

# Conspiracy, Crime, and Conflict in the Court of Star Chamber

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## ABSTRACT

To those living through them, the Elizabethan and early Stuart years of England's history seemed unusually riven by plots and conspiracies. Protestants feared the public effects of the private machinations of the Scottish queen and her supporters, of Jesuits, and of perfidious "papists" more generally. Catholic polemicists countered with narratives of dark deeds done by men who subverted rather than served the Crown: "secret histories" circulated that warned of William and Robert Cecil, the earl of Leicester, and others undermining the public state of the realm.<sup>1</sup> Very real conspiracies by men such as the Earl of Essex and Guy Fawkes fostered fears of others. From the hard and hungry 1590s, protests against enclosures and lack of food became so common and concerning that the authorities contrived to brand some such riots as the products of treasonous conspiracies that threatened not just particular landlords or grain merchants but the public at large.<sup>2</sup> Over the early seventeenth century, fears of covert machinations by both the poor and the powerful only increased, culminating in the fear that King Charles himself had become a pawn in a Catholic conspiracy that endangered the lives and liberties of his subjects.<sup>3</sup> Talk of plots and conspiracies—real and imagined—abounded in an increasingly divided and discordant political culture, seen as threatening a "public" they arguably helped to create.

## Keywords :

papists, Essex, conspiracies, secret histories, arguably

## 1.Introduction

To those living through them, the Elizabethan and early Stuart years of England's history seemed unusually riven by plots and conspiracies. Protestants feared the public effects of the private machinations of the Scottish queen and her supporters, of Jesuits, and of perfidious "papists" more generally. Catholic polemicists countered with narratives of dark deeds done by men who subverted rather than served the Crown: "secret histories" circulated that warned of William and Robert Cecil, the earl of Leicester, and others undermining the public state of the realm. Very real conspiracies by men such as the Earl of Essex and Guy Fawkes fostered fears of others. From the hard and hungry 1590s, protests against enclosures and lack of food became so common and concerning that the authorities contrived to brand some such riots as the products of treasonous conspiracies that threatened not just particular landlords or grain merchants but the public at large. Over the early seventeenth century, fears of covert machinations by both the poor and the powerful only increased, culminating in the fear that King Charles himself had become a pawn in a Catholic conspiracy that endangered the lives and liberties of his subjects. Talk of plots and conspiracies—real and imagined—abounded in an increasingly divided and discordant political culture, seen as threatening a "public" they arguably helped to create.

Conspiracies in the narrower legal sense abounded, too. From the late thirteenth century, "conspiracy" denoted confederacies to abuse legal process: typically, potentially fatal combinations maliciously to lay false charges of a capital crime against someone. Long triable at common law, the crime of conspiracy also became a focus of the early modern prerogative court of Star Chamber. In the late sixteenth and early seventeenth centuries, the Star Chamber heard growing numbers of allegations of people using and abusing criminal law and legal procedures for their own criminal ends, whether for personal profit or revenge. Among other efforts to protect the authority of royal justice, it expanded upon traditional common law definitions of conspiracy. In so doing, it became part of the problem. In several senses, the Star Chamber extended the scope of conspiracy, not least in encouraging people to frame their disputes as such and providing a venue that allowed further conspiracies to develop. Actions undertaken to protect the legitimacy of the king's (or queen's) law via this prerogative body contributed to the jurisdictional conflicts between common law and conciliar courts. More generally, the very public, much-discussed cases heard in the Star Chamber heightened concerns that royal "justice" was itself an engine of injustice. Amongst other allegations of people misusing the law for their own ends, conspiracy cases brought to the Star Chamber demonstrate ways in which criminal proceedings generated conflict rather than consensus in the years of growing social strife and political contention that culminated in the civil wars and revolutions of the mid-1600s.

Conspiracy cases in the late Elizabethan and early Stuart Star Chamber can be analyzed as part of a longer genealogy of the modern crime of conspiracy, but they can also speak to the history of the conflict-ridden era in which they occurred. While adding new elements to recent reappraisals of jurisdictional tensions in the pre-Civil War years, this study is primarily intended to contribute to an ongoing reassessment of the functions of the law and popular "participation" in early modern society and state formation. Social histories of law, crime, and punishment long relied on the records of the common law courts. Often focused on juries and the gallows, such studies made participation and discretion keywords for understanding the social functions of the criminal law in the long centuries before industrialization and the advent of policing, penitentiaries, and parliamentary reform of the penal laws. The widespread participation of subjects in the discretionary enforcement of law and order as accusers, jurors, and petty officers helped generate "the state" and purportedly served to legitimize social relations of power by making the law more reflective of community norms and needs. The heightened volume of litigation around the turn to the seventeenth century was a sign or source of stability as people took their conflicts to the courts instead of dealing with

them independently. But a growing body of work now undermines notions that participation in legal processes led to consensus or political legitimation. Laura Flannigan's recent reconstruction of the early Tudor origins of the Court of Requests, for example, demonstrates that a model of litigation as "state-society cooperation" struggles when both "justice-seeking and justice-giving" are factored in. In drawing attention not just to the petitioners but also to the defendants, Flannigan highlights the contestation of civil "justice" from the very beginning of this equity court. She also urges a contextualized, "more discerning and less generalizing" analysis of the varied law courts and their functions. This article builds on the recent efforts to qualify the supposed legitimizing effects of participation, in part by arguing that an assessment of the functions of the criminal law needs to recognize that common law courts did not have a monopoly on criminal matters: in the years before the English Revolution, the conciliar Court of Star Chamber also had criminal jurisdiction and made criminal law. And while people's uses of the highly discretionary court of Star Chamber may well have expanded the scope and functions of the state, in the context of the varied tensions of the early seventeenth century, they undermined any hegemonic functions of criminal law. The intervention is in part methodological: social histories of riot, witchcraft, libel, and other such crimes have long and ably drawn on Star Chamber records for their unusually rich depositions, but turning directly to cases as heard by "the lords of the council sitting in Star Chamber"—especially those with recorded judgements—allows a better view of the contested uses and disruptive effects of the criminal law before the mid-seventeenth-century revolutions. A focus on conspiracy cases as brought to and adjudicated in the Star Chamber brings this contestation and disruption into even sharper relief.

