ABSTRACT

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A New Definition of Treason: The 1794 Treason Trials
Under the Direction of DR. KIRK WILLIS

This paper examines the 1794 Treason Trials as a turning point in the British definition of treason. Without a written constitution, British state power relied on a carefully balanced relationship between the king, Parliament, and the people. The definition of treason, however, identified state power as residing solely in the person of the king; threats to the people or to Parliament were not considered attacks on the state. While the same had been true in France, the 1789 revolution overturned these structures in an attempt to redefine government according to the rights of the people. Initially, British responses to the French Revolution were positive, seeing a reflection of their own model of mixed government. Reform societies, especially, took inspiration from the French and attempted to introduce similar reform measures to Parliament. As the French Revolution progressed, however, the English government increasingly saw the violent revolution as a threat to English stability. Fearing that reform societies' French sympathies might lead to a similar revolt against the English government, Prime Minister William Pitt and his attorney-general John Scott brought the reform leaders to trial for treason. Ultimately, the defense, led by Thomas Erskine, was able to prove that the defendants' attempts to reform Parliament in no way represented an attack on the person of the king and therefore did not qualify as treason. The acquittal of the defendants led to new legislation which redefined treason to include attacks or threats to Parliament, acknowledging that state power had shifted outside of the king.

INDEX WORDS: 1794 Treason Trials, Treason, English Constitution, French Revolution, English Popular Radicalism, Thomas Hardy, London Corresponding Society, John Horne Tooke, Society for Constitutional Information, John Thelwall, Sir John Scott, Thomas Erskine

A NEW DEFINITION OF TREASON: THE 1794 TREASON TRIALS

by

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CHAPTER 1
INTRODUCTION

The 1794 Treason Trials emerged from the increased tensions of the escalating French Revolution. For a while, the French Revolution stirred English support and pride for the Settlement of 1688, however as the revolution devolved, it became apparent that it did not hold similar aims for a peaceful mixed government. In England, this was a time of flux for the king and Parliament. The settlement of 1688 had created a mixed government; the people, embodied in the Parliament, retained immutable civil and political rights, thereby limiting the monarchy and balancing power in government between the king and Parliament. With the early Hanoverian kings, however, this balance increasingly favored Parliament's side. The creation of the position of prime minister and cabinet dispersed the king's power. By the time George III took the throne, his attempts to reassert the role of the king appeared as a usurpation of Parliament's rights. Whig politicians, seeing the king's attempts to reclaim power as increased corruption in government, argued for reform and a return to the principles behind the Settlement of 1688.

However, the French Revolution introduced new ideas of popular political power which spread quickly in England. Despite the terrific twists and turns of the French Revolution, radical reformers in England continued to push for universal suffrage and annual parliaments. In 1794, the momentum and energy from the reformers came to be perceived as a threat to the stability of the English government. The government arrested the leaders of the movement and tried them for treason, partly out of a desire to silence the threat absolutely and partly out of a fervent belief that the threat directly endangered the government. In this endeavor, however, the Attorney General, Sir John Scott, had to redefine treason away from an attack on the person of the king to

an attack or a threat to an abstract definition of government. Although this legal footwork did not succeed and the defendants were declared not guilty of treason, the trials made apparent a great shift in political foundations away from the king as the embodiment of the state and towards a state comprised of king and legislative bodies that also had to be protected.

CHAPTER 2
THE EARLY REFORM MOVEMENT

The notion of reform was by no means a new phenomenon at the end of the eighteenth century. One of the strongest arguments for the defense in the trials was that the reformers were merely acting as part of a long tradition of reform rhetoric in English history. This reform movement in England dates back to the settlement of 1688, which ended the English Civil War and established a balance between King and Parliament. For the decades following, this settlement was regarded as sacrosanct and ideal. Albert Goodwin charts the start of reform movements to 'real Whigs' or 'eighteenth-century Commonwealthmen,' who by 1694 believed the country had already lost touch with the republican values achieved in 1688.[1] The independent Whigs opposed encroaching centralization of state authority by glorifying English liberty and attributing it to the "'mixed' government that had resulted from the revolution of 1688."[2] The Whig reform movement in the late seventeenth and eighteenth centuries concentrated its efforts on enacting a return to the idealized settlement of 1688, primarily through a decentralization of power from the monarchy to the nobility.

At the end of the eighteenth century, however, the tone of reform changed. George Woodcock locates this change in a new definition of revolution. For the revolutionaries in the seventeenth century and the Whig politicians in the eighteenth century, revolution meant a cyclical process, a "reestablishment of a lost and regretted past," whether this was the mythically

[1] Albert Goodwin, *The Friends of Liberty: The English Democratic Movement in the Age of the French Revolution* (Cambridge: Harvard UP, 1979), 33.
[2] Ibid, 36.

egalitarian Anglo-Saxon constitution or the 1688 settlement.[3] However, under French influence, the meaning of revolution and reform increasingly meant the overthrow of the old regime for a progressive future. It was this change in the tone of reform that so alarmed the government. In his summation of the trial of Thomas Hardy, Chief Justice John Eyre suggested that "the societies might have committed a distinctively 'modern,' or 'French' treason."[4] For the jury, the question became whether this modern treason fell under the treason law established almost five hundred years previously, but for the government the underlying threat to its stability became a serious concern.

A major impetus for the changing goals of the reform movement came from an increased dissatisfaction with the government during the American War of Independence. The war meant increased taxes and demands on the people, which was compounded by a relatively widespread sympathy with the American calls for parliamentary representation and a dissatisfaction with British military failures. A major example of this new reform rhetoric came from John Cartwright. While a major for the Nottinghamshire militia, Cartwright published *Take Your Choice!* in 1776 to express his belief that war with America demonstrated that the British Parliament was corrupt and in need of political reform. *Take Your Choice!* was one of the first publications to call for universal suffrage and annual parliaments, based partly on a claim for ancient rights guaranteed by an Anglo-Saxon constitution. Cartwright would quickly gather followers; in 1780 he would create the Society for Constitutional Information (SCI) to propagate his views. Throughout the 1780s, Cartwright would be joined by several voices urging various reforms.

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[3] George Woodcock, "The Meaning of Revolution in Britain," *The French Revolution and British Culture*, Ceri Crossley and Ian Small, eds. (New York: Oxford UP, 1989), 4.
[4] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds. (London: Pickering and Chatto, 2006), vol. 1, xxxi.

The opposition in Parliament saw the protracted and costly war with America as further evidence of the increased influence of the Crown. Regular men saw ever-increasing taxes to pay for a war that was not improving. As Philip Anthony Brown remarks, "reform, as a political watchword, began to rouse enthusiasm when placed under another interpretation: as an appeal against the corrupt influence of the Crown, exerted through the votes of revenue officers and the dispensation of Court places and Government contracts."[5] In 1782, as war with America devolved, these early reformers won some of their basic requests, including the reduction of the Pension list, a retrenchment bill, and, above all, the King's recommendation for an inquiry into the methods of economy. However, "many of the active leaders [of county reform associations] were now converted to a larger creed, and looked for permanent relief to a Parliament with a more independent representation and more frequent appeals to the electors."[6] The reform movement as a whole gained momentum from these small concessions and pushed for more, though still moderate, changes.

Moderate proposals called for abolishing rotten and pocket boroughs and giving representation to the new industrial towns, both of which would eventually be enacted in the 1832 Great Reform Act. In contrast to the reform movements of the 1790s, these agitations were more widely accepted by the government. The City of London recognized and encouraged Reverend Christopher Wyvill's 1780 convention, providing space in Guildhall and having the Lord Mayor preside over the proceedings. It was understood that this convention intended to petition Parliament.[7] On 3 June 1780, the Duke of Richmond introduced a bill to the House of Lords "for declaring and restoring the natural unalienable and equal rights of all the Commoners

[5] Philip Anthony Brown, *The French Revolution in English History*, (London: Frank Cass & Co, 1965), 11.
[6] Brown, *The French Revolution in English History*, 14.
[7] One topic of debate in the 1794 trails centered on whether the 1793 Edinburgh Convention more closely resembled the 1780 Guildhall assembly to petition Parliament or the Convention of 1688 to challenge and redefine the government.

of Great Britain to vote in the election of their representatives in Parliament."[8] Though this proposal was rejected without a division, an outcome influenced by the armed Gordon riots against Catholics, reform became a heavily-debated topic in both houses of Parliament. William Pitt, son of the Earl of Chatham and at that time a new MP facing a meteoric career, "would make the campaign for such reform his personal crusade for some three years" after the fall of the North government in 1782.[9]

Reform agitation in the 1780s was an almost exclusively upper-class phenomenon. Following the rejection of another proposed bill in 1782, several leading reformers met on the 18th of May at what is now known as the Thatched House meeting. The reformers included William Pitt, the Duke of Richmond, the Lords Surrey and Mahon, the Lord Mayor of London, Alderman Wilkes, Major Cartwright, William Tooke, Horne Tooke, and attorney John Frost. This privileged class of reformers "resolved unanimously that it had become necessary to petition Parliament for a substantial reformation of the House of Commons."[10] Despite this resolution, little progress was made in England at the time. Some of these reformers, Richmond in particular, pushed for similar reforms in Ireland. In a published letter dated 15 August 1783, the Duke of Richmond wrote to Colonel Sharman, one of the leaders of the Irish Volunteers, "I am more and more convinced that *the restoring the right of voting universally to every man, not incapacitated by nature for want of reason, or by law for the commission of crimes*, is the only reform that can be effectual and permanent. I am farther convinced that it is the only reform that is practicable."[11] Despite lack of progress, the Duke of Richmond and his fellow elite reformers

[8] Qtd. In Alan Wharam, *The Treason Trials, 1794*, (Leicester: Leicester UP, 1992), 2.
[9] William Hague, *William Pitt the Younger*, 74.
[10] Alan Wharam, *The Treason Trials, 1794*, 5.
[11] Qtd. in Alan Wharam, *The Treason Trials, 1794*, 5. Later reform groups, the London Corresponding Society in particular, would use this letter as an explanation and justification for their own reform aims. Richmond, along with Pitt, would later retract his stance on reform in light of the radical turn the movement maintained in spite of the dangers presented by the French Revolution.

continued to push for reform through parliamentary means throughout the 1780s. On April 18th, 1785, Pitt stood as the first Prime Minister to ask the House of Commons to reform itself. The debate cut across party lines, with Charles James Fox supporting the bill and Lord North and Edmund Burke siding together against Pitt. The motion, however, lost by more than seventy votes, representing a moderate threat to Pitt's government and effectively ending his career as a parliamentary reformer. Parliament moved on to other issues and renewed petitions for reform were rejected in 1786 and 1787. The debate over reform became a necessarily extra-parliamentary issue.

