

The Quatercentenary of Sir Walter Raleigh's Trial

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Raleigh and Queen Elizabeth

On just a few occasions in the history of the Western World, fate or coincidence have conspired to bring together, in the same place and at the same time, a collection of truly extraordinary individuals - individuals whose collective impact on the political, social and cultural development of mankind has far exceeded the sum of their parts. One such moment in history arose in Classical Rome, under Julius Caesar, when the first Emperor of the Known World rubbed shoulders with Pompey the Great, Sulla, Cicero, Atticus, Crassus, Brutus, Clodius, Catullus, and Marcus Antonius. Likewise, in the Florence of Lorenzo ("the Magnificent") de Medici, a population of less than 100,000 included Leonardo da Vinci, Michelangelo, Donatello, Botticelli and Machiavelli. So it was that in Elizabethan London, a constellation of historical stars came together in a city less than one-tenth - perhaps as little as one-twentieth - the size of modern-day Brisbane.

It seems more than accidental that this phenomenon has often coincided with the regimes of visionary autocratic rulers, and Elizabeth I was no exception. This enigmatic woman's 45-year reign was, in many ways, the mid-point between the absolute monarchy which preceded the Great Charter of 1215, and the constitutional monarchy presaged by the *Bill of Rights* of 1689. The last of the Tudor sovereigns was as autocratic as her father, Henry VIII, but less vicious; no less cunning than her cousin and successor, James I, but not so duplicitous. The Virgin Queen's handling of policy issues - domestic, foreign and military - displayed a wisdom and subtlety, strangely at odds with her petty and sometimes childish behaviour amongst the members of her court. She was naively prone to the flattery of the handsome young men with whom she surrounded herself, another trait which she shared with James I. But, unlike James, Elizabeth was masterful at playing her retinue off against one another, and possessed an uncanny ability to promote her most loyal and talented retainers to positions which suited their individual skills.

Dominant in her immediate circle was William Cecil, Lord Burghley, often identified as the inspiration for the character of Polonius in Shakespeare's *Hamlet* - a "tedious old fool" to the younger and more adventurous members of the court, but a gifted administrator who, as Secretary of State and later Lord Treasurer, was largely responsible for the financial and domestic security which characterised the Queen's long reign. Burghley was in due course succeeded as the Queen's principal minister by his hunchbacked second son, Sir Robert Cecil (subsequently 1st Earl of Salisbury), whose political intrigues were as crooked as his spine, and may have contributed to the theatrical device often employed by Shakespeare, of associating physical deformities with deformities of moral character. As a recent writer (Nieves Mathews, *Francis Bacon: The History of a Character Assassination*, 1996, p.236) has observed: "A craving for political power could be detected in the calculated concentration with which Robert Cecil camouflaged his wide network of corruption over the years, so successfully that it has only recently been uncovered."

Another prominent figure at Elizabeth's court was a shadowy character, Dr John Dee, who somehow epitomises the collision of Dark Ages mysticism and Renaissance learning. Dee would today be described as the government's scientific adviser, and he was undoubtedly a man of great learning, especially in the fields of mathematics, astronomy, geography and navigation. But he also served as the Queen's spiritualist and astrologer, conducting séances and the like, and is said to have inspired the character of Prospero in Shakespeare's *The Tempest*. As a mariner, Sir Walter Raleigh was naturally interested to obtain the benefits of Dee's knowledge regarding geography and navigation; but Dee's reputation as a mystic and necromancer opened Raleigh to the charge of being associated with atheism and the "black arts".

Raleigh, himself, was something of an amateur scientist, particularly interested in botanical specimens obtained from the New World, and their potential use for medicinal purposes; he is also remembered (albeit inaccurately) as the person who introduced the smoking of tobacco to Europe - a dubious title which rightfully belongs to his kinsman, the notorious privateer Sir John Hawkins. In an age of religious zealotry and heretical suspicion, Raleigh's interest in genuine scientific experimentation enhanced his reputation as dabbling in sorcery.

In his heyday, he surrounded himself with some of the most controversial intellects of his age, including mathematicians, astronomers, geographers and students of the natural sciences, as well as poets, playwrights, and philosophers. They met at Durham House, the grand London residence which Queen Elizabeth expropriated from the Bishop of Durham and provided for Raleigh's use. This group is often identified with the "School of Night" in Shakespeare's *Love's Labours Lost*.

Elizabeth's England enjoyed unprecedented advances in military strength and strategic influence, and in cultural development. The former was achieved largely through the efforts of privateers - in truth, little more than licensed pirates - like Hawkins and Sir Francis Drake, and more high-minded navigators and explorers like Sir Humphrey Gilbert and his half-brother, Raleigh. Elizabeth's reign was also a golden age of literature, though the brilliancy of the single greatest writer in the history of the English language, William Shakespeare, has tended to eclipse the lesser lights of Christopher Marlowe, Edmund Spenser, Ben Jonson, and John Lily.

There is no record that Shakespeare and Raleigh were personally acquainted, although they had many mutual acquaintances. Shakespeare's works contain a number of characters and references arguably inspired by Raleigh - including, as we shall see, an unambiguous reference to Raleigh's trial. The character of Armado in *Love's Labours Lost* is thought to be a caricature of Sir Walter, made all the more ironic because Raleigh's fanatical hatred of the Spanish is parodied by a character described as "a fanatical Spaniard".

Raleigh's literary connections included Ben Jonson - sometime tutor to Raleigh's eldest son, Wat - and the poet Edmund Spenser, to whom Raleigh was a close friend and patron. A rather more controversial connection existed between Raleigh and Shakespeare's major rival, Kit Marlowe, who was one of the Durham House "School of Night". Marlowe was a notorious atheist, and also openly homosexual - to him is attributed the aphorism, "All them who love not tobacco and boys are fools." When not writing plays, Marlowe was on the payroll of Sir Francis Walsingham, England's first semi-official spymaster. In 1593, Marlowe was arrested and charged before the Star Chamber with blasphemy and treason; but was then (astonishingly) released on bail. Within 10 days, he was dead - stabbed, supposedly, in an argument over who should pay the bill in a tavern at Deptford. The credibility of this "official" version of Marlowe's death is not enhanced by the fact that Marlowe actually died at a private home - owned, coincidentally, by a cousin of Cecil's - rather than a tavern; the fact that the man who inflicted the fatal wound, along with his two companions, were all members of Walsingham's secret service; and the fact that the killer rapidly received a royal pardon, and immediately returned to Walsingham's service. The true circumstances surrounding Marlowe's death have been debated ever since, with conspiracy theories ranging from the possibility that Marlowe was a double-agent who had to be eliminated to protect state secrets; that his death was necessary to prevent his implicating others when he came to trial before the Star Chamber; that he was the victim of a power play between the competing Cecil, Walsingham, Essex and Raleigh factions at court; that his death was "staged", and that he in fact survived with a new identity provided by his secret service employers, possibly to avoid his impending Star Chamber trial (and then went on, as it has been suggested, to "ghost write" *Hamlet* and other plays usually attributed to Shakespeare); or that his homosexual liaison with a prominent courtier was a potential source of embarrassment. Raleigh has from time to time been implicated in each of these conspiracy theories, except the last - not even the most fanciful of them has ever challenged Raleigh's sexual orientation.

The writing of poetry (though not plays) was regarded as a significant gentlemanly attainment amongst the inner circle at Elizabeth's court, and the noted poets of the age included three of Her Majesty's gentleman-soldiers, Sir Philip Sidney, Edward De Vere (17th Earl of Oxford) and Raleigh. The predominance of aristocratic *litterati* at Elizabeth's court has led to the suggestion - mainly emanating from the "lunatic fringe" of serious literary study - that William Shakespeare was in fact the *nom de guerre* of a high-born author who preferred to conceal his true identity, or perhaps the barely literate "front man" for the supposed "real" author: maybe the Earl of Oxford, maybe Sir Francis Bacon, maybe Christopher Marlowe, maybe the Earl of Derby, maybe Raleigh (with or without collaboration from Bacon), or maybe even the Queen herself.

Elizabeth's reign also produced a number of outstanding jurists. But in the legal world, as in the literary world, the fame of one has tended to out-shine the many; and that one was Sir Edward Coke. Amongst his contemporary lawyers, Ellesmere and Bacon are perhaps better remembered for their feuds with Coke, and in Bacon's case, for his philosophical and other non-judicial writings.

The Essex Trial

Raleigh and Coke were born in the same year - 1552 - but led very different lives, the former as a navigator, explorer, colonist, soldier, courtier, scientist, author and poet; the latter as a lawyer, parliamentarian, and judge. Prior to Raleigh's treason trial, their paths frequently crossed, notably when Raleigh, as a member of the House of Commons, succeeded where Coke (as Speaker) had failed, in negotiating the resolution to an impasse between the Commons and the House of Lords; and also at the treason trial of the Earl of Essex.

Each was a product of the system of personal patronage which filled all important offices during Elizabeth's reign. Raleigh was long one of the Queen's favourites, and the story of his laying a cloak over a muddy puddle for the Queen to walk upon, even if apocryphal, reveals truths both about Raleigh's love of fine and ostentatious clothing, and his chivalrous attitude to his sovereign. For some time he fell into disfavour, for marrying one of the Queen's "maids of honour" without Her Majesty's permission, and was confined to the Tower of London. But, towards the end of the reign, Raleigh had returned to favour, and was rivalled only by the young and dashing Earl of Essex.

