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The Star Chamber

By Kevin Tang

The Star Chamber's gruesome confines within the labyrinth of corridors which comprised the palace at Westminster were known for more than a century before the statute of 1487 purportedly established it. Originally, it was a special tribunal to try particular legal issues and matters of public order. This was a court of the King's Council, the members of which sat, without reference to civilised practice and procedure, and were

hardly ever legally trained. This aberrant conciliar court has fired the imagination of common law lawyers throughout the ages.¹

Origins

The chamber was originally used for sittings of the King's Council. The Star Chamber was first referred to in 1398 as the *Sterred Chambre* and by 1422 as *Le Sterne Chamere*.

The legend spread over the channel into Norman France and it was called *La Chambre Etoilee* and in Latin *Camera Stellata*.

The court was established to ensure the fair enforcement of laws against the privileged English upper classes (those likely to be born above the law or those so powerful and infamous that the ordinary courts could not convict them of monstrous crimes). It was understood to be a jurisdiction which countenanced morally reprehensible misdemeanours but which were not necessarily a violation of the letter of the law. It had a wide-ranging jurisdiction, it could punish a defendant or an accused for any action which the court felt should be unlawful, despite being technically lawful. By 1529, when Cardinal Thomas Wolsey was chancellor, it became a regular court of law. Sir Edward Coke (1552-1634) described the Star Chamber grandiloquently as ‘the most honourable court (our Parliament excepted) that is in the Christian World both in respect of the judges in the court and its honourable proceeding’.²

Cognoscenti

In 1540, the court of the Star Chamber and the Privy Council became formally separate entities. Before and after that date, however, the judges who sat in the Star Chamber were all Privy Councillors. Most of them, however, were not legally qualified. During the 16th century, the Privy Council was a select and secret institution. It was a band of the king’s own private advisers, chosen for their knowledge and ‘know-how’ in relation to government policy and administration.

Perhaps surprisingly, the Star Chamber from the first quarter of the 16th century exercised a mainly civil jurisdiction. Like the Chancery, the relief granted concerned mainly matters of real property. However, unlike Chancery, the petitioners to the court usually complained of riot, unlawful assembly, forced entry and oppression; matters of public disorder which gave the council its impetus to act in such matters. In reality, many of the allegations and claims made before the court were probably fictions.

The real reason for the Privy Council deciding these issues was essentially to decide title. However the statutes of Edward III prohibited the council from deciding issues in relation to freeholds – these were known as the statutes of due process and precluded such actions – resulting in these issues being

determined by Privy Councillors sitting as judges of the Star Chamber. At its height, Charles I used the Star Chamber as a de-facto parliament in the years 1628-1640, when he refused to call parliament. The Privy Council’s identity as an appellate court came about by the 17th century.

Jurisdiction and procedure

Generally, the chamber’s opaque and indeterminate nature (as to practice and procedure) gave rise to despotic and totalitarian characterisations of its own jurisdiction. Its jurisdiction was untrammelled. This was the age of civil unrest, lengthy wars and anarchy. As Thomas Hobbes said in *Leviathan* (1651), ‘[Man lived in] continual fear, and danger of violent death; and the life of man [was] solitary, poor, nasty, brutish, and short.’

A Star Chamber judge sat without jury and wholly out of the public gaze. This fired the imagination of the public. Another court which approached the terrifying and perverse descriptions of the Star Chamber’s practice and procedure was the Court of High Commission, which was the pope’s own private court, the quintessential ecclesiastical court.

In Stuart times, the Star Chamber dealt with criminal causes, and after conviction in the Star Chamber, only the king was able to pardon wrongdoers. By the 16th century, those cases had almost ceased to be referred. The procedure was simple: a prosecution was brought before the court upon referral by the attorney-general and any defendants were tried summarily in the absence of a jury and without witnesses. A private petitioner or aggrieved citizen could also seek that a cause be referred to the chamber or to another court, usually by indictment.

Noted in Star Chamber procedure was the *ex officio* oath where, as a result of their high positions, accused individuals would be forced to swear to answer truthfully any questions asked of them. Then, beset by hostile interrogation, the accused was forced into the ‘cruel trilemma’ – having to incriminate themselves, to face charges of perjury if they answered unsatisfactorily, or be held in contempt of court, if no answer was forthcoming.

