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Trial by Jury and English Political Radicalism c.1792 1825

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Trial by Jury and English Political Radicalism c.1792 – 1825

by

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This is for you Grandad. You are never out of my thoughts

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At no time during the registration for the degree of *Doctor of Philosophy* has the author been registered for any other University award without prior agreement of the Doctoral College Quality Sub-Committee.

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Thesis Abstract

Trial by Jury and English Political Radicalism c.1792–1825
Richard John Marshall

This thesis explores the jury trial in English radical thinking, politics and political culture during the age of revolution. Its significance for radicals and the wider political nation has been underappreciated by scholars, as the ballast stabilising the British constitution and polity. I argue that juries served as a counterweight to repression and surrogate site of power for the underrepresented middling sorts: as jurors checking the power and social dominance of corrupt elites. Radicals recognised the power inherent in independent juries, campaigning to defend their verdicts and bolster their powers. The jury played a critical role in the rhetoric of English constitutionalism. Radical leaders exploited the middling sorts' search for power to defend the jury against threats to its independence and existence. The thesis argues that jury-related controversies and jury trials of prominent radicals gave radicals an influence that was difficult to obtain elsewhere in their opposition to state-led political repression. Chapters one and two examine a campaign in favour of the 1792 Libel Act and efforts by the London Corresponding Society (LCS) to circulate information on jurors' rights, analysing the production, dissemination and arguments of pamphlets. Study of the LCS archive and a mapping of the dissemination of its republication of Hawles's *The Englishman's Right* (1793) shows demand for the text on the part of the middling sort. Chapters three, four and five place verdicts in the 1794 treason trials in the immediate politics of radical celebration and longer commemoration, including popular and material culture. They employ newspapers to interrogate popular, loyalist and radical reception of the verdicts and jurymen. The post-war radical and loyalist rhetorical and strategic uses of the jury are explored in chapter six through studies of publisher William Hone's acquittal (1817) and parodic responses to the Peterloo

Massacre (1819). Government efforts to pack London juries in the early 1820s have not been studied before: the final chapter studies the radical efforts of resistance as documented through archival sources, *The Black Dwarf* and *The Republican*.

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Introduction. The Birthright of Englishmen

Radicalism and the Trial by Jury

This thesis explores the jury trial in English radical thinking, politics and political culture in the age of revolution, particularly during the heightened repression and political tension that bookend the wars with France. It examines how and why radicals engaged with the subject of trial by trial, an issue radical Thomas Wooler deemed 'only second in importance to the subject of parliamentary reform'.[1] It focuses, primarily on popular radicalism, including the London Corresponding Society (LCS) and post-war writers including William Hone, Richard Carlile, and Wooler. The thesis establishes that the trial by jury was of deep concern for radicals, and something they consistently and successfully campaigned about.

It builds on existing scholarship on late-Georgian to early-Victorian radicalism and the jury.[2] Scholars, especially in the last three decades, have explored the relationship between the two, as part of wider studies of radicals, the constitution and criminal law. No dedicated study of radicals and the jury exists, nor any concerted attempt to trace the development of radical approaches to the jury trial from the 1790s into the post-war period. The most prominent studies by John Barrell, James Epstein, Philip Harling and Phil Handler, focus on particular trials or specific political offences.[3] Understanding of radical approaches to the jury trial is thus

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[1] T. Wooler, *The Black Dwarf*, 10:23 (June 1823), p.789.

[2] Early discussion of the jury and radicalism can be found in E.P. Thompson, *The Making of the English Working Class* (London: Gollancz, 1963), pp.148-149, 468, 508-510, 791-795; C. Hill, *The Century of Revolution, 1603–1714* (London: Nelson, 1962), p.135, 197; C. Cone, *The English Jacobins, Reformers in late 18th Century England* (London: Scribner, 1968), pp.107-110, 137-139, 155-159, 202-209; also I. Jennings, *Party Politics: The Stuff of Politics* (Cambridge: Cambridge University Press, 1962), pp.139-140, 147-149, 161. For earlier commentary S. Webb, B. Webb, *English Local Government: The Manor and the Borough* (London: Archon, 1908), pp.43-44, 56-59.

[3] J. Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide 1793–1796* (Oxford: Oxford University Press, 2000), pp.311-312, 348-354, 383, 424-430; J. Epstein, *Radical Expression: Political Language, Ritual and Symbol in England, 1790–1850* (Oxford: Oxford University Press, 1994), pp.33-81; J. Epstein, '"Our Real Constitution": Trial Defence and Radical Memory in the Age of Revolution', in J. Vernon, ed., *Re-Reading the*

limited. Scholarship concurs that radicals, both before and after the war, were united in supporting the institution as the 'palladium of liberty'.[4] Weinstein and Epstein explored tension between radical support for juries and verdicts that went against their wishes, but criticism came from the political elite, motivated by fear of empowered middling jurors.[5] Peter King notes that 'the gap between the elite's frequent characterizations of the jurors as illiterate, easily-led plebeians and the reality … may have been less an error of judgement than an expression of a deep, if only partly perceived, conflict of interest'.[6] This thesis will prove King's proposition.

Jury trial was English radicals' most successful campaigning issue *c.*1792–1825. Through a carefully crafted message underpinned by a healthy dose of pragmatism, they repeatedly avoided the label of unrespectability that normally plagued English radicals.[7] While this provoked alarm in government, it stirred the interest of those forming the backbone of England's juries: the middling sorts.[8] This thesis expands existing scholarship, by looking at radical approaches to the jury in the context of the wider political nation: how they utilised and manipulated existing political tension to gain substantial leverage over the question of jurors' rights. Radical sought to exploit the middling sorts' search for a surrogate form of political

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Constitution: New Narratives in the political History of England's Long Nineteenth Century (London: Cambridge, Cambridge University Press, 1996), pp.22-51; P. Harling, 'The Law of Libel and the Limits of Repression 1790-1832', *The Historical Journal* 44:1 (2001), pp.107-134; P. Handler, 'Forging the Agenda: The 1819 Select Committee on the Criminal Laws Revisited', *Journal of Legal History* 25 (2004), pp.249-268.

[4] F. Prochaska, 'English Sate Trials of the 1790s: A Case Study', *Journal of British Studies* 13 (1973), pp.63-82; C. Emsley, 'An Aspect of Pitt's 'Terror': Prosecutions for Sedition during the 1790s', *Social History* 6:2 (1981), pp.155-184, pp.170-172.

[5] B. Weinstein, 'Popular Constitutionalism and the London Corresponding Society', *Albion* 34:1 (2002), pp.37-57; Epstein, *Radical Expression*, pp.69-71; D. Hay, 'The Class Composition of the Palladium of Liberty', in J.S. Cockburn, ed., *Twelve Good Men and True* (Princeton, Princetown University Press, 1988), pp.305-357.

[6] P. King, '"Illiterate Plebians, Easily Misled": Jury Composition, Behaviours and Experience in Essex 1735–1815', in Cockburn, *Twelve Good Men,* pp.254-304, p.304.

[7] M. Davis, 'The Mob Club? The London Corresponding Society and the Politics of Civility in the 1790's', in M. Davis, P. Pickering, eds, *Unrespectable Radicals? Popular Politics in the Age of Reform* (London: Routledge, 2008), pp.21-36.

[8] G. Durston, *Whores and Highwaymen: Crime and Justice in the Eighteenth-Century Metropolis* (Sherdield on Loddon: Waterside, 2012), p.284.

power in place of a corrupt parliament.[9] Existing scholarship, most notably that of Harling, Handler, Peter King, and Douglas Hay acknowledges frequent non-compliance by jurors, in cases concerning forgery, poaching and libel, as a method of political resistance.[10] Radical campaigning aimed at encouraging jurors to use the jury's innate political power is often overlooked or treated lightly.[11] This thesis explores radicals' neglected role in encouraging, defending and justifying the middling sorts' resistance against the political elite, extoling jurors' rights, duties and powers in the face of state repression. It will also assess, through studies of public responses to radical campaigning in the 1790s, the extent to which radicals succeeded in getting their message across, and how it was received, internalised and even echoed by members of the middling sorts.

I argue that in relation to jury trial, radicalism developed a congenial understanding with the middling sorts, positioning itself as the legitimate advocate of jurors' rights. Radical campaigning on the subject of juries was structured around interceding in the struggle between the middling sorts and elites, focused on defending jurors from attacks and encouraging independence from the Crown. In turn, juries of middling men shielded radicals from the worst excesses of state oppression, although often from self-interest, consequently preserving civil liberties, protecting the boundaries of public discussion, or merely giving the authorities a bloody nose. In short, this thesis is an examination of the political relationship between radicalism and the middling sorts, as played out through the trial by jury, and how this

[9] T.A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200–1800* (London: University Chicago Press, 1985), p.327.
[10] P. Handler, 'Forgery and the End of the 'Bloody Code' in Early Ninetieth-Century England', *The Historical Journal* 48:3 (2005), pp.683-702, p.690; P. King, *Crime, Justice and Discretion in England 1740–1820* (Oxford: Oxford University Press, 2000), pp.247-248; D. Hay, 'Poaching and the Game Laws on Cannock Chase', in D. Hay et all, *Albion's Fatal Tree* (New York: Panthion, 1975), pp.189-254, pp.210-212.
[11] E.g. J. Cairns, G. Mecleod, eds, *The Dearest Birth-Right of the People of England: The Jury in the History of the Common Law* (London: Bloomsbury, 2002).

relationship developed, was maintained and, ultimately, severed during the decades following the French Revolution.

The Trial by Jury and the English People

The trial by jury is among the oldest surviving English legal and political institutions. A brief survey of its origins and development contextualises later discussions. The criminal jury's origins are traceable to the period after the Norman conquest, and 1166 when Henry II declared twelve men in each hundred should report persons alleged to have committed crimes to the King's justices or sheriffs.[12] These 'presenting juries' did more than merely accuse. In cases where there existed no supporting evidence they were able to decide 'which defendants should make proof [of their innocence] by ordeal and which should not … ostensibly a statement about guilt or innocence'.[13] The jury's role in fact-finding was formalised after the 1215 Lateran Council, which effectively ended the trial by ordeal as a legitimate form of criminal proceeding.[14] In England the already established jury took on the role of deciding on a prisoner's guilt, to the point in 1220 when prisoners were able to 'put themselves for good and ill (*de bono et malo*) upon a verdict of the countryside'. Defendants tried (and found guilty) in this way, Groot suggests, 'were the first persons properly convicted by an English jury'.[15]

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[12] Simultaneously, in private prosecutions, a system developed where an appellee could plead a charge had be brought *de audio et atia* ('from hate and spite'), and 'buy a writ to have a jury decide the issue'. These juries were essentially deciding on guilt or innocence, R.D. Groot, 'The Early Thirteenth-Century Criminal Jury', in, Cockburn *Twelve Good Men*, pp.3-35, pp.8-9; R.D. Groot, 'The Jury of Presentment before 1215', *Journal of Legal History* 26 (1982), pp.1-24, pp.3-6.

[13] Groot, 'Thirteenth-Century Criminal Jury', p.9.

[14] The Council called the practice 'barbaric', concluding that it could not reflect God's will, J.Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial* (New Haven: Yale University Press, 2008), pp.126-128.

[15] Groot, 'Thirteenth-Century Criminal Jury', pp.16-19; also see P.R. Hyams, 'Trial by Ordeal: They Key to Proof in the Early Common Law', in M.S. Arnold et al, eds, *On the Laws and Customs of England* (Chapel Hill: University of North Carolina Press: 1981), pp.90-126, p.118.