Coke originally rose to power as protégé of Lord Burghley and his son, Sir Robert Cecil – grandfather and uncle, respectively, of Coke's second wife – who procured his election as Speaker of the House of Commons during his first term as a member. Having successfully managed the passage of the Queen's (that is, Burghley's and Cecil's) legislative programme, including the all-important revenue laws required to fund the continuing war with Spain – albeit, as previously mentioned, with Raleigh's important assistance – Coke was promoted to solicitor-general.

When the position of attorney-general fell vacant upon the appointment of Lord Ellesmere as Master of the Rolls, Essex lobbied for the advancement of his own nominee, Bacon, even though the youthful Bacon then had no actual court experience. Cecil pushed for Coke's appointment, and was ultimately successful – quite possibly with Raleigh's support.

For some years, Cecil maintained a "divide and rule" stratagem as between the Queen's leading favourites, Essex and Raleigh, generally supporting whichever of them was the "under-dog" to prevent the other from consolidating a position of power. As Essex rose in the Queen's affections, this strategy increasingly brought Cecil into alliance with Raleigh. Indeed, it seems that Raleigh was genuinely beguiled by Cecil's assurances of affection, loyalty and support; even as Cecil was plotting Raleigh's ultimate fall, Raleigh continued to correspond with Cecil in terms of deep gratitude towards the person whom he regarded as his greatest friend at court. In the first instance, though, Essex was a greater threat to Cecil than Raleigh, and it suited both Raleigh and Cecil to have Essex out of the way. Nor would the removal of Essex's influence do any harm to Coke's position, given Essex's support for Coke's rival, Bacon.

Cecil, naturally, had a secret agenda – an agenda which was certainly unknown to Raleigh, and most probably unknown to Coke. Burghley and Cecil, father and son, had been the powers behind the throne throughout Elizabeth's reign; but the reign was coming to an end. The Virgin Queen was the last of the Tudor line, and there were several competing claims to the succession. James Stuart – James VI of Scotland, the son of Mary, Queen of Scots, who had been beheaded for treason at Elizabeth's orders – was not closest in line to the throne, and was arguably ineligible as a "foreigner". But England needed a strong and experienced ruler, and the rival claimants were too young, too feeble (or feeble-minded), or women.

James's succession had other advantages. It would bring about the unification of the English and Scottish crowns. The public demanded a Protestant king, and James was Protestant; yet it was imagined that James would also be tolerant to the Catholic Church, in which he had been baptised. Whilst his succession remained uncertain, he encouraged English Catholics to hope for such tolerance; but no sooner had he ascended the throne than he was heard to remark (in his thick Scottish accent), "na, na, we'll nae need the Papishes now". This would, in due course, lead to further troubles – including the Bye and Main Plots and the Gunpowder Plot; but, at this point, all of that lies in the future.

Cecil's concern was not merely that of a patriotic statesman, to ensure the succession; more important for Cecil was to ensure, not only that he was in good standing with Elizabeth's successor, but that others of Elizabeth's favourites did not enjoy a similar advantage.

With Raleigh, there was no difficulty. An envoy on behalf of James, the Duke of Lennox, sought a secret meeting with Raleigh, but Raleigh spurned the proposal, informing Lennox that he was "over-deeply engaged and obliged to his own mistress to seek favour anywhere else, that should divert his eye or diminish his sole respect to his sovereign". Raleigh then made the mistake of reporting to Cecil that he had "denied any kind of proffer of devotion or kind affection to have been made to King James"; to which Cecil disingenuously replied: "You did well; and as I myself would have made the answer, if the like offer had been made to me". Even as Cecil wrote those words, he was engaged in encrypted correspondence with James, attempting to secure his own future under the anticipated Jacobite monarchy.

Knowing, therefore, that Raleigh had little prospect of maintaining his position of influence after Elizabeth's death, Cecil set about to rid himself of his only remaining rival, the Earl of Essex. But Essex largely solved the problem for himself, by openly doing that which Cecil was doing covertly: attempting an alliance with

James. Already in disgrace over a failed assignment to suppress a rebellion in Ireland, and knowing that his final fall was near, Essex attempted a *coup d'état* in the expectation that, with assistance from James, the rebellion commenced by a small force under his command would attract spontaneous support from Catholics and others opposed to Elizabeth's regime.

Essex's rebellion was a dismal failure. Support which had been promised to Essex – or which Essex convinced himself had been promised to him – was not forthcoming. Though Essex, ever popular with the public, was cheered by crowds of Londoners, they did not rise up to join him. His co-conspirators, once they saw which way the wind was blowing, melted away. Finally, with a small group of his closest followers, Essex was besieged in his own London house, and forced to surrender. From distant Scotland, James was quick to dissociate himself from the plot – though happy to claim the dashing Essex as his “martyr” when James eventually became King.

Essex was put on trial for treason. Coke, as Attorney-General, led the prosecution. He conducted the case vigorously, but not viciously. More surprising was Bacon's role in the prosecution of his former patron. No doubt anxious to dissociate himself from the traitors, Bacon took an active and passionate part in the prosecution.

Essex's defence (if it can be called that) was to the effect that he was forced to rebel because Cecil and Raleigh were plotting to have him murdered. During the trial, Essex interrupted Bacon's address to “plead Mr. Bacon for a witness”, as Bacon had written and delivered for him a letter to the Queen seeking her protection against “the course of private persecution”. Bacon's reply was: “My Lord, I spent more hours to make you a good subject than upon any man in the world besides”. This, as much as any event in Bacon's odious life, justified Pope's description of him as “the wisest, brightest, meanest of mankind”.

Coke's role in the prosecution was, by contrast, an honourable one; as was Raleigh's. Raleigh gave evidence against Essex, comprising a factual description of his part (as Captain of the Queen's Guard) in putting down the rebellion, but without taking the opportunity – as so many other witnesses did – to introduce court gossip regarding Essex's motives, or otherwise to denigrate his character. It was Raleigh's duty to officiate at Essex's execution, and by doing so Raleigh attracted the enmity of the public; but, in fact, Raleigh discharged his duty with every possible courtesy and consideration.

James's Succession

Elizabeth died in 1603, without having named her successor. Cecil was present at her death-bed, and we only have his word for it that, when he enquired of the dying Queen whether James should succeed her, she made a motion indicating her assent. Cecil lost no time in ensuring that his long efforts to ingratiate himself with James would bear fruit. He immediately issued orders for the accession of James to be publicly proclaimed throughout the Kingdom, and sent a despatch-rider to Scotland to summon the new King, then himself set out to meet James on his progress to London.

In due course, Cecil was to become the power behind James's throne, just as his father, Burghley, had been the power behind Elizabeth's. Aside from Cecil, James's principal courtiers were characterised by two qualities - their outstanding good looks, combined with an almost total ineptitude in matters of public administration. His first favourite, Sir Robert Carr - later Earl of Somerset - was rewarded with the gift of Raleigh's country house, Sherborne, following the forfeiture of Raleigh's worldly possessions upon his being attainted for treason. After Carr fell from grace, he was displaced by Sir George Villiers - later Earl, then Marquis, and finally Duke of Buckingham. The King was not alone in his susceptibility to the attractions of Buckingham's physical beauty: Laud, the Archbishop of Canterbury, recorded “a delightful dream in which Villiers came into his bed”; and even Bacon wrote, in response to a letter from Villiers, that “the flame it hath kindled in me will never be extinguished”. King James wrote to Buckingham, whom he nicknamed “Steenie”, as “my only sweet and dear child”, as “sweetheart”, and even as “wife”.

With Essex out of the way, and with the King's “toy boys” providing no real threat to Cecil's control of the government, only Raleigh could be seen as a serious challenge to his power and influence under the new regime. But, quite apart from Raleigh's own (honourable but foolish) refusal to accept friendly overtures from Lennox on James's behalf, Cecil had well and truly poisoned the well between James and Raleigh. In secret correspondence with James in the last years of Elizabeth's life, Cecil had insinuated that Raleigh was opposed to James's succession, preferring one of the female claimants - either Lady Arabella Stuart, who had a more direct lineal claim, or possibly the Spanish Infanta - whom Raleigh might be able to manipulate as successfully as he had manipulated Elizabeth. Similar insinuations had been communicated to James by Essex - who also implicated Cecil as favouring the Infanta - and by Lord Admiral Howard (later

the Earl of Nottingham). Thus, when James and Raleigh first met, James was already thoroughly prejudiced against Raleigh, making the famous pun: "Raleigh, Raleigh, O my soul, mon, I have heard but rawly of thee".

Perhaps there is another reason for James's animosity to Raleigh, namely Raleigh's reputation for having introduced the smoking of tobacco to England. In an essay published in 1604, entitled *A Counterblaste to Tobacco*, James issued what was probably the first "Government Health Warning" on this subject, describing smoking as "a custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs, and in the black stinking fume thereof nearest resembling the horrible stygian smoke of the pit that is bottomless". In what was quite possibly a reference to Raleigh, James's essay mentioned "the foolish and groundless first entry thereof into this Kingdom", observing that "It was neither brought in by king, great conqueror, nor learned doctor of physic".

