

# The Marquess of Winchester's Regiment



## THE JUSTICES AND THE COMMISSION OF THE PEACE

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1. In the seventeenth century the government of the country was exercised from the King and Privy Council through various Court officials – akin to the modern government departments (e.g. The Lord Admiral, The Lord Treasurer). Parliament was seen as offering advice to the King except in the area of taxation where it was supposed to approve. However, King Charles I ruled without a Parliament from 1629 to 1640. For all the period from 1603 to 1640 the main vehicle for settled administration in the country was through the **Commission of the Peace**, carried out by the **Justices of the Peace** (JPs).

2. The desires and policies of the King were first communicated to the **Justices of Assize** (also known as the common law judges) by an address by the Lord Keeper<sup>1</sup> in the Star Chamber<sup>2</sup> twice yearly before the common law judges departed for their circuits. Each Circuit (Home, Midland, Norfolk, Oxford, Western and Northern) was visited by pairs of judges for each county to hold the county assizes. The county assizes formed the principal court for the trial of major crimes (murder, manslaughter or witchcraft), those beyond the purview of the quarter sessions and suspects bailed or held in goal. The judges gave an assize sermon to summarise the key points of law the Crown wished to emphasise. They heard the presentments of the Grand Juries which could initiate process as well as act as a preliminary inquisition for crown proceedings. In practice the assizes were a major event in local government. All the JPs of the county were expected to attend as well as being a social occasion for the county gentry with elaborate dinners and opportunities to meet and lobby men of influence. They lasted for two or three days twice a year.

3. From the point of view of the King and Council the judges provided a rare, if indeed unique, opportunity of direct contact between the centre and the localities. Also, on their return, the judges presented to the King 'the distastes and griefs of the people'. This was supplemented by the reports made by the Sheriffs. However it appears that not all Sheriffs reported on a regular basis.

4. To codify the law and changes required to the law to the JPs, King Charles and his Privy Council issued the *Book of Orders*, supplemented by Royal Proclamations. Some Justices also produced guides to the law and precedents. For example Justice Heath promulgated thirty-eight 'resolutions', which were relayed by the other circuit judges as a guide to the JPs. Ultimately these were included in *The Complete Justice* printed in 1661.

5. Unlike his modern counterpart the **Justice of the Peace** in the 17th Century was responsible for a vast range of activities largely carried out today by local and central government agencies.

a. As wealthy landowners and gentlemen of high status in the community JPs sat on the county bench (i.e. they could serve as a justice in the county court, when more than one judge presided). However, the JP's primary role was to keep the peace by applying the law of the land and the

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1 The Lord Keeper of the Great Seal, Thomas Coventry, first Baron Coventry 1625–40, Lord Finch 1640-41, Lord Lyttleton 1641-45, Sir Richard Lane 1645-50. The Great Seal was captured and destroyed by Parliament in 1646.

2 Established originally to ensure the fair enforcement of laws against socially and politically prominent people so powerful that ordinary courts would probably hesitate to convict them of their crimes. However, it became synonymous with social and political oppression through the arbitrary use and abuse of the power it wielded during the reigns of James 1 and Charles 1. It was composed of Privy Counsellors and common law judges to supplement the judicial activities of the common-law and equity courts in civil and criminal matters.

monarch's wishes as expressed through the orders of the Privy Council. Many day-to-day matters could be decided at the discretion of a Justice of the Peace sitting on his own ('out of sessions'); for others he would sit with fellow JPs at the courts of Petty Sessions and Quarter Sessions. Further legal duties included the taking of oaths and sureties and the preparation of the cases against felons and commitments for goal or punishment. This legal work, however, was only part of his duties.

b. The JP had to levy local rates to ensure that the bridges and highways were maintained, public alehouses regulated, and young people gainfully employed through approved apprenticeships. Wages and commodity prices had to be regulated and conformity with weights and measures standards overseen. Undesirables - 'rogues and vagabonds' - were to be driven away from the community. Careful distinction was made between the deserving and the undeserving - the poor and people genuinely unable to work such as the elderly, those maimed through injury at their work or as a result of military service had to be provided for; almshouses and prisons had to be constructed and maintained. Bastardy cases had to be resolved and the diligent mustering of the militia encouraged. Specific requirements of the King and Privy Council, such as the collection of Ship Money and the contributions levied for the repair of St Paul's in London during Charles' reign, had also to be followed

c. The Quarter Sessions were held four times each year, nominally in one place for each county, although some counties (e.g. Lincolnshire) used the three ancient divisions of the shire, while others (e.g. Somerset) held each session in a different town because of the size of the county. All the JPs of the county were expected to attend, and, like the county assizes, they were also social occasions. To meet the pressure of legal business during the early seventeenth century, small groups of JPs who lived near each other would also meet in 'Petty Sessions', often monthly or more regularly. Dalton's *'Country Justice'* contained guidance on the practice of the JP and of their sessions. *The Book of Orders* required JPs to report monthly to the Sheriff, who in turn was supposed to forward all reports to the Justices of Assize.

d. Public health was important too, as in a time of sporadic outbreaks of plague, it was necessary to organise a watch by day and night to control those entering the neighbourhood. Regular church attendance was expected and non-attendees, 'recusants' were liable to be fined.

