" (Friday) as the most probable original date in the engrossment. This is also the date most favoured by Thoms and Gardiner (although Gardiner thinks it may have been written out on the evening of the 25th). Even if this deduction is correct, it does not demonstrate or imply that the document so drawn up was signed by anyone, before the actual sentence; however, it would imply that someone who drafted the document, and ordered its engrossment, expected the King to be convicted and sentenced on Friday the 26th, and the difficulties involved in this have been discussed above.

(b) *Text, line 2. (sentence) "uppon Saturday last* $\overline{\textit{was}}$ *(pronounced).*

Thoms thinks that the erased words were: "uppon this day was", and that "this day" was Friday the 26th. It is noteworthy that so little effort was made to conceal the fact that an amendment was being made, to the extent that the word "was" was inserted between lines over a caret. There is no question that in this case, at least, a change was made, and that therefore the original engrossment was made when whoever commissioned it either anticipated, as the Thoms-Gardiner theory holds, that sentence would be passed on some day other than Saturday the 27th, or did not think it necessary to specify the date on which sentence was actually passed. While Thoms's guess that it originally said "uppon this day was" would fit plausibly into his theory that there was an anticipation that sentence would be on the 26th, it would be possible to make an alternative guess that the original was something else, e.g. "has now been duly".

(c) *Text, line 3. "... severinge of his head from his body".*

This phrase is part of the original text, and is not written over an erasure. As we have seen, in the late afternoon of Thursday, the Court ordered that the draft of the sentence should be prepared "with a Blank for the manner of his Death", and that the form of the sentence which contained this phrase was not agreed till the afternoon of the Friday. This seems to indicate that a death warrant based on the sentence and specifying "severing of his head" was unlikely to have been drawn up until after the afternoon meeting on the 26th; and this conflicts with the Thoms-Gardiner theory that it was intended to pass sentence that day. It is true that it is difficult to understand why the manner of death should be a stumbling-block if it had already been agreed that condemnation should extend to death; it would surely be "thinking the unthinkable" to consider, instead of decapitation, the punishing of a King, even one condemned for High Treason, by the hanging, castrating, quartering, and disembowelling before decapitation which was the later fate of a number of the regicides. However, there was obviously some hesitation about specifying the manner of execution, and the need was felt to separate it out from the condemnation to death.

(d) *Text, line 4. (sentence executed) "In the" (open Streete).*

The writing of these two words over an erasure is a puzzling circumstance, for which neither Thoms nor Gardiner tries to give any explanation. What can have been the original

under "In the"? It may have been that correction was being made of a simple *lapsus calami* by the scrivener, like the correction of a typing error. Or a possible explanation may emerge from the comments immediately following.

(e) *Text, line 4. "... open Streete before Whitehall uppon the morrowe being the Thirtieth ..."*

This has always been held to be part of the original document, except for the word "Thirtieth", which Thoms believed to have been written later in a blank space; he also pointed out that the word did not fill up the space left for the date, which would have taken the words "twenty-sixth" or "twenty-seventh" if necessary; and he and Gardiner used this to support his theory of an intention to sentence and execute earlier. There are some puzzling aspects about this argument. Why was a blank left for the date of execution, carefully measured, according to Thoms's argument, to accommodate a particular date, the twenty-seventh, when positive dates were inserted in the heading and line 2 of the text? How could "the open Streete before Whitehall" be an original entry when it was not until the late afternoon of Saturday that a committee of five officers was appointed "to consider of the time and place for the execution"? It seems highly probable that on Saturday ideas had not been firmly formulated about the place and time of execution. Otherwise, what purpose was served by not putting them up at the Saturday afternoon meeting in the Painted Chamber? It is not very plausible that there were deep divisions in the Court on the logistical question of the place and time of the execution, leading to deliberate delay. If the matter was truly decided only after the appointment of the committee, the reference to the street before Whitehall, apparently an original entry, cannot be fitted into the Thoms theory. Indeed, if it is original it is difficult to fit into any plausible theory about the alterations to the warrant.