The medieval jury served as the principal finder of fact and was from its inception a politicised institution. Even before 1215 the reputation of a prisoner counted for as much as discernible evidence. The interests, prejudices and beliefs of those who sat upon England's juries were important in the following centuries.[16] From at least the fifteenth century, it is widely recognised that these were members of England's 'middling sorts', the nature of whom I turn to in the next section.[17] Scholarship, most notably by Thomas Green, James Cockburn and Peter King, uncovered debates between the fourteenth and early seventeenth centuries in which jurors' conduct was questioned and their competence criticised.[18] Jurors were not shy in delivering verdicts adverse to the Crown. As Green discusses in detail, their actions were crucial in developing nullification as a concept, an idea upon which later jury independence would be founded. Statutes were passed, in 1414 and 1531, to tighten and better enforce the property qualification for jurors, which stood at 40 shillings. This was revised in 1664 to twenty pounds, and then in 1692 to ten pounds – its level between 1792–1825 – to ensure 'the return of more able and sufficient jurors'.[19] This entrenched the jury as an institution of the middle sorts, separating it from the state and the criminals brought before the courts.[20]

Before the seventeenth century juries were at least nominally under the control of the Crown. Their independence was not formal. The jury originated as an extension of the judicial

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[16] G. Durston, *Fields, Fens and Felonies: Crime and Justice in Eighteenth-Century East Anglia* (Sherfield-on-Loddon: Waterside Press, 2016), pp.187-188; Green, *Verdict According to Conscience*, p.1.
[17] Green, *Verdict According to Conscience*, pp.114-115, 132-134, 225-231; R.D. Smith, *The Middling Sorts and the Politics of Social Reformation: Colchester 1570–1640* (P. Lang: Oxford: 2004), pp.74-76; C.B. Herrup, *Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1989), pp.131-140; see essays in Cockburn, *Twelve Good Men*: J.B. Post, 'Jury Lists and Juries in the Late Fourteenth Century', pp.65-77; P.G. Lawson, 'Lawless Juries? The Composition and Behaviour of Hertfordshire Juries, 1573-1624', pp.117-157; S.K. Roberts, 'Juries and the Middling Sort: Recruitment and Performance at Devon Quarter Sessions 1649–1670', pp.182-213.
[18] See essays in Cockburn, *Twelve Good Men*, J.S. Cockburn, 'Twelve Silly Men? The Trial Jury at Assizes 1560–1670, pp.158-181; King, '"Illiterate Plebians, Easily Mislead", pp.254-304; Green, *Verdict According to Conscience*, pp.325-335, 339-344.
[19] Green, *Verdict According to Conscience*, pp.131-133.
[20] Green, *Verdict According to Conscience*, pp.114.

system rather than as a foil to it. In theory jurors' verdicts could be questioned by the bench. Juries in important cases were regularly 'packed', by ensuring only individuals sympathetic to the Crown were empanelled, a practice that was apparent in state trials in the late eighteenth century. Beyond this, judges could interrogate individual jurors and in a variety of ways pressurise them into delivering verdicts satisfactory to the bench. These included fines, detention (often without food or water), imprisonment (for contempt) and occasionally threats and verbal abuse.[21] The extent to which judges were able or prepared to use these powers is however questionable. The complaints against jurors' decisions noted above implied a level of powerlessness among Crown officials and judges, and it does not appear that justices overturned jury acquittals. There were almost certainly cases in which juries convicted at the direction of a belligerent judge, or from fear of punishment should they defy the bench.[22] In most cases, a jury's verdict was accepted by the court with little or no question. It was more important to preserve the integrity of justice, than risk presenting the King's courts as arbitrary. As my thesis demonstrates, this belief pervaded the considerations of England's political elite and dictated their approach to the jury trial into the nineteenth century.[23]

The political tumults of the seventeenth century changed fundamentally how the jury operated in England and how it was perceived. John Beattie called it 'the heroic age of the English jury … [during which] it emerged as the principle defence of English liberties'.[24] Criminal cases, most importantly that of John Lilburne in 1649, were characterised by discussion of the rights of jurors, 'as judges of law as well as of fact', irrespective of the bench's opinion.[25] 'You, Gentlemen of the Jury', Lilburne argued, '[are] my sole Judges … I desire you

[21] Green, *Verdict According to Conscience*, pp.137-141, 208-215, 219, 225.
[22] Green, *Verdict According to Conscience*, p.68.
[23] E.P. Thompson, *Whigs & Hunters: The Origins of the Black Act* (London: Breviary, 2013, orig.1975), pp.210.
[24] J.M. Beattie, 'London Juries in the 1690s', in, Cockburn, *Twelve Good Men*, pp.214-253, p.214.
[25] Green, *Verdict According to Conscience*, p.159.

to know your power, and consider your duty, both to God, to me and to your own selves, and to your Country'.[26] It was *Bushel's Case* in 1670 that would establish formally the principles of jury independence and non-coercion. Chief Justice Vaughan ruled that no juror could be punished merely for the verdict that he reached.[27] The intention and reasoning behind Vaughan's judgement are widely debated but the consequences were clear.[28] In most criminal trials there was little practical change. In political cases the ruling had the effect of entrenching the tension between the bench and a jury quickly coming to symbolise popular freedom. This formalised independence created the conditions for the jury box to become a source of political influence in the following century. By the 1760s the power that trial by jury offered the unenfranchised middling sorts was widely recognised, notably among supporters of John Wilkes.[29] By the late 1780s this potential had come to underpin the whole question of jurors' rights and duties and would ultimately do so for at least the next fifty years.

'Securely Plac'd Between the Small and the Great': The Middling Sorts[30]

This section explores what is meant by the 'middling sorts'. It offers a definition in the context of existing historiography of class and the subject of trial by jury, and their role within this institution. I explore why they sought to use the jury as a surrogate form of power in the late eighteenth century.

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[26] M. Wood, *Radical Satire and Print Culture 1790–1822* (Oxford: Clarendon, 1994), p.127.
[27] This case stemmed from the prosecutions of Quakers William Penn and William Mead, and refusal by their jury to convict them of addressing an unlawful assembly, K. Crosby, 'Bushell's Case and the Juror's Soul', *Journal of Legal History* 33:3 (2012), pp.251-290, pp.251-252.
[28] Green and John Langbein downplay the significance of *Bushel's Case*, Green, *Verdict According to Conscience*, pp.236-254; J. Langbein, 'The Criminal Trial Before the Lawyers', *University of Chicago Law Review,* 45, (1978), pp.263-316, pp.297-298. Crosby asserts its importance and that it was critical in bringing jurors' consciences to the fore of questions surrounding jury trial, Crosby, 'Bushell's Case', pp.253-254, 288-290.
[29] Green, *Verdict According to Conscience*, pp.326-327.
[30] *Poems by William Cowper &c.* (London: Oliver & Boyd, 1818), p.374.

The middling sorts elude a clear definition. Peter Earle argues that the definition of 'the middling sort of people' depends entirely on the economic and social criteria applied and questions of identity.[31] In the early seventeenth century when the 'language of sorts' originated, the phrase was employed 'impressionistically' and with few social connotations. Nicholas Rogers notes how the boundaries of the middling sorts were vague, the term employed to encompass all who could not be otherwise defined as gentlemen, or of the lower orders.[32] The early eighteenth century saw the term increasingly associated with particular groups of people and their professions which, broadly, is how it is still understood. By the 1760s it had come to refer to shopkeepers, tradesmen, merchants and manufacturers, along with other professions such as the law or medicine.[33] As John Seed explains, the middling sorts were understood to be those men 'distinguished from the landed aristocracy and gentry by their need to generate an income from … active occupation' and from the 'labouring majority by their possession of property- whether mobile capital, stock in trade or professional credentials'.[34]

Membership was not defined singularly by wealth or social standing. It was entirely possible, as was the case with some professionals such as junior lawyers, clergy or teachers, to be poorer than many artisans or skilled tradesmen.[35] Yet education, likely social background and profession, qualified one as 'genteel' and thus of the middling sort. There were many shopkeepers and artisans whose social background was among the lower orders, but whose income and property mean they did not belong among the poor. This does not mean that

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[31] P. Earle, 'The Middling Sort in London', in J. Barry, C. Brooks, eds, *The Middling Sort of People: Culture, Society and Politics in England 1550–1800* (London: Macmillan, 1994), pp.141-158, p.155.
[32] N. Rogers, 'The Middling Sort in Eighteenth Century Politics', in Barry, Brooks, eds, *The Middling Sort*, pp.159-180.
[33] P. Langford, *A Polite and Commercial People: England 1727–1783* (London: Clarendon, 1998), pp.61-68; Rogers, 'The Middling Sort in Eighteenth Century Politics', pp.161-162.
[34] J. Seed, 'From 'middling sort' to middle-class in late eighteenth and early nineteenth-century England', in M.L. Bush, ed., *Social Orders & Social Classes in Europe Since 1500* (London: Longman, 1992), pp.114-135, p.115.
[35] Earle, 'The Middling Sort', pp.146-147; also see H. Marland, *Medicine and Society in Wakefield and Huddersfield 1780-1870* (Cambridge: Cambridge University Press, 1987), ch.7.

contemporaries always considered such people as among the middling sorts. As Earle has explored, it was common for tradesmen and some artisans to be dismissed as unrefined, 'rude', or lacking in the manners and dress expected of a middling individual.[36] But their income put them comfortably above 'mechanicks' and labourers. The middling sorts were those not, Daniel Defoe wrote, 'exposed to the miseries and hardships, the labour and suffering of the mechanic part of mankind, and not embarrassed with the pride, luxury, ambition and envy of the upper part'.[37]

My understanding of 'the middling sorts' largely mirrors that of contemporaries. I avoid employing any criteria which would have the effect of excluding any group or profession from the middling sorts. By their very nature they were a highly variable group of professional and business men which could include those wealthiest merchants trading overseas and at the other end of the income spectrum, tradesmen and 'artisan small-masters'.[38] In the context of the jury it is essential to view them in this way. Jury service was quintessentially the duty of middling men, owing to the ten-pound property qualification. Contemporaries and scholars acknowledge this. Any attempt to draw exclusive boundaries to narrow the middling sorts, whether based on occupation, social background, or even income, are problematic. Contemporary jury lists makes this clear. Take for an example the jury that tried Daniel Isaac Eaton in June 1793, for republishing Thomas Paine's *Rights of Man*. If exclusive criteria were to be applied, a number of the jurors (all obviously property holders) might be excluded from the middling sorts, including fishing rod maker Thomas Bond, orange seller Joseph Greening, tallow chandler David Bligh and most strikingly, Jonathan Cope, a cobbler. Radicals did not

[36] Earle, 'The Middling Sort', p.147, 155-156.
[37] Quoted in P. Earle, *The World of Defoe* (London: Weidenfeld, 1976), pp.164-166.
[38] Many artisans and small master 'classed themselves' with professionals and shopkeepers, I. Prothero, *Artisans and Politics in Early Nineteenth Century London: John Gast and His Times* (London: Taylor & Francis, 2013, orig. 1979), p.86.

make exclusions, draw boundaries or refer to particular groups or professions when addressing jurors. So it would not be useful or helpful for this thesis to do so. I treat the concept of middling in its broadest sense as describing the vast majority of people between the gentry and labouring poor: in other words, all those eligible to serve on a jury. General notions often held to characterise the middling sorts, such as 'respectability' and 'independence' do nonetheless feature in radical discourse and responses to it. They served to appeal to middling jurors' sense of liberty and rights as 'free-born Englishmen', and to characterise juries as a source of shared identity and power among those who served on them. I deal with these, where they are relevant, in later chapters.