But Raleigh was a political survivor. He had reversed Elizabeth's disfavour more than once, and outlasted all of her principal courtiers apart from Cecil. Realistically, there was little chance that Raleigh would ever overcome the new King's animosity to him; but that risk was not one which Cecil was prepared to take.

Possibly, Cecil had another reason for wanting Raleigh out of the way. His own role in bringing down Essex was not calculated to endear him to the new King, and James - a homosexual or bisexual with a particular attraction to dashing young men of good looks and heroic attainments - formed a strong posthumous attachment to his "martyr". At his trial, Essex had attempted to deflect attention from his own treason by declaring that he could "prove thus much from Sir Robert Cecil's own mouth: That he, speaking to one of his fellow councillors, should say that none in the world but the Infanta of Spain had the right to the Crown of England." There can be little doubt that Cecil did, indeed, "hedge his bets". Throughout his time in government service, and even whilst England was at war with Spain, Cecil was in receipt of a Spanish "pension" - that is, regular bribes from the Spanish Crown. If there were any truth in Essex's allegation that Cecil and Raleigh supported the Infanta's claim to the succession, Raleigh was the only man alive who could betray Cecil. Cecil needed Raleigh eliminated.

The Main and Bye Plots

In the first year of James's reign, 1603, two separate conspiracies were uncovered. Whilst there were some common participants in the two plots, their only real connection was that they occurred simultaneously, and had similar motives and objectives.

Each was a product of the failed expectation that James would ease the suppression of Roman Catholicism, and the persecution of Catholics, which had occurred under Elizabeth. The principal parties to each conspiracy were largely unaware of the other. Indeed, each sought a similar outcome by very different, and mutually inconsistent, means.

The Bye Plot, or "Treason of the Priests", was a rather harebrained scheme hatched by two Catholic priests, Watson and Clarke. They employed two "impecunious swordsmen", Sir Griffin Markham and Anthony Copely, to seize the King, imprison the members of the Privy Council in the Tower, and pressure the King into appointing Catholics to positions of prominence and power. Needless to say, there was never the slightest suggestion that Raleigh had any part in this ridiculously ill-conceived venture.

The object of the Main Plot was, seemingly, to depose the King and replace him with a rival claimant, Lady Arabella Stuart. The central figures were George Brooke, brother of Lord Cobham, and Lord Grey of Wilton. Neither was pro-Catholic; indeed, Grey was a Puritan. Both had personal reasons for disliking James - in Grey's case, because James had pardoned the Earl of Southampton, one of the co-conspirators in Essex's rebellion, and also a personal enemy of Grey's. They proposed to raise a regiment and lead a *coup d'état*. Again, there was never the slightest suggestion of any direct involvement by Raleigh in these plans, or even that Raleigh knew of them.

But, through his friendship with Cobham, Raleigh had the misfortune to get caught up in some shady dealings at the periphery of the Main Plot. It seems that Cobham was involved in negotiations with the Count of Aremberg - envoy from Archduke Albert of Austria - to obtain a significant sum of money, five or six hundred thousand crowns, from Spain. On one version, Cobham was to travel to Brussels, and thence to Spain, returning to England by the Isle of Jersey, where Raleigh was Governor. Then, so it was charged, Raleigh and Cobham would decide how best to use the funds in support of the Main Plot, either by bribing key officials in the government, or by paying troops.

This entire story, or at least Raleigh's supposed role in it, was utterly fantastic. No man in England had made a larger contribution to England's war with Spain, and it is equally unthinkable that Raleigh would have participated in a conspiracy with the Spanish, or that the Spanish would have trusted Raleigh with such a large sum of money. Indeed, it is exceedingly improbable that Spain could have, or would have agreed to, supply such a large fund – the Spanish economy had been broken by the cost of raising Armadas to fight the English, and Spain was heavily indebted to money-lenders in the Low Countries, at exorbitant rates of interest.

Nor, in any event, did Spain have much to gain even if the Main Plot were to succeed. There had been war between England and Spain throughout Elizabeth's reign, and Spain had suffered both financially and in terms of prestige through the defeat of its Armadas, and through the capture of Spanish treasure galleons by English privateers. One of James's first acts as King was to ban the taking of Spanish ships as "prize", and he quickly opened dialogue with the Spanish to negotiate a lasting peace. There were even plans for a marriage between the King's son and the Infanta of Spain, thereby reuniting two rival lines of claim to the English throne. James may not have been Spain's first choice as monarch of England, but he was a safer bet than Lady Arabella Stuart.

It is more than possible that negotiations did take place between Cobham and Aremberg, and that Aremberg may have induced Cobham (who does not emerge from contemporary accounts as being especially bright) to believe that he was in a position to obtain funds from Spain. But it is impossible to imagine that a man of Raleigh's worldly experience would have fallen into such an obvious trap, just as it is impossible to believe that any such funds were in fact available from Spain. It has been suggested that Raleigh might have gone along with Cobham's proposal, intending to seize Cobham (and the money) when he arrived in Jersey, in the hope of increasing his standing with James, and perhaps being rewarded with a share of the proceeds. But, again, it is highly unlikely that such an experienced courtier as Raleigh would have assumed the role of *agent provocateur*, without taking careful steps to ensure proof of his own innocence.

Significantly, modern historical research – including a close examination of historical records in Madrid – has not uncovered a shred of evidence to support the allegations against Raleigh. Yet, even during Raleigh's lifetime, the case against him was thoroughly exposed as the invention which it plainly was. Following his conviction, and after 13 years in the Tower, Raleigh was released to conduct an expedition to Guiana, in the course of which a Spanish settlement – San Thomé on the banks of the Orinoco River, in modern-day Venezuela – was attacked. Though Raleigh claimed self-defence against an unprovoked Spanish attack, the Spanish bayed for Raleigh's blood: especially the formidable Spanish Ambassador, the Conde de Gondomar. In a written *Apologia* sent by Raleigh to King James, Raleigh made the telling point that, if the Spanish Ambassador sought to prove Raleigh's perfidy, nothing could be easier for the Spanish than to produce evidence of Raleigh's alleged conspiracy with them, 15 years earlier. Needless to say, no such evidence was forthcoming.

The truth is that Raleigh did, indeed, have discussions with Lord Cobham with respect to Spanish money – as Raleigh readily admitted at his trial. But the discussions were very different from those alleged against him. Prior to Aremberg's arrival in England, Cobham proposed to Raleigh that Aremberg be approached to negotiate a "pension" for each of Cobham and Raleigh, similar to that which Cecil was already receiving. Raleigh's worst crime was that he gave an ear to Cobham's proposal, and did nothing about it. Given that Cecil was already in receipt of a similar pension, it could hardly be charged against Raleigh that it was treasonable even to discuss the idea. Raleigh, who seems to have regarded Cobham as a good-natured idiot, no doubt dismissed the entire conversation as idle chit-chat which would come to nothing. But it came to something when Markham and Grey were arrested, leading to the arrest of Brooke. Brooke seemed to imagine that he could save his own skin by implicating his brother, Cobham – and Cobham, in turn, thought to save himself by naming Raleigh.

Cobham's Allegations

Raleigh's name was first mentioned by Brooke, when he accused Cobham. Brooke offered no evidence against Raleigh directly, but named him as a person whom the conspirators in the Main Plot regarded as a "fit man" to join with them. This meant nothing in itself: even under the oppressive treason laws of the day, a man could not be convicted merely because others mooted him as one who might be approached to join a conspiracy. And anyone seriously contemplating an armed insurrection would have been stupid not to consider Raleigh's name, given his (by this time) well-known fall from grace under the new King, his vast military and administrative experience, and his significant connections with people of influence. But even the fact that Brooke had mentioned Raleigh's name was sufficient ground to interrogate him.

At their initial interrogations, both Raleigh and Cobham denied any knowledge of the Main Plot. A few days later, a merchant from Antwerp, Matthew la Renzi (or Laurency) came forward, and admitted carrying correspondence between Aremberg and Cobham. He also deposed to a secret meeting between Aremberg and Cobham. More significant, so far as Raleigh was concerned, was the claim that Raleigh was present when a letter from Aremberg was delivered, and that Cobham and Raleigh had gone "into a chamber privately" to read the correspondence.

Raleigh was again interviewed, and again denied any knowledge. But, in an apparently genuine attempt to assist the investigation, he sent a letter to the Privy Council, stating:

"If your honours apprehend the merchant of St Helen's, the stranger will know that all is discovered of him, which perchance you desire to conceal for some time. All the danger will be lest the merchant fly away. If any man knows more of the Lord Cobham, I think he trusted George Wyet [Wyatt] of Kent."

There can be little question about Raleigh's sincerity in writing this letter. The "merchant of St Helen's" was obviously la Renzi; "the stranger" was obviously Aremberg; Raleigh was making the helpful suggestion that la Renzi should not be arrested, lest it serve as a "tip off" to Aremberg and other conspirators. He was also suggesting that useful information about Cobham could be obtained from Wyatt.

Cobham was shown this letter during a subsequent interrogation, and immediately "broke out into passion", believing that Raleigh was determined to implicate him. Cobham cried out: "Oh villain! Oh traitor! I will now tell you all the truth", and then admitted to the negotiations with Aremberg, but claimed that it was all Raleigh's idea, and that he (Cobham) would not have become involved but for Raleigh's influence.