Throughout the 1780s, radical reformers had begun to recognize that "the People, as a political factor, had to be created."[12] In 1780, Major Cartwright and other leading reformers created the Society for Constitutional Information, aiming to restore records of the ancient constitution – especially harkening back to the 1688 settlement – but more specifically, "to revive in the minds of their fellow-citizens, *the commonality at large*, a knowledge of their lost Rights; so that…they may restore Freedom and Independence to that branch of the legislature which originates from, represents, and is answerable to *themselves*."[13] Operating from London, the SCI prioritized the task of converting public opinion to favor and agitate for reform from the provinces. The widespread reach of the SCI came from high numbers of Dissenting involvement, and the repeal of the Test and Corporation Act became the focus of SCI efforts for the latter half of the decade. In 1789, however, the language of reform would be forever altered by the fall of the Bastile and the start of the French Revolution.

[12]Phillip Brown, *The French Revolution in English History*, 15.
[13] Albert Goodwin, *The Friends of Liberty*, 63.

CHAPTER 3
INITIAL RESPONSES TO THE FRENCH REVOLUTION

Initial responses to the French Revolution in England were mixed, but not hostile. The government line, originally, was a detachment from the internal affairs of their old adversary combined with a hope that France would be too preoccupied to play a large role in European affairs. Many in Britain welcomed the Revolution as a transition from French despotism to something resembling the settlement of 1688, creating a mixed system based on checks and balances between the Crown, the Commons, and the Lords. Radical opinion, however, saw these similarities to the old settlement but focused on the potential of how that settlement might be restored and reformed in England.[14]

The first phase of renewed debate over reform emerged from this last group when Dr. Richard Price, the celebrated Dissenting minister, delivered a speech to the London Revolution Society on the 101st anniversary of the 1688 revolution. Price was one of the intellectual leaders of rational Dissent and well known within the reform movement. Though comparatively moderate in his politics – he preferred mixed government over democracy and called for the restoration of the constitution – Price's rhetoric, and often his effect, was politically charged. As Marilyn Butler describes, in his phrasing "Price displays that reckless expansive spirit which was typical of the radicalism [of the time]."[15] In his 1789 *Discourse on the Love of our Country*, a publicized version of the speech he delivered to the Revolution Society, Price criticized the British constitution, denied the hereditary descent of the monarchy, and called for a union of the

[14] Clive Emsley, "The Impact of the French Revolution on British Politics and Society," 33.
[15] Marilyn Butler, *Burke, Paine, Godwin, and the Revolution Controversy*, 23.

friends of liberty to press for parliamentary reform using French success against despotism as an example.[16]

Price's impassioned speech induced the London Revolution Society to send an Address of Congratulation to the French National Assembly and led to an angry riposte from the Whig politician Edmund Burke. Burke, previously regarded as someone sympathetic to reform, published *Reflections on the Revolution in France* in 1790 to communicate his fear that the Revolution was a dangerously unprecedented phenomenon, far different from the 1688 Glorious Revolution in England, and destined to lead to "nothing but the gallows."[17] Burke employs the analogy of king as father to compare the removal of the French royal family to Paris as an attack on the inviolable body of the king, thus almost amounting to regicide and, by analogy, parricide. If "regicide, and parricide, and sacrilege, are but fictions of superstition, corrupting jurisprudence by destroying its simplicity," Burke argues, "laws are to be supported only by their own terrors, and by the concern, which each individual may find in them, from his own private speculations, or can spare to them from his own private interests."[18] Without the national system of manners and hierarchy, without the paternal oversight of the king, the result will be anarchy. Burke published *Reflections on the Revolution in France* to persuade his fellow Whigs to abandon their favorable views of the events in France and also, in the words of Albert Goodwin, to "expose to public view the insidious and subversive objectives, as Burke saw them, of its English sympathizers."[19] Burke identified the London Revolution Society, especially with its close ties to the French National Assembly, and the revitalized Society for Constitutional Information as particular threats to English government and stability.

[16] Albert Goodwin, *The Friends of Liberty*, 110.
[17] Burke, in Marilyn Butler, *Burke, Paine, Godwin, and the Revolution Controversy*, 240.
[18] Ibid.
[19] Albert Goodwin, *The Friends of Liberty* 99.

One of the greatest dangers presented by these revitalized societies was the publication and dissemination of texts like Thomas Paine's *Rights of Man*, one of the more subversive responses to Burke. Paine already had a reputation for incendiary action from his 1776 *Common Sense* and the role it played in inciting the American Revolution. Paine's 1791 *Rights of Man* is one of the more subversive responses to *Reflections* in that it attacks Burke's veneration for tradition and history, the foundations of the British Constitution. As Marilyn Butler describes, Paine "depicts the ruling orders without reverence, as imcompetents, parasites, pilferers, and confidence tricksters."[20] Paine argues that the new government, as represented in France, is "founded on the original inherent Rights of Man," rather than Burke's hereditary government, which is "in its nature tyranny."[21] *Rights of Man, part I* advocates a representative government for its transparency and its reliance on popular consensus.

Paine was not the first to counter Burke, nor is his attack the most theoretically complex, an honor which is probably due to William Godwin's *Enquiry Concerning Political Justice*. However, Paine's simple language, the relative cheap price of three shillings, and his increasingly anarchist message in *Rights of Man*, part II, led to his trial and conviction *in absentia* of seditious libel. In the trial, Erskine's defense placed Paine's intentions as continuing a political discourse which ran from Milton to Hume. The prosecution, however, used the cheapness and popular style of the pamphlet as evidence that Paine's real intention was to "bring the Constitution, Legislation, and Government of this Kingdom into hatred and contempt with his Majesty's subjects; -- and to stir up and excite discontents and seditious among his Majesty's

[20] Marilyn Butler, *Burke, Paine, Godwin, and the Revolution Controversy*, 108.
[21] Paine, in Marilyn Butler, in *Burke, Paine, Godwin, and the Revolution Controversy*, 109, 110.

subjects…"[22] Paine's trial *in absentia* was an obvious attempt to discredit him and limit his influence and betrayed the government's fears about the popular discontent emerging across the country in 1792.

[22] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds. vol. 1, 31. Paine's involvement in America, especially his favorable response to the 1787 Convention in Philadelphia, strongly influenced the outcome of his trial in 1792.

CHAPTER 4
REVITALIZATION OF THE RADICAL REFORM MOVEMENT IN 1792

The fall of the Bastille on 14 July 1789 galvanized reform movements across England, some of which were in desperate need of stimulation. Approaching its tenth year in 1790, the SCI was facing financial trouble, decreased membership, and a loss of leaders, including Major Cartwright. New leadership was found in John Horne Tooke, an ordained priest from a respectable, middle-class background, well-traveled and well-read. His political views were far from radical, however, as Brown observes:

> Horne Tooke was not a revolutionary nor even an advanced democrat; he did not believe in rights to universal suffrage… He believed in the ordinary man and his capacity… The French Revolution and the position in English politics seemed to him to have created an opportunity of bringing the existing political system to the ground. He believed that the people of England could do it if they were educated and organized, and he devoted himself to the task.[23]

Horne Tooke's primary goal in the reform movement was to inform and educate the public, through both publications and the founding and development of societies, about their rights as Englishmen. His engagement with reform rhetoric began with the Wilkesite movement in the late 1760s and early 1770s. He was jailed during the American War for Independence on libel charges for soliciting subscriptions for "our beloved American fellow-subjects…inhumanely murdered by the king's troops at or near Lexington."[24] Several of the pieces of evidence used to convict Horne Tooke in 1777 would return in the trial against him in 1794 as evidence of his antagonism towards the government and proof of the developing conspiracy to overthrow it.

[23] Philip Brown, *The French Revolution in English History*, 52.
[24] Qtd. in Marilyn Butler, *Burke, Paine, Godwin, and the Revolution Controversy*, 18.

In spite of his time in prison, Horne Tooke continued his push for reform, through both parliamentary and extra-parliamentary means. Horne Tooke was nominated for membership in the Society for Constitutional Information by John Cartwright himself in 1781; by the end of the 1780s, he had emerged as the leader of the society. The SCI announced their return to life first with a vow of support for the 1788 Scottish movement for burgh reform and then, later in the year, by the celebration of the centenary of the Glorious Revolution.[25] The revival picked up pace along with the rest of the reform movement in 1792, partly spurred by the debates between Burke, Thomas Paine, and others. Horne Tooke led efforts to distribute Paine's first part of *The Rights of Man* through the society. As Barrell and Mee observe, "the SCI and LCS saw cheap editions of *Rights of Man* as a means of exciting popular support for reform, although their official political positions did not go as far as Paine's republicanism."[26] In 1792, Horne Tooke helped draft the constitution of the London Corresponding Society (LCS) at the request of its founder, Thomas Hardy. By 1794, Horne Tooke emerged as what Brown describes as "the heart of the reform movement."[27]

The emergence of the LCS demonstrates that the radicalization of the reform movement is simultaneously a process of democratization. Thomas Hardy, a shoemaker from London, was from a lower class than the elite reformers of the 1780s. Hardy was self-educated and cited two texts, John Cartwright's 1782 *Give us our Rights* and the duke of Richmond's letter to Lieutenant-Colonel Sharman of the Irish Volunteers, as particularly formative to his political development.[28] From Cartwright, Hardy favored universal suffrage and annual parliaments. From Richmond, Hardy got the idea "to correspond with individuals and societies of men who

[25] Albert Goodwin, *The Friends of Liberty*, 114.
[26] *Trials for Treason and Sedition*, Barrell and Mee, eds, vol. 1, 2.
[27] Philip Brown, *The French Revolution in English History* 52.
[28] Clive, Emsley, "Hardy, Thomas (1752–1832)," *Oxford Dictionary of National Biography*, Oxford University Press, 2004

wished for a reformation."[29] Hardy created a society based on the principles of unlimited membership and low weekly subscription which would appeal to the journeymen, tradesmen, and mechanics new to this overt political engagement. The members of the LCS believed, first, that the problems of society were caused by lack of equal representation, and, second, that by educating people to these rights of representation, the nation as a whole would speak and reform would be inevitable. From the beginning, the LCS aimed to achieve its goals through parliamentary and legal means; the final question each new member must answer satisfactorily to gain membership was, "Will you endeavour by all *justifiable* means to promote such reform in parliament."[30] However, the LCS and fellow reformers would find it difficult to convince Parliament to seriously consider their reforms.

As the LCS began to construct its constitution, a group of young Whig aristocrats created the Society for the Friends of the People in April 1792. The Friends of the People was a moderate reform group avowedly against Paine's non-constitutional aims and thus attracted higher profile members. One of their number, Charles Grey, was able to bring forward a motion for parliamentary reform to the House of Commons. A full-scale debate followed. Grey was opposed by Pitt who, though declaring himself sympathetic to reform, argued that reform could not be enacted now, under the influence of the events in France. As historian Clive Emsley summarizes, Pitt identified "two kinds of reformers in the country: those who sought a moderate reform, and those who wanted to subvert the constitution, depose the king, and establish a republic."[31] Emsley suggests that Pitt, perhaps, sought to divide the reformers further, but at any

[29] Thomas Hardy, ""Thomas Hardy's account of the origin of the London Corresponding Society (1799)," *Selections from the Papers of the London Corresponding Society: 1792-1799*, Mary Thale, ed, (Cambridge; Cambridge UP, 1983): 7.
[30] Ibid, 8.
[31] Clive Emsley, "The Impact of the French Revolution," 38.

rate his words were taken at face value and the motion did not pass. It is in this atmosphere of prohibition that the LCS announced its existence to the world.