Unlike the Chancery, the Star Chamber was not a court concerned with conscience. There was no development of any equitable juris-

dition. It was a Common Law court. During the 17th century, the Star Chamber awarded damages to its claimants – a matter hitherto unknown to the Chancery.

Court of law or lore

The Star Chamber was so much the Law, that it became lore itself. In this procedurally opaque jurisdiction, the Crown had an enormous advantage in prosecutions. It tried citizens who had fallen from public favour, unfavourable or notorious litigants and accused persons. The court was used to suppress sedition and to discourage political activism and similar. The activist William Prynne (1600-1669) who published treatises against religious holidays and Christmas was known to have ‘lost his ears’ twice (by degree) by order of the Star Chamber. He was brought before the Star Chamber for his religious libels in the Puritan context.³ William Noy (1600-69), the attorney, referred the matter into the chamber. The church fathers condemned Prynne’s infamous views and searing criticism against stage plays and his assiduous railing against the monarchy. In addition to earlier orders causing the loss of his ears Prynne was sentenced to the pillory and publicly humiliated. The chief justice ordered him to be branded on the cheeks ‘S L’ a ‘Seditious Libeller’. Prynne preferred his own Latin formulation of those letters ‘stigmata laudis’ – signs of praise, claiming it a higher honour.

In the aftermath of the treatment of Prynne and other politically active individuals, the Long Parliament (1640-1660) abolished the Star Chamber by introducing the Statute of Habeas Corpus in 1640. The Star Chamber by then was a legend in its own right for arbitrary procedure and chilling cruelty.

During its existence, the Star Chamber developed the law of misdemeanours. Its hallmark, however, became its terrifying brutality and imaginative punishments for misdemeanours, for example the slitting of noses, severing of ears and public humiliation, although it did not order death. The more gruesome punishments became a feature in the last 10 years of its life. Constitutional principle precluded felonies from being tried in the chamber – a man could only be tried for his life by a jury of his peers.

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Punishments for misdemeanours that were unfixed at Common Law at that time, allowed the Star Chamber to decree whippings and the pillory in lieu of a pecuniary fine. The chamber had morphed into favouring cruel and unusual punishments – perversity became its signature.

The Star Chamber heard cases of criminal libel, forgery, perjury, subornation perjury, conspiracy and attempts to commit crimes. It has been said that it was a jurisdiction for criminal equity, however, that overstates the equitable nature of the court, if it ever existed. By the time of the abolition of the Star Chamber, it had commenced creative work which the other courts developed.

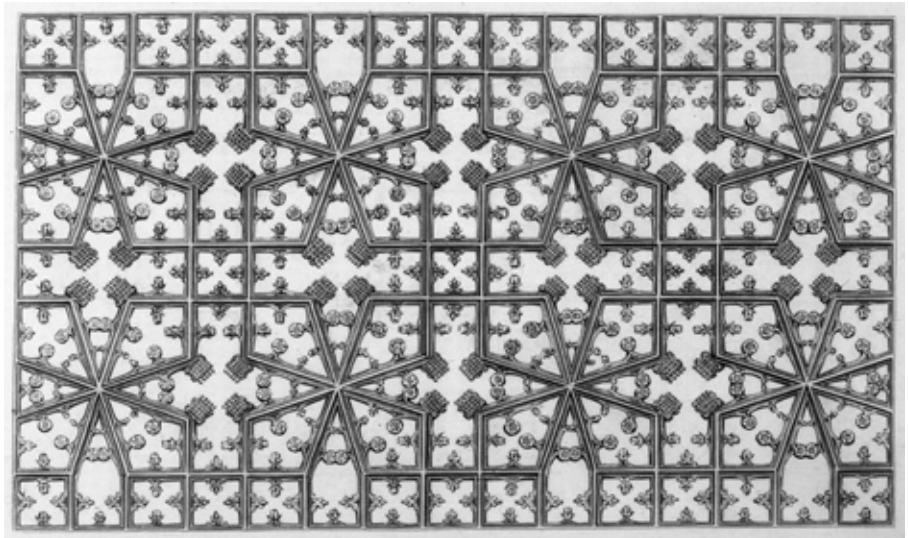
On the demise of the Star Chamber, the King's Bench claimed to have inherited some aspect of equitable function of developing the criminal law to meet particular or new circumstances that might have presented. Sir Edward Coke however urged that any creativity of the jurisdiction or ability to deal with the novelties which might have presented were not desirable in penal matters. It is understood that any such equitable jurisdiction, or room for it to develop was abandoned in the interests of certainty. The Bill of Rights of 1689 prohibited cruel and unusual punishment.