Raleigh was arrested, and imprisoned in the Bloody Tower pending trial. Normally, and for obvious reasons, treason trials were held very swiftly. But Raleigh's imprisonment continued from the end of July until early November. Possibly this was due, in part, to an outbreak of plague in London; but more likely, the Privy Council knew how weak was the case against Raleigh - based on the testimony of a single witness, and him a co-conspirator - and determined to wait in the hope that further evidence would turn up.

Far from producing further evidence to implicate Raleigh, the delay weakened the case against him, as Cobham recanted of his allegations. Then, at a further interview, Cobham repeated the allegations, claiming that he had retracted them only because of his fear of Raleigh.

This was itself a bizarre claim, given that both Cobham and Raleigh were imprisoned, and facing trial for their lives. What greater risk could Raleigh pose to Cobham, than the risk which his own confession had called upon himself: the risk of the gruesome punishment then meted out to convicted traitors, of being drawn on a hurdle through the streets of the capital, hanged, disembowelled, castrated, decapitated, then to have one's body hacked into quarters, with the four parts being displayed on the gates to the City, and the head left to rot on a staff over London Bridge - added to which was the penalty of attainder or "corruption of the blood", by which all of the convicted traitor's worldly goods were forfeited to the Crown, and the traitor's family were denied any inheritance from or through the traitor? And even if it could be supposed that Raleigh was in a position to do Cobham any greater harm than that, Cobham's best protection was to have Raleigh kept in secure confinement.

The suggestion that Cobham withdrew his allegations against Raleigh out of fear does not bear scrutiny. If anyone was in a position, either to terrify or to reward Cobham, it was the Privy Council - Cecil, in particular. Though Cobham had no hope of escaping conviction as a traitor, it was unusual for a member of the nobility to suffer the full rigours of the punishment prescribed by law, and Cobham could at least hope merely to be beheaded. But, were he to make himself useful to the King (and Cecil), there was even some chance of his sentence being commuted to one of imprisonment - and of his family continuing to enjoy his hereditary title and property. The suspicion that a deal was done with Cobham is strengthened by the fact that, following his and Raleigh's convictions, Cobham immediately received a full pardon.

In the lead-up to Raleigh's trial, Cobham again sought to withdraw his allegations against Raleigh, writing to the Governor of the Tower to arrange an interview with the Privy Council, saying: "God is my witness, it doth touch my conscience ... I would fain have [back] the words that the Lords used of my barbarousness in accusing him falsely". But the Governor withheld the letter until after Raleigh's conviction.

Due to the continuing plague in London, the trial was held in the Great Hall of Winchester Castle - to this day, apart from the great Gothic Cathedral, Winchester's main tourist attraction, where credulous

Americans are shown King Arthur's Round Table, and the equally apocryphal nook from which James I is said to have eavesdropped on Raleigh's trial (James was in fact nowhere near Winchester at the time).

On a charge of treason, the prisoner was committed to trial by the Privy Council - not its Judicial Committee, which evolved in later years, but the council of the King's Ministers of State - so there were no committal proceedings in the modern sense.

Raleigh had never been a popular figure, and the mere accusation of treason was sufficient to turn the mob against him. Raleigh was despatched from the Tower to Winchester, in his own coach, with an escort of 50 horsemen, led by Sir William Waad and Sir Robert Mansell. He was pelted with sticks, stones and mud - and with tobacco pipes - and Waad wrote that it was "hob or nob" whether Raleigh "should have been brought out alive through such multitudes of unruly people as did exclaim at him". The 75 mile trip took five days, leaving Raleigh less than 48 hours to prepare for his trial on 17 November 1603.

Thus Raleigh came to trial for his life, on the accusation of a single witness, a confessed co-conspirator, who had everything to gain and nothing to lose from implicating Raleigh, and who had twice retracted his accusations against Raleigh.

The Law of Treason

The law of treason at the time of Raleigh's trial was largely unchanged since 1352, when a statute of Edward III defined treason to include "compassing or imagining" the monarch's death. Essentially the same provisions were enacted in Queensland, as part of Sir Samuel Griffith's *Criminal Code* in 1899 (s.37), and were only repealed in 1997. Similar provisions appeared in the Commonwealth *Crimes Act 1914*, section 24, and now section 80.1 of the *Criminal Code Act 1995*. The death penalty has, of course, been abolished in Australia; and also - very recently - in the United Kingdom.

At the time of Raleigh's trial, the manifestation of an "overt act" was apparently necessary where the treason alleged was "adhering to the King's enemies", but not in the case of a treason by way of "compassing or imagining" the King's death. But even so loose a concept as "compassing or imagining" the King's death was made more nebulous by the proposition that any plan of action likely to imperil the King's life was sufficient, though the King's death was neither intended nor contemplated. So it was laid down in Sir Matthew Hale's *Pleas of the Crown* that a conspiracy to imprison the King by force, or the assembling of a company with that object, sufficed - on the reasoning, as supposed by Blackstone (4 Bl.Com. 79), of the "old observation, that there is generally but a short interval between the prisons and the graves of princes" [spelling modernised].

Even if Raleigh had known the full extent of the Main Plot, as devised by Brooke and Grey, it did not involve the death of King James; merely his replacement, as sovereign, by Lady Arabella Stuart. And Raleigh's alleged role, put at its highest, was merely to assist in the distribution of funds to support an undertaking of which he did not know the details. At his trial, Raleigh was taunted by Coke with a statement that Watson and Markham, both involved in the Bye Plot, had heard Brooke attribute to Cobham, in the words: "There is no way of redress save only one, and that is to take away the King and his cubs, not leaving one alive". This was, at best, third-hand hearsay; and even then, it did not in any way implicate Raleigh. But it was adduced against Raleigh, apparently, as evidence that the course of action which Raleigh "compassed or imagined" placed the King in mortal danger.

Thus Raleigh was prosecuted on the footing that he possessed a certain state of mind, though there was no requirement that his state of mind be communicated to anyone else, or that it be put into action; and in fact, no evidence, even from Cobham, that Raleigh was privy to any proposal which imperilled the King's safety. Yet the alleged traitor was considered incompetent to give evidence on his own behalf, in defence of the allegation that he possessed a felonious state of mind.

As Blackstone notes (4 Bl.Com. 352):

"... it was an ancient and commonly received practice ... that, as counsel was not allowed to any prisoner accused of a capital crime, so neither should he be suffered to exculpate himself by the testimony of any witnesses." [spelling modernised]

But Blackstone also adds (ibid., p.357):

"Sir Edward Coke protests very strongly against this tyrannical practice: declaring that he never read in any act of parliament, book-case, or record, that in criminal cases the party accused should not have witnesses sworn for him; and therefore there was not so much as *scintilla juris* against it." [spelling modernised]

Coke's protest was not, of course, heard when he appeared to prosecute Raleigh; so Raleigh had to defend himself, without legal representation, neither permitted to give evidence on his own behalf, nor to call witnesses in his defence.

But on a charge of high treason, in Raleigh's time, the defendant laboured under a further and even more extreme disadvantage: prosecution witnesses were not called to give oral testimony, or made available for cross-examination; the prosecution merely read their depositions - and indeed, only those parts of the depositions which supported the prosecution case.

This was critical in Raleigh's trial, because Raleigh had every reason to suppose that Cobham might again recant if giving testimony *viva voce*. Though there is no complete transcript of the proceedings, Raleigh's submissions can be pieced together from a number of sources; what he said was to this effect -

"I claim to have my accuser brought here face to face to speak. The Proof of the Common Law is by witnesses and jury: let Cobham be here, let him speak it. If you proceed to condemn me by bare inferences, without an oath, without subscription, upon a paper accusation, you try me by the Spanish Inquisition. If my accuser were dead or abroad, it were something, but he liveth, and is in this very house. Consider, my Lords, it is not a rare case for a man to be falsely accused; aye, and falsely condemned too. I beseech you, my Lords, let Cobham be sent for, charge him on his soul, on his allegiance to the King: let my Accuser come face to face, and be deposed. If Cobham will maintain his accusation to my face, I will confess myself guilty."

Cobham was not produced, Chief Justice Popham offering the explanation that "there must not such a gap be opened for the destruction of the King as would be if we should grant the application". In other words, where a man is on trial for his life for an alleged treason, a "gap [would] be opened for the destruction of the King" if the person accused were given a fair opportunity to test, by the process adopted in every other branch of the law - namely, by cross-examination of adverse witnesses - the veracity of the accusation.

The circularity of this process of reasoning is self-evident: it only begins to make any kind of sense if one starts with the presumption that the person accused is guilty, so that any weakness in the prosecution case demonstrated by effective cross-examination involves the risk that a traitor may escape punishment. Whilst (as Raleigh pointed out) for all other purposes the Common Law regards the production and cross-examination of witnesses as an indispensable component in ascertaining the truth, that ingredient was omitted only in the class of cases where, one might think, ascertainment of the truth was of the utmost importance. Plainly, it is of no little importance to the man whose life is (quite literally) at stake; but even if "the destruction of the King" were - as "Pompous Popham" suggested - a relevant consideration, surely the greatest protection for the King was to establish the truth, rather than convicting an innocent and loyal subject, and taking the risk that the real traitors may escape unpunished.