The Court of Star Chamber exhibited many differences from the common law courts with which it had an uneasy supervisory relationship. Essentially the monarch's council acting in a judicial capacity, the Star Chamber acquired institutional coherence by the early 1500s and a special focus on "abuses" of legal procedure. Like other courts, its business boomed from the later years of the sixteenth century into the seventeenth. Part and parcel of that profusion of litigation, it heard many allegations from petitioners that others had harmed them and offended the sovereign by seeking profit or revenge "under color of law or pretense of Justice." The court's discussions and decisions in response to these complaints show how royal agents sought to keep criminal law from being used for criminal ends, to encourage the right kind of participation, and to make justice seem just to those it was meant to police. As William Lambarde explained in the 1580s, the Star Chamber was no ordinary court: "Sundry things do fall out (both in peace and war) that do require an extraordinary help and cannot abide the usual cure of common rule and daily justice": for enormities that hindered the execution of law, "a higher hand" and "absolute government and authority" proved necessary. Significantly, the court did not use grand or petty juries to filter or try accusations. Instead, royal councilors and high court justices sat at Westminster to hear the narratives of complaints brought to them directly by both private petitioners and royal agents. While they paid some attention to precedent and to statute, their own decisions were largely discretionary. They sometimes ordered the payment of damages, as in civil suits between parties, but operated primarily as a criminal court: with the key caveat that they could not impose a sentence of death (and the attendant forfeiture of estates), they otherwise punished both defendants and plaintiffs as they thought fit for the quality of the offense and offender, using a mix of fines, imprisonment, and corporal sanctions such as whipping, branding, and the pillory.

In respect to conspiracy allegations, the royal councilors and high court justices who sat in the Star Chamber extended older notions of the crime, long understood at law as agreements to pervert the course of justice, alongside a broader, more general sense of confederacies to effect some unlawful end. They made decisions in some cases that went on to be treated as precedents in the subsequent common law history of the crime. For it would be, of course, the common law courts that outlasted the Star Chamber. In 1641, parliamentarians cited the court's own lack of "due process" as a reason to abolish it.<sup>13</sup> Before its demise,

it heard a wide range of complaints of injustices perpetrated through the courts but also came to be seen as producing its own. Conspiracy cases as brought to and adjudicated in this highly discretionary court show that participation could undermine the criminal law's ideological functioning in more ways than one: in the increasingly charged social and political climate of the late sixteenth and early seventeenth centuries, they focused attention on profit-taking and other "misuses" of the law, sharpening concerns that the king's justice was not just and even contributing to an emerging sense of a "public justice" separable from that of the king.

### Using Criminal Law to Criminal Ends

The Star Chamber's archive opens a window into enterprising individuals' varied misuses of criminal law as a tool for personal profit and revenge. Criminal law had never just been about controlling criminal behavior: in its medieval development, it operated openly and explicitly as a profitable attribute of lordship, one meant to quell disruption and channel vengeance in ways that enhanced the revenue as well as the power, if not the authority, of the lord. But even as the early modern Crown sought to gather together the fragments of political power dispersed in lordly hands and to assert a "public Justice of the State" coterminous with its own interests, it contended with many individuals across the social spectrum who used the law to their own profit and purposes. People had long done so, of course, but in years in which ever more people turned to the courts to litigate their disputes, the Star Chamber showed particular concern to quell abuses and offered a distinctive venue for petitioners to complain of varied misuses of criminal proceedings in other courts. Petitioners turned to the Star Chamber with often lengthy narratives that alleged a mix of wrongs to themselves and their sovereign that they described in such terms as perjury, bribery, and conspiracy. Over Queen Elizabeth's reign, the number of bills filed with the court rose from 72 in the first year to 732 in the last. In James I's reign, petitioners entered 8228 bills. Thomas Barnes's indexing of the latter suggests that roughly a quarter alleged crimes against justice. Few bills from King Charles's reign or formal records of judgements survive, but reports and case notes allow insight into how the court responded to at least some such complaints. Collectively, they demonstrate the wide variety of ways that people of all sorts sought to appropriate legal processes to their own purposes.

Some officeholders acted "corruptly" against their oaths, of course—and in ways that Linda Levy Peck showed to have become, if not more common, then more concerning in the early seventeenth century—but others also tried to avail themselves of the perquisites of law and justice. In addition to the JPs, sheriffs, coroners, and bailiffs brought before the Star Chamber on complaints that they had used their positions to secure rewards, other people faced accusations that they had sought personal profit by impersonating officers of the Crown. According to one bill of complaint, for example, Henry Roise portrayed himself as a royal pursuivant, using forged warrants to exact payment from a merchant of Margate. Some men had thriving enterprises in extorting funds by brandishing forged privy council warrants to search for Jesuits, seminary priests, and recusants. The Star Chamber pleadings and reports on judgments offer abundant evidence that criminal law could be a profitable enterprise and an instrument of personal power for a wide range of participants.

Such uses or abuses of legal processes for personal profit sometimes happened in the courts themselves. Deponents could legitimately collect payment to cover their expenses but sometimes illicitly made money by bearing false witness. Jurors in common law trials sometimes used their position to take payment in exchange for acquittals or, at times, false convictions. According to depositions made before the Star Chamber commissioners, one man bragged that in his role as foreman of two juries upon life and death, he had made substantial profit to help secure false acquittals—£10 from a murderer and an unspecified sum from one "Black Robbin," accused of horse theft. He had also boasted that he expected payment in a new case, but this time to convict a man for a killing he did not commit.