The social and economic makeup of a jury varied significantly, making a broad definition of 'middling' essential to understanding them. William Hone's jury, in the second of his three blasphemous libel trials in December 1817, contained at one end Richard Wilson and Richard Thornton, affluent wine, spirit and brandy merchants, and at the other, hat maker Joshua There and cobbler James Donaldson. Similarly, that of Thomas Wooler in June of that year, was populated by several merchants, an accountant and wool manufacturer, serving alongside a George Billett, a joiner and woodworker.[39] Seed notes the vagueness of these categories and it is important to acknowledge that they often do not indicate whether the individuals in question owned large or small businesses, employed others or were speculative traders.[40] Nevertheless these individuals were unlikely to all be big business owners. If, as Seed also contends, 'the possession of property, of mobile capital, was an essential constituent of the middle class', then all jurors must, by definition, qualify for membership of the middling

[39] Billett was a talesman, called from those present in court, in the place of a special jurors who had not appeared. In libel trials, talesmen were usually of a lower social and economic standing than the other special jurors, drawn exclusively from lists of merchants and esquires, see J. Oldham, 'The Origins of the Special Jury', *University of Chicago Law Review* 50:1 (1983), pp.137-221, pp.204-205.
[40] Seed, 'From 'middling sort' to middle-class', p.117-118.

sorts.[41] It was entirely possible, on the same jury, to have men from very different ends of the income and social spectrum. This thesis suggests that the right to serve on an English jury defined the middling sort and its identity as much as occupation, income or social background.

The reason that these middling men sought alternative forms of political power is a simpler question to answer. Most of those in this broad group were denied the franchise, and thus the ability to influence national politics.[42] Middling men could combine to lobby parliament, especially on trade-specific or local issues, and various scholars point to the growth in local office holding among middling men.[43] Formal political participation in the latter half of the eighteenth century among the middling sorts has also been highlighted. It has been estimated that twenty to thirty per cent of the borough electorate and half in the shires were of the 'middling sorts', broadly defined.[44]

Parish or even municipal politics were hardly sources of widespread influence on national politics. Nor were they substitutes for it. Equally, the potential for participation in elections is a poor guide to actual political influence. The county electorate which comprised the majority of middling voters in the eighteenth century rarely had an opportunity to exercise their rights, with only 16.4% of English counties contested between 1768 and 1801.[45] Devonshire, with roughly eight-thousand voters in the 1790s, was contested once between 1712 and 1812. As for the small boroughs, especially in the south-west, these were controlled

[41] Seed, 'From 'middling sort' to middle-class', p.121.
[42] Green, *Verdict According to Conscience*, p.327.
[43] Rogers, 'The Middling Sort in Eighteenth Century Politics', p.162; S. D'Cruze, 'The Middling Sort in Eighteenth-Century Colchester: Independence, Social Relations and the Community Broker', in Barry, Brooks, eds., *The Middling Sort*, pp.181-207, pp.181-182, 187, 198; S. D'Cruze, *A Pleasing Prospect: Society and Culture in Eighteenth-Century Colchester* (Hertford: Hertfordshire University press, 2008), pp.127-134, 175-176; H.R. French, 'The Search for the Middle Sort of People in England 1600-1800, *The Historical Journal* 43:1 (2000), pp.277-293, pp.284-287; N. Rogers, 'The Middling Orders', in H.T. Dickinson, *A Companion to Eighteenth-Century Britain* (London: Wiley, 2008), pp.172-182; on the metropolitan middling sorts and criminal justice see Durston, *Whores and Highwaymen*, pp.53-58, 103-109.
[44] Rogers, 'The Middling Sort in Eighteenth Century Politics', p.168.
[45] Rogers, 'The Middling Sort in Eighteenth Century Politics', p.169.

by landed interests.[46] If the large London boroughs of Westminster and the City were frequently contested with large electorates, with the City's voting qualification (membership of a livery company) granting the vote to a potentially large group of middling men, in practice neither represented middling interests. Nicholas Roger estimates that borough electorates comprised thirty per cent by middling men, so the 1790 election would have accounted for just over eight thousand out of a London middling sort estimated by contemporaries to number nearer fifty thousand, and probably much larger when the artisans and tradesmen are included. Coupled with the fact that by 1800 close to three quarters of London's population resided beyond the boundaries of the two borough constituencies, even this estimation of middling political participation is probably exaggerated. Ultimately, as radical groups routinely complained, the Commons was corrupt, the majority routinely elected by a mere eleven-thousand voters nationwide; equivalent to barely a fifth of the middling households in London alone.[47] As the London Corresponding Society argued in 1792, 'upon the whole it appears, that 257 supposed Representatives of the people, making a majority of the House of Commons, are returned by a number of voters not exceeding a thousandth part of the nation'. In seeking redress however, they told the unrepresented to stand firm, 'assured, that in so doing, we are protected by a Jury of our Countrymen'. The jury trial was in their view a natural surrogate for the unenfranchised.

[46] Rogers notes that seven of the twenty-eight boroughs with electorates exceeding one-thousand frequently returned nominees of landed families, and four more were dominated by closed corporations, Rogers, 'The Middling Sort in Eighteenth Century Politics', p.172.

[47] *The London Corresponding Societies Addresses and Resolutions* (London: 1792), pp.6-8 discusses the corrupt nature of elections and the distribution of Commons seats.

Radicals and Radicalism

The term 'radical' is ubiquitous in study of the Age of Revolution in Britain, and the subject of much scholarly debate.[48] Criteria used to try and ascertain who was 'radical' and who was not include class, social, cultural, political, generational and geographical boundaries, while the use of these markers has at times been dictated more by the interests of historians than the complexities of political societies.[49] I will not restate these arguments, but explain why this thesis avoids them and focuses on maintaining a broad and generally loose approach to 'radicals' and radicalism.

In the period 1792-1825, radicalism is generally understood to be a varying set of ideas rather than any particular group or association, although it was not a term generally used in contemporary political discourse. It is held to represent a political identity that centred on a belief in the necessity of political reform.[50] Meanwhile, those whose opinions centred on support for the established social and political order are generally referred to as loyalists and are distinct from radicalism.[51] The two could however overlap, share the same ideas, discursive and physical spaces. This thesis will argue that the trial by jury was one area where they did. Beyond the general aim of reform, radicalism took a variety of forms; some extreme, such as the revolutionary politics of the United Englishmen, and some moderate, embodied by the

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[48] Glenn Burgess provides a useful overview of the several historiographical 'definitions' of radical, while noting that 'radicals and radicalism are everywhere, at least from the sixteenth century onwards', G. Burgess, 'Introduction', in, G. Burgess, M. Festenstein, eds, *English Radicalism 1550–1850* (London: Cambridge University Press, 2007), pp.1-16, p.1, 4-9.

[49] See E.P. Thompson and Christopher Hill for an approach centred on class, and an understanding of the 'radical' and distinctly 'working class', Thompson, *English Working Class*, pp.10-12, 33-34; on radicals generally see J.C. Davis, 'Radical Lives', *Political Science*, 37:2 (1985), pp.166-172; C. Condren, 'Radicals, Conservatives and Moderates in Early Modern Political Thought', *History of Political Thought,* 10 (1989), pp.525-542, pp.525-528; G.S. De Krey, 'Radicals, Reformers and Republicans: Academic Language and Political Discourse in Restoration London', in, A. Houston, S. Pincus, eds, *A Nation Transformed: England after the Restoration* (London: Cambridge University Press, 2001), pp.71-99, pp.80-81, 93-95.

[50] First used to refer to opponents of state in 1820, Burgess, 'Introduction', p.1.

[51] Burgess does note however that in the centuries before 1800, 'radical' had been used to describe a multitude of people on both the left and right of politics, from both the Whig and Tory traditions and of the plebian and elite classes.

London based Society for Constitutional Information, or the reformist politics of Whig leaders including Charles James Fox and Charles, 3rd Earl Stanhope. They were as Gary De Krey argues, those who to varying extents 'reject, challenge or undermine established political norms or conventions … the intellectual rationales that legitimate those norms or conventions and the structures or authority that maintain them'.[52] This last point in particular was, as I will contend, at the heart of support and campaigning relating to jury trial.

Radical can refer to an array of different groups and individuals from across the social spectrum. In the context of this thesis though, an open definition is particularly important. As with the middling sorts, understanding radicals in the broadest possible sense is significant, because the issue of jury trial was something that united almost all those who sought parliamentary reform. As will be discussed subsequently, the backbone of English oppositional politics was constitutionalism, and the jury trial was among its most treasured tenets. There were some notable exceptions which will be explored, especially among those followers of the Paineite tradition which criticised the English constitution as archaic. Yet for most opponents if the Pittite state, the pursuit of a unified front in the defence of trial by jury was among their most crucial aims. On few other issue would the likes of Charles James Fox or Earl Stanhope share both a discursive and physical platform with popular rabble-rousers such as John Thelwall and other plebian speakers. In 1795, they would even appeared together at large and well attended public gatherings in homage to the trial by jury, celebrating and remembering the 1794 treason trial verdicts.

In short, radicals were a diverse cast of individuals and groups, dissecting the social spectrum. They shared a central yearning for political reform and a reverence for the constitution and it's institutions, although not invariably so. Many combined elements of the

[52] De Krey, 'Radicals, Reformers and Republicans', p.80.

'old constitution' with the ideas of Thomas Paine, and others with those imported from France or America.[53] Through both the courts and public discourse, they sought to challenge the political, social and legal norms, along with the authorities underpinning them. There was also a strong element of localism that often characterised radicalism, especially beyond the metropolis. Radicals in cities like Bristol, Sheffield, Derby, Norwich, Manchester or indeed in Scotland, were often invested heavily in local issues and politics which would often occupy much of their efforts and shape their political outlooks.[54] Yet, as this thesis will explore, a common feature of radical groups and organisations in all of these places, was a shared interest in defending, understanding and celebrating jury trial as symbolic of popular sovereignty and English uniqueness.[55] Combined with a general deference to London radicals when discussing and campaigning on the subject, this thesis approaches the ideas of radicals and radicalism in the broadest sense possible.

Structure and Approach

Broadly, the thesis focuses on England, especially London. The key radical groups and individuals studied operated in the metropolis, and the most significant trials and juries considered in this work, notably the Treason Trials of 1794 and the trials of Wooler and Hone in 1817, were held in the capital, at the King's Bench (Old Bailey Sessions House) and City of London Guildhall respectively. These trials were the most significant legal contests between state repression and popular liberty between 1790-1825, the ramifications of conviction or acquittal prompting nationwide interest, discussion and response. The 1794 London state

[53] Epstein, *Radical Expression*, pp.3-5.
[54] See Thompson, *English Working Class*, pp.21-23; K. Navickas, *Protest and the Politics of Space and Place 1789–1848* (Manchester: Manchester University Press, 2016), pp.26-35.
[55] See especially Chapt. 3.

treason trials for instance, had the potential to uproot the national political order and constitution, something contemporaries among the elite, middling sorts and radicals knew. Trials in other parts of Britain, for instance those of the 'Scottish Martyrs' in Edinburgh in early 1794 did not, on a national scale, hold the same significance. For one, the charge in Scotland was sedition, while in London, radical leaders stood trial for their lives. Equally, the impact of these trials differed. In Scotland, the government won convictions against radicals unashamed of their principles and prepared to use their trials as political platforms. The defendants remained undaunted.[56] The opposite was true south of the border. The treason charges faced by LCS secretary Thomas Hardy and his compatriots had an immediate impact, instilling fear and paranoia in the public.[57] This was not merely because of the potential sentence they carried, but also an understanding that the government's aim was to obscure the boundary between legitimate and criminal political dissent, to the point that none could be sure whether their actions were lawful, or could cost them their lives.[58]

Besides the significance of the London trials, the city's radicals were, as chapters two, four, five and seven demonstrate, leaders on the subject of trial by jury, to the point of lecturing other radicals on the issue. The LCS for one had no problem taking ownership of the

[56] Defendant Maurice Margarot for instance, was escorted to his trial by a crowd of supporters carrying a large tree of liberty. Another, Joseph Gerrald, not only refused entreaties to escape while on bail, but used his trial to pronounce his political views, as did Thomas Muir and William Skirving. In contrast, Hardy (the first tried in London) left his defence to his counsel, and refused to engage in the post-acquittal hysteria. Thelwell too, the most outspoken of the London defendants, was persuaded to remain silent. Only the mild-mannered Tooke spoke in his own defence, careful to avoid political commentary, J. Gurney, *The Trial of John Horne Tooke for High Treason &c.* (2 vols; London: M. Gurney, 1795), vol.1, p.426.