Raleigh's trial ultimately produced some beneficial effects. Mention has already been made of Coke's attitude (as subsequently expressed) to the practice which denied the accused the right to give evidence, or to call evidence in his behalf; and, before the Century was out, those rights were expressly conferred on defendants in all cases by Act of Parliament. So, too, the right to legal representation was eventually extended to the accused in all criminal cases. By Blackstone's time, it was also well settled that, in any case of high treason, the prosecution must produce at least two witnesses, either testifying to the same overt act of treason, or to two separate overt acts of the same nature of treason.

Raleigh's trial holds a special place in the jurisprudence of the United States of America, where the Sixth Amendment to the Constitution specifically requires, in all criminal prosecutions, that the accused "be confronted with the witnesses against him". In *California v. Green*, (1970) 399 U.S. 149 at 146, the US Supreme Court noted:

"A famous example is provided by the trial of Sir Walter Raleigh for treason in 1603. A crucial element of the evidence against him consisted of the statements of one Cobham, implicating Raleigh in a plot to seize the throne. Raleigh had since received a written retraction from Cobham, and believed that Cobham would now testify in his favour. After a lengthy dispute over Raleigh's right to have Cobham called as a witness, Cobham was not called, and Raleigh was convicted. ... At least one author traces the Confrontation Clause [in the Sixth Amendment to the US Constitution] to

the common-law reaction against these abuses of the Raleigh trial."

The Accused

Raleigh's trial was inevitably a turning-point in the lives of the two principal protagonists - Sir Walter Raleigh and Sir Edward Coke. Although both aged 51, the trial marked the end of the career which made Raleigh famous, and the beginning of the career which made Coke famous. Coke, it is true, had some prominence in public affairs prior to Raleigh's trial, especially when he led the prosecution of Essex; but nothing prior to 1603 would have generated for him more than a footnote in any history of the period. Raleigh survived 15 years after the trial, most of that time as a prisoner in the Tower, though he was released in 1616 to lead an expedition to Guiana, and his most important writings (especially his *History of the World*) date from the period of his imprisonment. But the things for which he is chiefly remembered all lay in his past.

History provides several similar examples of a confrontation between two near-contemporaries, where the outcome has practically ended one famous career, but created another. Napoleon Bonaparte and the Duke of Wellington were born less than three months apart, yet Bonaparte's defeat by Wellington at Waterloo ended the former's life of prominence, whilst making the latter a celebrity. The same may be said of Oscar Wilde and Lord Carson, who had studied together at Trinity College, Dublin.

Raleigh, at 51, had led a life of action and adventure, of conquest and of colonisation, of battles by land and by sea and in the thick of political intrigues at Elizabeth's court, unparalleled in English history. He amassed, not one fortune, but several - and lost each of them, as quickly, and almost as cheerfully, as they had been gained. He accumulated large holdings of property, including one of the grandest houses in London and an even grander country seat, and a large private fleet of armed warships; but, again and again, he hazarded everything on speculative ventures in the Americas.

Raleigh occupied a prodigious number and variety of public offices, some of them mere sinecures, but many involving onerous responsibilities which he discharged with great efficiency and success. He was Captain of the Queen's Guard, Warden of the Stanneries (the tin mines in Devon and Cornwall), Lord Lieutenant of Cornwall, Vice-Admiral of the West, and Governor of Jersey. In addition, he controlled Crown monopolies in wines and exports of cloth - lucrative positions, but also ones requiring considerable administrative talent.

Raleigh first saw action at 15, fighting with the Huguenots in France. At 26, he captained a vessel of his half-brother, Sir Humphrey Gilbert, in a voyage of exploration and privateering in the West Indies. At 28, he was sent by Elizabeth to command troops in Ireland, and took part in the savage defeat of an attempted Spanish invasion. Having been granted a royal charter to establish a colony in Virginia, he made three expeditions to North America, establishing the first English settlement on that continent. In England, he was instrumental in uncovering the Babington Plot against Elizabeth by supporters of Mary, Queen of Scots. In 1588, England was threatened by the Great Armada of Spain, the largest fleet ever assembled in Europe, and Raleigh was given responsibility for the defence of the channel ports; after the Armada was defeated, he led a reprisal raid at Cadiz. His last great adventure was the search for El Dorado, the legendary gold mines of Guiana; Raleigh led two expeditions to the Caribbean coast of South America, in 1594, and again (following his imprisonment) in 1617 at the age of 65. Raleigh was not, however, merely a man of action; he was also an accomplished writer and poet. He studied at Oriel College, Oxford, and was also enrolled at the Middle Temple (where he was a contemporary of Coke at the Inner Temple), but it does not appear that Raleigh had any interest in studying law. He wrote widely on matters historical, nautical, geographical and military; and his "serious" writings were amongst the most widely-read and best of his time. And he was also a noted poet. One story has Raleigh writing in a glass window, "Fain would I climb, yet fear I to fall"; Queen Elizabeth, "either espying or being shown it, did under-write, 'If thy heart fails thee, climb not at all'." Two couplets are worthy of particular mention, as having an added poignancy given the circumstances of Raleigh's life and career.

As a young man, Raleigh penned the lines:

For whoso reaps renown above the rest
With heaps of hate shall surely be oppressed.

The night before his execution, he wrote:

Cowards fear to die; but courage stout,

Rather than live in snuff, will be put out.

The Prosecutor

If Raleigh was the most romantic figure of his age, then Coke was the very opposite - a man of scholarly inclinations, with an unprepossessing appearance and an explosive temper, who retired to bed nightly at 10 and rose at 3 am only to pursue his bookish interests. Yet it may fairly be said that this unlikely man, more than any other figure in English legal history, is responsible for making the Common Law a systematic and effective legal regime; for establishing the jurisdiction of the Courts of Common Law to review abuses of executive power; and for creating that separation between the judicial branch of government, and the executive and legislative branches, which was regarded by political philosophers such as Locke and Montesquieu as the crowning glory of England's unwritten constitution, and which has been assiduously copied in the written constitutions of many nations, including the United States and Australia.

Coke's fame depends chiefly on three things: first, for his writings, especially the *Institutes of the Laws of England* and his *Reports*; secondly, for his efforts, as Chief Justice of the Common Bench, and subsequently as Chief Justice of the King's Bench, in enlarging the jurisdiction of both Courts, and in defending their jurisdiction from encroachment by other courts and by the executive; and thirdly, following his removal from office as Chief Justice, for asserting the rights of Parliament against the King.

Just as Coke's *Reports* are the progenitor to every series of law reports subsequently published, so his *Institutes* set the foundation for the study of Common Law as a serious academic discipline. Whilst he was not the first to publish law reports, nor the first to publish a scholarly analysis of English law, the form and content of each work set a standard against which all subsequent legal reporters and writers are measured. It was perhaps fortuitous for Coke that he was a contemporary of William Shakespeare, for Coke wrote mainly in the English language - the language of Shakespeare - which is still largely intelligible to English-speaking lawyers after four centuries have elapsed. The primacy of Coke's work is recognised in the fact that a reference to "the Reports", without any other qualification, is traditionally taken in Common Law courts as a reference to Coke's *Reports*; and the first volume of Coke's *Institutes* - his commentary on Littleton's Tenures - shares only with Blackstone's *Commentaries* the distinction of a standard abbreviation (*Co. Lit.* and *Bl. Com.*, respectively) which is recognised by all practitioners in the Common Law world as a sufficient citation, without further explanation.

What characterises Coke's writings, and distinguishes them from Coke's predecessors, is Coke's use of authorities to justify his view of the law. Today, it is taken for granted that a legal text-writer will cite statutes, case-law, and the opinions of other writers expressed in books and articles, in support of a particular contention; but it was at Coke's hands that the quotation of precedents was transformed from a mere literary flourish, into a concerted attempt to trace an authoritative source for every proposition advanced. To this extent, Coke was not merely the first modern writer of English law; he was one of the first modern writers in any academic discipline. In Zerby, *The Devil's Details: A History of Footnotes* (2003), the author traces the first footnote to Elizabethan England, where a biblical margin note was removed to the bottom of the page; see also Grafton, *The Footnote: A Curious History* (1997) - if not the first, then Coke was surely one of the earliest exemplars of a practice which is now ubiquitous.

Appointed Chief Justice of the Court of Common Pleas, largely as a reward for his services to the Crown at the trial of Raleigh and the subsequent trial of Guy Fawkes and the other conspirators in the Gunpowder Plot, Coke almost immediately became embroiled in a brawl with the Ecclesiastical Courts. The issue was the payment of tithes - a tenth moiety of the agricultural product of land, originally payable in kind to the parish rector or vicar. In many parishes, there had long been compositions under which tithes were paid in money at a fixed annual amount; but as agricultural production increased, and the value of money diminished, the church sought to escape such compositions and recover a full one-tenth value of all agricultural production. Whilst the Ecclesiastical Courts had jurisdiction in relation to tithes, the question whether or not there was a composition was (in Coke's view) purely a matter of contract, and therefore cognisable only by the Courts of Common Law. The church objected to this, as juries - themselves parishioners - invariably found in favour of the parishioners. But Coke held steadfast, and succeeded in persuading the King to support the King's courts over those of the Church.