As accusers and plaintiffs, most anyone could try to use the law to their own ends, and, troublingly, quite a few people knowingly falsely accused others of capital crimes for a variety of reasons. Some purportedly did so from desires for revenge. Such was the court's verdict against Dorothy Blackburn, for example: the judges deemed her and her associates guilty of conspiracy to have a man executed for treason—and he was racked—after he had had her husband arrested for debt. Others sought to use accusations of capital offenses to force valuable concessions. In one example, the court found John Harrington and his confederates guilty of falsely charging two men with the theft of barley, oats, and 80 cheeses (“or thereabouts”) in an attempt to have them forgive a debt John owed them, with a promise that he would abandon the prosecution once they did so. Some sought to have the law remove a person who barred them from a profitable wardship or inheritance. In one such case, in 1620, the attorney general filed a bill that accused Thomas Andrews of conspiracy to have his brother's widow, Lady Andrews, and her maid, Anne Moyle, charged with murder for the supposed death by poisoning of his brother Euseby. Physicians had offered conflicting accounts upon the dissection of Euseby's body, with some maintaining he had died of a longstanding illness, but at least one, John Cotta (a physician with some residual fame for his publication on witchcraft), opining forcefully that poison was to blame. The Star Chamber bill suggested that Thomas had procured Cotta's testimony to prop up his efforts to have the women indicted at the Northamptonshire assizes—and Moyle at least did face trial, though she was ultimately acquitted—all in an effort to claim for himself the wardship of his brother's heir.

Complainants alleged that some false capital charges came from greed for the forfeitures due upon conviction, with private parties trying to make active use of the law's provision that felons forfeit their property. Upon conviction of felony or treason, land was forfeited to one's lord and personal property to the Crown. From the late sixteenth century, the Crown very often bestowed the rights to collect these forfeitures on petitioners as rewards and favors.

The grants of forfeitures became part of the patronage bounty that courtiers sought from the late Tudor and early Stuart sovereigns. Some of the would-be recipients of these forfeitures worked hard to ensure the conviction needed to get the goods. In 1628, for example, the Star Chamber found that Thomas Carleton had conspired to charge Giles Escourt with the murder of Mary Winkle, having secured a grant of Escourt's forfeitures should he be convicted. Although a coroner's jury deemed Winkle's death the result of natural causes, Carleton tried at two separate assize sessions to lay indictments against Escourt, to have him killed by law, and thus to acquire his possessions.

In some such episodes, innocent people did go to their deaths. One remarkable case combined several of these motives, bringing together desires for revenge and for profit, and both private initiative and judicial malfeasance. The incident took place in Ireland but prompted two long, convoluted, and wellreported trials in the English Star Chamber. In 1625, Philip Bushen, an 80-yearold native of Devonshire but then resident in County Kildare, found himself on trial for the murder of his wife, Grace, on indictments twice proffered by “MacRobin,” a local man who wished him harm. While grand juries initially found the bills without sufficient merit to go to trial—most everyone having deemed Grace's death the result of natural causes—the assize judge and sheriff responded more helpfully to Bushen's local foe when they thought of the forfeitures to be had. The Star Chamber later accepted the story that the judge, Dominick Sarsfield, Lord Kilmallock, had presented evidence in private to a packed and then threatened trial jury. Bushen was convicted and executed. Bushen's son insisted that Sarsfield and others had effectively murdered his father for the forfeitures. The son overstepped, though, when he also asserted that the Lord Deputy, Viscount Falkland, had been in on this plan “to murder a man by pretense of justice.” (Bushen Jr. said that Falkland had wanted the forfeitures to put towards the marriage portions of his two daughters.) In 1633, Falkland brought Bushen and others before the Star Chamber on an accusation of slanderous libel and was vindicated.

But some of the judges in that case agreed with Bushen that Sarsfield, MacRobin, and some others, at least, were deeply at fault, with one judge noting that the case had seen “an innocent old man brought with sorrow to his grave.” Judges’ discussions included references to the biblical Jezebel having Naboth killed on false charges to claim his vineyard and scathing comments on the misuse of the “sword of justice” to strike down an innocent man—along with a weak pun that Sheriff Walter Welden had, despite his name, “ill done.” In a second trial focused on Chief Justice Sarsfield’s abuse of office, the Star Chamber judges found him guilty and sentenced him to heavy fines, damages, and time in the Fleet, where he died a few years later. MacRobin, Bushen Sr.’s local foe who had started the proceedings, seems to have died of natural causes before he could be brought to justice himself. Bushen Jr. obtained damages to make up for the property seized from his father, but Bushen Sr. had, in this account, been killed by legal process to satisfy malice and, above all, greed.

That people would abuse legal process for their own ends was obviously a problem, in all sorts of ways. For one, that forfeitures might tempt a person to lay false charges against another was sufficiently well known and feared that the prospect served as a means to cast doubt on legitimate accusations. When Christopher Bainbridge tried prosecuting Philip Brunsell for the murder of his cousin, Brunsell argued that Bainbridge had conspired with confederates to procure a false indictment, “with a view to endangering my life and dividing my estate among them.” Brunsell maintained that his accuser had sought a grant from the king of all the goods and chattels that he would forfeit upon conviction and had pledged to use some of that money to pay co-conspirators for their help along the way. Whether or not he was in fact a killer, Brunsell used such arguments to undermine any attempt to prosecute him for the death right from the outset. In other cases, too, the accused or their heirs cast doubts upon an accusation that may well have been proper, based on the supposed lure of the forfeitures to those who had done the accusing. Such stories must at times have moderated jurors’ readiness to indict and to convict offenders brought before them.

Quite aside from the dangers such uses of legal proceedings for private ends posed to individuals and to the practical operations of the courts, they also endangered the ideological functioning of the criminal law. While participation in the law’s operation might in some contexts shore up perceptions of the law’s legitimacy, in such cases, it could well undermine any such beliefs. The Star Chamber judges, at least, made clear in their recorded decrees their fear that such abuses of the law offended “Justice” itself. In the 1602 case of a lawyer involved in laying false felony charges to benefit from the forfeitures due upon conviction, the judges deemed his crime especially odious in that he had “made Justice a murderer and a robber.” In another such case, a judge urged that if “The lying in wait to kill a man without doing of it is punishable in this court, much more the lying in wait to kill one with the sword of justice.” This last quote hints at a few of the problems posed by such abuses of the law: how and where and under what law would a person accused of such malfeasance be tried? Here, the Star Chamber goes from being just a source of information about such uses and abuses to a key venue for developing means to respond to them—but in so doing, aggravating concerns about its own undermining of “justice.”