[57] Future US President John Quincy Adams, in London in October 1794, noted in his diary that acquaintances he made in England were 'guarded' in their conversations, all 'under an evident restraint and a fear of speaking with freedom'. Massachusetts Historical Society Adams Family Papers (MHSAFP), Adams Family Papers, John Quincy Adams Diaries Vol.21 (September 1794–November 1794), f.39.

[58] In another entry, Adams recorded a conversation with American born lawyer Edmund Jennings, who had expressed his belief that 'this Government have drawn and still draw the reins of power so tight that they will break. There will be an explosion before long'. Adams reflected that, 'the completion of this prediction would not I confess surprize me. The extraordinary agitation of the Government; its apparent anxiety and their present recourse to these measures of terror, strongly betray their consciousness that there is something rotten at the heart', MHSAFP John Quincy Adams Diaries Vol.21 (September 1794–November 1794), ff.50-51.

discourse surrounding juries, nor with telling others what to think. Indeed, radicals in Scotland, as chapter two notes, waited for (and accepted) guidance from London, as did other radicals associations, when it came to trial by jury. Similarly, post-1815, popular radicals in the metropolis maintained this authority on the issue, warning against open or unguarded criticism even of packed special juries in the counties. Besides these reasons, I also acknowledge the practical constraints imposed by the pandemic, preventing access to regional, local or international archives and necessitating a focus on digital and London-based material.

Chapter one introduces the key themes of this thesis. It re-examines the 1792 Libel Bill, which proposed that jurors decide the fact and law in libel cases, and the debates about jurors' rights and duties it produced. It argues that tension between the political elite and the middling sorts, was the central motive behind pre-existing restrictions on jurors' rights and strong opposition to the bill by the government and its supporters. Proposals to bring libel law into line with other crimes exposed the fragility of the power balance in English jurisprudence, between the political elite represented on the bench and the middling sorts. Change alarmed the political elite and its allies, fearful of juries of middling men having carte blanche to abridge the rules governing popular politics, according to their – and not the government's – interests. Radicals exploited this, comprehending that any move to extend jurors' rights would shift the balance of power in English society. Their arguments in favour of further rights for juries are explored in the context of this situation.

Chapter two continues the discussion of jurors' rights, exploring how the success of 1792 was secured, through a radical campaign aimed at acquainting the nation's jurymen with their new rights. Central to this was *The Englishman's Right,* a late seventeenth–century pamphlet on the rights and duties of jurymen by Sir John Hawles, re-published in September 1793 by the London Corresponding Society. The chapter analyses how this group, and popular

radicalism more broadly, came to inherit affinity for the jury trial from Whig radicalism, and its place within their thinking and political culture. It builds on and challenges existing scholarship on *The Englishman's Right*. This work was carefully marketed to the middling sorts, the Society eager to take advantage of their desire for political power, and improve its position against state repression. Examination of the LCS accounts demonstrates that the work was a major success driven by the patronage of the middling sorts.

The next three chapters of the thesis focus on a single series of events: the State Treason Trials of October to December 1794, which should be read as one continuing discussion. More than any other event in the revolutionary decade, they displayed the importance of trial by jury to the English polity, checking the most dangerous overextension of authority by the Pittite state. The response to the trials also demonstrated the strong position that radicals had developed discussing juries and the sense of unity and identity they could produce among the middling sorts. Chapter three examines how radicals addressed potential jurors before the trials, and how they justified the verdicts in the face of loyalist criticism. Building on existing scholarship, it argues that central to radical propaganda were patriotism and providentialism. Providentialism was crucial to rebutting suggestions that the prisoners, despite the legal verdicts, were 'morally guilty'. Radicals narrated the acquittals as a moment of divine providence, and evidence of England's 'elect' status.

Chapters four and five focus on popular reaction to the trials, in which the role of the jury as a unifier for the middling sort was made most apparent. Chapter four examines the immediate public celebrations in the streets, at meetings, parades and other events. Analysing the crowds that gathered in London and elsewhere, it argues that they were comprised at least in a large part by members of the middling sorts, brought together by radical agitation in recognition that their interests and liberties were tied to the fates of the prisoners. The chapter

also re-evaluates the symbolism of these various gatherings in the context of the middling sorts' search for power and influence. The verdicts were a triumph not just for radicalism, but middle England as well. Chapter five continues this line of discussion, examining the trials' long-term legacy. Employing the scholarship of memory, the chapter discusses how the acquittals were remembered and re-interpreted over sixty years. As with many other moments of repression during the 1790s, the trials were adapted to suit the needs of contemporaries, emphasising different although not always real elements of the 1794 story.

Chapters six and seven examine how radicals in the post-war decade approached the topic of trial by jury. The legacy of the 1790s is apparent in the late 1810s, popular radicals inheriting admiration for jury trial from predecessors. The cracks in radicals' support for jury trial were evident post-war as was public criticism of jurors by loyalists. Through two case studies, chapter six explores the place of juries in radical popular culture after 1815. Looking at radical reaction to the acquittals of William Hone in December 1817 and the Peterloo Massacre in 1819, it explores the depiction of the jury in cartoons, parodies, satires and songs. A re-reading of these sources in the context of struggles over trial by jury, its independence and future, reveals that part of their political message related to the security and importance of the jury. In both studies the influences of previous radical popular culture is evident.

Chapter seven examines a radical campaign for legal reform in relation to the libel laws: the effort to end special jury packing during the early 1820s. Existing scholarship has understood the practice to have largely ended in London following efforts by Thomas Wooler and Charles Pearson in 1817. However, in the wake of Peterloo the practice was revived with a vengeance. Exploring Wooler's rejuvenated campaigning, petitioning, and pamphleteering, this chapter continues the study of special jury corruption, arguing that radical efforts resulted

directly in the Juries Act of 1825, which effectively ended the practice of special jury packing nationwide.

Methodology and Source Base

The papers of the LCS at the British Library, collected by nineteenth-century radical Francis Place are central. Principally this is material from after the 1794 treason trials, or that which was not in the possession of the Society's secretary, Thomas Hardy, when he was arrested in May 1794. I have also closely studied the Society's papers in the National Archives, seized by the British government in 1794, 1796 and 1799, during its efforts to suppress the LCS. Unlike the Place papers, these are uncatalogued and remain in the condition they were left in by the authorities in the 1790s. My research on *The Englishman's Right* and the Society's wider views on juries, required detailed examination of this National Archive material, research that underpins chapters two, three and four. An understanding of the LCS's approach to the jury was established through their minutes, memoranda and notes. These documents demonstrate the central position of the jury in their political thought and activity, and the fact that in 1793 the *The Englishman's Right* was the LCS's leaders' major preoccupation. This pamphlet's circulation was at the forefront of their campaigning, appearing frequently in correspondence with other radical groups. LCS accounts relating to the pamphlet's retail (which Mary Thale identified) were located and analysed.[59] These, combined with Hardy's correspondence and the LCS's sales figures allow me to map *The Englishman's Right's* circulation. Lacking the meeting minutes, I have nevertheless been able to piece together the Society's strategy and aims, surmising something of the nature of the no longer extant advertising handbills, and uncover details

[59] M. Thale, *Selections from the Papers of the London Corresponding Society 1792–1799* (Cambridge: Cambridge University Press, 1983), p.76.

about who purchased the pamphlet. Chapter two uses tradesmen's directories and merchants' guides to reconstruct the social geography and spatial distribution of the reprinted text. As a result I am able to argue that the pamphlet circulated most prominently in 'middling' areas of the capital, and in the growing towns and cities of industrial Britain.[60]

These tradesmen's directories offer insights on the nature of those attending radical meetings in relation to jury trial. Cross-referencing the names listed in the press, published radical accounts and private correspondence has allowed me to analyse the social composition of such gatherings; finding the middling sorts often played a central role. The same methodology with lists of subscribers to radical causes published in 1794 and 1817, reveals that support for popular radicals acquitted by London juries came from across the country and, like *The Englishman's Right*'s circulation, in towns with a flourishing merchant and commercial class. This gives names to the overlooked majority who publicly supported jury trial, returning to them the agency that previous studies, on radicals and the state, marginalised.

Of the other archives used for this thesis, the papers of Henry Addington, Viscount Sidmouth in the Devon Archives and Local Studies Centre are most significant. Speaker of the Commons during the 1790s, Minister for the Home Department between 1812–1822, his correspondence with family and political associates enables us to understand elite reaction to radical campaigning on juries in two critical periods. They are a thread through which I am able to trace the development of Addington's attitudes, as influenced by wider events, and see how these compared with other members of the loyalist elite. Additional government sources include the Home Office papers at the National Archives, especially the correspondence of Lord Mayor of London (1793–1794) Paul Le Mesurier, and the 'opinion books' of the

[60] For introduction to ideas of space see C. Parolin, *Radical Spaces: Venues of Popular Politics in London: 1790–c.1845* (Canberra: ANU Press, 2010), pp.1-16; K. Beebe, A. Davis, K. Gleadle, 'Space, Place and Gendered Identities: Feminist History and the Spatial Turn', in, A. Davis et all., *Space, Place and Gendered Identities* (London: Taylor and Francis, 2017), pp.7-23.

Attorney and Solicitor Generals, in which they comment on potential prosecutions. Published works by loyalists and pro-government authors have been used to contrast with radical texts. These loyalists include John Bowles, Joseph Cawthorn and William Firth. I also looked at *Anti-Jacobin* and other loyalist work including pamphlets, parodies and cartoons.

The papers of William Hone at the British Library, and material on Thomas Wooler's efforts in 1819 to influence juries trying forgery cases, at the Bank of England's archives, were not used as extensively simply because of the word limits of doctoral research. The digitised papers of the family of John Adams, held by the Massachusetts Historical Society were consulted for a foreign perspective on events in England in 1794. I had intended to survey foreign commentary (including works with contemporary English translations) on the English jury but space constraints did not allow this.

Published documents form the core of the source material throughout this thesis. These include newspapers, radical and loyalist periodicals, pamphlets, tracts and books. Newspapers have been among the most important, with access to the digitised *British Newspaper Archive* and *British Library Burney Newspapers* allowing me to follow reaction to trials and reporting of jury verdicts across the nation, not just in London. This in-depth work through the daily press supports my study of the 1794 treason trials and responses to the acquittals. This expands a previously London-centric approach to trial commemorations (the notable exception being research on Sheffield), and enables a focused analysis of the crowds and gatherings associated with the acquittals, employing the scholarship of public space developed by Robert Poole and Katrina Navickas.[61]

[61] R. Poole, 'The March to Peterloo: Politics and Festivity in Late Georgia England', *Past & Present* 192 (2006), pp.109-153.

The press is the main source base for chapter five, the first scrutiny of the trials' long-term legacy, placing them in a longer context of nineteenth-century politics. The lists of toasts and speeches often carried in press reports of radical commemorative meetings proved richly informative, enabling me to characterise these gatherings, explore the social makeup of attendees, and how these events evolved. The 'meaning' of the trials was not fixed, and chapter five builds on scholarship by Ian McBride and Paul Pickering to understand how and for what reasons or purposes the memory of 1794 altered.

Of the radical periodicals I have searched through those with the most extensive engagement with the jury question, especially in the wake of significant trials, were Daniel Isaac Eaton's *Politics for the People*, Thomas Wooler's *Black Dwarf,* and Richard Carlile's *Republican*. This work in the radical periodicals shows that radicals reinvigorated their campaign against special-jury packing several years after scholars believe it to have ended in 1817. Read alongside Sidmouth's private papers and trial accounts, my study permits chapter seven to construct an understanding of how the authorities could begin packing juries again after Peterloo in 1819, in the absence of any official documents directly on the new practice. Examination of radical periodicals, press coverage, parliamentary debates and petitions further show how radicals tackled this new leviathan.