During the spring of 1792, Hardy and the first chairman, Maurice Margarot, prepared a constitution for the Society, with advice from Horne Tooke. Admission to the LCS was based on nomination and required satisfactory answers to such questions as, "Are you convinced that the parliamentary Representation of this Country is at present inadequit and imperfect?"[32] The constitution, anticipating government fears of popular or military uprisings, was explicit in its goal to work within the parliamentary process. In keeping with their aim to educate the bulk of the nation, the LCS published a summary of the new constitution in an Address to the Nation dated 24 May 1792. In this address, Margarot and Hardy observe the "numerous burthemsome and unnecessary taxes" and the exclusion of "an exceedingly great majority…from all representation in parliament."[33] They continue, "it further appears to us, that until this source of corruption shall be cleansed by the information, perseverance, firmness, and union of the people at large, we are robbed of the inheritance so acquired for us by our forefathers [i.e., the constitution]."[34] Margarot and Hardy conclude with a resolution to create "one firm and permanent body, for the purpose of informing ourselves and others of the exact state of the present parliamentary representation—for obtaining a peaceful but adequate remedy to this intolerable grievance—and for corresponding and co-operating with other societies united for the same objects."[35] The Address followed this statement of purpose with ten regulations for the LCS and then a history, starting with Henry VI, of parliamentary representation in England. The

[32] Thomas Hardy, ""Thomas Hardy's account of the origin of the London Corresponding Society (1799)," *Selections from the Papers of the London Corresponding Society: 1792-1799*, Mary Thale, ed, (Cambridge; Cambridge UP, 1983): 8.
[33] Qtd. in *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol 2, 212-213
[34] Ibid, 213.
[35] Ibid.

address, though explicitly declaring itself to aim for “peaceful” remedies, still represented a threat to the government because of the way it addressed the nation as a whole and the manner in which that national address mimicked the national movements in France.

CHAPTER 5
INCREASING TENSIONS IN ENGLAND AS THE FRENCH REVOLUTION PROGRESSES

The tensions in Parliament over the French Revolution first became obviously apparent with the split of Burke and Fox, previously Whig allies. Fox had, from July 1789 onwards, expressed admiration for the progress made in France, declaring on 15 April 1791 that "he for one, admired the new constitution of France, considered altogether, as the most stupendous and glorious edifice of liberty, which had been erected on the foundation of human integrity in any time or country."[36] Fox's counter stance to Burke's conservatism led to a public break when Burke left Fox to sit next to Pitt in the House, declaring, "I have done my duty though I have lost my friend. There is indeed something in the detested French constitution that envenoms every thing it touches."[37]

This rift in the reformers who had been active in the 1780s gave pause to the emerging evidences of Anglo-French accord. Celebrations, especially to commemorate the fall of the Bastile, were widespread and well attended in England for the first two years of the Revolution. The famous dinner at the Crown and Anchor in 1790 was attended by more than 600 people all wearing the national cockade of France.[38] The Revolution society, after a brief hiatus to reconsider after Burke's *Reflections*, continued to publish their correspondence with the French National Assembly, though they had lost some of their more moderate membership. The SCI, reviving at this point in 1791, also initiated contact with the assembly, congratulating their "fellow-citizens" on the overthrow of "an inveterate and destructive tyranny" and the

[36] Qtd in Jenny Graham, *The Nation, the Law and the King, Reform Politics in England*, vol. 1, 193.
[37] James Prior, *Life of the Right Honourable Edmund Burke*, 330.
[38] Jenny Graham, *The Nation, the Law and the King, Reform Politics in England*, vol. 1, 200.

establishment of a "rational and therefore a free Constitution."[39] The resolution continued, "the Society cannot help calling upon the people of England to be upon their Guard against that wicked system of Resistance to the still further extension of the blessings of freedom, which has been for some time past so unremittingly pursued by the usurping aristocracies of this country."[40] Many of the reformers celebrated the fall of the Bastille in 1790 and continued communications with the French National Assembly on the assumption that they were witnessing the climax of a quick and effective revolution which embodied the purest English ideals for liberty.

This belief, however, was heavily questioned in June 1791 with the royal flight to Varennes. If Louis's attempted escape did not make it clear enough, the proclamation he left behind clearly established his renunciation of the Revolution, including complaints of imprisonment in Paris, violation of property, and 'complete anarchy in all parts of the empire.'[41] Pitt's previously detached stance began to change as it became apparent that the revolution in France was veering out of control. Bourbon France had been one of the strongest monarchies in Europe for over a hundred years previously. Its fall came not only as a shock, but also as a threat to governments who believed themselves to be just as solid. As it became obvious that the French Revolution was an act of the people divorced from the approval of the king which was increasingly speeding out of control, Pitt and his ministers began to fear the explicitly expansionist aims of French rhetoric, and, by extension, the communications between the French revolutionaries and English reform societies.

The insurrection of the 10th of August 1792 and the violent September massacres further shook the faith of English sympathizers with France. Charles James Fox described the September massacres as "the most heart-breaking event that ever happened to those who, like me, are

[39] Qtd. in Jenny Graham, *Nation, the Law and the King, Reform Politics in England*, vol. 1, 215.
[40] Qtd. in ibid.
[41] William Doyle, *The Oxford History of the French Revolution*, 152.

fundamentally and unalterably attached to the true cause."[42] While some reformers were turned off to the cause entirely, many came to believe, as the *Manchester Herald* wrote, that the enormities were the work of "an ungovernable few."[43] The reformers chose to "throw a veil over a scene which humanity cannot, without horror, contemplate, but which the rigor of justice cannot certainly condemn."[44] Many English men and women sympathetic to the revolution, including William Wordsworth, Helen Maria Williams, and Mary Wollstonecraft, traveled to France at this time of upheaval and wrote back, often of French moderation and calm. When reformers encountered evidence of great violence, they viewed it as a necessary step in the path to the liberation of the peoples' rights in France.

As for the ministry, as Philip Schofield observes, "there was now a strong desire within the governing classes to see the Revolution destroyed. The revulsion against the increasingly violent course of events in France had at last forced them to accept Burke's analysis of the nature of the Revolution."[45] It was into this tense and prohibitive atmosphere that the reform societies found themselves pleading their case for parliamentary reform. It only worsened as France declared war on Great Britain and Holland in 1792 and correspondence with or reference to the French case became treasonous activity. Reformers were careful to speak about the war with patriotism while still communicating criticism. One of the loudest complaints was against the cost of the war on the common man. After the English capture of Toulon and the establishment of an English stronghold on French soil, the English government declared their intentions to restore the monarchy in France. This declaration outraged those reformers who had previously

[42] Qtd. in Jenny Graham, *Nation, the Law and the King, Reform Politics in England,* vol. 1, 351.
[43] Ibid, 352.
[44] *Manchester Herald*, 15, 22 September 1792, qtd. in Jenny Graham, *Nation, the Law and the King, Reform Politics in England,* vol. 1, 352.
[45] Philip Schofield, "British Politicians and French Arms: The Ideological War of 1793-1795," *History* 77 no. 250 (June 1992): 187.

supported the war on the grounds that English intervention could reset the cycle of violence and establish, at the very least, the freedoms enjoyed under the English limited monarchy. The *Cambridge Intelligencer* expressed this outrage, "After spending TWELVE MILLIONS of money and sacrificing TWENTY THOUSAND of our brave countrymen we are now plainly told that the object of the Allied Powers is the restoration of the Hereditary Monarchy in France, *and that only*!"[46] Though the reformers did not speak positively about the ensuing terror in France, they did applaud the adoption of a formal constitution under the Jacobins. Ultimately, for the reformers the central question was the importance of realizing French ideologies for popular government. However, as the French threat escalated across the Channel, the government associated the reform societies' support for French ideologies with the violent danger the French revolution represented.

[46]*Cambridge Intelligencer*, 2 November 1793, qtd in , *The Nation, the Law, and the King, Reform Politics in England, 1789-1799*, 530.

CHAPTER 6
EDINBURGH CONVENTION

The reform societies, for the most part, recognized the dangers of this association and, at least in words, opposed all reform except through legal and parliamentary means. Hardy and Margarot spent much of their first year corresponding with reform societies across the United Kingdom and, by May 1793, had collected thirty-six petitions mainly from Scotland but also from London, Norwich, Sheffield, Nottingham and elsewhere. They sent these petitions to Westminster, in the hopes that Fox would present them. The atmosphere in Parliament was undoubtedly tense, focused on the concurrent trial of the King of France, and even the more liberal MPs were reluctant to stand firm behind the petitions. Fox told the LCS, "he would present their petition if they so desired, but he thought it desirable that it should be presented by someone else, as he had always been an avowed enemy of universal representation."[47] So it was Grey who presented the proposal for reform to the House of Commons, paying scant attention to the petitions, declaring his own hostility to universal suffrage, and concluding with a modest proposal that "the House take into consideration the possibility that it might reform itself."[48] The motion was defeated by 282 votes to 41.[49] In response to this setback, the reformers began to seriously and enthusiastically consider alternatives to petitioning. The general conclusion was that Parliament could not so easily ignore "a convention with a genuine claim to speak the will of the majority of the people."[50]

[47] Alan Wharam, *The Treason Trials, 1794*, 43.
[48] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 1, xxiii.
[49] Alan Wharam, *The Treason Trials, 1794*, 43.
[50] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 1, xxiii.

The first large scale convention came about as a result of communications between the LCS, Hardy, Margarot, and William Skirving, secretary of the Friends of the People in Scotland. The Scottish Friends had already held two conventions on moderate reform in late 1792 and early 1793, demonstrating a subtle difference between Scottish and English politics. Conventions were a recognized part of the Scottish Constitution, though Skirving, Hardy, Margarot and other participants would have been well aware that a convention canvassing both England and Scotland could be interpreted as threatening Parliament with an alternative representational body. In a clear recognition of this potential interpretation, the LCS gave their delegates, Margarot and Joseph Gerrald, specific, written instructions "not to depart from the original object of the Society, namely to obtain annual parliaments and universal suffrage by rational and lawful means."[51] When the English delegates arrived, however, the moderate convention became increasingly radicalized.