The next battle which Coke faced was with the Court of Chancery, which regularly granted relief against judgments of Common Law Courts, especially in the case of contracts which were enforceable at law but voidable on equitable grounds such as undue influence. Coke contended that, once a judgment was given at law, the matter was *res judicata*, and could not be reopened in any other tribunal. He also attempted to invoke the *Statute of Præmunire*, first enacted under Edward III and later expanded under Henry VIII, by

which it was deemed an offence to challenge a judgment of the King's Courts in any other tribunal. The purpose of *Præmunire* was to prevent English subjects appealing to Papal courts against the judgments of English courts; but the words of the legislation were capable of being read widely enough to cover proceedings in Chancery. A prosecution was launched in the King's Bench against a litigant, along with his solicitor and counsel, for *Præmunire* in applying in Chancery for an injunction to restrain enforcement of a Common Law judgment; but, despite a direction that the facts proved constituted an offence, the jury acquitted.

Whilst the King had an interest to defend the jurisdiction of his Courts against the encroachment of Ecclesiastical Courts, the King had no predisposition to favouring his Common Law Courts over his Court of Chancery. The outcome therefore turned largely on the King's siding with Ellesmere in preference to Coke; and thus arose, almost by accident, the principle which is now taken for granted - that Equity prevails over the Common Law.

King James's decision to side with Ellesmere over Coke was largely a result of Coke's refusal to permit the King to interfere in the business of the Common Law Courts. In the famous case, published in Coke's own *Reports* under the name of *Prohibitions del Roy*, Coke records:

"A controversy of land between parties was heard by the King, and sentence given, which was repealed for this, that it did belong to the common law: then the King said, that he thought the law was founded upon reason, and that he and others had reason, as well as the Judges: to which it was answered by me, that true it was, that God had endowed His Majesty with excellent science, and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason but by the artificial reason and judgment of law, which law is an act which requires long study and experience, before that a man can attain to the cognizance of it: that the law was the golden met-wand and measure to try the causes of the subjects; and which protected His Majesty in safety and peace: with which the King was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith, *quod Rex non debet esse sub homine, sed sub Deo et lege* [the King is under no man, but is under God and the law]."

The King had Coke transferred from Chief Justice of the Common Pleas to Chief Justice of the King's Bench - a promotion in status, but a reduction in salary - in the hope that this would make Coke more compliant, or at least give him less opportunity to cause trouble for the King. Bacon was the architect of this plan, which also involved appointment of the then Attorney-General as Chief Justice in the Court of Common Pleas, thereby opening the way for Bacon to fulfil his ambition of becoming Attorney-General. But the plan back-fired, and Coke became an increasingly irritating thorn in the King's side. He denied the King's authority to create criminal offences by proclamation, to issue search warrants, or to arrest subjects otherwise than by due process of law.

Matters reached a culmination when the King wrote to each of the Judges, calling on them to refrain from hearing and determining a particular matter until the King's pleasure was known. Coke proceeded with the hearing in disregard of the King's instructions, with the result that all of the Judges were summoned to a meeting with the King in Council. Every one of the Judges, other than Coke, buckled to the King's pressure, and agreed that the King had power to make such a direction; only Coke stood firm in denying the King's authority to interfere in the proceedings of the King's Courts. As a result, James - acting again on Bacon's advice - dismissed Coke as Chief Justice.

Again a private citizen, Coke stood for Parliament, and rapidly emerged as leader of the Parliamentary opposition to the King. The Parliamentary rights on which he insisted - that the King had no power to suspend laws, or their execution, without Parliament's consent; that the King had no power to create judicial tribunals or commissions without legislative authority; that the King had no power to levy money without a Parliamentary grant; that the King had no power to raise or keep a standing army in time of peace, except with Parliament's consent; that the King may not interfere in the election of Members of Parliament; that freedom of speech and proceedings in Parliament may not be impugned by the King; and that Parliament must be convened at regular intervals - were all recognised before the end of the Seventeenth Century, by the *Bill of Rights of 1689*. But it may fairly be said that the principles reflected in the *Bills of Rights* were not novel, and that this great constitutional enactment merely declared and confirmed those rights which the Parliament achieved during the reigns of James I and Charles I, most particularly by the *Petition of Right of 1628*, of which Coke was the principal author.

Coke's role, in the forefront of Parliamentary opposition to the exercise of absolute and arbitrary power by

James I and Charles I, placed him under no small personal danger. In 1623, at the age of 71, his efforts were rewarded by imprisonment in the Tower of London. Charles I attempted to keep Coke out of Parliament, by appointing him as Sheriff (without his consent) in his home County of Buckinghamshire - a Sheriff was not permitted to leave his County without the King's permission, and this enabled Charles to prevent Coke from travelling to London for Parliamentary sittings. But every attempt to silence Coke merely strengthened his popularity and influence: in successive elections, he was returned to the Commons, often by two or three different constituencies.

By his death in 1634, at the then prodigious age of 82, Coke had almost single-handedly transformed the Common Law, English legal scholarship, and the English constitution, from their primitive medieval origins, into something serviceable for the needs and aspirations of a nation which was rapidly becoming a world power. No lawyer who studies Coke's life and achievements can fail to be overawed by his industriousness, learning, wisdom, and sagacity - which makes it all the more remarkable to discover the extreme savagery with which he conducted the prosecutions of the Earl of Essex in 1600-02, Sir Walter Raleigh in 1603, and the Gunpowder Plot conspirators in 1605. In two of these three cases, Coke's zeal is understandable, if not forgivable, given the demonstrable guilt of those whom he prosecuted. But in Raleigh's case, the grotesque brutishness of Coke's conduct is in no way ameliorated by the supposition that Coke, himself, might have been convinced of Raleigh's guilt.

No lawyer, no historian, no commentator, has reviewed the circumstances of Raleigh's trial without reaching a conclusion, if not favourable to Raleigh's innocence, then (at the very least) that the so-called "evidence" against Raleigh fell conspicuously short of proving his guilt, and that the so-called "trial" was a perversion of the judicial process. That this was not perfectly apparent to a lawyer of Coke's scholarship, a jurist of his devotion to the Common Law, a man of his commitment to the liberties of the subject, a person of his outstanding intellect and wisdom, is utterly impossible. The fact that he dedicated so much of his subsequent career to the extirpation of such abuses might suggest that, if he did not experience a Pauline conversion, his was at least a case of the King's gamekeeper turned poacher.

The Trial

Some accounts refer to Raleigh's trial before the Court of King's Bench, but this is not strictly correct. The court was in fact a "special commission of oyer and terminer", not to be confused with the ordinary commissions of oyer and terminer and general gaol delivery, held at assizes under a Judge of one of the Courts of Common Law. As is noted in *Tucker's Blackstone* (the so-called "American Blackstone", expanded and annotated by St. George Tucker):

"In England there are also courts of special-commission of oyer and terminer, ... occasionally constituted for the special purpose of trying persons accused of treason, or rebellion, the judges of which, are frequently some of the great officers of state, associated with some of the judges of Westminster-Hall, and others, whose commission determines as soon as the trial is over. Most of the state trials, have been had before courts thus constituted: and the number of convictions and condemnations in those courts is a sufficient proof how very exceptionable such tribunals are: or rather how dangerous to the lives and liberties of the people, a power to select particular persons, as judges for the trial of state offences, must be, in any country, and under any possible form of government. In these cases, the offence is not only in theory, against the crown and government, but often, in fact, against the person, authority, and life of the ruling monarch. His great officers of state share with him in danger, and too probably in apprehension, and resentment. These are the judges, he selects, and from their hands expects security for himself and them. Whilst the frailties of human nature remain, can such a tribunal be deemed impartial?"

Any question of impartiality was noticeably absent from Raleigh's trial, where the commissioners included Sir Robert Cecil, and several of Cecil's cronies - Sir William Waad (who had acted as Raleigh's jailer), the Earls of Suffolk and Devonshire, Lord Wotton, Lord Henry Howard, and Sir John Stanhope. They sat with the Chief Justice of the King's Bench, Sir John Popham, the Chief Justice of the Court of Common Pleas, Sir Edmund Anderson, Mr. Justice Gawdy and Mr. Justice Warburton. At least one member of the Commission later repented of the proceedings: on his deathbed, Mr. Justice Gawdy observed that "the justice of England was never so depraved and injured as in the condemnation of Sir Walter Raleigh". Contemporary reports also state that, following the trial, Cecil was seen to have tears in his eyes; but one may be forgiven for suspecting that they were tears of the crocodile variety.

The jury was selected in advance, and brought down from London to Winchester for the trial. It comprised four knights, four esquires and four gentlemen. Offered the opportunity to challenge any of the jury, Raleigh

replied: "I know none of them; but think them all honest and Christian men. I know my own innocency and therefore will challenge none. All are indifferent to me." Again, contemporary reports have members of the jury later kneeling before Raleigh, and begging his forgiveness for their verdict.

Nominal leader for the prosecution was Heale, the King's Serjeant; until 1814, the King's Serjeants took precedence over King's (and Queen's) Counsel, and even over the Attorney-General; but Heale's role was limited to elaborating on the allegations contained in the Indictment; Coke had the real conduct of the prosecution.