A clue to the solution of this problem may lie in the fact that the words "open Streete" before Whitehall" seem to be crowded up exceptionally closely. It is possible that a large blank was left for the time and place of execution, not yet decided when the warrant was engrossed, and that the whole phrase: "In the open Streete before Whitehall upon the morrowe being the thirtieth" was written in after an appropriate decision was taken, i.e. on the morning of Monday the 29th. The length of the phrase could explain the difficulty of adjusting the spacing out of the words to the total room available, leading to closing up at the beginning and spreading out at the end. It may be added that the description of the date of execution – "uppon the morrowe being the Thirtieth day of this instante moneth of January" – seems rather unnaturally elaborate; it looks as if a phrase were being composed to fill up a considerable space. (Thoms had a theory that the amendments were written in a different hand from the original engrossment, but this is not obviously the case.)

The explanation here suggested would imply that some earlier signatures, at least up to the 29th, that of Garland, were applied to a document in which place and time were not entered. This is much more easily conceivable than signing before sentence; but it also draws attention to the tremendous weight which is being placed in all discussions of this document on five words - "at the day of sentence" – reported in the transcript of a trial as being spoken by Augustine Garland twelve years later. It is after all possible that his memory, or the reporting of his words, was not exact; him, or to anyone else. The law report quotes him as saying: "I sat, and at the day of Sentence signed the warrant for the execution"[15]; by the displacement of one word the statement becomes rather different: "I sat, and at the day of Sentence, and signed the warrant for the execution." This opens up the possibility that

when the gap for time and place was filled in at the meeting on Monday morning, signatures then began, implying that the minutes in the Roll tell the truth, except that a draft of most of the warrant had been engrossed earlier, and some amendments had to be made, including the date. Again this possibility, there is the fact that two of the early signers of the warrant, Sir John Danvers in 7th place and Sir Thomas Mauleverer in 10th place, are not reported as being present in the Painted Chamber on Monday.

(f) Text, line 5. "Five" (in the afternoone).

This change either extended or reduced the space of time, starting at 10 a.m., within which the execution was to be carried out. There has been no discussion or suggested explanation of this change by any commentator. The original figure must still have been some hour of the afternoon. It is unlikely to have been "six", because by six in January it would already be dark. It could have been "one", "two", "three", or "four". Any of these (or "five" itself) allows a surprisingly wide gap. The execution was in fact carried out between two and three o'clock, although the King had been brought to the Banqueting Hall about half-past ten. Wedgwood[16] comments on a number of possible factors in the delay, including a last-minute decision that it was necessary for the House of Commons to pass an emergency bill making it illegal for anyone to proclaim a new king. Is it possible that this was responsible for a very late amendment to the terminal time authorised in the warrant?

(g) *Text, line 7. "you".*

This amendment was made to a word in the lines calling upon the army and people to "be assisting" to those charged with the execution. No explanation seems possible except the correction of a scribal error; if this is the explanation in this case, it might also apply to some other cases.

(h) *Address. "To Colonell ffrancis Hacker, Colonell" (Huncks) "and Lieutenant Colonell Phayre and" (to every) "of them".*

This is a large erasure, which nevertheless leaves the words "Huncks" and, just below it, "to every" as in the original; it is also noticeable that the words over the erasure fit very snugly and appropriately into the space left by it. It seems an obvious deduction from the erasure of two names that the warrant was at first addressed to two officers other than Hacker and Phayre, and that they were recalcitrant. This supposition has been widely followed; Thoms speculates that "the officers' names erased were possibly Lieutenant-Colonel Cobbet and Captain Merryman" (p.22); they had both been involved with Colonel Tomlinson in the custody of the King.[17] If there had been a refusal on the part of two officers originally named, this could have been an important cause of any delay which might have held up the finalising of the warrant, and therefore of a need to amend other parts of the document.