Eaton's *Politics for the People* was satirical. Examining the central role juries played in his publication after Hardy's 1794 acquittal, chapter three expands on the more serious legal and political defences of the verdicts explored by Barrell and others. Satires played a crucial role in public defence and celebration of juries. They pervaded the public sphere in the form of religious, legal or political parodies, broadsides, poems, songs, mock plays and were consumed by the literate and illiterate. Chapter six focuses on the radical and loyalist parodies that imitated William Hone's *The Political House that Jack Built*, highlighting the place of jury trial in

these works, building on Marcus Wood's analysis of text and imagery in post-1815 parodies.[62] The chapter reads the loyalist parodies depicting juries against the grain, exposing the anxieties about juror independence underpinning the presentation of juries in these works.

The materiality of radical campaigning on the issue of jury trials is another vital part of this thesis, taking in handbills, posters, medals, tokens and cartoons. These, studied before, are approached from the new angle of their messages in relation to jury trial, in the context of the middling sort's extensive involvement in jury-related discourse. Chapter four examines the multitude of medals and tokens that followed the 1794 treason trials: their sophistication depending on their expense since costly medals displayed the jurors' names and words of praise, while cheap tokens had simpler text and imagery. Chapter six analyses other material culture of juries: the cartoons by George Cruikshank and others after William Hone's acquittal in 1817. I reappraise these in the context of radical campaigns related to the jury, exploring how juries were visually represented and how loyalists contested this through their visual parody.

[62] Wood, *Radical Satire,* chs. 4 and 5.

Chapter One

The 1792 Libel Bill and the Politics of Trial by Jury

I

The 1792 Libel Act was among the most profound moments in the history of English legal reform and radical political campaigning. It was a response not to the laws of libel, broadly accepted as a necessary constraint on a free press and civilised society, but the ongoing problem posed by the so-called Mansfield Doctrine by which these laws were implemented. This legal precedent, named after the former Chief Justice, dictated that in trials for libel the intent, meaning and effect of a given work were considered matters of law reserved for the bench to decide. The jury were only to decide the 'facts' of the case, defined by the doctrine as encompassing only the questions of publication and authorship.[1] The problematic nature of this practice was evident to many contemporaries, its intent being to hand the judiciary maximum control over often politically contentious libel trials. As long as the jurors were convinced of their limited role, the verdict could essentially be regulated from the bench, fed to the jury in the form of judicial opinion.[2]

The doctrine was highly offensive to radicals. With no legislative basis, it represented the worst excesses of executive power, designed to frustrate the rights and powers of English jurymen to decide the whole matter at issue: not just the facts of publication and authorship

[1] Barrell, *The King's Death*, pp.348-353; T. Ross, *Writing in Public: Literature and the Liberty of the Press in Eighteenth-Century Britain* (Baltimore: John Hopkins University Press, 2018), pp.157-158, 179-180, 213-217; Harling, 'Limits of Repression, pp.115-115; on longer-term origins of Libel Act and its consequences, M. Lobban, 'From Seditious Libel to Unlawful Assembly: Peterloo and the Changing Face of Political Crime 1660–1820', *Oxford Journal of Legal Studies* 10:3 (1990), pp.307-352, pp.310-322.

[2] On longstanding disagreements about law-finding powers of juries, Green, *Verdict According to Conscience,* pp.328-329; J. Barrell, 'Imaginary Treason, Imaginary Law', in J. Barrell, *The Birth of Pandora and the Division of Knowledge* (Basingstoke: Macmillan, 1992), pp.119-144, pp.127-128.

but the legal questions too. Over the latter-half of the century the doctrine was challenged in the courts on several occasions. The trials of radical John Horne (later known as John Horne Tooke) in 1777 and William Shipley, the Dean of St Asaph, in 1784 were perhaps the most important tests of the legal process and have received substantial scholarly attention.[3] While the 1792 Act and the campaigning instigated to support its passage have been studied by historians they have not been considered either in the context of future radical campaigning regarding trial by jury, or of the political tensions between the elite and middling sorts that underpinned both the doctrine and responses to it.

This chapter explores the Libel Bill in this context, focusing on the three most prominent areas of debate regarding proposed changes to England's libel laws. It begins by examining the arguments employed to justify reform made by Whig radicals and legal reformers, most importantly the lawyer Thomas Erskine, Whig Charles Stanhope and the bill's sponsor, Charles James Fox. Their legal case was a simple one: that the Mansfield Doctrine made the law of libel a tool of repression governed by political bias. It therefore needed to be brought into line with the rest of the criminal law. The chapter then briefly addresses radical arguments concerning ideas of constitutionalism, introducing and contextualising a theme that would play a critical role in subsequent radical discourse. Radicals located their arguments in constitutionalism, their proposed reforms presented as the natural product of England's constitutional history.

The chapter subsequently studies the prevalent and politically–motivated arguments for and against reform, related to the questions of jurors' competency, integrity and above all their independence. Pushing the case for reform, radicals highlighted jurors' rights and duties in

[3] A. Page, 'The Dean of St. Asaph's Trial: Libel and Politics in the 1780's', *Journal for Eighteenth-Century Studies* 23:1 (2009), pp.21-35; Thompson, *English Working Class*, p.135; Lobban, 'From Seditious Libel to Unlawful Assembly', pp.314-321.

libel trials in an effort to make clear the power inherent in the institution and the increased influence in state trials which reform of the libel law would herald. Their aim was to exploit the social and political antagonisms in 1790s England between the political elite and unrepresented middling sorts, hoping to force a reform of the libel doctrine and improve their chances against political prosecutions.[4] The chapter suggests that the response of elites, spearheaded by lawyer John Bowles, magistrate William Hutton and Lord Chancellor Edward Thurlow makes this clear, seeking to justify their expectation of juror compliancy by attacking their competence and at times acknowledging that expanding the jury's rights was a question of political and social power.[5] I argue that elite criticisms of jurors' intelligence and ability were predicated upon a fear that middling jurors, increasingly aware of their own collective social interests, might seek to exploit any new authority to their own ends.

II

To Fox and Erskine, the libel bill was about abolishing a repugnant remnant of past abuses. Their overall approach was pragmatic, couching the bill as an effort to 'recover' jurors' rights rather than claim anything new, wishing to appear both practical and moderate.[6] This prevented proponents of reform from being perceived as taking powers, instead painting opponents as subverting the juryman's rightful position, threatening liberty and the national character. The bill insinuated that the Mansfield Doctrine was an illegal and arbitrary abrogation of the law. The legal argument in its favour hinged on proving that the distinction between 'fact' and 'law' in libel trials was artificial.[7] Radicals contended that the categorisation

[4] D. Hay, 'The Class Composition of the Palladium of Liberty', in Cockburn, *Twelve Good Men*, pp.305-357.
[5] V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770–1868* (Oxford: Oxford University Press, 1994), p.524.
[6] Lobban, 'From Seditious Libel to Unlawful Assembly', p.311; Green, *Verdict According to Conscience*, p.328.
[7] Lobban, 'From Seditious Libel to Unlawful Assembly', pp.314-315.

of intent and meaning as matters exclusively for the bench undermined the purpose of the jury trial, reducing the jurors to the cognisance of the non-criminal element of the charge: the matters of publication and authorship. These actions only became criminal in a trial for libel after the text in question had been ruled libellous, a decision taken by the bench after the jury had been required to deliver a verdict.[8] The duplicity inherent in the doctrine was clear, in effect removing the jury from the judicial process. This was about restraining juries' political influence and discretion.[9]

The Mansfield Doctrine was an instrument of political, legal and social power, intended to provide the authorities with the ability to control the most common form of political prosecution without interference from those who could moderate oppression. For defenders of the doctrine, the status quo was justified by their understanding of the nature of libels. Criminality was inferred from the fact of publication or authorship rather than from any proof of meaning or intention. The leading proponents of this view, lawyer and loyalist propagandist John Bowles and Lord Chancellor Thurlow, believed that intent was meaningless, 'the crime is complete without any proof [of malicious intent] … whether the defendant believed or not that his conduct was criminal'.[10] Once the court established the authorship of a document, the defendant was *de facto* guilty and incapable of presenting any evidence to establish an innocence of intention. This exposed the politics at the heart of the doctrine. The crime was not publication with malicious intent, but publishing any material the court deemed libellous, irrespective of intent, purpose, meaning, context or truthfulness.[11] As Thurlow

[8] Wood, *Radical Satire*, pp.121-144 discusses the behaviour of judges in criminal and libel trials.
[9] On the 'large measure of discretion accorded to juries' in the eighteenth century, see Durston, *Whores and Highwaymen,* pp.458-460.
[10] J. Bowles, *A Second Letter to the Right Honourable Charles James Fox, upon the matter of libel &c.* (London: Whieldon & Butterworth, 1792), pp.42-45.
[11] J. Bowles, *Considerations on the Respective Rights of Judge and Jury &c.* (London: Whieldon and Butterworth, 1791), p.24.

argued in a response to a previous attempt to overturn the Mansfield Doctrine in 1771, 'the injury done is the only proper measure of the punishment'.[12] The causing of offence was the illegal act, thus finding the facts of writing or publishing by the jury were sufficient to prove guilt.[13]

These arguments were complicated by the differing interpretations placed upon the wording of a libel indictment or information. According to these documents, any work 'tending to a breach of the peace' could be considered libellous.[14] To Bowles and Thurlow, this meant that the text of an indictment which defined a libel as being 'false, seditious and scandalous' was a mere formality and irrelevant to the jury.[15] Their interpretation of the law was that a given work did not necessarily have to break the peace to be considered criminal, meaning its tendencies need not be proven in court. They could instead be inferred from the potential to offend or disturb public order, a judgement that rested with the bench. To Bowles, no actual 'harm', intent, falsity or context ever actually needed to be demonstrated, only the principle that any given work might offend.[16] As David Nash concludes, the law was as much preoccupied with 'imagined harm', especially in political trials, as actual breaking of the peace.[17] The fundamental purpose of the Mansfield Doctrine was to allow the authorities to control and define what constituted harm, and through this set the limits of political dissent.

Radicals sought to expose this by routinely highlighting differences between libel and the wider criminal law. The suggestion that the words 'false, seditious and scandalous' were

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[12] J.C. Campbell, *Lives of the Lord Chancellors &c.* (London: J. Murray, 1851), pp.402-410.
[13] Bowles, *A Second Letter*, pp.40-50; Lobban, 'From Seditious Libel to Unlawful Assembly', p.317, the libel law operated on the premise of 'the greater the truth, the greater the libel'. Truth or honesty of intention were no defence, the question of offence taking precedent, N. Poser, *Lord Mansfield: Justice in the Age of Reason* (Montreal: McGill-Queen's University Press: 2013), pp.244-247.
[14] Harling, 'Limits of Repression', p.110.
[15] For example of libel indictment see appendix II.
[16] Bowles, *Rights of Judge and Jury*, p.23-25.
[17] D. Nash, 'Analysing the History of Religious Crime: Models of "Passive" and "Active" Blasphemy', *Social History* 41:1 (2007), pp.5-29, p.12.

mere form was nonsensical for those advocating the bill, who argued that as everywhere else in the criminal law, it was these words which gave the indictment meaning and insinuated criminality.[18] For a libel indictment to be legitimate, radicals argued these words had to aggravate the offence as in every other criminal indictment, for if they did not the jury was being asked to criminalise the act of publication or writing.[19] Whig lawyers Thomas Leach and Anthony Highmore, along with Stanhope and Erskine, took the examples of other crimes, notably murder and high treason, demonstrating that in other cases intent, meaning and context were central to jury deliberations. Addressing the question of treason which, two years later, became central to radical discussion of juries, Erskine argued that the criminality lay not in the action alleged (for instance purchasing a firearm or gunpowder) but in the 'traitorous intention' of which the act was 'a manifestation'. 'The charge in the indictment', he argued, 'is laid as an averment of a fact', meaning the two had to be considered simultaneously and could not be separated.[20] Others, particularly Stanhope and Leach, forwarded a similar argument in cases of murder, where they argued the jury was directed to find the prisoner guilty or innocent of murder or manslaughter, not the fact of killing which, as with publication in libel cases, was already self-evident.[21] To suggest no evidence could be supplied to prove innocence of intent was dismissed as a ridiculous proposition: the whole basis of English law relied on the opposite being true. Guilt could, argued Leach, be *prima facie* inferred from an action, such as killing or printing, serving as justification for arrest or prosecution. But common sense demanded this

[18] Barrell, 'Imaginary Treason, Imaginary Law', p.128-130.
[19] A. Highmore, *Reflections on the Distinction usually adopted in Criminal Prosecutions &c.* (London: T. Farnworth, 1791), p.22.
[20] Barrell, *The King's Death*, p.357.
[21] C. Stanhope, *The Rights of Juries Defended… and the Objections to Mr Fox's Bill Refuted* (London: P.Elmsly, 1792), p.5; T. Leach, *Considerations on the Matter of Libel* (London: J. Johnson, 1791), p.4-8.

could only ever be presumptive, 'because it may be shown that the will of the actor went not to injury'.[22] To conclude otherwise denied a fundamental tenet of fair judicial process.