### **Courting Conflict and Conspiracies in the Star Chamber**

The conciliar Court of Star Chamber offered a distinctive venue for allegations of conspiracy and other crimes against justice in the late sixteenth and early seventeenth centuries, but “misuses” of criminal law were not new, of course: the common law had long included remedies for false accusations and perversions of the king’s justice. From the late 1100s, an individual facing trial could argue that they had been accused from hate and spite (*de odio et atio*). The 1275 Statute of Westminster (I) emerged from efforts to tame maintenance and the improper support for another person’s litigation, known as champerty when it resulted in financial reward for the supporter. From 1293, if not earlier, a writ for conspiracy ran, too, with conspiracy identified as agreements to corrupt legal process with false accusations. In 1305, conspiracy

also became, in Alan Harding's words, the subject of "the first statutory definition of a crime in English law," with parliaments evincing concern from their earliest days with such agreements to maintain false accusations. Someone acquitted by a jury upon charges of a capital felony, brought by either appeal or indictment, could prosecute the people who had confederated together to have them tried. Moreover, as Harding notes of his medieval evidence, "the idea of conspiracy covered the whole spectrum of ways in which the legal process was corrupted, by maintenance, embracery, and champerty." Early legal historians such as James Stephen and William Holdsworth had believed that the "modern" notion of conspiracy as an agreement to effect any unlawful end only developed in the seventeenth century from the Star Chamber decisions, but Harding has argued that it had earlier roots. He suggests that the parliamentary acts as well as judicial decisions conveyed a broader sense of conspiracy as including sworn associations to disrupt order more generally.

Even though the modern notion of conspiracy as an agreement to effect any unlawful end did not originate in the Star Chamber, royal councilors and judges in the sixteenth and early seventeenth centuries did use this prerogative court to develop an ever more expansive and robust approach to defining and damning attacks on justice. A concern with abuses of law and of legal process shaped the Star Chamber from its first real institutional development. Some people in the sixteenth and early seventeenth centuries thought the court originated with a statute of 1487; others argued that the court had a longer history and had only been newly empowered by that statute. Either way, that 1487 statute had as its focus bribe-taking by jurors and the maintenance and embracery by powerful men that perverted justice.<sup>36</sup> As the court's scope expanded in the late sixteenth century, its judges and the petitioners who came before it evinced growing concern with subversions of justice not just by the great but also by any and all participants in the enforcement of the law. This concern was shared in both the Star Chamber and the common law courts, thanks in part to overlapping personnel. David Chan Smith has previously demonstrated Sir Edward Coke's use of both to try to rein in misuses of the law to protect the Crown and its courts from coming into disrepute: as attorney general, Coke prosecuted officers, informers, and others who used "public authority" for "private purposes." As a judge, he and his common law brethren honed older notions of barratry as brawling disturbances of the peace to link it more closely with vexatious promotion of suits at law. Supplementing common law's developing measures, he and others acting via the Star Chamber defined some such abuses as libel and "false clamor," charges brought to bear against malicious accusers and vexatious litigants. In the prerogative court, councilors and judges developed an expansive jurisdiction over perjury, both before and after sixteenth-century statutes brought this ecclesiastical offense into the common law courts. They expended much energy on prosecuting as perjurers jurymen they thought had given verdicts opposed to their oaths and the evidence. The Star Chamber claimed cognizance over attempts—attempted murder, for example, had not been a crime at common law but could be tried in the Star Chamber—and used this to sanction a broad range of endeavors as prospective attempts to subvert the law. They also attended to conspiracies, understood narrowly as agreements to prosecute someone falsely and maliciously of a crime punishable with death but also more broadly as combinations to effect other unlawful acts. Some 250 bills alleging conspiracy to indict survive in the files of the Jacobean court, amidst approximately 3600 referencing conspiracy in a looser sense. Some of these cases began with charges from the attorneys general but most came from private petitioners encouraged by the court's actions in previous cases to depict themselves as victims of conspiracies that endangered them and offended the king, crimes at once private and public.

In his 1621 treatise on the court, William Hudson claimed for the Star Chamber an expansive ability to punish conspiracies, one that extended beyond the common law's remit. Having served as both clerk and counsellor in the Star Chamber, Hudson had a long familiarity with the court he sought to defend from imputations of wrongdoing. He acknowledged that some dispute had arisen between Lord Chancellor

Ellesmere and Chief Justice Sir Edward Coke over the Star Chamber's jurisdiction in such cases. While Coke actively participated in the court's broadening of actions against false accusers, he wanted cases that did fit common law definitions of conspiracy to be tried in the common law courts. In a complaint brought to the Star Chamber in January 1607, Richard Rochester accused Margaret Solme, her son, her physician, and others of having conspired to accuse him unjustly of the murder of Margaret's husband, Samuel, in part to secure his forfeitures and in part from bitterness about a previous suit he had filed in the church courts. Coke argued that Rochester could and should prosecute his case at common law, as he had been lawfully acquitted. According to Hudson, though, Ellesmere "did gravely confute that opinion": the Lord Chancellor successfully insisted that even when an individual might pursue his own case elsewhere, in this as in any other case of force or fraud, "this court will proceed for the king also." In this particular case, the court sided with the defendants: they noted that the plaintiff had struck Samuel shortly before his death, so there had been reasonable grounds to prosecute him, even if a jury later rightly found him not guilty. The defendants' actions did not constitute a criminal conspiracy maliciously to indict, but Ellesmere and then Hudson used the hearing to assert that the Star Chamber could claim jurisdiction over cases of conspiracy that might otherwise be heard at common law. Using language that had a particular resonance in the early seventeenth-century disputes over legal jurisdiction, Hudson insisted "this is no usurpation of this court." For Hudson, as for Ellesmere, such private abuses of the law to private ends surely fit within the "great and high jurisdiction of this court, which, by the arm of sovereignty :: [performs] such things as are necessary in the Commonwealth, yea although no positive law or continued custom of common law giveth warrant to it."