Skirving planned this convention quickly and, though the primary goal was a general union of reform societies, the several branches of the Scottish Friends greatly outnumbered the seven English delegates representing the LCS, the SCI, and the Sheffield Society for Constitutional Information. The English delegates arrived late and Skirving reconvened the already dispersed convention. From this point on, the convention assumed characteristics obviously modeled on the French, including naming it the "British Convention," declaring a new calendar beginning "in the first year of the British Convention," and referring to each other as "Citizen."[52] Despite this stylistic radicalism, however, the convention's proposed plans of action were rather moderate. The SCI wished to continue the petitioning campaign, along with many of the Scottish delegates. Margarot and Gerrald opposed petitioning and instead advocated

[51] Alan Wharam, *The Treason Trials, 1794*, 51.
[52] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 1, xxiv

increasing educational efforts aimed at earning a majority of adult males dedicated to voting for reform. These issues had not been resolved, and indeed records indicate a declining interest amongst Scottish representatives who perhaps resented the English takeover of the convention, when Edinburgh officials dispersed the convention and arrested several leaders on December 3rd.[53]

It is unclear what participants wanted to gain from these conventions. Ostensibly, the goal was to convince Parliament of the need and popular support of reform. However, the Scottish convention demonstrated how rhetoric can get out of hand. Prompted to act when the convention published an attack on the English judiciary in the *Gazeteer*, the Lord Advocate arrested Skirving, Margarot, Gerrald, and four Scottish representatives. Skirving, Margarot, and Gerrald were tried on charges of sedition and sentenced to fourteen years transportation.

The harshness of this sentence, especially when compared to the relative leniency of sedition trials just two years before, galvanized the reform societies in England. The LCS published an Address to the Nation which heavily quoted the Magna Carta to prove the corruption of the government. In answer to the rhetorical question, "You may ask, perhaps, by what means shall we seek redress?" the address concludes:

> We must have our redress from our own laws and not from the laws of our plunderers, enemies, and oppressors. THERE IS NO REDRESS FOR A NATION CIRCUMSTANCED AS WE ARE, BUT IN A FAIR, FREE, AND FULL REPRESENTATION OF THE PEOPLE.[54]

Hardy and the LCS followed this proclamation with a Resolution calling for daily meetings during Parliament's session so they would be poised to call for a general convention of the people if Parliament should introduce bills for landing foreign troops in Britain, suspending

[53] Alan Wharam, *The Treason Trials, 1794*, 55.
[54] Ibid, 70.

habeas corpus, proclaiming martial law, or preventing people from meeting in societies.[55] These possible eventualities echoed a secret motion passed at the end of the Edinburgh convention whereby evidence of the above would call for a new convention to address the situation.

[55] Ibid.

CHAPTER 7
SPIES AND SUSPICION

The government monitored these assemblies and communications between reformers as closely as possible. They had several men serving as spies within the organizations. One man, John Groves, would prove crucial to the prosecution's case against Thomas Hardy, but also elucidates some of the causes behind the government's strong response, and perhaps overreaction, to the reformers' actions. Groves' most significant piece of evidence came from a meeting of the London Corresponding Society on 14 April. Groves heard some men speaking about spring knives, also known as French knives, and describing the knives, "when the blade is out, unless you undo that spring, it cannot close."[56] Furthermore, one man continued to remark that better spring knives were made in Sheffield, an area known for a strong and restless reform movement. The prosecution would later seize on this information, referred to as the *couteaux secrets*, in their case against Thomas Hardy, and the potential connection between Hardy, the LCS, and weaponry was one of the factors which led to the arrests in early May.

Much of the government's knowledge of the reformers' actions prior to the arrests and the seizure of their papers came from a wide network of spies. As Groves' *couteaux secrets* suggests, however, evidence from spies can mislead as easily as it can illuminate. Spies were paid for the information they collected, which could encourage exaggeration. Furthermore, their information is not always reliable. Horne Tooke discovered one of his spies and deliberately mislead him. He would drop hints about the strength and unanimity of the popular party and magnified their numbers. As Wharam describes, "he pretended to confess that he himself was the

[56] Quoted in Alan Wharam, *The Treason Trials, 1794*, 80.

leader of a conspiracy, and he boasted, like Pompey of old, 'that he could raise legions merely b stamping on the ground with his foot.'"[57] With this kind of evidence, combined with the daily updates from the Reign of Terror across the Channel, it almost seems inevitable that Pitt and his ministry would react as they did. Their primary suspicions, a strong reformist connection to France and potential military uprisings against the government, seemed to be confirmed by these spies' testimonies.

[57] Alan Wharam, *The Treason Trials, 1794*, 92.

CHAPTER 8
THE ROAD TO TRIAL

Tensions continued to mount as reform societies across the country continued to meet. When, in late January 1794, the government announced that a small body of Hessian troops had been stationed on the Isle of Wight and at Portsmouth as a precaution against sickness, the LCS responded immediately. They formed a secret committee and composed a circular letter to reform societies across England calling for another British Convention.[58] Though the urgency behind this call petered out due to the slow response of other reform societies, the government acted on the belief that this planned convention intended to usurp Parliament. On May 12, Hardy and Daniel Adams, secretary of the SCI, were arrested on suspicion of treasonable practices. Over the next three months, over thirty members of reform societies were arrested, some to face persecution and some as reluctant witnesses.

The statement read to the House of Commons announcing the king's warrant of arrest emphasized both the association between a general convention and a usurpation of Parliament as well as the connection to France:

> certain Societies in *London*, in Correspondence with Societies in different Parts of the Country, have lately been pursuing with increased Activity and Boldness, and have been avowedly directed to the Object of assembling a pretended General Convention of the People, in Contempt and Defiance of the Authority of Parliament, and on Principles subversive of the existing Laws and Constitution, and directly tending to the Introduction of that System of Anarchy and Confusion which has fatally prevailed in *France*…[59]

[58] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 1, xxvi.
[59] *Journal of the House of Commons, 1794*. vol. XLIX, 586.

The arrest warrant issued by the king also called for the defendants' papers and documents to be seized and examined by the House. To do this, the House set up a secret committee which, on the 16th of May, produced a preliminary report stating that the LCS and the SCI did intend to hold a Convention similar to the National Convention of France and to overthrow the Constitution. The committee report continued, "these Proceedings appear to become every Day more and more likely to affect the internal Peace and Security of these Kingdoms, and to require, in the most urgent Manner, the immediate and vigilant Attention of Parliament."[60] The committee's two primary concerns were the relationships the societies had with France and the potential for the militarization of these societies. On the basis of this information, the government quickly introduced and passed a bill suspending habeas corpus for those charged with high treason or treasonable practices until February 1795.[61] The secret committee returned its official findings on the 6th of June. It comprised some 80 pages, including evidence that the societies, the LCS in particular, were procuring arms, as well as emphasizing their connections to France and opposition to the war. The Report concluded that, though the societies ostensibly sought to petition Parliament for reform, they secretly aimed to create a rival legislature and overturn the Constitution.

The secret committee's recommendation, therefore, was to charge the reformers with high treason instead of the lighter charge of sedition. The first reason for this higher charge was straightforward: several members of the government were wholly convinced that treason had been committed. In their committee report, Parliament referred to "a seditious and traitorous conspiracy."[62] A central desire for the government was to resolutely silence this radical threat to ensure public safety. There was also a legal dimension. If the lighter charge of sedition went

[60] *Journal for the House of Commons, 1794*, vol. XLIX, 601.
[61] Alan Wharam, *The Treason Trials, 1794*, 99.
[62] Quoted in John Ehrman, *The Younger Pitt*, v. 2, 396.

forward and evidence of treason emerged in the trial, the accused could be acquitted of the lesser crime. Finally, events in Scotland influenced Attorney General Scott's decision to prosecute for treason. First, the sedition trials of Skirving, Margarot and Gerrald had been highly successful for the government. The accused were convicted of sedition and the sentences were severe enough to be prohibitive. Second, a few days after the arrests in England, news came of the arrest of Edinburgh wine-merchant, Robert Watt, who had sixteen pikeheads in his home with plans to take Edinburgh castle and demand the king end the war.[63] The English government took this discovery as further confirmation that the reform societies planned an armed insurrection, even though Watt had no clear ties to Hardy, et al. and the government had been unable, in their countless searches, to find enough weapons to suggest radical plans for a military *coup d'état*. Attorney General Scott therefore began his case against Thomas Hardy for treason.

[63] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., xxviii.

CHAPTER 9
THE MAJOR PLAYERS

Sir John Scott took to law when his runaway marriage with Elizabeth Surtees blocked his path in the Church. With a wife to support, and soon a growing family, Scott had to devote long hours to speed up his career. His industry paid off and he was called to the bar on 9 February 1776. On 4 June 1783, he took silk and was noticed by Lord Thurlow who promoted his legal and political career. Thurlow was able to procure a seat for Scott in the pocket borough of Weobley in Herefordshire in 1783 just as the Fox-North coalition began. Scott and Thurlow supported the "king's friends" against the coalition and thus, were "staunch supporters of the king, rather than followers of the prime minister."[64] Scott's loyalty to the king and the law characterized his time in Parliament. As solicitor-general, he played a critical role in the regency crisis. He was the first to suggest the solution adopted by Pitt, "of securing the agreement of both houses to the use of the great seal to signify consent…"[65] Scott's commitment to the king outweighed even his commitment to Pitt and when popular political dissent began to appear, he led the charge against it. He was instrumental in writing the Traitorous Correspondence Act of 1793 and after his failure with the 1794 Treason Trials, he continued to pursue dissent by approving Pitt's suspension of habeas corpus in 1794 and by writing the 1795 Treasonable Practices and Seditious Meetings Acts of 1795.

Thomas Erskine played a diametrically opposed role. He began as a sailor where he grew increasingly dissatisfied with the structure of the army. His 1772 *Observations on the Prevailing*

[64]Smith, E. A. "Scott, John, first earl of Eldon (1751-1838)." *Oxford Dictionary of National Biography*. Oxford University Press, 2004. Online ed, 2008.
[65] Ibid.

Abuses in the British Army condemned the system of purchasing commissions where young men with money but no skill were promoted over experienced officers.[66] From this dissatisfaction, Erskine decided to quit the army and try his hand at law. He and Scott came to the bar at the same time and both were elected to Parliament at the same time. Erskine's political career was less steady than Scott's, though he maintained a relationship with the Whigs and became a part of the entourage surrounding the Prince of Wales. In 1790, Erskine visited Paris and returned favorably impressed with the progress of the Revolution. He opposed going to war in 1793 and addressed Parliament as a former soldier to urge caution.[67] Erskine took up Paine's defense against advice and, though he stood for three hours defending the press, the case was lost. It was a professional disaster for Erskine. As attorney general to the Prince of Wales, he had to write a letter explaining his conduct to the King. He expressed his attachment to the constitution and the king himself before taking the liberty of saying it was an invaluable part of that constitution that defendants can retain any counsel they choose. The Prince Regent had to request Erskine's resignation in the face of his father's continued disapproval. Erskine continued his thriving practice and became known a defender of the press, free speech, and reform ideals. When Erskine and Scott met in the courtroom, they were both at the height of their legal careers.[68]

[66] Alan Wharam, *The Treason Trials, 1794*, 111.
[67] Ibid, 119.
[68] Neither Scott nor Erskine would suffer as a result of these trials; both would go on to serve as Lord Chancellor.