Stanhope and Whig writer Francis Maseres, took these legal arguments further, raising the fact that the oath sworn by every juryman charged him to decide, by a general verdict, whether the prisoner was guilty of the crime they had been charged with.[23] Stanhope argued that the purpose of the jury, embodied in a juryman's oath, was to assess the question of criminality, thus providing them with the right to decide the whole matter whether it be murder, treason or libel.[24] Were the jury to deliver a partial or special verdict, this was perfectly legitimate, provided it came from their consciences and not from the dictates of law.[25] No juror could fulfil his oath if the criminal element of the charge was removed from his judgement. Maseres, a baron of the exchequer, concurred that retention of the doctrine might force jurymen to convict those ostensibly innocent, for instance an illiterate servant conveying a note or document they could not read. Since under English law 'the delivery of a single paper from one person to another … is an act of publication' and according to the Mansfield Doctrine this act proved guilt, a jury in such circumstances could be compelled to break their oaths.[26] Illiteracy, ignorance of the paper's content and lack of criminal intention were all in theory mitigating evidence, yet under the doctrine not permitted to be argued before a jury.[27] The honour and integrity of jurors were directly threatened by the existing system, the Mansfield Doctrine damaging to their rights and by denying oversight of criminality, compelled perjury,

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[22] Leach, *On the Matter of Libel*, pp.5-6.
[23] Stanhope, *Rights of Juries Defended,* p.8.
[24] For examples of jurors oaths from late eighteenth century see appendix III.
[25] Despite this argument, partial verdicts were undesirable, especially after the Mansfield Doctrine was abolished. In the months afterwards, judges began to interpret any partial verdict as the jury handing back the matters of intent and meaning to the bench, see chapter two.
[26] F. Maseres, *An Enquiry into the Extent of the Power of Juries &c.* (London, J. Debrett, 1792, orig.1785), pp.14-17.
[27] Maseres gave the example of a printer unaware his employees had printed and distributed a work. The mere appearance of his name on the work was considered sufficient to prove culpability, Maseres, *Extent of the Power of Juries*, pp.14-17.

since the verdicts it demanded went against juror's oaths. In the words of Tooke, speaking in 1790 of his own struggles against the doctrine, 'where crime is the question, the jury must judge of the guilt charged and of its extent'.[28] Anything less was unjust, perjurious and opened the door to extreme political interference through the bench in the execution of the laws of libel.

These arguments for reform were reinforced with a variety of precedents, intended to demonstrate that the Mansfield Doctrine had never been a universal practice but was rather an act of political vindictiveness by authorities. Erskine pointed out that, in recent decades, Attorney Generals Charles Pratt (the case of John Shebbeare, 1758) and more recently William De Grey (the case of Henry Woodfall, 1770) had, while prosecuting political libels for the Crown, placed the question of criminality with the jury.[29] And while Pratt – by 1792 Earl Camden and a vociferous supporter of the Libel Bill – tended to support jurors deciding the law, De Grey both as Attorney and later Chief Justice of Common Pleas had not.[30]

The inconsistency of the doctrine's namesake and frequent advocate, Chief Justice Mansfield, was also seen by Erskine and Stanhope as significant; they stressed the difference between Mansfield's refusal to permit the jury in Shipley's 1784 trial to consider the criminal element, with his instructions in the 1777 trial of Horne Tooke, when jurors were asked to decide, 'the Sense of the Paper'.[31] As Stanhope remarked, Mansfield left the jurors to decide upon the criminality of the alleged libel even refusing to furnish his opinion, an extremely

[28] *Public Characters, or, Contemporary Biography &c.* (London: Bonsal and Niles, 1803), p.312.
[29] De Grey prosecuted Woodfall for publishing the letters of Junius, a complex case and the subject of much disagreement. Erskine argued that in this instance it was in the Crown's interests to explain the legal elements to the jury, especially since the author was unknown, T. Erskine, *The Rights of Juries Vindicated &c.* (London: SCI, 1785), pp.54-55.
[30] Erskine, *Rights of Juries Vindicated*, pp.53-54.
[31] Stanhope, *Rights of Juries Defended*, pp.51-52.

unusual omission given judicial proclivity even after the Libel Act's passage, to provide jurors with often highly prejudicial and inflammatory opinions.[32]

The difference between the cases, likely responsible for this varying approach to evidence, was the subject matter and the context of publication. Both were deeply political. Tooke had attacked British troops in America as barbarous tools of oppression, insults seen by many as genuinely libellous in the context of war in the American Colonies. Conversely, Shipley's crime was to support political reform in print: a far more contentious issue.[33] In the former case, the authorities likely felt they did not need to restrict the purview of the jury to the facts of publication. Their confidence came from the fact that Tooke's views were, at least domestically, unpopular (something he was well aware of) and potentially, as was alleged by some contemporaries including Tooke, because the jury was packed.[34] In the Dean's case, there was a greater risk that an impartial jury might either not agree on a general verdict for the Crown or might acquit altogether if permitted to hear arguments about the justness of parliamentary reform. This was the probable reason for the distinction between the cases, adding weight to reformers' arguments that the Mansfield Doctrine was a political instrument.

Stanhope reinforced this conclusion with further examples, highlighting a difference between the employment of the doctrine in cases dealing with contentious domestic politics and other libels. Most striking was the 1762 case of Francis Hart, who having been convicted of a personal libel appealed to Mansfield's King's Bench for a new trial, on the grounds that his

[32] Stanhope, *Rights of Juries Defended*, p.53, Lobban notes that 'paradoxically, because the Act empowered the judge to give his opinion in cases depending on context', judges gave their opinions more freely, Lobban, 'From Seditious Libel to Unlawful Assembly', pp.317, 321.
[33] E.C. Black, *The Association: British Extra Parliamentary Political Organisation 1769–1793 (New York: Harvard University Press, 1963)*, pp.197-200; Cone, *The English Jacobins,* pp.108-109; Barrell, *The King's Death*, pp.348-353.
[34] J. Bentham, *The Elements of the Art of Packing as Applied to Special Juries* (London: E. Wilson, 1821), pp.84-87; J.C. Oldham, 'The Origins of the Special Jury', *Chicago Law Review* 50:1 (1983), pp.137-221, p.158; C. Bonwick, *English Radicals and the American Revolution* (Chapel Hill: University of North Carolina Press, 2017), pp.87-88.

jury had been denied the right to decide law.[35] Mansfield set aside the verdict, concluding that the trial judge had acted improperly by refusing to allow the defendant's counsel to argue points of law before the jury.[36] For the proponents of reform, this was evidence of 'confusion' among judges making apparent the discretionary nature of the Mansfield Doctrine.[37] It was not a universal rule as Bowles or its other defenders argued. Rather, it was a flexible tool of oppression exercised from the bench to control political trials. Individual judges did not apply it consistently, merely when it suited the Crown and, as in Hart's case, even disagreed on its use. From a legal standpoint, the case for reform was convincing.

III

Alongside these arguments, radicals used a rhetoric of constitutionalism to buttress the legal position by situating jurors' rights in a narrative of the constitutional past. For radicals throughout the period of my study, constitutionalism generally formed the core of their political outlook. The jury trial, and other elements of the constitution were lauded as bulwarks of liberty. As James Vernon argues, a constitutionalist 'language of legitimation' was employed by those espousing radical principles and those defending the existing social and political order: a narrative construed from erudite but selective precedents, enabling constitutionalism to underpin any given cause.[38] James Epstein has suggested that writers

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[35] For detail of this case (a personal libel against a Quaker) *The Laws Respecting Women, as they Regard their Natural Rights, or their Connections and Conduct* (London: J. Johnson, 1777), pp.18-21

[36] Stanhope, *Rights of Juries Defended*, pp.56-57.

[37] Stanhope, *Rights of Juries Defended*, p.57, and pro-reform articles in several London newspapers, *Morning Chronicle* (London), 17 May 1792 or *Star* (London), 18 May 1792.

[38] See introduction to Vernon, *Re-Reading the Constitution*, p.9, this 'flexible' nature is what gave constitutionalism its appeal, see A. Taylor, 'Republicanism Reappraised: Anti-Monarchism and the English Radical Tradition', in Vernon, *Re-Reading the Constitution*, pp.154-178, pp.175-178; M. Philp, "The Fragmented Ideology of Reform", in M. Philp, ed., *The French Revolution and British Popular Politics* (Cambridge, Cambridge University Press, 1991), pp.50-77; G. Claeys, 'The French Revolution Debate and British Political Thought', *History of Political Thought* 11:1, (1990), pp.59-80; I. Hampsher-Monk, 'On not inventing the English Revolution: The radical failure of the 1790's as linguistic non-performance', in G. Burgess, M. Festenstein, eds, *English Radicalism 1550–1850* (London: Cambridge University Press, 2007), pp.135-156, p.136.

'sought the authority of the British Constitution, or at least their own reconstruction of that elusive body'.[39]

For radicals discussing the trial by jury, reference to the constitution was persuasive and vital. Juries posed a unique challenge to discursive norms as a 'constitutional right' enshrined in the texts and heritage of the constitution. Their legitimacy, rights, duties and heritage could not be articulated through any other medium, but the cornerstones of the constitution, specifically Magna Carta, the Petition of Right (1628) and Bill of Rights (1689) were held to encompass juries as fundamental elements. The legitimacy of trial by jury was interwoven with the ancient constitution. This made jury trial a prescriptive right, imbedded within the natural democracy of the English constitution, and legitimately expressed through this single idiom of language.[40] In short, radicals recognised the inescapable links between juries and the constitution, and the necessity of referring continually to it in defence of jurors' rights.[41]

In justifying the libel bill, constitutionalism provided radicals with legitimacy, and an associated identity as inheritors of a tradition of resistance, of the torch once carried by John Hampden, Algernon Sydney and John Lilburne. The libel doctrine represented the remnant of past tyranny.[42] Radicals, as will be further explored across chapters three, four and five, saw themselves as part of a story of constitutional struggle, their defence of jurors' rights forming the latest chapter in the English peoples' defence of their liberty. The constitution was not a

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[39] Esptein, *Radical Expression,* pp.4-5. British Marxists, particularly Thompson, suggested Paineite ideas replaced constitutionalism in radical politics. Recent approaches are more nuanced, seeing constitutionalism as one among many 'idioms' used to articulate ideas, Hampsher-Monk, 'Linguistic non-performance', pp.136-137, 144-145.
[40] This was compounded by Thomas Paine's rejection of the English jury system. The constitutional nature of jury trial and Paine's dismissal of its legitimacy defined the radical approach to it throughout the period of my study. See T. Paine, *Rights of Man, Common Sense and other Political Writings* (London: Oxford Classics, 1995, orig.1791-1792), pp.41-43, 70-74. On Paine's rejected the English constitution and the jury trial, see Epstein, '"Our Real Constitution": Trial Defence and Radical Memory, p.23; Thompson, *English Working Class,* pp.99-101, 111-112; R. Lamb, 'The Liberal Cosmopolitanism of Thomas Paine', *Journal of Politics* 76:3 (2014), pp.636-648; Epstein, *Radical Expression,* p.6.
[41] L. Colley, *Britons: Forging the Nation 1707–1837* (London: Yale University Press, 1992), pp.315-317.
[42] S. Blackmore, 'Burke and the Fall of Language: The French Revolution as Linguistic Event', *Eighteenth-Century Studies* 17:3 (1984), pp.284-307, pp.287-293.

passive concept or language but an active and changeable idea, giving radical calls to abolish the Mansfield Doctrine a much deeper purpose, by tying the present struggle to the past: the reclamation of lost and threatened liberties.[43] Radicals relied on the fact that the constitution was a 'shared cultural inheritance' understood, albeit in slightly differing ways and with differing points of emphasis, by most English people, especially those engaged in popular politics.[44] An important claim in the defence of juries since the seventeenth century, was that there were liberties and rights derived from the English constitution belonging to all Englishmen. The concomitant duty of loyal Englishmen was to defend these liberties and rights.