Not long after, also in 1607, a second, more broadly significant case alleging a conspiracy came before the Star Chamber, one that created precedents cited even today in defense of judicial immunity. *Rice ap Floyd* alleged that Sir Richard Barker, a justice of the Great Sessions in Anglesey, had criminally conspired to have William Price [ap Rice] executed for a murder he did not commit. Floyd maintained that Hugh ap William had drowned entirely by accident in 1600, but that Justice Barker had procured a compliant sheriff to pursue a murder charge against Price in furtherance of personal animus. The Welsh witnesses who supposedly supported the case against Price later denied their purported examinations, which had been recorded in English rather than in Welsh, to their confusion. According to Floyd, money and kinship procured a biased jury; Price went to his death unjustly. All this and more, Floyd set out in a lengthy bill of complaint, but to no avail. Indeed, Floyd—the plaintiff—was fined £100 for false clamor, pilloried, and imprisoned. In respect to conspiracy, the case affirmed that such a charge could not be brought to any court by or on behalf of a person found guilty of felony after due procedure by a grand jury and a trial jury. But the case would also be made to do more.

Edward Coke used Floyd's case against Justice Barker to insist that common law judges could not be sanctioned in the Star Chamber for their decisions in their own courts. Ellesmere might be able to claim for the Star Chamber conspiracy cases triable in the regular courts of law, but according to Coke, in this hearing, the majority of the judges resolved that the dignity and authority of common law judges could not be challenged in the conciliar court. Coke may have been responding to the discussions in the Rochester case or to broader concerns about the relationship between the various courts and laws of the land that manifested in the same year: throughout 1607, Coke stepped up his efforts to assert the primacy of common law courts over the Courts of High Commission, Requests, and the regional councils in maintaining what he took to be due process as set out in Magna Carta. This was the year in which the great Case of Prohibitions was heard, after common law judges had prohibited and paused several cases brought to the Court of High Commission. Coke and the king clashed in their understandings of law and jurisdiction, with lasting consequences.<sup>48</sup> While Coke left no comment on the Rochester trial in his reports, he did write a substantial account of Floyd's case against Justice Barker, a report asserting that judges and juries in common law

courts served the king and commonwealth and should be presumed to be acting indifferently. If jurors acquitted a felon against manifest proof, yes, they could certainly be charged, but they could not be questioned for convictions made in the common law courts of record. A common law judge could be held to account for “extrajudicial” acts but was otherwise immune to action in the Star Chamber. Coke maintained that judges could not be charged for conspiracy for what they did openly in court:

And the reason and cause why a judge, for anything done by him as judge, by the authority which the king hath committed to him, and as sitting in the seat of the king (concerning his justice) shall not be drawn in question before any other judge, for any surmise of corruption, except before the king himself, is for this: the king himself is de jure to deliver justice to all his subjects; and for this, that he himself cannot do it to all persons, he delegates his power to his judges, who have the custody and guard of the king’s oath.<sup>49</sup> To accuse the judges of conspiracy, even in the king’s high Court of Star Chamber, would slander the justice of the king in what Coke considered its highest seat: the courts of common law.

In his report, Coke also laid the groundwork for an argument that the common law courts were courts “of record” in a way that the Star Chamber and the other prerogative courts were not. He insisted that common law “records are of so high a nature, and for their sublimity, they import verity in themselves, and none shall be received to aver any thing against the record itself.” The Star Chamber was no court of record in his view, and indeed, he secured the destruction of the bill that Floyd had filed against Barker: “As the matter was deemed not to be examinable in this court, it was ordered that the bill be taken off the file and cancelled and utterly defaced.” More broadly, Coke’s report intimated that abuses of justice and legal process happened not just outside the Star Chamber but also potentially within.<sup>50</sup>

The Star Chamber continued to hear allegations by private petitioners that their foes had tried to use the law as a potentially fatal instrument of personal profit and power, including two cases in 1611 that (arguably) allowed the court to expand upon traditional, common-law notions of conspiracy. The first to be adjudicated, known as the Poulterers’ Case, went on to be treated by some legal historians as foundational in the modern history of the crime of conspiracy in that it allowed even a failed confederacy to be punished as criminal. Thomas Stone complained that Ralph Waters, Henry Bate, and other poulterers of London had conspired “to procure him to be indicted, arraigned, adjudged, and hanged” on a false accusation of robbery for their own gain. Stone had married the widow of one of the poulterers and moved in on their business; they wanted him dead. Waters staged an elaborate scene for the supposed crime, bloodied himself up a bit, raised the hue and cry, and pointed the finger of suspicion at Stone. Waters and his fellow defendants in the Star Chamber case admitted that they had attempted to indict Stone upon false charges but argued that they had no case to answer: at common law, a person had to be indicted and legitimately acquitted before they could bring a charge of conspiracy, but in this case, a grand jury had thrown out the bill against Stone, so he had never been tried. As his life had not been endangered by the false accusation, he could not bring charges of conspiracy against the men. Yet Star Chamber’s judges decided that whatever might limit the common law courts in this respect, they could hear the case as a criminal attempt and so found the defendants guilty. Coke’s report simply sought to claim this as no new thing: “That a false conspiracy betwixt divers persons shall be punished, although nothing be put in execution, is full and manifest in our books.”