CHAPTER 10
THE CASE FOR TREASON

Scott, in his dedication to protecting the king from treason, faced the difficult challenge of redefining treason, especially in light of the recent Scottish case. In 1793, Skirving, Margarot, and Gerrald had been convicted of sedition for planning and attending a supposedly revolutionary convention. As historians Barrell and Mee summarize, "law officers were faced with the problem of arguing that what it had been no more than sedition to do late in 1793, it was now high treason merely to plan to do in 1794."[69] After the crown's failure in the case, many questioned why Scott and the prosecution charged the men for treason rather than the lighter, and more easily proven, charge of sedition. In his autobiographical anecdote book, Lord Eldon, previously known as Sir John Scott, said that the Warrants of Commitment for Trial "treated [the accused] as Parties committed on account of High Treason."[70] Scott continued, "As Attorney General, and the public prosecutor, I did not think myself at Liberty in the indictments to let down the Character of the Offense."[71] Scott also described the predicament he found himself in regarding the debate between sedition and treason. If he tried the accused for sedition, he ran the risk of exposing treasonous evidence that would result in acquittal for the misdemeanor crime.[72] The only way to prevent this acquittal for sedition would be to present only such evidence as proves sedition and withholding the more dangerous evidence. Scott objected to this idea

[69] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 1, xxix.
[70] *Lord Eldon's Anecdote Book*, 55.
[71] *Lord Eldon's Anecdote Book*, 55-56.
[72] If evidence of treason appeared in a case for sedition, the case would have to be retried because the juries and courts created for the sedition case would not qualify to convict the defendant of treason. For one thing, treason juries must be composed of natural-born subjects, which is not required for sedition cases.

because he felt bound to "the great Object of satisfying the Kingdom as to the real Nature of the Case…"[73] In a treason case, Scott knew he would be able to lay the whole evidence before a jury, which he saw as the only way to make the Country fully acquainted with the dangers presented by the persons and societies accused.

Scott saw the danger represented by these men as so great that it appeared to him "more essential to securing the public safety that the whole of their Transactions should be published, than that any of these Individuals should be convicted."[74] These statements represent Scott's perspective from thirty years after the acquittals of Hardy, Horne Tooke, and Thelwall, and we can assume that his reliance on the public response and understanding had been impacted by the generally conservative swing in public opinion during the Napoleonic Wars. Despite this, his statements do communicate a deep and abiding fear of the actions and potential outcomes from these men and their reform societies. Scott's perspective suggests that the government saw this as their opportunity to crush a threat and to thwart further radical escalation. The decision to try the accused of treason was thus motivated out of intense fear of the radical threat rather than an examination of the evidence and precedence.

That being said, Scott's prosecution case did have to provide the legal basis for treason, which they defined based on a 1352 act under Edward III. In this act, treason was defined in six parts:

1) Death: by compassing and imagining the death of the king, queen and/or prince, or by killing and murdering the Chancellor, treasurer, Justices of one Bench or another in their places doing their offices;
2) Violation: carnally to know the king's consort, or queen, the king's eldest daughter unmarried, or the prince's wife;
3) Levying war against the king;

[73] *Lord Eldon's Anecdote Book*, 56.
[74] *Lord Eldon's Anecdote Book*, 56.

4) Adhering to the king's enemies within the realm, or without, and declaring the same by some overt act;
5) Counterfeiting of the Great Seal, the Privy Seal or the king's coin
6) Bringing into the realm counterfeit money to the likeness of the king's coins.[75]

This 1352 treason law identified the state in the body of the king and his progeny; treason against the state was equated with treason against the king's body or his direct bloodline, either through direct physical threat, war, or counterfeiting his money. This identification did not persist from 1352 to 1794, however. Leading up to and during the Civil War, the definition of the English state changed. For example, the trial of Charles I held that sovereignty resided in the people and that by attacking the rights of the people, Charles I himself was guilty of treason against the state. This location of the state in the people would have made for a stronger prosecution against Thomas Hardy, et. al because their attempts to usurp Parliament could be construed as actions against the representatives of the people, and therefore against the state. Perhaps because this definition of treason led to such disastrous consequences in the English civil war, or perhaps because the revolution settlement wiped the slate clean, or perhaps because the idea of the state residing in the people too closely resembled French revolution ideology, the prosecution in 1794 chose to return to the earlier definition of treason.

The law officers defined the crime of high treason by an act of 1352 under Edward III, focusing on two definitions of treason provided there: it is treason to 'compass and imagine' the death of the king, and it is treason to 'levy war' against the king.[76] To prove this intention, the government had to prove that the defendant had committed some overt act which manifested that intention. Treason as an attempt to levy war against the king could mean either armed insurrection, as the government desperately hoped to connect through Robert Watt, or

[75] Qtd in Lisa Steffen, *Defining a British State: Treason and National Identity*, 10, as the summation of the 1352 law of treason by Sir Edward Coke, Lord Chief Justice of the Court of King's Bench in the early seventeenth century.
[76] Quoted in *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 1, xxxix.

encouraging an overthrow of either the king or his government, which the law officers now attempted to define as actions intended "to achieve some reformation in the law, or to 'reform' or 'new-model' the government."[77] To prove treason, therefore, the prosecution would aim to prove a conspiracy of the reform societies to usurp the powers of the legislature, which they would then have to tie to a direct threat to the body of the King.

[77] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 1, xxx.

CHAPTER 11
THE TRIALS

On the 25th of October, the treason trials began. The Lord Mayor of London oversaw the initial proceedings, assisted by Chief Justice John Eyre, four other judges, and six aldermen of the City of London. The nine prisoners were brought to the bar to hear their accusations. They faced a formidable prosecution, led by Attorney-General, Sir John Scott, accompanied by the Solicitor-General, Sir John Mitford, and six other barristers. Thomas Hardy would later remark, "Never was such a host of Crown lawyers employed against any person tried for High Treason."[78] The accused had enjoyed little communication with the defense counsel prior to the start of the trial, for which Horne Tooke and Thelwall complained. After hearing and dismissing these complaints, the court proceeded to plead and arraign the accused. Each was asked if they pleaded guilty or not guilty and then, "How will you be tried?" Each of the nine responded, "not guilty," followed by the ceremonious expected reply to the second question, "by God and my country." Horne Tooke, however, took umbrage at the second question, pausing significantly before answering, "I WOULD be tried by God and my country. But—"[79] After the arraignment, Scott announced the prosecution's intention to try the defendants separately, starting with Thomas Hardy. The court was reconvened on the following Tuesday.

Each of the trials commenced with jury selection. For the trial against Thomas Hardy, some two hundred and thirty-eight jurors were summoned. In order to serve as a juror in a case of treason, a man had to be a freeholder and a natural subject. Some jurors were challenged by

[78] Qtd in Alan Wharam, *Trials for Treason and Sedition, 1794,* 143.
[79] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol 2, 3.

both the defense and the prosecution for pre-conceived opinions. Twelve men were finally selected, mostly gentlemen and esquires, but also a biscuit-maker, a mealman, two distillers, and two brewers. The composition and role of the jury took a strong hold in the popular imagination. Several pamphlets focused on appealing the jurors from both sides, actively engaging in debates.

One such example is the 1794 pamphlet *A Calm Inquiry into the Office and Duties of Jurymen in Cases of High-Treason*, the anonymous author remarks the widely divided opinion on the issue, which presents "the strongest claim to attention" in the public mind.[80] The pamphlet expressly intends to remain impartial in the issues of the case, and instead focuses on the heroic role and duties of the jurors. He distinguishes between the roles of jurors in civil cases, where they must be guided by the law as explained by the judge, and criminal cases, where the entirety of the decision rests on their independent analysis of the accused's actions, motives, and intentions. As the highest civil crime, high treason therefore required that the jurors allow themselves to be guided by the judge's admonitions. Fortunately, the pamphlet continues, the Edwardian treason statute is clear and concise; however, there have been cases where judges have "misinterpreted the original statute, in order to bring upon it constructive treasons."[81] The pamphlet takes a more politically-charged turn at this point, arguing that "any case of constructive treason, not directly specified in that statute, cannot constitutionally be brought forward without a distinct and express interference of the legislature."[82] The author urges the jurors, who "represent the country, with whose interest they are intrusted," to carefully consider the law and preserve the rights guaranteed by the British constitution. This pamphlet,

[80] "What is the proper definition of a juryman, by the laws of England, in the case of high-treason?" From *A Calm Inquiry into the Office and Duties of Jurymen in Cases of High-Treason: with Seasonable Remarks. Earnestly Recommended to their Attention in the Present Crisis.* In Cristoph Housqitschka, ed. *Freedom-Treason-Revolution: Uncollected Sources of the Political and Legal Culture of the London Treason Trials (1794)*, Frankfurt: Peter Lang, 2004, 120.
[81] Ibid, 124.
[82] Ibid, 125.

representing one side of the argument, demonstrates the popular agitation surrounding the treason trials, as well as a sense that the educated public knew the potential legal ramifications of the trials. Thus the trials began under intense popular scrutiny.

CHAPTER 12
THE TRIAL OF THOMAS HARDY

Once the jury had been selected, Lord Chief Justice Eyre opened the trial of Thomas Hardy with a statement of the legal precedence of treason. He began by advising the jurors that they serve as the king's representatives in this inquiry and that their actions should "operate ultimately for the benefit of his people."[83] When describing the definition of treason, he emphasized the immediacy of a crime defined by intention, "from the moment that this wicked imagination of the heart is acted upon, that any steps are taken in any manner conducing to the bringing about and effecting the design, the intention becomes the crime, and the measure of it is full."[84] The jurors were charged with first judging the facts of these overt acts and then determining the relation of these facts to a subversive design. Eyre's opening speech betrays the worry that questioning the definition and applicability of the Edwardian treason statute may overstep judicial boundaries and attempt to legislate from the bench. Eyre makes a claim on which the entire trial would rest, that a physical attack on the king is equivalent to an attack on the government or the constitution, and, as such, all fall under the statute of Edward III. He attempts to avoid the dangers of legislating from the bench by declaring that a specification of the two types of treason "might be argued to be unnecessary."[85] Eyre continues,

> In securing the person and authority of the King from all danger, the monarchy, the religion and laws of our country are incidentally secured; that the constitution of our government is so framed, that the imperial crown of the realm is the common centre of the whole; that all traitorous attempts upon any part of it are instantly communicated to that centre, and

[83] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol 2, 7.
[84] Ibid, vol 2, 8.
[85] Ibid, vol 2, 11.

> felt there; and that, as upon every principle of public policy and justice they are punishable as traitorous attempts…[86]

With this statement, Eyre set up the two goals of the prosecution in the Hardy trial: to prove that Hardy aimed to overthrow the constitution and that such an attack on government fell under the Edwardian statute and was therefore prosecutable as treason.