Nevertheless, when in 1660 Francis Hacker was tried, condemned, and executed, along with his fellow-officer Colonel Daniel Axtel, who had been in charge of the troops in Westminster Hall, in all the evidence given against them and by them, and particularly in the evidence of such witnesses against them as Huncks and Tomlinson, there is no reference to refusal or resistance by any other officers who might have been nominated before Hacker. In his evidence against Hacker, Tomlinson actually refers by name to Cobbet and Merryman. He was given great latitude to explain his position and his activities in 1649 as fully as he wanted, mostly without much relevance to the charge against Hacker. Having

explained that he "had to do" with the guard that "had to do" with the person of the King "about St. James's", he said that orders every day for removing the King to Sir Robert Cotton's House were commonly directed to him, to Lt. Col. Cobbet, Captain Merryman, and one more. He made no attempt at this point to blacken Hacker further, or to add detail and verisimilitude to the account, by revealing that Cobbet or Merryman, or anyone else, had refused to act before Hacker's name was entered on the warrant. (If the names first entered were those of Cobbet and Merryman, the question must arise why that of Huncks, who was senior to both of them, was entered in second place.)

One must ask whether it would not have been an elementary administrative and political precaution to consult in the first place any officers whose names were being considered for entry in the warrant. The hypothesis of recalcitrance itself assumes that men in this position were not insignificant subordinates who could be expected to obey without question in such a serious task; and this is surely correct – Hacker, for example, was the younger son of a gentry family of Notts (the rest of the family being royalists) and shortly later in 1649 he became a judge in the High Court of Justice which condemned to death the Duke of Hamilton and others.

The supposition about the refusal of some to act has been used, obliquely, to support the suggestion that it must have been difficult to secure the services of army officers willing to undertake such a horrid and dangerous task. This involves an underestimate of the degree of disaffection, animosity, and fanaticism in their ranks. The capital was thronged with troops who with their officers had been petitioning Parliament for many weeks on behalf of the policy expressed in the *Remonstrance* of the Army back in November 1648, for the bringing to justice of "the capital and grand author of our troubles, the person of the King". There must have been many other officers around who felt, as Axtel was later reported by Huncks to have said at the time, that it would be shameful if, "the ship ... now coming into harbour", they were to "strike sail before we come to anchor"[18]. Huncks's own name was not withdrawn from the warrant; he was apparently not "recalcitrant" at that time; Axtel himself was around, and was apparently spurring on the action. Even if it were true that one, or even two, of the original nominees refused to act, and there was therefore some delay, there is unlikely to have been any difficulty in finding substitutes.

Summing up on this point, it can be said that the introduction of the names of Cobbet and Merryman is an unsupported speculation; that refusal to serve by two individual officers remains a possibility, although there are some puzzling aspects about it; and that it is not logically out of the question that the names of Hacker and Phayre were also in the original and that some other error or defect in the document had to be corrected at this place.

(i) *Signatures. Column 7. "Gregory Clement".*

Clement was a merchant of Plymouth and London; he was later moderately active in the Rump (the historian of the Rump Parliament, Dr. Blair Worden, classifies him as 3 out of 6 on his scale of activeness) until he was expelled from it in 1652, on a charge of adultery, but actually at the instance of Harrison and his supporters as a result of political disagreements.[19] In spite of his relative insignificance, he was one of six regicides executed in 1660, nominally because he did not surrender but was arrested. Gardiner[20] says his name on the death warrant was not written over an erasure but was merely erased; Wedgwood[21] follows this, and links it with his disgrace because of being found in bed with his maid-servant. But the Wedgwood idea does not hold water; the warrant was in the possession of

Hacker, and not available for the House of Commons to punish one of its members by trying to strip him of the honour of regicide. In any case, his name remained, and remains, in the list of signatories of the death-warrant, including a listing in the Roll, and he pleaded Guilty in 1660. The mystery attached to his signature over an erasure on the warrant is unsolved.