Meanwhile, another allegation of criminal conspiracy was making its way through the Star Chamber, one that received much attention at the time and that would also be cited as a “grande case” in the treatment of conspiracies to pervert justice. In a hearing that took up several days, Sir Anthony Ashley—a former clerk to the privy council, himself dismissed for corruption—alleged that Sir James Creighton and his confederates had conspired to have him killed by law. Ashley said they had bonded themselves together to accuse him unjustly of a murder supposedly done years before, with the primary motivation of securing and

splitting his forfeitures. The depositions offer up a remarkable and remarkably convoluted tale of skullduggery. At its base, the story eventually accepted by the court was that Creighton had secured the cooperation of various Londoners of ill repute (including women who ran taverns and brothels in the city) to lay a felony charge against Ashley, all in exchange for formal bonds that promised them shares of Ashley's forfeitures post-conviction, forfeitures that Creighton believed himself able to obtain from the king. (Both Creighton and Ashley had had a history of getting such forfeitures as patronage grants from the Crown.) The plotters had talked for a while of charging Ashley with entertaining seminary priests, forging privy councilors' signatures, or bugging boys. Ultimately, they opted to recast the death of one of Ashley's former associates from an "uncurable ulcer of his yard" as murder by poison. When their plot fell apart, they ended up in the Star Chamber. The defendants tried the same argument used by the poulterers—that an action for conspiracy could not be brought, as Ashley had not been formally indicted and acquitted, the plot having come to light too soon. They also argued that such an action would "deter men to prosecute against great offenders, and thence great offenses will pass unpunished, which will be dangerous to the weal public."

The judges, though, saw the dangers to the public weal differently. They expressed their horror at the inducement used to cement the conspiracy—the promise of a felon's forfeitures—which they deemed "an offence of so heinous and odious nature as is detestable both to God and man, and of such dangerous consequence as is not tolerable in any well-governed commonwealth." Indeed, they ruled that even had Ashley been guilty of the murder as alleged, the use of bribes from prospective forfeitures to further the prosecution would have sufficed to make the parties punishable for conspiracy. To use forfeitures in this way was a "great indignity to the king." Conspiracy pertained whether or not the accusation was false. Judges reiterated Star Chamber's broad remit and its ability to go beyond common law limits. In addition to ordering heavy fines and imprisonment, they had the offenders pilloried and ridden backwards on horses through the streets of London. They also had their own decree read aloud in several places to ensure "a more publique example."

A year later, in 1612, another petitioner brought a high-profile case to the court that again asserted the dangers conspiracies posed not just to the falsely accused but also to the state and to justice itself. Nicholas Miller alleged that Robert Basset, one of his tenants, and Basset's attorney, William Reynolds, had concocted a false charge that he had stolen a ring from Basset as they were "unconscionably thirsting after your complainant's estate." Basset had fallen behind in his rent, so he agreed to have his goods appraised and to convey to his landlord so much as needed to clear his account. Basset later claimed that during the appraisal, Miller had slipped into an upper chamber unobserved and stolen a gold ring along with coins and important documents. Basset took the allegation to local JPs, but they found no reason for Miller to answer the charge. Basset and Reynolds then tried extorting £300 from Miller in exchange for abandoning the accusation. They said, moreover, that they had spoken with the king's favorite, Robert Carr, then Viscount Rochester, who had already received a pledge of Miller's estate from the king should Miller be convicted, and implied that this would make his conviction all the likelier. When this story still failed to make Miller compound with them, they tried to secure a bill of indictment against him at the Kent assizes "to the end the plaintiff might lose his life and his estate." But the grand jury also found the accusation without merit and refused to endorse it for trial. Here again was a case that would not have proceeded as a conspiracy at common law, as Miller had not stood trial and risked losing his life. But Star Chamber judges readily proceeded to sentence, partly focused on the scandal and "great slander" against Carr and the king, and partly focused on the danger to both subjects and the state of conspiracies that invoked forfeitures as a lure. The judges noted that the case showed the dangers of granting forfeitures before conviction, as word of such practice might incline juries to doubt indictments and acquit even the guilty. It might even be a "great cause of rebellion," as it had been under King Henry VI, they said, when the goods of men were granted

away before conviction. Both Coke and Ellesmere took the opportunity to clarify that any case alleging conspiracy had to prove malice; they did not want to dissuade or to punish allegations that might prove to be simply mistaken. But this case, they said, showed malice aplenty. They deemed it “a very great offence:::and that if such practices should be suffered and go unpunished, that no man’s life was in safety but in continual jeopardy.” The attorney, Reynolds, was disbarred. Both Reynolds and Basset were ordered to pay fines to the king of £500, to be whipped, and to stand on the pillory with papers noting their offences. Finally, they were to lose their ears and, like so many other conspirators, be branded in the face to advertise their crime.

Writing in 1621, William Hudson noted that in the ever more numerous cases coming before the Star Chamber alleging conspiracy, complainants or defendants might be branded on their face with FA or FC—false accuser or false conspirator. Like other punishments imposed by the court, such signs might work to the “terror of the people,” in *terrorem populi*. In other conspiracy cases, he wrote, Star Chamber’s judges decided that they might try false misdemeanor charges, too, whereas common law limited itself to charges that endangered a person’s life. They entertained cases of conspiracy in which no formal charge had even been made, but just threatened—extortion more so than conspiracy at common law. According to Hudson, they even decided that while common law required a conspiracy to consist of two or more participants, they might also proceed against solitary plotters. A few years after Hudson wrote, the court expanded upon conspiracy further still: in a 1625 case, judges decided that a combination to indict someone of barratry could be tried as conspiracy in the Star Chamber even if the accusation was true, if the impetus to indict came from malice. According to the Lord Keeper, “although malicious conspiracy be not punishable in the common law or by any statute if it be not falsely, yet it is in this court.” Well had Hudson observed in his treatise on Star Chamber that “conspiracy, rarely heard of in former times” had in his age “grown frequent and familiar.” Whether or not the incidence of conspiracies to use the criminal law to criminal ends was in fact increasing, Star Chamber’s processes and interests allowed more people to portray themselves as victims of others’ misuses of criminal proceedings and provoked conflict with the common law in doing so.