After Eyre's opening, Attorney General John Scott stood to deliver the indictment of the actions and crimes of Mr. Hardy. He opened, however, with an examination of treason, somewhat countering Eyre's admonition to leave off from questioning legal definitions. After clearly explaining treason according to the Edwardian statute, Scott extended this definition to include conspiring with foreigners to invade the kingdom or conspiring to "oblige him to alter his measures of government, or to compel him to remove evil counselors from him, are…deeds proving an intent to do that treason."[87] Before proceeding to the evidence, Scott then discussed the planned Convention in the light of this extended definition of treason. He defined the convention as "a convention of the people, claiming, as such, all civil and political authority, proposing to exercise it by altering the government, otherwise than by acts of the present constituted legislature, otherwise than by those statutes, according to which the King has sworn at the hazard of his life to govern."[88] Given these two definitions, Scott concludes "it appears to me to follow necessarily on the part of all who took a step to assemble it, that they are guilty of conspiracy to depose the King…"[89] Scott acted out of a fear that any challenge to the government is a threat to the stability of that government, and can therefore be construed as treason.

[86] Ibid, vol 2, 11-12.
[87] Ibid, vol 2, 49.
[88] Ibid, vol 2, 59.
[89] Ibid.

After thus establishing the prosecution's aim in the case, Scott proceeded to detail the crimes committed by Hardy over the past five years. He emphasized connections to the French, both in stylistic mimicry and in correspondence. He incorporated evidence of the mimicry of the French National Assembly at the Edinburgh Convention, after arguing that the Edinburgh Convention was admissible as evidence because it was part of a greater conspiracy.[90] Scott acknowledged the tension resulting from citing the Scottish sedition trials, but bypassed this concern by stating, "if they had been tried for high treason, they would have had no right to complain…"[91] According to Scott, therefore, Hardy's trial can be seen as the correct approach to such treasonable practices and therefore not a contradiction of the Scottish sedition trials. Scott quotes heavily from the LCS Address to the Nation on January 20, 1794. Scott connects the declarations in this address, namely to call a General Convention of the People, as an extra-parliamentary action tantamount to treason.

Scott's opening speech lasted over nine hours, at a time when treason trials were expected to be concluded in one day. The prosecution did not begin presenting evidence until evening and even that presentation was complicated by the need to prove Hardy's handwriting on each document. Witnesses reluctant to testify against their fellow reformer, including Alexander Grant, would affirm, "I believe it to be his hand, but I cannot swear it."[92] The only other option open to Scott was to call witnesses loyal to the king to attest, "I found this paper in the prisoner's house."[93] When Scott continued into the night with his presentation of the prosecution's interest, Erskine interrupted asking whether "there will be any probability of their being able to finish their evidence within a time that human nature is equal to pay attention to

[90] Alan Wharam, *The Treason Trials, 1794*, 153.
[91] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol 2, 151.
[92] Ibid, vol. 2, 202.
[93] Ibid, vol. 2, 205.

it…"[94] Chief Justice Eyre, on finding that the prosecution was not finished with half of its evidence, decided to adjourn the case for the night despite precedence.

The length of the prosecution's presentation may have been detrimental in the end. All previous trials for high treason had been concluded in a single day, and this protracted trial may have communicated to the jury that there was no treason. "Jurists believed that treason should 'stand out,'" Barrell and Mee explain, "should be established by clear and obvious proofs, not by elaborate concatenations of evidence that required lengthy interpretation or by complicated legal arguments." Despite this danger, the prosecution spent several days presenting a great mass of documentary evidence attempting to prove there was a conspiracy to overthrow the government, either by supplanting Parliament or threatening the king, and that Hardy was complicit in this conspiracy.

The prosecution was granted great leeway in the admissibility of the material presented, including documents which Hardy had never seen or read. Upon Erskine's objection to the admission of a note from Thelwall, Scott protested, "all the acts of Mr. Thelwall, or any other person against whom we have given evidence, fit to be submitted to the Jury or their accession to the general plan of the conspiracy, is clearly evidence against every man charged with that conspiracy…"[95] The evidence was declared admissible, but this issue of law, whether papers or statements unrelated to the defendant but suggestive of a wider conspiracy could serve as evidence against the defendant, would resurface later that same day. Erskine objected to the admission of a personal letter between Margarot and Martin, which if admitted, might communicate an animosity towards the king. Erskine argued that the only evidence that can be permitted is that which proves the direct and overt threat to the king, in other words treason,

[94] Ibid, vol. 2, 262.
[95] Ibid, vol 2, 354.

which is at issue in the indictment. This argument between Erskine, Scott, and Eyre persisted for most of Wednesday. In the end, the court concluded that

> the Crown was not restricted to calling evidence relating to documents which Hardy had written, or were found in his possession, or to words which were spoken in his presence; they could now range over the whole field of the alleged conspiracy, and call evidence on matters of which the defendant had no knowledge, over which he had had no control, and to which he had never given his consent or approbation.[96]

Thus the prosecution aimed to prove that there was a conspiracy to overthrow the constitution, which by extension amounts to a treasonous act against the person of the king.

With the case against Thomas Hardy, Scott and the prosecution presented evidence to prove the conspiracy against the government and gave primacy to evidence which connected this conspiracy with weapons or potential military uprisings. One of the crucial testimonies, that of the spy Groves, connected the LCS and Thomas Green with the purchase of small *conteaux secrets*. When the prosecution presented evidence like this, Erskine and the defense, first aimed to prove the evidence inadmissible or irrelevant. That would often fail, in which case Erskine aimed to undercut the value of the evidence. In the case of Thomas Green, Erskine's cross-examination asked to see a sample knife that Green sold, and upon seeing it asked "You had no intention to cut throats with it, I hope?" and Green replied, "Never."[97] He further discussed the possible uses of the knives and intimated that he, himself, would like to purchase such a useful tool, which brought a laugh from the crowd.

After four days of presentation by the prosecution, Erskine stepped up to deliver the defense and referenced the prosecution's apparent method of throwing innumerable pieces of evidence at the jury. His opening speech lasted seven hours and began with an address to the jury, declaring his hope that they could negotiate "the labyrinth of matter laid before you, a

[96] Alan Wharam, *The Treason Trials, 1794*, 154.
[97] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 4, 120.

labyrinth in which no man's life was ever before involved, in the annals of British Trial, nor indeed in the whole history of human justice or injustice."[98] He then refocused the case on the issue of treason. He agreed with Scott that there was a central legal issue to the case, but that the legal issue was incredibly clear cut. He focused on the indictment for treason, that "the Prisoners did maliciously and traitorously conspire, compass, and imagine, to bring and put our Lord the King to death."[99] Erskine addressed the issue of conspiracy, but emphasized that such a conspiracy requires intent:

> "'They met, conspired, consulted, and agreed amongst themselves, and other false traitors unknown, to cause and procure a Convention to be assembled within the kingdom, WITH INTENT—' (*I am reading the very words of the indictment*, which I intreat you to follow in the notes you have been taking with such honest persevereance) 'WITH INTENT, AND IN ORDER that the persons so assembled at such Convention, should and might traitorously, and in defiance of the authority, and against the will of Parliament, subvert and alter, and cause to be subverted and altered, the Legislature, Rule, and Government of the country; and to depose the King from the Royal State, Title, Power, and Government thereof.'"[100]

Erskine's defense laid out three matters for the jury to decide, based on this indictment. First, what share the defendant had in assembling a Convention. Second, what were the acts to be done by this Convention. And third, "what was the view, purpose, and intention, of those who projected its existence."[101] In order for the defendant to be found guilty, these three considerations must add up to a factual summation of a treasonous intent. Erskine emphasized that the Edwardian statute called for intent or action taken against the King's natural life, and while he would argue that, under Scott's new definition of treason, Hardy's potential Convention was not treasonous, he would also argue that nowhere in the Court's case is there any evidence

[98] Ibid, vol. 4, 184.
[99] Ibid, vol. 4, 184.
[100] Ibid, vol. 4, 184.
[101] Ibid, vol. 4, 184.

or suggestion of evidence that there was a conspiracy against the body of the king, the recorded definition of treason.[102]

The core of Erskine's argument revolved around hard facts. He examined the Edinburgh Convention and scoffed at the idea of any military potential, concluding "there had been raised, in the first session of this parliament, £15, from which you must deduct two bad shillings."[103] Clearly, with such limited funding, the convention did not aim to wage war on Parliament. He remarked on the prosecution's attempts to paint a picture of armed insurrection, and reminded them of Green, who openly admitted that he kept his knives, which the prosecution presented as evidence of weaponry, in a storefront window. As for the plans for the Convention, Erskine quoted heavily from Richmond's letter to Colonel Sharman and suggested that if such a Convention was imagined, it did not go beyond the plans set forward by Richmond, plans which were supported by the government ten years ago. Erskine laid into the prosecution's evidences, such as references to the trial of Watt in Scotland, of whom Hardy had no knowledge. Sick throughout the trial, Erskine grew increasingly frail and hoarse as his speech continued, until he was leaning against a desk and whispering urgently at the end.[104] After his speech, the courtroom erupted in applause and Eyre retired the case for the night.

Presentation of evidence for the defense consisted mostly of confirmations of Hardy's character and vows that planned reforms or conventions did not possess any plans for military revolution. Erskine called the Duke of Richmond to the stand to verify his letter and his reform intentions in 1783, namely to call a convention, or a meeting of the minds, to discuss two key parliamentary reforms: universal suffrage and annual parliaments. Though by 1794, the duke had recanted his reformist agenda, he confirmed that his original letter was indeed the same letter that

[102] Ibid, vol. 4, 188.
[103] Qtd. in Alan Wharam, *The Treason Trials, 1794*, 169.
[104] Alan Wharam, *The Treason Trials, 1794*, 171.

the defendant quoted.[105] The final major legal question of the trial revolved around whether the defense could present evidence to demonstrate the innocent intention of the accused. Legal historian Alan Wharam suggests that Erskine raised this question as a trap for the prosecution, as an opportunity to bring forward all other instances of treason cases, which were so different from the one at hand because the older acts of treason were much more aggressive and apparent. The prosecution's argument was that evidence which was wholly unrelated to both the defendant and a possible conspiracy was inadmissible; the Duke of Richmond's testimony as well as any evidence suggesting the Convention had legal intentions would fall under this category. Eyre allowed the question, the Duke of Richmond's testimony remained, and Erskine concluded the defense's presentation.