Fabled decor

The Star Chamber took its name from the golden stars painted on its blue ceiling. Notably, the ceiling was painted in cerulean blue, *ultramarino* (Latin beyond the sea), which was a coveted colour in decoration

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in Medieval and Renaissance times. It rivalled the colour of murex favoured of the Ancients in rarity and expense. That colour blue was made by grounding to a fine powder lapis lazuli from Afghanistan, then mixed with other compounds. It was otherwise used for the robes in depictions of the Virgin Mary, the serene colour being symbolic of holiness and humility. The gold stars were a popular motif at the time and applied directly onto the blue ground. Such ceilings are observed in buildings which date to the time; for example, La Sainte Chappelle in Paris, built in 1240 for Louis IX – the king's own private chapel within the Palais



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de Justice on the Ile de la Cite.

In light of its décor, the likely source of the Star Chamber's name comes from Ovid's *Metamorphoses* 'soe called of the serpent stello...For the form of the said serpent was in colour blewe, al to be speckle with spots shyneigne in the night bright like unto starres'.⁴ Ovid was a popular reference in Elizabethan England, and this description concerns punishment which became the chamber's signature.

The Star Chamber room was demolished in 1806, long before the great fire which destroyed that part of the palace in about 1830. The décor, however, was salvaged. The door of the chamber room hangs in the well-known Westminster school nearby. That fabled Star Chamber ceiling with its bright gold stars on the blue ground was taken to the Leasowe Castle on the Wirral Peninsula in Cheshire directly from the demolition site. There were four tapestries of Flemish origin that covered the chamber's four walls – arras-es which insulated for sound and heat. The arras-es were gifts to the British Royal family from a Netherlandish royal house and depicted the four seasons. Those tapestries were removed to the great house Knole, the seat of the Sackville-West family since the 1450s, in Sevenoaks in Kent. It was the traditional holding venue for obsolete furniture of royal and government houses. According to one source, the workmen dismantling the old chamber noticed mysterious black encrustations similar to flecks of dried blood at intervals as they were lowered, on the green blue tapestries, having borne witness to chilling forms of brutality over the centuries.

Vernacular

In the 1980s and 1990s, Baroness Thatcher was known to hold private ministerial meetings at which disputes between the Treasury and certain government departments were argued and resolved. These high level question time meetings, held at 10 Downing

Street, went into the night and were often termed 'Star Chamber sessions', due to their impromptu nature and unsubtle advice from the top.

The Star Chamber is an expression that has become synonymous with disregard of personal rights, liberties and the abuse of power. The term 'the Star Chamber' has entered the English vernacular and is referred to in many judgments which observe the aberrant and invasive procedures of authority. It is memorialised in English case law, by reference to interrogations, Kafkaesque procedures, and inquisitorial procedures, as Lord Dyson noted in a case about disclosure and closed material procedure *Al Rawi & Ors v Security Service* [2011] 3 WLR 388 at [37].

Scott LJ in *Bayer v Winter & Ors (No.2)* (1986) 1 WLR 540 at 544 made the following remarks concerning an application for orders permitting the applicant the right to conduct an interrogation without limit in an action for Anton Pillar orders: 'Star Chamber interrogatory procedure has formed no part of the judicial process in this country for several centuries. The proper function in my opinion of a judge in civil litigation is to decide issues between parties. It is not, in my opinion, to preside over an interrogation'.

ENDNOTES

- 1 Sir John Baker *An Introduction to English Legal History* London (2nd ed.) Butterworths 1979
- 2 Edward P. Cheney, *The Court of Star Chamber*. *The American Historical Review*, Vol. 18, 4 (July 1913) at 745
- 3 Losing the lobes of one's ears was a signature punishment known to be done by degrees in the chamber.
- 4 See Ed. Hutson *Oxford Handbook of English Law and Literature* Oxford University Press (2017)