### **Abuses of Law and Justice in a “Lawless” Court?**

Thus, while abuses of criminal law as an instrument of personal power and profit were not new, they had become newly concerning and prompted actions in the conciliar Court of Star Chamber that went beyond what common law offered. But conspiracies understood in either the broad or the narrow sense also occurred within and through the Star Chamber itself. Hudson warned, in vain, that it was “a high contempt to make the justice of this court an instrument of malice.” In sanctioning complainants for false clamor, the Star Chamber judges showed themselves well aware that petitioners sometimes used their own processes for illicit ends. Moreover, some of those judges, councillors, and their clerks also used the court for political and personal profit. Petitioners sought and received grants of the large Star Chamber fines. And some people complained that the court’s officials solicited bribes for their decisions in this and in their other courts, complaints punished in the Star Chamber itself as offenses against not just the “slandered” official but also the king. In one such case, Lord Keeper Coventry and his fellows in the Star Chamber punished Bonham Norton for having petitioned the king with a complaint that Coventry had sought a bribe from him in a Chancery case. Part of the judges’ arguments for their ability to punish Norton’s offense worked outwards from conspiracy: just as someone could be punished for laying false charges in a court of law, so too could a person who made slanderous claims in a petition to the king. One judge continued: “For what greater dishonour can be laid upon the king than to say that in the supreme place of judicature his majesty hath placed an unjust, a corrupt, and bribing judge that turns justice that is sweet in itself into corruption and into wormwood.”<sup>64</sup>

When the body that came to be known as the Long Parliament began investigating some such complaints in 1640, it opened the door to a wideranging critique not just of abuses but of the Star Chamber itself. Upon receiving petitions from or on behalf of men sanctioned in high-profile ecclesiastical disputes over the eleven years in which parliament had not sat, the Commons declared some of the court's decrees unlawful and unjust. Its repudiations of the Star Chamber charges, proceedings, and sentences against Henry Burton, John Bastwick, William Prynne, and John Lilburne are well known, but they are just a few among many. In presenting the first such petitions against the Star Chamber to the Commons, John Pym accused the king's councillors of having turned the body into a "court of revenue" and condemned its arbitrary proceedings: law and precedent meant nothing to it.<sup>65</sup>

A petition from Sir Richard Wiseman in January 1641 denounced the Star Chamber twice over and prompted the Lords to act, too. In 1638, Wiseman had sued John Stone for defamation in the Star Chamber, but unsuccessfully so: Wiseman believed he failed because his response to the Lord Keeper's solicitation of gifts paled compared to Stone's. He made the mistake of saying as much in a petition to the king. For this critique of the Star Chamber's justice, the court ordered Wiseman to pay fines and damages amounting to some £17,000, an amount that effectively allowed indefinite imprisonment at the king's pleasure. Wiseman was also stripped of his knighthood, pilloried with a whetstone about his neck, and forced to make his submission before all the courts at Westminster after having his ears severed. He complained to the Lords that one of his maidservants was also whipped through the streets, "no testimony or proofs being made against her, to the disgrace of your petitioner and the great wrong or hindrance of his poor servant." Unable to pay his fine, Wiseman remained imprisoned in the Fleet. He was by no means the first person punished in the Star Chamber for complaining of injustices suffered there or in other courts, but his claims at that moment prompted much alarm and sympathy in the Lords. Such degrading punishments might be suited to some, but not to gentlemen. The Lords ordered a special committee to examine Wiseman's petition and, more broadly, the very "institution and power of Star Chamber."

A variety of complaints against the Star Chamber coalesced around its "lawless" discretion in the coming months. Its ties to the bishops and use to punish critics of the ecclesiastical establishment were broadly unifying complaints. The perception that it had become a "court of revenue" that misused legal processes to enrich the king's treasury, and in ways that had helped him govern without calling parliaments to authorize taxation, proved damaging with key parliamentarians. But a growing sense of it having become an agent of injustices such as those imposed on Wiseman and the many other petitioners who now came forward also propelled both houses of parliament to declare the court itself a violation of "the old law of the land" and "the ordinary course of justice." According to the act that abolished the Star Chamber in June 1641, "the proceedings, censures, and decrees of that court have by experience been found to be an intolerable burden to the subjects and the means to introduce an arbitrary power and government."<sup>70</sup> The Star Chamber's responses to the criminal complaints people brought before it convinced some contemporaries that dangerous abuses of law happened not just outside the courts but also within. In the building crisis that would lead to civil war, parliament severed this arm of the king's prerogative power as an affront to public justice.

## Conclusion

Examining the Star Chamber and its conspiracy cases adds new elements to a growing body of work that undermines older claims about the integrative or legitimizing nature of participation and discretion in early modern law and governance. As argued elsewhere, restoring profit-takers to accounts of the operation of early modern criminal law prompts a more pessimistic view of its political effects. Opportunities for conflict had multiplied when Elizabeth and the early Stuarts had increasingly bestowed the rights to collect felons' forfeitures upon courtiers and licensees, even as talk of "the state" as a public realm separable from and

above private interests became more pervasive. Notoriously, too, the financial exactions of informers who launched cases partly for the Crown and partly for their own benefit, or who compounded simply for the latter, provoked heated debate within parliament and far beyond. Turning to the Star Chamber's criminal jurisdiction in general and its conspiracy cases in particular suggests a few additional dimensions. Alan Harding's work on the medieval law of conspiracy notes just how quickly writs and remedies meant to ensure the justice of legal process were put to use against serfs who banded together to secure their freedom and against popular combinations to secure other such "unlawful" ends—a use that certainly extended into the seventeenth century. Harding suggests that in contrast with treason legislation, which focused on the person of the king, "the shifting application of the idea of conspiracy actually extended awareness of the public authority which private associations challenged. A crime must have a victim." How much more so, then, in the context of the heightened rhetoric of the antithesis of public and private heard in the late sixteenth and early seventeenth centuries? It was a rhetoric that the privy councilors and high court justices who sat in the Star Chamber themselves promoted as they sought to stamp out private abuses of the criminal law to better protect what they called the "public justice of the state." They provided a venue for people seeking justice, or leverage in their own conflicts, to invoke ever more expansive claims of conspiracy, in ways that supplemented and sometimes came into conflict with common law. They did so in a social and political environment rife with fear of plots, confederacies, and conspiracies. In the end, the king's High Court of Star Chamber itself fell before men who decided that its actions were antithetical to law and justice and the public good as properly understood.