For radicals, trial by jury was both a right and a mechanism by which other rights and liberties were protected. Erskine questioned repeatedly whether jurors were, through the libel doctrine, to be denied their constitutional rights to the unfettered consideration of evidence and to give general verdicts. He argued the Mansfield Doctrine had no basis in any written law or constitutional document, being a construct of the courts intended to abridge not only the law of parliament but the constitution of the people, and with it their fundamental rights to justice and a fair trial.[45] The various sacred texts of the constitution were also frequently examined as a primary method of legitimation, especially Magna Carta, in which radicals argued jury trial was first enshrined. The provision in Magna Carta, that any accused must be adjudged by their peers, was interpreted, for instance by radical lawyer Manasseh Dawes and Stanhope, to mean that the whole matter must fall within the juries' purview.[46] According to Stanhope, juries had originated among the first Britons, 'confirmed by *Magna Carta,* and …

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[43] For this narrative of the constitution, Erskine, *Rights of Juries Vindicated*, pp.3-8; Esptein, *Radical Expression*, p.12.
[44] F. Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (London: Routledge, 2002, orig.1981), pp.81-85.
[45] Erskine, *Rights of Juries Vindicated*, pp.4-7, 45.
[46] M. Dawes, *The Deformity of the Doctrine of Libels &c.* (London: J. Stockdale, 1785), p.17; M. Dawes, *England's Alarm! On the Prevailing Doctrine of Libels &c.* (London: J. Stockdale, 1785), pp.18-25.

ever so esteemed and prized in this Island, that no Conquest, no Change of Government ever prevailed to alter it'.[47] And while the rest of the constitution was corrupted and pervaded by tyranny, the trial by jury with its roots in Saxon law was a beacon that the Mansfield Doctrine sought to extinguish.[48] For Stanhope, reform was required not just as a matter of law but because the doctrine damaged the only constitutional bastion as yet uncorrupted by oppression. Constitutionalism provided a call to arms to protect this last pillar of constitutional excellence and freedom:

> If therefore, we are still a *free* Nation, if this Kingdom is the richest, and the most prosperous country that at this Moment exists in Europe; we owe it to that strong Hold, and *Fortress of the People,* to that impregnable GIBRALTAR of the English Constitution, the TRIAL BY JURY.[49]

Much of this argument was sophistry and rhetoric. Magna Carta neither enshrined (nor named) the actual practice of jury trial, nor applied the right to a fair hearing to anyone beyond those who signed the document.[50] Equally, the origin of juries lay after the Norman Conquest not with the Anglo-Saxons.[51] The use of constitutionalism in defence of libel law reform testifies to the re-imagining of constitutional history and purpose as a shield for the people. This shared inheritance was useful for radicals, allowing them to appropriate a 'legitimate' and national narrative, embodying many of the messages that they wished to convey. What mattered was not the reality of history but its perception; what radicals sought was the ability to

[47] Stanhope, *Rights of Juries Defended,* p.161.
[48] Stanhope, *Rights of Juries Defended,* pp.161-162.
[49] Stanhope, *Rights of Juries Defended,* p.163.
[50] A narrative fiction constructed to attach meaning to contemporary events, see C. Ingemark, 'Retelling the Past: Distance, Voice and Time in the Narrative Shaping of History in Finland-Swedish Legends', *Folklore* 127:3 (2016), pp.305-324, pp.309-310.
[51] Groot, 'Jury of Presentment', pp.3-6; Groot, 'Thirteenth-Century Criminal Jury', pp.3-9.

manipulate understanding of the constitutional past regarding trial by jury.[52] This set an important precedent and tone for all future campaigning on the jury trial and wider related discussions. All would be framed in the constitutional idiom, allowing radicals to develop a dominant voice on the subject.

IV

The most significant argument for and against libel law reform, and the most momentous for future discussion of jury trial, surrounded the question of jurors' competence. Criticism of juries by legal reformers and political figures was common during the eighteenth century. Legal writers bemoaned rising crime which they attributed to a system which forced jurors to commit pious perjury in order to temper the harshness of the criminal law.[53] The bloody penal code made grand larceny (theft of goods valued above 12*d*) uttering (passing forged documents) and various bankruptcy offences capital crimes.[54] The potential for death sentences in such cases left sympathetic jurors looking for means to mitigate punishment, frequently undervaluing stolen goods to avoid capital sentences (a particular grievance for Henry Fielding), petitioning for mercy or occasionally, nullifying the law by acquitting evidently guilty defendants.[55] Legal reformers opposed such actions, but understood that these were the acts of honest, merciful men dismayed by the violence of the law. They did not directly question jurors' rights or

[52] Stanhope, *Rights of Juries Defended,* pp.155-157; Esptein, *Radical Expression*, pp.27-28.
[53] W. Eden, *Principles of Penal Law* (London: B. White, 1771), p.268; H. Fielding, *An Enquiry into the Causes of the Late Increase of Robberies* (London: A. Millar, 1751), pp.111-112, 158-159; one of the bill's advocates previously criticised jurors exercising undue clemency: M. Dawes, *An Essay on Crimes and Punishments &c.* (London: C. Dilly, 1782), especially pp.61-63, 94-97; Durston, *Crime and Justice in Eighteenth-Century East Anglia*, pp.264-272, 432-35, 463; G. Durston, *Whores and Highwaymen*, pp.531-533.
[54] F. McLynn, *Crime and Punishment in Eighteenth Century England* (London: Taylor and Francis, 2013), pp.XIII-XV, 90-92, on differing jury attitudes to women accused of capital offences see, pp.125-129; Gatrell, *Hanging Tree*, pp.332, 400, 406-407.
[55] McLynn, *Crime and Punishment in Eighteenth Century England,* pp.XIII-XV, 259-261.

suggest they were deliberately partial. Rather, they opposed the legal system which encouraged this 'pious perjury'.

Responding to proposals to remove the Mansfield Doctrine however, its defenders including Bowles, Thurlow and several others struck directly at jurors' integrity. In their estimation, jurors were not competent to decide what constituted a libel. As Bowles argued, jurors could not be expected to judge the nation's laws, 'that which it is the labour of the lives of the most enlightened men to attain'. Only judges could be expected to decide meaning, intent or factuality. The fundamental argument was as Highmore summarised, that 'in points of law, Jurymen are incompetent to decide'.[56] Most critics were blunt. As one anonymous correspondent to the Tory *St James's Chronicle* styled 'PUBLICOLA' declared, English jurors were simply 'blockheads', sarcastically suggesting that if the bill were passed, 'we may expect to hear of Stupidity cured by statute'.[57] The magistrate William Hutton was equally forceful, opining that jury duty simple fell upon a 'lower class' of people incapable of weighing legal questions effectively, asking 'what can be expected from men who move in a circumscribed latitude, and were never taught to think beyond it … urge them into other pursuits and they instantly lose their use'.[58]

Similar objections came from Lord Chancellor Thurlow. Addressing the House of Lords, he spoke for the government and authorities more broadly. Of all the critics of reform he was perhaps the frankest, unconcerned with whether intent, meaning or truth were matters of fact or law. The Lord Chancellor believed that libel cases were too complex for the simple-

[56] Bowles is quoted in Highmore, *Reflections on the Distinction*, p.19.
[57] *St James's Chronicle* (London), 2–4 June 1791.
[58] W. Hutton, *A Dissertation on Juries: With a Description of the Hundred Court* (Birmingham: R. Baldwin, 1789), p.24; there were also others who, more generally, worried about the emotional influence counsel could exert over unfettered juries, see D. Lemmings, 'Introduction: Criminal Courts, Lawyers and the Public Sphere', in, D. Lemmings, ed., *Crime, Courtrooms and the Public Sphere in Britain 1700-1850* (London: Taylor & Francis, 2016), pp.1-22, pp.4-7, 13; also in same edited boon, S. Devereaux, 'Arts of Public Performance: Barristers and Actors in Georgian England', pp.93-118, p.98.

minded and 'uneducated' English juror to understand.[59] 'The mind of an ordinary man' he told the Lords, 'is [too easily] distracted and confounded … rendered incapable of coming to any regular conclusion'. Thurlow agreed with Bowles that only a judge was 'equal to such a difficult task'.[60] Thurlow's defence of the Mansfield Doctrine took attacks on jurors a step further, introducing a decidedly political element. As a representative of the government, he questioned the independence of jurors in libel trials, arguing that they were not only incompetent but, unless restricted in their purview, likely to be biased against the prosecution. 'If we even suppose the jury sufficiently enlightened' argued the Lord Chancellor, 'there remains an insuperable objection. In state libels … [jurors] passions are frequently so much engaged, that they may be justly considered as parties concerned against the Crown. No justice can therefore be expected from them'.[61]

This was evidence of a fear among representatives of the government and elites about the consequences of empowering jurors in the judgement of political libels. As the introduction to this thesis suggested, at the heart of questions about jurors' rights and powers in the late eighteenth and early nineteenth centuries was a question of power and its division between the political elite and the middling sorts.[62] The result was an animus directed at trial by jury in political trials, as in 1792, and even more vigorously, in the post-war years.[63] Thurlow's claim that jurors could be considered 'parties concerned against the Crown' in

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[59] Barrell, *The King's Death*, p.353.
[60] Campbell, *Lord Chancellors,* p.17, also quoted in *Diary or Woodfall's Register* (London), 14 May 1792.
[61] Campbell, *Lord Chancellors,* pp.16-17.
[62] Jury service was made uncomfortable to maintain control over juries. Juries were likely directed by one or two men, commonly the foreman, the rest passively concurring without leaving the jury-box in most cases: J.M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford: Oxford University Press, 1986), p.397. The system was designed to mute the jury, making deliberation unpalatable. With defence counsel uncommon and evidence brief, the opinions of experienced jurors dominated. Stuffy courts lacked facilities and the nature of assizes meant lengthy deliberations could keep jurors away from families and businesses. The criminal law was designed to exasperate the difficulties of independent men. As John Langbein puts it, truth was a by-product not an objective, *The Origins of the Adversarial Criminal Trial* (Oxford: Oxford University Press, 2003), p.331-332; King, *Crime, Justice and Discretion,* pp.231-238; King, '"Illiterate Plebians, Easily Mislead", p.298.
[63] See chapters six and seven.

political trials crystallises this reality, as arguably did Bowles' dismissal of them as belonging to a 'lower class'. The government's primary concern was that jurors, free to act independently, threatened the elite's ability to repress opposition and maintenance of 'their justice'.[64] Studies of game offences during this period make this animosity evident. As John King demonstrates, poaching offences were rarely indicted at the petty sessions in the eighteenth century for fear middling jurors, who opposed the elite's monopoly on land, unfair taxation and regulations, would acquit.[65] Writers in the press attacked juries in such cases, suggesting they delivered verdicts regardless of the law. 'There is no answering for a common jury' wrote one anonymous complainant, 'as they have in general a Strong Byass upon their minds in favour of Poachers, being professed enemies to all Penal Laws that relate to Game'.[66] The elite viewed juries in these cases as obstacles to expedient justice, compensating for their lack of influence over national politics with the power inherent in the jury to make political statements.[67]