He began with a complete irrelevancy - a lengthy exposition of the Bye Plot. Raleigh interrupted with the observation, "You Gentlemen of the Jury, I pray remember, I am not charged with the Bye, being the Treason of the priest"; and Coke had to acknowledge that this was so. In the course of his discourse on the Bye Plot, Coke attempted to link it with the Main Plot, implying that Brooke - Cobham's brother - was the common connection, arguing that "these Treasons were like Sampson's foxes, which were joined in their tails, though their heads were severed". Taunting Raleigh with the words which Brooke attributed to Cobham - though there was no suggestion that these words were ever spoken by Raleigh, or in his presence - that Cobham meant to destroy the King "with all his cubs", Coke rhetorically asked: " ... to whom do you bear Malice? To the Children?", leading to this exchange:

Raleigh: To whom speak you this? You tell me news I never heard of.

Coke: Oh, sir, do I? I will prove you the notorious Traitor that ever came to the bar. After you have taken away the King, you would alter Religion: as you Sir Walter Raleigh, have followed them of the Bye in Imitation: for I will charge you with the Words.

Raleigh: Your words cannot condemn me; my innocency is my defence. Prove one of these things wherewith you have charged me, and I will confess the whole Indictment, and that I am the horriblem Traitor that ever lived, and worthy to be crucified with a thousand thousand torments.

Coke: Nay, I will prove all: thou art a monster; thou hast an English face, but a Spanish heart. Now you must have Money: Aremberg was no sooner in England (I charge thee Raleigh) but thou incitedst Cobham to go unto him, and to deal with him for Money, to bestow on discontented persons, to raise Rebellion on the kingdom.

Raleigh: Let me answer for myself.

Coke: Thou shalt not.

Raleigh: It concerneth my life.

Having done with the Bye Plot, Coke turned his attention to the Main Plot, in which Raleigh was supposedly involved. Cleverly, Coke attempted to turn to the prosecution's advantage the fact that only one witness - namely Cobham - implicated Raleigh. He anticipated (correctly) an argument by Raleigh that the testimony of one witness was insufficient to found a conviction for treason: Raleigh, who had been for some time enrolled at the Middle Temple 30 years earlier, but without the benefit of legal representation or any facilities to conduct his own research, was unaware that the statutory requirement for two witnesses had been repealed. So Coke charged that: "Raleigh, in his Machiavelian policy, hath made a Sanctuary for Treason: He must talk with none but Cobham; because, saith he, one Witness can never condemn me."

Nonetheless, the evidence against Raleigh remained the evidence of one man only - not under oath, and not even signed by the accuser. Raleigh argued the point with an extraordinary display of persuasive logic. He cited examples, within living memory, of persons accused on false testimony and convicted, with the true facts coming to light only after the sentence had been executed. He quoted the precepts of Holy Scripture, ordaining that no man shall be condemned on the evidence of a single witness, and added: "If Christ requireth it, as it appeareth, Matthew 18, if by the Canon, Civil Law, and God's Word, it be required, that there must be two Witnesses at the least; bear with me if I desire one". Answering a bench of no fewer than five Judges and seven Privy Councillors, Raleigh made his case with great force, yet the utmost deference. When finally the Lord Chief Justice remarked, "You plead hard for yourself, but the laws plead as hard for the King", Raleigh replied:

"The King desires nothing but the knowledge of the truth, and would have no advantage taken by severity of the law. If ever we had a gracious king, now we have; I hope, as he is, such are his ministers. If there be but a trial of five marks at Common Law, a witness must be deposed. Good my Lords, let my Accuser come face to face, and be deposed."

Embarrassed by the absence of any evidence against Raleigh, beyond the unsworn and unsigned confession of Cobham, Coke began grasping at straws. He referred to a book, in Raleigh's possession, written during the reign of Elizabeth, disputing the Stuart title to the Crown. When Coke charged Raleigh that the book was treasonable, Raleigh denied having read it, but (addressing Coke) added: "It was written by one of your profession". It emerged that Raleigh had obtained the book from Sir Robert Cecil's father, Lord Burghley; and Cecil was quick to make the point "how useful and necessary it is for privy-counsellors and those in his place to intercept and keep such kinds of writings: for whosoever should then search his study may in all likelihood find all the notorious Libels that were writ against the late queen; and whosoever should rummage my Study, or at least my Cabinet, may find several against the King, our Sovereign Lord, since his accession to the throne". Not satisfied, Coke made the point to Raleigh: "You were no privy-counsellor, and I hope never shall be". But Cecil, obviously anxious to keep his father's name out of the proceedings, supported Raleigh: "He was not a sworn councillor of state, but he has been called to consultations." The discussion ended with an exchange in these terms:

Raleigh: Here is a Book supposed to be treasonable; I never read it, commended it, or delivered it, nor urged it.

Coke: Why, this is cunning!

Raleigh: Every thing that doth make for me is cunning, and every thing that maketh against me is probable!

The only witness called to give testimony in the entire proceedings was one Dyer, a mariner or merchant, whose evidence was:

"I came to a merchant's house in Lisbon ... ; there came a gentleman into the house, and inquiring what countryman I was, I said, an Englishman. Whereupon he asked me, if the king was crowned? And I answered, No, but that I hoped he should be so shortly. Nay, saith he, he shall never be crowned; for Don Raleigh and Don Cobham will cut his throat ere that day come."

It is almost unbelievable that any court, in any case, would accept such evidence; let alone on a capital trial. It was not merely hearsay, but - so it would seem - hearsay several times removed from the original source. The "gentleman" was not identified, and nothing established to verify the source of his information. It may have been idle gossip, or speculation. Raleigh, perhaps rhetorically, asked: "What infer you upon this?". Coke replied, "That your Treason hath wings." This produced one of the many powerful responses from Raleigh:

"If Cobham did practise with Aremberg, how could it not but be known in Spain? Why did they name the Duke of Buckingham with Jack Straw's Treason, and the Duke of York with Jack Cade, but that it was to countenance his Treason? Consider, you Gentlemen of the Jury, there is no cause so doubtful which the King's Counsel cannot make good against the law. Consider my disability, and their ability: they prove nothing against me, only they bring the Accusation of my Lord Cobham, which he hath lamented and repented as heartily, as if it had been for an horrible murder: for he knew that all this sorrow which should come to me, is by his means. Presumption must proceed from precedent or subsequent facts. I have spent 40,000 crowns against the Spaniards. ... If I had died in Guiana, I had not left 300 marks a year to my wife and son. I that have always condemned the Spanish Faction, methinks it is a strange thing that now I should affect it! ... If you would be contented on presumptions to deliver up to be slaughtered, to have your wives and children turned into the streets to beg their bread; if you would be contented to be so judged, judge so of me."

Throughout the trial, as the weakness of the prosecution case became increasingly more obvious - as it became more apparent that Coke could not win the day with reasoned argument - he simply replaced reason with invective. He called Raleigh "the absolute Traitor that ever was"; the "notorious Traitor that ever came to the bar". Coke harangued Raleigh: "Thou hast a Spanish heart, and thyself art a Spider of Hell". At a time when the pronoun "thou" was ordinarily addressed only to children and servants, or between people on terms of intimacy - the pronoun "ye" being the appropriate form of address between gentlemen - Coke addressed Raleigh: "All that he [Cobham] did was by thy instigation, thou Viper; for I thou thee, thou Traitor." This turn of phrase must have attracted some notoriety at the time, as it was picked up by Shakespeare in *Twelfth Night* (Act 3, Scene 2, lines 44-46): "Taunt him with the licence of ink;

if thou thou'st him some Thrice, it shall not be amiss".

What is even more extraordinary than Coke's brutality is the wit and good grace with which Raleigh responded. Immediately after being "thoued" by Coke, Raleigh replied: "It becometh not a man of quality and virtue, to call me so: But I take comfort in it, it is all you can do." Coke's antagonism to Raleigh, and Raleigh's cool replies, reached their culmination in this exchange:

Coke: Thou art the most vile and execrable Traitor that ever lived.

Raleigh: You speak indiscreetly, barbarously and uncivilly.

Coke: I want [i.e., lack] words sufficient to express thy viperous Treasons.

Raleigh: I think you want words indeed, for you have spoken one thing half a dozen times.

Coke: Thou art an odious fellow, thy name is hateful to all the realm of England for thy pride.

Raleigh: It will go near to prove a measuring cast between you and me, Mr. Attorney.

Coke: Well, I will now make it appear to the world, that there never lived a viler viper upon the face of the earth than thou.

Throughout these exchanges, a tactical battle was taking place between Coke and Raleigh, each of them trying to get the last word with the Jury. Raleigh argued that "He which speaketh for his life, must speak last." Coke protested: "The King's safety and your clearing cannot agree. I protest before God, I never knew a clearer Treason."

In fact, both Raleigh and Coke held letters from Cobham, one retracting the allegations against Raleigh, the other withdrawing the retraction. Each was trying to out-manoeuvre the other, so as to deal the last trump. When it appeared that the Court might indulge Raleigh to have the last word, Coke "sat down in a chafe, and would speak no more, until the Commissioners urged and intreated him". Finally, Coke was prevailed upon to make his closing address, and produce his letter from Cobham. Only when Coke had finished reading his letter from Cobham, did Raleigh produce another; and, cleverly, invited Cecil to read the letter, as Cecil was familiar with Cobham's handwriting:

"Seeing myself so near the end, for the dire charge of my own conscience, and freeing myself from your blood, which else will carry vengeance against me; I will protest upon my salvation I never practised with Spain for your procurement; God so comfort me that this is my affliction, as you are a true subject for anything that I know. ... God have mercy upon my soul, as I know no Treason by you."