On the seventh day of the trial, Eyre delivered the conclusion of this unprecedented case, summarizing oral testimonies and evidence. Once again, Eyre dismissed the idea that the trial centered around a newly defined legal question, declaring that "conspiracy to depose the King is evidence of compassing and imagining the death of the King," and thus the old definition of treason sufficed to serve as the central question for the case.[106] At the same time, Eyre's summation of the trial seemed prejudiced in favor of the prosecution, arguing that it seemed obvious the reformers desired to achieve a convention for republican ideals. He charged the jury with deciding, first, if the convention and the reform ideals remained within acceptable loyalty to "the Constitution of the Country, as established in the King, Lords, and Commons."[107] This definition of government including King, Lords, and Commons, in a way redefines treason to include acts against Parliament. Eyre also addressed the question of Hardy's involvement and whether he can be condemned for the actions or intentions of an entire movement, but

[105] Alan Wharam, *The Treason Trials, 1794*, 176.
[106] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 5. 414.
[107] Ibid, vol. 5. 422.

concluded, "there is no cruelty or hardship whatever in making the principal accountable for the conduct of the agent, in construing the language of the agent to be the language of the principal."[108] The ultimate question for the jury, according to Eyre, was not whether Hardy set out to fulfill Richmond's goals, but whether he deviated to a more criminal bent later.[109]

Eyre's directions to the jury was that their "proof ought to be clear and convincing;..it may consist of a train of circumstances such as shall leave no doubt in your minds."[110] After stating his own perspective on the trial, Eyre repeated this with an admonition to the jury that their final decision must result "on clear grounds of fact," and should not be based on anything except that which "is necessary to lead you to the consideration of those points which seem immediately to constitute the particular charge against this man..'[111] The jury retired for a three hour span before returning with a not guilty verdict, upon which Hardy replied, "My fellow countrymen I return you my thanks," and Eyre thanked the jury for their labor before closing the court.[112]

This verdict was returned on November 5, 1794 after an eight-day trial. Outside of the courthouse, children were building bonfires to celebrate Guy Fawkes Day. As Wharam notes, the outlook did not look good for the defense while the jury deliberated. Thomas Hardy's name was already linked with famous traitors. The prosecution, meanwhile, were preparing more arrests, "800 it was said, and 300 warrants were already made out and signed, ready to be executed."[113] The not-guilty verdict thus came as a surprise to most of the court. As Hardy records in his memoirs, the verdict was met with loud shouts of applause, and "like an electric shock, or the

[108] Ibid.
[109] Ibid, vol. 5. 441.
[110] Ibid, vol. 5. 415.
[111] Ibid, vol. 5. 442.
[112] Ibid, vol 5, 444.
[113] Alan Wharam, *The Treason Trials, 1794*, 191.

rapidity of lightning, the glad tidings spread through the whole town, and were conveyed much quicker than the regular post could travel, to the most distant parts of the island, where all ranks of people were anxiously awaiting the result of the trial."[114] Newly free, Hardy set out to rebuild his life. During his trial, his pregnant wife's health declined tremendously. She was delivered of a stillborn child after a strenuous birth on 27 August, which Hardy attributed to the "violent compression which its mother had suffered while crawling through the window" on the day of his arrest.[115] She died on 30 August in the midst of writing a letter to her husband. Though relieved to be saved from conviction and execution, Hardy's life would never be the same. His tragic story became fodder for increased attacks on the government.[116] As Hardy mourned his wife, the country's attention turned to Horne Tooke's trial.

[114] Qtd. In Alan Wharam, *The Treason Trials, 1794*, 192.
[115] Alan Wharam, *The Treason Trials, 1794*, 129.
[116] For example, see "Citizen" Lee's elegy, "On the Death of Mrs. Hardy."

CHAPTER 13
THE TRIAL OF JOHN HORNE TOOKE

When recollecting the trials, Sir John Scott enigmatically remarked that, although some "said it would have been better Management if I had tried Horne Tooke first, I had convinced myself that would have been unfair."[117] Perhaps this is because the case against Hardy was much more public and seemingly egregious, even if Horne Tooke had a much longer and spottier history with radical reform. For whatever reason, Scott chose to proceed against Hardy first and now, with Horne Tooke's trial after Hardy's acquittal, he faced an uphill battle. In the case against Hardy, the prosecution aimed to prove there had been a conspiracy to overthrow the government and then to connect Hardy's complicity and the potential for a military threat. When the jury acquitted Hardy, the case against Horne Tooke became much more complicated. For one, the London Corresponding Society, in both its lower-class composition and its more radical publications and demonstrations, more closely resembled the conspiracy Scott aimed to demonstrate. The SCI appeared to be more of a club when compared to the LCS. For one thing, it was much more difficult to connect Horne Tooke or the SCI to weapons or possible military uprisings. Furthermore, if Scott could prove there had been a conspiracy and that Horne Tooke was complicit in this conspiracy, he would then have to argue that Horne Tooke's involvement amounted to treason when the supposed leader of the conspiracy, Thomas Hardy, was acquitted.

In addition to this, Horne Tooke was a much more vocal defendant than Hardy had been. The latter spoke once, to thank the jury. Horne Tooke opened his own trial with a request to leave the docks and stand next to the counsel. He makes the point that he has been in close

[117] Lord Eldon's *Anecdote Book*, 57.

custody without much interaction with his Counsel, who cannot thus "know the passages of my life…" He continues somewhat sardonically, "from what I have seen of the last trial, the whole passages of my life, and those which are not passages of my life, but are only imputed to me, will be brought before you: how is it possible for my Counsel to know those particular facts which are known only to myself?"[118] From the beginning, Horne Tooke showed himself to be a much more outspoken and defiant defendant than Hardy; he gained his seat next to his counsel and won a battle before the trial even began.

The prosecution approached the case against Horne Tooke with an aim to connect his actions to a conspiracy that the SCI, in conjunction with the LCS, to imitate the Jacobin Clubs in France and overthrow the government. The opening statement was made by solicitor-general Spencer Perceval who, from the start, dismissed the notion that the case centered on an issue of law.[119] This case for treason, according to Perceval, was simply a matter of proving whether Horne Tooke committed acts whose main tendency "is a conspiracy to subvert and alter the Legislature, Rule, and Government of the Kingdom, and to depose the King from his Royal State, Power, and Government."[120] Perceval's opening addresses many of the issues raised in Hardy's trial. His definition of treason includes attacks against "the Legislature, Rule, and Government," which strictly speaking more closely resembles Scott's arguments from Hardy's trials than the 1352 statute. He anticipates the argument that Horne Tooke did not approve extra-parliamentary measures against the government by arguing that "it is impossible for [people] to say, so far we will go, and no farther."[121] He argues against any respectable tradition of reform, anticipating a repeat of the Richmond's inheritance argument, by declaring that reform

[118] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol 6, 4.
[119] Perceval would later go on to become prime
[120] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol 6, 22.
[121] Ibid.

propositions like universal suffrage and annual parliaments must be rejected, "because in all probability, amongst all the advocates for Reform, there would hardly be found one to vote for it."[122] Therefore, because such a proposition was unthinkable, the reformers who petitioned for those reforms could only be using that petition as a cover for more subversive intentions, thus reintroducing the idea of a conspiracy.

To counter the difficulties the conspiracy theory faced in Hardy's trial, Perceval develops a new theory in his opening speech. He identifies the subversive intentions of the SCI as stirring up dissatisfaction in a population who, once convinced that universal suffrage was a right they had been denied, would seek to obtain it by force, using the French model and strong connections to the French Jacobin club as support. Perceval does not seek to implicate Horne Tooke directly in the use of force, but rather argues that there is a chain reaction that equates treason: "when men form plans, the consequence of which may lead to the destruction of the Government in any of its parts, the consequence of which (if the Government is so destroyed in any of its parts) necessarily lead to the deposition of the King," these persons are guilty of compassing the death of the king and are therefore guilty of High Treason, "whatever their leaders may have originally intended…"[123] The prosecution seeks to prove that there was a conspiracy to overthrow the legislation, which by extension deposes the King and equates High Treason, and that Horne Tooke was intricately involved and thus guilty of the potential consequences, regardless of what his stated aims had been.

Once again, long debates focused on what evidence should be admissible, especially when it was not apparent that the evidence connected Horne Tooke or simply attempted to prove a conspiracy theory. One of the methods of proving this conspiracy was aligning Horne Tooke as

[122] Ibid. vol. 6, 29.
[123] Ibid, vol. 6, 34.

an influential leader of both the SCI and the LCS. In an attempt to prove both his involvement and his dedication, the prosecution presented the record books of the SCI and argued that because Horne Tooke signed his name at meetings, he was aware and complicit with every action taken by the SCI. He rose to his own defense, indignantly crying, "My name being found in any book!...the bulk of the trash that is to be found in that book I never saw or heard of before; but that every time my name is to be found in that book, that that is to be evidence that I was present is a most extraordinary proposition."[124] Erskine rose to defend Horne Tooke, arguing that the very weak connection between the books and Horne Tooke's complicity or approval of what is stated in them should not allow for the evidence to be read. The court decided that the parts of the SCI records which Horne Tooke wrote himself were admissible as evidence.

The core of the prosecution's arguments was to prove Horne Tooke's complicity with the actions of the SCI and then prove that the SCI attempted, relying on their French connections, to overthrow the legislature. However, the prosecution was unable to provide a direct connection between the statements of the SCI and Horne Tooke's approval. When they introduced a resolution from the SCI dated 11 April 1794, they argued that Horne Tooke's interlineations and marginalia underscored his commitment to the conspiracy. However, Horne Tooke was able to prove that his interlineations, specifically when he circled a word, served as a means of crossing it out. Therefore, "By circling the word *Convention* with a line, that copy serves for two copies. With the word Convention *in*, it is the report of the Committee—With the word Convention *out*, it is the resolution of the Society."[125] Thus a document which the prosuection presented as evidence that Horne Tooke emphatically called for a convention is in actuality a mark that the society stepped back from the inclusion of the word "convention" in its final report.

[124] Ibid, vol. 6, 85.
[125] Ibid, vol. 6, 314.

In general, the prosecution avoided trying to connect Horne Tooke and the SCI with the use of force or potential military uprisings, choosing rather to focus on proving the conspiracy. One exception to this practice was the testimony of George Widdison. Widdison testified that the SCI had asked him about making pikes, specifically for the purposes of defense at Sheffield, yet he could not say that the pikes had been made. Furthermore, on cross-examination, he stated that as a member of the society,"I had not [any idea of producing reform by force]; nor I did not understand that any such plan was in agitation."[126] After this, the prosecution did not attempt to connect Horne Tooke or the SCI with plans for armed rebellion.

The prosecution's case finished with the examination of William Sharpe, a delegate from the SCI for the planned Convention. Scott probably intended for this witness to be the introduction to a crucial piece of evidence, a letter from a Mr. Joyce on the arrest of Hardy which asks, "Is it possible to get ready by Thursday?"[127] Horne Tooke observed that when produced before the Privy Council, this letter had been the subject of "great alarm, and great apprehensions," which had most likely led to his arrest; the government read this line as communicating plans of a large-scale uprising.[128] However, on cross-examination Horne Tooke used his familiarity with the witness to disassemble the prosecution's case. The readiness mentioned in the letter was not a preparation for military uprising, as the Privy Council feared, but in actuality the presentation of the "emoluments that Mr. Pitt and his family derived from the public" which Horne Tooke had been preparing.[129] After clarifying this, and destroying the potency of this crucial evidence for the prosecution, Horne Tooke finished his cross-examination by asking Mr. Sharpe to attest to his character. Sharpe said he was a person who preferred to stay

[126] Ibid, vol. 6, 331.
[127] Ibid, vol. 6, 351.
[128] Ibid, vol. 6, 349.
[129] Ibid, vol. 6, 351.

at home, was rather careless with the business of the SCI, and had been consistent in his arguments that the true source for reform lay in the legal processes of Parliament. The case for the prosecution was closed.