People continued to abuse criminal law to personal ends and to secure private profit, of course—one thinks of the "thief-makers" produced by the eighteenth-century system of rewards meant for thief-takers (or indeed of the instances of private and corporate profit-taking perpetuated today in systems of ostensibly public justice).<sup>76</sup> But people who used the criminal law as an instrument of personal power in the years after the mid-century revolutions did so in different contexts. The law was no longer understood as a profitable incident of lordship and less often simply as the king's. The rhetoric of "public justice" and the "rule of law" legitimized different distributions of political and social power by the late seventeenth century. In a seminal essay, Douglas Hay memorably depicted the eighteenth-century criminal law as a "ruling class conspiracy" to protect property as it developed in the post-Revolutionary context. The law's majesty, terror, and discretionary doses of mercy combined to a hegemonic effect.<sup>77</sup> Subsequent studies pointed to the broad participatory base of the law's operation as a mediating element throughout the early modern years. But in the early seventeenth century, at least, some such private uses—and also the responses to them—undermined the law's ability to legitimize a social and political order centered on the Crown. "Participation" of the wrong sort and in the right context propelled conflict rather than consensus. In providing a venue for conspiracies to flourish, the Star Chamber did much the same.

## References

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2. John Walters, “A “Rising of the People”? The Oxfordshire Rising of 1596,” *Past and Present* 107.1 (1985): 90–143 at 127–30 and Roger Manning, *Village Revolts: Social Protest and Popular Disturbances in England, 1509-1640* (Oxford: Clarendon Press, 1988), 227–9.
3. See especially Caroline Hibbard, *Charles I and the Popish Plot* (Chapel Hill: University of North Carolina Press, 1983) and Alastair Bellany and Thomas Cogswell, *The Murder of King James I* (New Haven: Yale University Press, 2015).
4. On the history of the law of conspiracy, see especially Alan Harding, “The Origins of the Crime of Conspiracy,” *Transactions of the Royal Historical Society* 33 (1983): 89–108; Víctor Saucedo, *Conspiracy: A Conceptual Genealogy* (Madrid: Editorial Dykinson, 2017); and Percy Winfield, *The History of Conspiracy and Abuse of Legal Procedure* (Cambridge: Cambridge University Press, 1921).
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6. See, e.g., Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1987) and J.A. Sharpe, *Crime in Early Modern England, 1550–1750* (London: Longman, 1999, 2nd edn.). Steve Hindle, *The State and Social Change in Early Modern England, 1550-1640* (Basingstoke: Palgrave, 2000), makes a case for participation’s role in state formation, drawing on Star Chamber practice as well as common law. On the boom in civil litigation and arguments for its integrative role, see especially work by Christopher W. Brooks, including *Pettyfoggers and Vipers of the Commonwealth: The ‘Lower Branch’ of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986) and *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008), and work by Craig Muldrew, including “The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England,” *The Historical Journal* 39.4 (1996): 915–42.
7. Laura Flannigan, *Royal Justice and the Making of the Tudor Commonwealth, 1485–1547* (Cambridge: Cambridge University Press, 2024), quotes at 16, 257. For other recent works offering a pessimistic view of the effects of popular participation in the law’s operation, see, e.g., Hillary Taylor, *Language and Social Relations in Early Modern England* (Oxford: Oxford University Press, 2024) and Jonah Miller, *Gender and Policing in Early Modern England* (Cambridge: Cambridge University Press, 2023).
8. See works by T.G. Barnes, esp. “The Making of English Criminal Law (2): Star Chamber and the Sophistication of the Criminal Law,” *Criminal Law Review* (1977): 316–26. On Star Chamber more generally, see the essays in K.J. Kesselring and Natalie Mears, ed.,

- Star Chamber Matters: An Early Modern Court and its Records (London: University of London Press, 2021).
9. The National Archives, Kew (hereafter TNA), STAC 5/B8/32, from Richard Brereton's bill of complaint in *Brereton v Radcliffe et al.* (1583-4).
10. British Library (hereafter BL), Add. MS 24,926, "A discourse on the court called the Star Chamber," ff. 2-3, 7. Dated 1585/6; later published as part of William Lambard, *Archeion, or, A Discourse upon the High Courts of Justice in England* (London, 1635), 78-9.
11. On the limits, see esp. William Holdsworth, *A History of English Law* (London: Methuen, 1931), 1:487.
12. See esp. Harding, "The Origins of the Crime of Conspiracy."
13. 17 Car. 1, c. 10, *An Act for the Regulating the Privy Council and for Taking away the Court Commonly Called the Star Chamber*.
14. The quoted phrase appears in Jacobean royal proclamations, e.g., *Stuart Royal Proclamations*, ed. James F. Larking and Paul Hughes (Oxford: Clarendon Press, 1973), 1:304 (no. 136). On the emergence of the concept of the "state," named as such, see, e.g., John Guy, *Tudor England* (Oxford: Oxford University Press, 1988), 352 and Michael Braddick, *State Formation in Early Modern England, c. 1550-1700* (Cambridge: Cambridge University Press, 2000), 19-20.
15. Kesselring and Mears, "Introduction: Star Chamber Matters," 9-10.
16. It is difficult to quantify complaints in even the well-indexed Jacobean files (let alone in the Elizabethan records catalogued only by plaintiff's surname) given the multiple and overlapping allegations in most bills, but for T.G. Barnes's categorization and counting of Jacobean cases, see "Star Chamber Litigants and their Counsel, 1596-1641," in *Legal Records and the Historian*, ed. J.H. Baker (London, 1978), 7-28 at 13. (The count of cases alleging offenses that hindered the execution of law would be substantially higher if it included unlawful assemblies and riots, as some contemporaries understood them.) Louis Knafla also comments on the high volume of corruption and related cases in his study: *Kent at Law, 1602*, vol. 3, *Star Chamber* (Kew: List and Index Society, special series 47, 2013), xxviii-xxx.
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20. See Taylor, *Language and Social Relations*.