All Raleigh's efforts were to no avail. After a trial lasting from 8am to midnight, the Jury took but 15 minutes to return with a guilty verdict, and the Lord Chief Justice thereupon pronounced sentence of death in the full magnitude and horror which the law then required.

Yet, to say that Raleigh's efforts were to no avail is not entirely true, since, although he lost the trial, he was the undoubted victor in the court of public opinion. A man almost universally unpopular, as one of Elizabeth's favourites, and especially for his role in the trial and execution of Essex, suddenly became a national hero. Had James ordered the execution to proceed, it would have put his Crown at far greater risk than any imagined treasons of which Raleigh was accused. Even James was to concede of Raleigh that, "by his wit, he turned the hatred of men into compassion for him". So, for 13 years, Raleigh remained a prisoner in the Tower; legally dead, as he had been attainted for treason, but still very much alive in mind, body and spirit.

Raleigh's Execution

Raleigh's imprisonment was not quite so severe as might be imagined; he was allowed servants, and given every facility to pursue his interests as a writer and as an amateur student of science. For some time, his wife and family were permitted to reside with him in the Tower, and he was allowed regular visitors. He

became a hero to King James's eldest son, Prince Henry, the Prince of Wales, who petitioned his father for Raleigh's release, and famously remarked: "Sure no king but my father would keep such a bird in a cage". But Henry's untimely death, in 1612, deprived Raleigh of any further support from that quarter.

Finally, in 1616, at the age of 64, and having suffered two strokes whilst in the Tower, Raleigh was released to lead a further expedition to Guiana, in search of El Dorado. The venture was a complete failure, and led to the death - amongst many others - of Raleigh's eldest son, Wat. Unfortunately for Raleigh, a detachment sent by him into Guiana encountered a Spanish settlement; there was fighting and bloodshed, and a number of the Spanish were killed. When Raleigh returned to England, without the gold with which James had hoped to enrich his treasury, James was more than willing to accommodate demands for Raleigh's execution by the Spanish Ambassador, the Conde de Gondomar. But James was afraid that the good account which Raleigh made of himself, at the treason trial, would be repeated - to Raleigh's benefit, and James's detriment - so James sought a way to rid himself of Raleigh without a further trial.

At this point, reference should be made to another famous figure in the history of English law, Francis Bacon - by then, Lord Chancellor and Baron Verulam, subsequently to become Viscount St Albans. Whatever fame and respect Bacon is entitled to as an essayist, philosopher and scientist, he is surely one of the most odious creatures ever to have disgraced judicial office at any time or in any place. We have already seen how he turned against his former patron, the Earl of Essex, when Essex was on trial for his life. At Elizabeth's request, and for a substantial fee, he wrote a vicious account of that trial; but, no sooner had James ascended the throne, than Bacon again put pen to paper, by way of an *apologia* for James's "martyr". We have seen, too, how he destroyed the judicial career of the learned and sagacious Coke, of whose brilliance and success Bacon was profoundly jealous.

The career of this undoubtedly talented lawyer and scholar reached a fitting culmination when he was impeached for accepting bribes - an almost unique instance of graft in the long and glorious history of the English judiciary. Bacon's apologists, who are numerous, argue that the acceptance of bribes by judges was a common thing in Bacon's time, and that Bacon did not allow the bribes to influence his decisions. However, when James I (with Bacon's assistance) was looking for an excuse to sack Coke, Coke's conduct as Chief Justice was subjected to the most meticulous examination, and no plausible instance of any form of corruption could be discovered. Nor does it seem very probable that the bribes which Bacon accepted were without any influence on the exercise of his judicial powers; yet, even if that were the case, it is difficult to see how his conduct in accepting bribes is made more virtuous by the fact that he cheated the people who bribed him, by not giving them the benefit of the influence for which they had paid.

Bacon was amongst the many visitors received by Raleigh in the Tower, and it seems that they became firm friends. Most likely, Bacon had a very genuine interest in Raleigh's scientific study and Raleigh's writings; it may be the case that they collaborated on some works, which for political reasons Bacon could not risk publishing under his own name; and they have even been linked, in one of the more far-fetched emanations of the Shakespeare "authorship controversy", as jointly the "real" authors. It was therefore natural that, when Raleigh was offered his freedom to undertake the expedition to Guiana, he sought Bacon's advice. Raleigh was provided with a Commission from the King, which not only gave Raleigh liberty to undertake the voyage, but vice-regal powers over the entire expedition, including the power to dispense justice. Raleigh reportedly asked Bacon whether he should seek the insertion of a provision, formally pardoning him of his previous treason conviction. Bacon's advice to Raleigh was that a formal pardon was unnecessary: that Raleigh had "a sufficient pardon for all that is past already, the King under his Great Seal having made you Admiral, and given you power of marshal law".

However, after Raleigh's return from Guiana, and when James sought the Privy Council's advice as to how Raleigh should be dealt with, it seems that Bacon was the first to suggest that the King could obtain execution of the sentence passed 15 years earlier. Other members of the Privy Council scrupled at the injustice of beheading Raleigh after so long; some even argued that, whatever the legalities of the situation, it was distinctly dishonourable to treat Raleigh as being still attainted of treason, after he had been commissioned to undertake a difficult and dangerous voyage of exploration for the Crown's benefit, and had lost his son in the process. The Privy Council provided James with a number of options: a new trial with new charges; a commission of inquiry regarding the failed Guiana expedition, with the possibility of a recommendation that Raleigh's previous sentence be carried into effect; or an application to the Court of King's Bench for execution of the previous sentence. But James, determined not to allow Raleigh any further opportunity to increase his popularity, would not contemplate any possibility which allowed Raleigh again to reclaim the public sympathy which he had won over at Winchester, 15 years earlier.

So, on 28 October 1618, a Writ of *Habeas Corpus* was delivered to the Lieutenant of the Tower, commanding that he bring Raleigh before the King's Bench at Westminster. The attorney-general, Henry Yelverton, applied for "Execution of the former Judgment". In *Cobbett's State Trials*, it appears that Coke

presided; but this cannot be correct, as Coke had been dismissed as Chief Justice two years earlier; in fact, Sir Henry Montague presided as Chief Justice. Unlike the previous proceedings, Raleigh was addressed with particular courtesy and civility:

"I am here called to grant Execution upon the Judgment given you fifteen years since; for which time you have been as a dead man in the law, and might at any minute have been cut off, but the king in mercy spared you. ... I know you have been valiant and wise, and I doubt not but you retain both these virtues, for now you shall have occasion to use them. Your faith hath heretofore been questioned, but I am resolved you are a good Christian; for your Book, which is an admirable work, doth testify as much. I would give you counsel, but I know you can apply unto yourself far better than I am able to give you; yet will I, with the good neighbour in the Gospel, who finding one in the way, wounded and distressed, poured oil into his wounds, and refreshed him, I give unto you the oil of comfort; though, in respect that I am a minister of law, mixed with vinegar. Sorrow will not avail you in some kind: for, were you pained, sorrow would not ease you; were you afflicted, sorrow would not relieve you; were you tormented, sorrow could not content you; and yet, the sorrow for your sins would be an everlasting comfort to you. You must do as that valiant captain did, who perceiving himself in danger, said, in defiance of death; 'Death, though expectest me, but manage thy spite, I expect thee'. Fear not death too much, nor fear not death too little: not too much, lest you fail in your hopes; not too little, lest you die presumptuously. And here I must conclude with my prayers to God for it; and that He would have mercy on your soul. Execution is granted."

Thus, having 15 years before been convicted of treason on the pretext of a traitorous conspiracy with the Spanish, he was now condemned to die at the behest, ultimately, of the Spanish Ambassador. As was remarked by his only surviving son, Carew, Sir Walter "was condemned for being a friend to the Spaniard; and lost his life for being their enemy".

Raleigh met his death on the scaffold, at Old Palace Yard, Westminster, the following morning. On the scaffold, he showed remarkable courage and placidity. Inspecting the headsman's axe, he remarked: "This is sharp medicine, but it is a physician for all diseases". He declined a blindfold, but - according to legend - was permitted to smoke his pipe; supposedly the first example of the traditional indulgence for a condemned man. He made a moving and dignified speech to the assembled crowd and, before placing his head on the block, proceeded to each corner of the scaffold kneeling and asking the onlookers to pray for him. When finally Raleigh placed his head on the block, somebody suggested that he was facing the wrong direction - that he should face "the east of our Lord's arising" - Raleigh replied that: "So the heart be right, it is no great matter which way the head lieth". But, to oblige the crowd, he stood up and rearranged himself. When he made the signal that he was ready, the axeman hesitated, so Raleigh's last words were: "Strike man, strike!".

Yet subsequently, in Raleigh's cell, was found a poem, apparently written by during his last night:

Even such is time, that takes in trust
Our youth, our joys, our all we have,
And pays us but with earth and dust;
Who, in the dark and silent grave,
When we have wandered all our ways,
Shuts up the story of our days;
But from this earth, this grave, this dust,
My God shall raise me up, I trust.