A Possible Scenario

It cannot be claimed that this line-by-line analysis reveals a completely convincing alternative probable sequence of events to that embodied in the Thoms-Gardiner story. However, there can be constructed from it a different scenario which does not contradict any of the known facts and which does not violate strong probabilities, e.g. by assuming that a first draft could be drawn up specifying execution by "severing his head from his body" when the manner of death had been by resolution left open by an official meeting of the Court, or by assuming that signatures and seals could be solemnly attached to a warrant which said that sentence had been pronounced, before sentence had in fact been pronounced.

Two assumptions of some importance have to be found acceptable. The first is that in a document such as this – a warrant for action addressed to specific officers – there would be little hesitation, if amendments were needed, in dispensing with a complete new engrossment, and instead making erasures and new entries in a fairly obvious way, in the confidence that the final document as handed over to the addressees would be a clear and unmistakable instruction and authorisation. The second is that while signatures would not be appended to mis-statements of vital facts, some might have been appended to a document in which (a) a gap was left for a statement of the time and place of execution, not yet decided, and (b) acceptance would be taken for granted of changes which proved necessary in such non-vital matters as the date of the document itself.

On such a basis, the following sequence of events would have been possible, and indeed probable:

1. In the late evening of Friday the 26th, after the Painted Chamber meeting at which the intended sentence and death by decapitation were agreed, and on the following Saturday morning, progress was made in drafting and engrossing the order to three officers to see to the execution, it being assumed that all three would be willing to undertake this. It was dated for Saturday the xxviith , and it said, as Thoms suggested, that sentence "uppon this day was" pronounced; it was assumed that the trial session would be concluded in a much shorter time than it eventually took, and that it would be possible to append a sufficient number of signatures and seals on the Saturday. A large gap was left for the place and time of the intended execution, for these had not yet been discussed.

2. Signing and sealing of this document was started after the Saturday afternoon meeting in the Painted Chamber, with the gap about time and place still there, those problems having just been remitted to the military committee. Signing went on at least up to the 29th signature (i.e. Garland's statement at his trial in 1660 was correct, and was quoted correctly).

3. Either late that evening, or over the week-end, it emerged that one, or two, of the officers addressed in the warrant (not including Huncks), having brooded over their previous consent to be nominated to see to the execution, or having heard about it

for the first time, indicated their unwillingness. (This is not a necessary part of this hypothesis; the explanation for the later change at this place in the warrant could be otherwise, but unknown.)

4. The signatures on the warrant started off with a fine free spaciousness – four in the first column, six in the second, and only eight in the first full-height column, the third. This spacing would have given room on the warrant for no more than fifty signatures at the most; it had never been intended that all the 67 judges who passed sentence would sign this warrant. It became clear, long before Garland's signature was reached, that many more of them wanted to sign than had been allowed for. Consequently, not only did the signatures begin to be crowded up much more closely (as many as twelve in the sixth column), but it had to be recognised that all the would-be signatures and seals could not be accomplished that day. The following day was Sunday a *dies non*. No matter how much buzz and debate occupied that Sunday, further official progress had to be deferred till Monday,

5. On the Monday:

    a. It was decided that since more signatures had to come, it would be better to amend the date of the warrant to that day, the xxixth, and it was therefore necessary to alter "uppon this day was" to "uppon Saturday last was".

    b. The committee of officers having recommended a time and place for the execution, and the Court having approved (purely formally, for the King had already been informed), the necessary entry was made in the warrant. The spacing needed for the long phrase was difficult to gauge; it had to link up at the end with "day of ..."; so the hasty writing (with a mistake at the beginning which had to be corrected) started off with unnecessary crowding and ended up by not filling up the whole space.

    c. For some uncertain reason it was decided that the period of time to be allowed for the execution should be extended to five p.m., and this change was made in the warrant.

    d. It had now been arranged that Hacker (and possibly Phayre) would take the places of the officer or officers who had withdrawn from the charge of the execution, and the necessary amendment was made to the warrant. The fact that the new names fitted so neatly into the spaces left by the old, and followed the correct order of rank, was a coincidence.

    e. Other signatures and seals (including that of Gregory Clement) were appended, to the total of fifty-nine.

    f. Either at the final stage, or earlier in the scrivener's work, a small slip in writing the word "you" was corrected.