6. To help him bear this massive range of responsibilities and carry them out effectively, the JP was supported by a local network of parish officials including the Church Warden, the Petty Constables and High Constable, the Overseer of the Poor and the Surveyor of the Highways, all of whom could be admonished and fined for neglect of their duties. However by the same token, the JPs were also held accountable by the judges at the Assizes for their behaviour and could themselves be fined!

7. The Constables were the workhorse of local government. They were elected by the JPs and served for a term of one year, although some served more terms. The High Constable covered a Hundred and the Petty Constables covered a Parish. They were responsible for all policing – literally 'keeping the peace' (dealing with drunkards, riots, executing warrants, raising the hue and cry); the enforcement of orders and proclamations concerning alehouses, inmates, recusants and poor relief; military affairs, musters of the militia, the press and the parish armour; and taxation both national and local – purveyance<sup>3</sup>, payments for St Paul's, ship money, military charges, local rates for bridge and highway repair, the poor house and house of correction, relief of maimed soldiers and so on. As local men, they were expected to understand local matters and to fairly allocate the burden of taxes. High Constables would have been substantial freeholders and farmers, whereas the Petty Constables were recruited from the husbandmen and tenant farmers. Most did a fair job, but some were inclined to tip off suspects so that they could flee from justice and to be less than diligent in carrying out the distraint of property for non-payment of rates, fines or ship money. Their job involved a balancing act between the pressure from the Justices and JPs, discussed at monthly meetings of constables, and the feelings

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3 The traditional right of the Crown to take provisions for the royal household at below market cost, often commuted to a monetary fee.

of their fellow neighbours. By the 1640s the constables were more inclined to tilt towards local sensibilities as the pressure of discontent grew.

8. Church Wardens arranged the maintenance and repair of the structure and furniture of churches, rendering accounts, and reported recusants to the constables. However religious differences were sharpening old and creating new interpersonal conflicts. In some areas a Muster Master was appointed to organise the mustering of the militia. The Surveyors of Highways tried to organise the maintenance of roads and bridges. In places with large bridges this caused a considerable drain on local resources. The Overseer of the Poor administered the Poor Law<sup>4</sup> regulations. The act levied a poor rate on each parish which Overseers of the Poor were able to collect. Those who had to pay this rate were property owners, or rather, in most cases, occupiers including tenants.

9. The Privy Council could, and did, summon recalcitrant officers (Deputy Lieutenants, JPs, constables, muster defaulters and sheriffs etc.) to account for their actions or lack of them. It could praise or award punishment accordingly. Particularly during the period of personal rule by Charles I it also attracted appeals by aggrieved citizens or officials in the absence of a parliament. It also commissioned investigations, such as that into the decay of the cloth trade, complaints about payments and fines and scores of petitions about ship money assessments. It was assisted by Clerks and the Serjeants at Arms. Exceptionally, the Council of the North, based in York, and to a lesser extent, the Council of the Marches, could exercise functions like the Privy Council and be the equivalent of the Star Chamber for judicial matters within their localities. The Privy Councillors also were men of substance in their own localities and were an important influence there when they were at their homes during the summer.

10. In a prelude to modern pandemics, the plague in the seventeenth century caused local officials to take action including the confinement of households to their homes, curtailment of trade and public gatherings and refusal of entry to towns and cities to visitors. Affected ports closed to shipping, schools closed, fairs were banned and transport of goods from infected places prohibited. Town and city corporations did their best to alleviate the suffering through relief to the poor.

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## REFERENCES

No	Title	Version/Date
1.	List of Lord Chancellors and Lord Keepers	Wikipedia current
2.	Star Chamber	Wikipedia Commons
3.	The Personal Rule of Charles I	Kevin Sharpe 1992
4.	The Royalist War Effort 1642 - 1646	Ronald Hutton 1982
5.	The Exchequer	ECWS Handout Iss 2 Aug 20

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4 Relief under the 1601 Poor Law could take on one of two forms: indoor relief, relief inside a workhouse, or outdoor relief, relief outside a workhouse. This could come in the form of money, food or even clothing. As the cost of building the different workhouses was great, outdoor relief continued to be the main form of relief in this period. Relief for those too ill or old to work, the so-called "impotent poor", was in the form of a payment or items of food ("the parish loaf") or clothing also known as outdoor relief. Some aged people might be accommodated in parish alms houses though these were usually private charitable institutions.