For Horne Tooke's defense, Erskine stood up and spoke; he had been silent for most of the trial under Horne Tooke's active involvement. Erskine once again read and emphasized the indictment against the defendant and its reliance upon compassing and imaging the death of the King himself. He refutes Perceval's understanding of the treason statute as a manipulation of a "*written unalterable* record," which cannot be reinterpreted when it is "expressed in such plain, unambiguous terms."[130] Erskine's rhetorical power comes to the front when he summarizes his argument,

> *That the intention against the King's life is the crime, that its existence is matter of fact, and not matter of law, and that it must therefore be collected by you the Jury, instead of being made the abstract result of legal proposition, from any fact which does not directly embrace and comprehend the intention which constitutes Treason.*[131]

Erskine discounts much of the prosecution's evidence, especially those documents which Horne Tooke was entirely unfamiliar, by arguing, "let every man, therefore, be responsible for his own acts, and not for the writings and opinions of others."[132] The crux of Erskine's defense, however, was that by law treason must constitute a threat to the life of the king and that, because there is little to no evidence connecting Horne Tooke even remotely to plans for armed rebellion and abundant evidence where he states his disavowal of all but the proper means of achieving reform, the prosecution presented no relevant evidence against him.

Erskine's defense, however, was meant to close the case against all of the other reformers under arrest and waiting trial. He states that he began his preparation for this particular case with

[130] Ibid, vol. 6, 376.
[131] Ibid, vol. 6, 382.
[132] Ibid, vol. 6, 396.

the purpose "to have selected those parts of the evidence only by which he was affected, and by a minute attention to the particular entries, to have separated him from the rest."[133] However, Horne Tooke urged him to "waste and destroy [his] strength to prove that no such guilt can be brought home to others."[134] As Wharam describes, "some of the most distinguished men who have ever set foot in the Old Bailey came into the witness box to give evidence on behalf of an alleged traitor."[135] The trial was quickly becoming a national spectacle. Many members of the upper-class reform movement of the 1780s appeared as witnesses for the defense. Major Cartwright attested that Horne Tooke had been firm and consistent in his dedication to the proper reform of the House of Commons. The Duke of Richmond testified that Horne Tooke had been committed to his own brand of moderate reform in the 1780s. Attorney-General Scott attempted to have this evidence dismissed on the grounds that the state of mind of the defendant ten or more years ago did not relate to their project today. Chief Justice Eyre, however, allowed the evidence on the grounds that it countered the prosecution's case for a growing conspiracy.

The defense, led jointly by Erskine and Horne Tooke, called witnesses to prove the defendant's commitment to parliamentary reform through legal means. Charles James Fox testified to Horne Tooke's participation in the Thatched House meeting in 1785 and signed a petition in favor of Pitt's plan for reform. William Pitt himself appeared and Horne Tooke asked him to confirm that he had been committed to reform along the lines advocated by the Prime Minister twelve years ago. Horne Tooke also pointedly asked Pitt whether the Thatched House Meeting, as a meeting of delegates from different towns and counties throughout England, also constituted a convention similar to the plans the SCI made. The defense called forth numerous witnesses, mostly to testify to Horne Tooke's good character and his commitment to

[133] Ibid, vol. 6, 449.
[134] Ibid.
[135] Alan Wharam, *The Treason Trials, 1794*, 210.

parliamentary reform through legal means. Gibbs closed the case for the defense with a meticulous and slightly acerbic dismantling of the prosecution. He agreed with Erskine's statement that there was no evidence in the case. The prosecution could not prove that the SCI had any money or more than twelve pikes, nor could they prove that the SCI had any intentions enacting military plans against the government. Furthermore, Hardy's acquittal meant that the great leader of the supposed conspiracy was not guilty of treason, so therefore how could Horne Tooke, who was less involved in the supposed conspiracy, be considered guilty?

Chief Justice Eyre then wrapped up the case, spending hours summing up the evidence presented before directing the jury. According to Eyre, there were two issues at hand: was there a plan to establish a national convention that would overthrow the government? And secondly, was the defendant part of such a plan? The jury stepped out for ten minutes before declaring Horne Tooke not guilty.

CHAPTER 14
THE TRIAL OF JOHN THELWALL

Two weeks after Horne Tooke's acquittal, the court reconvened. Scott announced that he did not intend to proceed further against four defendants, Bonney, Joyce, Kyd, and Holcroft. The prosecution then began the case against John Thelwall. Much of it was a repetition of the earlier cases, with a statement of the 1352 statute and a suggestion that the LCS's plans for a convention would lead to a military uprising that was treasonous. Most of the evidence against Thelwall came in letters he had written friends where he made rash statements like, "I am a Republican and a true Sans Culotte."[136] The prosecution attempted to connect Thelwall, as secretary of the LCS, with any statements or actions taken by the society. In Thelwall's case, he was perhaps the most radically outspoken defendant of the three and the prosecution attempted to prove that his rhetoric against the king made him complicit in the conspiracy to overthrow the government. They read passages from *Rights of Man* in an attempt to implicate Thelwall in some of Paine's more radical beliefs. For the most part, the trial was rather dull. Major Cartwright wrote that the opening speech "nearly lulled me to sleep, and I was told that the Chief Justice had been asleep the greatest part of the time."[137] The strongest evidence the prosecution presented was the testimony of the spy Groves who said he had "seen Thelwall blow the head off his glass of porter and heard him say, 'This is the way I would have all kings served."[138] In some ways, the prosecution treated the trial as a final attempt. Scott did not put as much effort into proving a conspiracy and relied heavily on Thelwall's own words to prove treason.

[136] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 8, 23.
[137] Qtd. In Alan Wharam, *The Treason Trials, 1794*, 227.
[138] Qtd. In Ibid, 227.

The prosecution closed its case quickly and Erskine stood. Erskine responded to Thelwall's brash statement by first hinting that spy's reports could have been exaggerated before remarking that the jury were not here to answer "whether the Prisoner be a hasty or rash man, whether his disposition be for mischief or not…"[139] Treasonable sentiments were not enough to convict a man of treason: "the treasonable purpose must necessarily have preceded the accomplishment of the acts by which it is to be proved, and can only be established from the clear and unequivocal evidence of those acts."[140] The defense then called witnesses to prove Thelwall's good character and his avowal of reform only through parliamentary means before closing the case. The jury took a little under two hours before they returned a not guilty verdict. On December 15th, Scott said he did not wish to proceed against the final two defendants, Richter and Baxter, who were then declared not guilty and the 1794 treason trials came to an end.

[139] *Trials for Treason and Sedition*, John Barrell and Jon Mee, eds., vol. 8, 52.
[140] Ibid, vol. 8, 65.

CHAPTER 15
THE AFTERMATH

Although Hardy, Horne Tooke, and Thelwall were ultimately declared not guilty, and all of their fellows were released without trial, in many ways the 1794 Treason Trials did signal the death of the radical reform movement. The SCI had virtually ceased to meet with Horne Tooke's arrest and only met once more after the end of the trials, in 1795, to protest the new Treason and Seditious Meetings Act. The Friends of the People ceased to exist. The London Corresponding Society did continue its efforts for a time. Francis Place, a journeyman breeches-maker, took over the administration, and the society raised funds to support the defendants and their families during the trial. However, these continued meetings would only lead to a stronger government resistance.

The government response in 1795, after the conclusion of the trials, was quick and decisive. Lord Grenville introduced the Treasonable Practices Bill to the House of Lords on 6 November 1795. This bill recognizes Erskine's skillful defense that the courtroom could not legislate a new definition of treason. It modified the law of treason

> so as to bring within its scope any who 'compassed or devised' the death, bodily harm, imprisonment or deposition of the King, who exerted pressure on him to change his measures or counsels, who plotted to assist foreign invaders, or to intimidate or overawe both houses or either house of Parliament, whether such intention was expressed, as hitherto, by over act, or by speech or writing.[141]

The bill also included a provision whereby those who incited the people to hatred or contempt of the king, the established government, or constitution were liable to first the penalties of a high misdemeanor and, on a second conviction, to seven years' transportation. This expanded

[141] Albert Goodwin, *The Friends of Liberty*, 387.

definition of treason directly resulted from the recognition in the 1794 trials that the state had expanded beyond the king.

The Seditious Meetings Act was specifically designed to kill off any remaining reform societies. It gave discretionary control to local magistrates to limit or prohibit meetings of over fifty people convened specifically "for the discussion of public grievances or for the consideration of any petition, remonstrance or address to King or Parliament bearing on the 'alteration of matters established in Church or State.'"[142] Pitt hoped that these bills would, by limiting the expression of political dissent, render unnecessary the forced suppression of reform societies. These acts, which would come to be known as the 'Gagging Acts,' were not well received and started what some would call Pitt's reign of terror. Ultimately, the reform societies would be effectively, at least temporarily, silenced. Part of this was due, however, to continuing warfare against France and total loss of France as a model for popular reform. In the end, many of the reforms the societies called for, including the restructuring of boroughs and the redistribution of seats in Parliament, would be enacted in the 1832 Reform Bill.

By that time, however, it was apparent that Parliament and the ministers ran the government as representatives of the people. Forty years earlier, however, that transition was not yet complete. George III was not yet mad and his reign had seen an (forced) increase of the king's power. As a student of English history, George III had attempted to regain powers which his father and grandfather had delegated to ministers and Parliament. Despite these efforts, however, it was clear that the state no longer resembled the Edward's fourteenth-century kingdom. The treason trials highlighted this transition as well as the failure, thus far, of the legislature to catch up to reality. Without a written constitution, the British government was in many ways defined by show. For example, when Pitt's spies discovered potential treason, he

[142]Albert Goodwin, *The Friends of Liberty*, 388.

passed the information back to the king so he could announce arrests warrants and the need for inquiries to Parliament. Without the hard lines provided by a constitution, the government relies on "show" to consolidate and represent power in times of transition so that they can later address the issues through the legislature. This abstract definition of government works for the "show;" the metaphorical crown can encompass king, legislature, and government. However, as the treason trials show, the law requires hard-lined definitions; government must explicitly include Parliament in order for a convention which could usurp Parliament to constitute treason.

By highlighting this shortcoming in the unwritten constitution, the treason trials and subsequent legislation in many ways added to the constitutional framework. Despite this, the question of whether Britain should write a formal constitution was not seriously raised, nor did Britian suffer a revolution that would force the writing of a new constitution. The idea was certainly there. First with the Americans and then the French, Britons had evidence of the practicability of constitutions. However, the ideology behind the French constitution led to the destruction of both the constitution and the state, which was a very real and terrifying example. In this light, it makes sense that those in power would reject and attempt to silence those who preached this new and dangerous French ideology. The treason trials emphasized these proponents of French ideologies. By acquitting the defendants, the juries recognized that the legal definition of treason was outdated, but perhaps they also recognized that the power of the state had moved to Parliament and by extension the people. The lasting legacy of the treason trials was not the reform that the defendants preached; that would have to wait forty years or more. Rather, the legacy is the recognition that the definition of the state had shifted away from the king to include Parliament. Ultimately, this consolidation of state power in Parliament would

pave the way for the increased representation of the people that Hardy, Horne Tooke, and Thelwall urged.

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