This is a less dramatic tale than that developed by Thoms and Gardiner. But it avoids the gross improbabilities otherwise involved; it is consistent with all the observable facts; and it has the positive advantage that it does not depend on the myth of the reluctant regicides.

[1] Particular thanks for advice and encouragement in the preparation of this paper are owed to Professor Austin Woolrych and Dame Veronica Wedgwood.

[2] Young, G. M., *Charles I and Cromwell*, 1950, p. 174. See also: Abbott, W. C., *Writings and Speeches of Oliver Cromwell*, i., 1937, p. 743; Wedgwood, C. V., *The Trial of Charles I*, 1964, pp. 173-4; Fraser, A., *Cromwell, Our Chief of Men*. 1973, p. 286.

[3] For an account of how it came into the possession of the House of Lords, see *Lords Journals*, xi., 20-31 July 1660.

[4] Page references to Thoms are to the 1880 edition.

[5] *State Trials*. v., p. 1200. This was not, as Abbott thinks (i., p. 743) "Colonel Ewer", who was a regicide and signed the warrant in 37th place; this Ewer was a servant of Henry Marten.

[6] Page references to Gardiner are to the 1891 edition, iii.

[7] Whitelocke, B.: *Memorials of the English Affairs*, (ed. 1732), p. 373. The minutes of the Court record that the intention was to withdraw for half-an-hour.

[8] Where references to, or direct quotations from, the proceedings of the Court are given, they are taken from "the Roll", House of Lords MS 3676, which is the engrossment of the official Journal of the High Court of Justice, presented to the House of Commons in 1650 (see Bond, Maurice F., ed.: *The Manuscripts of the House of Lords*, xi, (New Series), Addenda 1514-1714, pp. xviii-xix.)

[9] Nalson, J.: *A True Copy of the Journal of the High Court of Justice for the Tryal of K Charles I*. 1684.

[10] Thoms. op. cit., p. 23, Wedgwood, op. cit., p. 174.

[11] Mabbott, Gilbert, *A Perfect Narrative of the Proceedings of the High Court of Justice in theTryal of the King*, 1649, as reproduced in *State Trials*, iv, p. 1004. Mabbott was the principal licenser of the press, and was a favoured reporter. Under the same date both Whitelocke (*Memorials*, 1732, p. 372) and Rushworth (*Historical Collections*) print shortened versions of the same statement, the structure and phraseology of which are so close that it is obvious that they were taken from Mabbott.

[12] Wedgwood, op. cit. pp. 142, 237.

[13] Omitted from this list is John Fry, M.P. for Shaftesbury, and a somewhat erratic secretary. He had attended every single meeting of the Court up to January 25th, but on the 26th, in a mysterious episode, he was suspended from membership of the House of Commons and debarred from sitting on the High Court, on a suspicion (probably justified) that he did not believe in the doctrine of the Trinity. He would undboutbedly have passed sentence on the King if he had not been debarred.

[14] Professor Austin Woolrych has suggested that there was "a sense in this baroque age that death had a tragic fitness, and that imprisonment or banishment would have demeaned the cause. Wasn't Charles himself set on martyrdom?" (Private communication.)

[15] *State Trials*, v., p. 1215.

[16] op. cit. pp. 184-6.

[17] Tomlinson had been a member of the Court, and is reported in the Roll as having attended the trial session on 27 January and having participated in passing sentence on the King. However, in 1660 he denied his attendances at the Court, and was not put on trial at that time, not having been included among the exceptions to the Act of Oblivion.

[18] *State Trials*, v., p. 1148.

[19] Worden, B. *The Rump Parliament, 1648-1653*, 1977, pp. 284, 389; Commons Journals, vi., 11 May 1652.

[20] op. cit. p. 583.

[21] op. cit. p. 219.