The attacks on jurors' competence during the libel bill debates were an instance of this clash of mentalities and interests, an issue not simply of rights, but political influence. Elites distrusted the intentions of middling jurymen, concerned above all that they might utilise their powers to assert their own political and social interests, a fear expressed repeatedly and explicitly throughout the period of this study.[68] In political trials, the stakes were at their

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[64] Gatrell, *Hanging Tree*, pp.523-529.
[65] King, *Crime, Justice and Discretion,* pp.248-253; D.Hay, 'Property, Authority and the Criminal Law', in Hay et al, *Albion's Fatal Tree,* pp.17-64; Green, *Verdict According to Conscience,* pp.267-301; King and Jonathan Atherton make a similar point in relation to rioters, 'juries were capable of exercising their own very independent judgement. Even in cases when judges tried to direct the jury, this would not guarantee the outcome they [Crown] desired … if members of the jury were sympathetic to the rioters cause then this could lead to acquittals despite the presence of very strong evidence against the accused', J. Atherton, '"Nothing but a Birmingham Jury can save them": Prosecuting Rioters in Late Eighteenth-Century Britain', *Midland History,* 39:1, (2014), pp.90-109, p.106-108.
[66] Hay, 'Poaching and the Game Laws', p.211.
[67] For further discussion P.R. Munsche, *Gentlemen and Poachers: The English Game Laws 1671-1831* (Cambridge: Cambridge University Press, 1981); J.R. Pole, "Representation of Moral Agency in Early Anglo-American Jury", in Cairns, Macleod, eds, *The Dearest Birth-Right of the People of England*, pp.101-130, esp. pp.102-104.
[68] Gatrell, *Hanging Tree,* pp.522-524, on education and nature of the middling sorts, P. Earle, *The Making of the English Middle Class* (New York: University of California Press, 1989), pp.205-239; Prothero, *Artisans and Politics*, pp.1-2, 25-27.

highest. At issue were press freedom, the boundaries of legitimate criticism, political thought and as in the 1794 treason trials, political opposition to Tory politics. Suggestions that jurors be granted extended powers when deciding such matters naturally elicited a strong response from supporters of the administration. In the late eighteenth-century, justice, far from being an 'alliance of the propertied', was a contingent if uneasy accommodation between the elite and middling sort. Stability of the economy, society and the polity were in the mutual interest of the elite and middling sorts, and so developed a 'harmonious' judge-jury relationship to represent this in the courts.[69] Property crimes, which dominated the English statute books, were important to both groups, as were personal or tax offences. Middling jurors performed the function of legitimising the law, representing as declared to every prisoner before their trial, the country.[70] However, libel was a political crime, involving not only social but political and moral boundaries.[71] The dynamics in such cases were thus more complex. The potential power available to the middling jurors was immense, should they elect to use it to pursue political objectives. The libel bill promised to solidify and expand the ability of juries to check repression and challenge elite authority in favour of their own. Radicals were keenly aware of this, as were Thurlow and Bowles.

For those advocating reform, defence of jurors' integrity was a strategic necessity. Foremost, it was necessary to justify reform and refute accusations that the libel law was in some way more complex or confusing than the rest of the criminal law. But radical responses to

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[69] J. Langbein, 'The English Criminal Trial Jury on the Eve of the French Revolution', in A. Schioppa, ed., *The Trial Jury in England, France Germany 1700–1900* (Berlin: Duncker & Humblot, 1987), pp.13-39, pp.34-38, for commentary on juror behaviour and interaction, with particular focus on Ireland, see N. Howlin, 'Passive Observers or Active Participants? Jurors in Civil and Criminal Trials', *The Journal of Legal History,* 35:2, (2014), pp.143-171.

[70] A medieval jury trial was 'trial *per* pais' or 'trial by the country'. This endured, jurors were told defendants 'had, for trial, put himself upon God and the country, which country you are': W. Cobbett, *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanours from the Earliest Period to the Present Time* (34 vols; London: T.C. Hansard, 1813-1824), vol.24, p.5; J. Oldham, 'Jury Research in the English Reports in CD-ROM', in Cairns, Mecleod, eds, *The Dearest Birth-Right of the People of England*, pp.131-154, p.145

[71] Gatrell, *Hanging Tree,* p.524.

these attacks served a more significant purpose, allowing them to position themselves as the natural champions of trial by jury.[72] This is not to say opponents of the old order had not always upheld the rights of jurors, but that their efforts in the late eighteenth-century were focused differently, seeking to gain an advantage against the state. Above all, radicals sought to nurture a level of affinity with the middling sorts in a new and rapidly evolving political and social environment, to exploit their desire for political influence.[73] Nothing provoked radical writers to eloquence more than accusations of incompetence among jurymen. Elites criticised jurors concerned they would act in their own interests, and these often unguarded criticisms created an opportunity for radicals to present themselves as defenders of the middling gentleman's honour, dignity and intelligence. Their arguments rested on a libel indictment's wording, and the definition of what constituted a libel contained within it. A libel had to be 'false, seditious and scandalous', causing offence to or damaging the reputation of the subject. Crown lawyers often went to great lengths to persuade juries that libels, especially those which brought the government into contempt or risked inducing 'hatred' among the lowest orders were criminal. Radicals pointed out the hypocrisy this entailed: if a work could be understood by the illiterate plebeian classes, why not by an educated juror. 'It is ridiculous,' argued Highmore, to suggest 'that a writing which is understood by the meanest capacity, cannot be understood by a Jury'.[74] This was framed as an insult to middling jurymen, a farcical suggestion purely the product of social and political animosity. In Highmore's words, libels were of necessity written 'in language in which men are accustomed to converse'.[75] Thus, it was impossible to assert that jurors could read or listen to slander, yet only understand its meaning

[72] Blackmore, 'Burke and the Fall of Language', p.289-292.
[73] Seed, 'From 'Middling Sort' to Middle-Class', pp.125-135.
[74] Highmore, *Reflections on the Distinction*, pp.18-20, pointed out that Common Law /Constitution operated on the principle that every man understood the law. It was incongruous that jurymen were deemed not to.
[75] Highmore, *Reflections on the Distinction*, p.15.

in their capacity as private citizens but not as jurymen; that once this transition was made, the text was in some way complicated, meaning that only a judge could make sense of its meaning or intentions.[76]

Radicals demolished the legal fiction at the heart of the Mansfield Doctrine. As Maseres suggested, reasoned inferences were 'a talent common to all men', and saying that jurors – but significantly not the lower orders – lacked such talents was both insulting and absurd.[77] Indeed, they argued that if anyone was incapable of deliberating upon the laws of libel it was in fact the nation's judiciary. The existing system imbedded the social anxieties of the elite, allowing the judiciary to declare works to have broken the peace without hearing evidence. The defendant was essentially silenced. This prevented literate and politically engaged defendants, prosecuted for their dissenting 'seditious' opinions, from airing their views in court, influencing those present and appealing to their jury. The old order had experienced the danger inherent in allowing defendants to lecture the court. John Lilburn had done so in 1649 and Nicholas Amhurst likewise in 1729, both acquitted by juries of their peers.[78] For the elite, maintaining the power of judges to decide such matters was vital for the protection of their own interests.[79] But Maseres and other radicals questioned whether judges as 'men of retired lives, given up to the study of law' could genuinely understand a work's reception, perhaps the most critical element in proving a work libellous.[80] They argued that jurymen were naturally better placed to draw such conclusions, being more closely engaged in wider society, popular

[76] Barrell, 'Imaginary Treason, Imaginary Law', pp.127-128; T. Hunt, 'Servants, Masters and Seditious Libel in Eighteenth-Century England', *Book History,* 20:1, (2017), pp.83-110, pp.101-102.
[77] Maseres, *Extent of the Power of Juries,* p.27.
[78] Wood, *Radical Satire*, pp.121-127, Amhurst published *The Craftsman* to criticise Walpole's government, see H.T. Dickinson, *Bolingbroke* (London: Constable, 1970), pp.216-218.
[79] See the dissenting minister, J. Towers, *Observations on the Rights and Duties of Juries* (London: Society for Constitutional Information, 1785), pp.VI-V, 91-93, 143, on the tyranny of preserving the existing system. Towers also published *Enquiry into the Question Whether Juries are… judges of law, as Well as Fact &c.* (London: Wilkie, 1784, orig.1764).
[80] Maseres, *Extent of the Power of Juries*, pp.27-28.

politics and conversation.[81] It was of course in the interests of radicals to expand the powers of jurors, yet their argument in defence of jurors' faculties was ostensibly correct.

V

These were political arguments. Advocates of the libel bill assumed that its passage would impede the state's primary tool of repression by granting juries increased autonomy and with it greater power and influence over the boundaries of political discussion. The next few decades demonstrated the truth of this assumption, the proposals becoming law in June 1792. Libellers continued to face punishment, indeed conviction rates increased following the Act.[82] But in many of the most politically charged cases brought over the revolutionary period it shifted the balance, if only slightly, in favour of radical defendants. The defences of radicals such as Daniel Isaac Eaton in February 1794, William Hone or Thomas Wooler in 1817 (see chapter six) were only possible under its auspices, allowing each to argue points of law before a jury without interference from the bench.[83] Provided the jury was independent it was now possible to deploy political arguments in court to justify or defend radical ideas with relative freedom.[84] Radicalism was invariably strengthened through this reasoned, logical and pragmatic discourse.

The reason for this was the impact the Libel Act had on the middling sorts and their role as jurors. 1792 did not, as I have noted, introduce the prospect of jurymen rejecting instruction from the bench. But the Act provided a legitimate avenue for the political views and frustrations of the middling sorts. This was a powerful shift resulting, as later chapters

[81] Stanhope, *Rights of Juries Defended,* pp.72-76.
[82] Lobban, 'From Seditious Libel to Unlawful Assembly', p.321, this had little to do with the Libel Act. The increase in such prosecutions during the revolutionary period and post-war unrest coupled with, as chapter seven explores, corruption of special juries, are more likely to account for this apparent paradox.
[83] Although in Hone's trials, Chief Justice Lord Ellenborough did his utmost to silence the defendant. Hone however cited the Libel Act, addressing legal arguments to the jury, see Wood, *Radical Satire*, pp.110-113, 127-129.
[84] Hunt, 'Servants, Masters and Seditious Libel', p.103.

show, in the stifling of key legal methods of state repression, notably the treason laws and ultimately the law of libel itself. It meant that by the end of this thesis' period of study in 1825, Crown lawyers were often reluctant to bring alleged libellers to court – especially in London – unless they could also pack or otherwise corrupt the jury.[85] It was overzealous use of the former to compensate for the Act which would ultimately render libel a dead letter.[86] For the state, the defeat of the Mansfield Doctrine was extremely damaging. Its passage was permitted with little opposition in parliament. The case against reform was both legally weak and almost entirely based on prejudice. Yet this put the English authorities on the back foot when it came to both political trials and the subject of juries more broadly, culminating two years later in the acquittals of several leading radicals following attempts to persecute them for high treason. As I will argue in chapters three and four, emboldened middling jurors simply would not permit the elite to criminalise political dissent. The state would not extricate itself from this position until well after reform in 1832 and the gradual enfranchisement of the middle class.

The removal of the Mansfield Doctrine and the public discussion on jurors rights it prompted, also provided the middling sorts with a real impetus to engage with the jury as a form of political power and influence. Critically, as the next three chapters will demonstrate, they did so in a concerted, conscious and at times organised way. As early as autumn of 1793, jury trial appeared as focal a point for middling identity, around which largely middling men demonstrably coalesced, whether by engaging with radical campaigns or publications on the subject (see chapter two) or, as followed the treason trials in 1794, gathering to celebrate their jurors: their political representatives (see chapter four). In doing so, they clearly began to view radicals as the proper advocates of the jury and its rights in opposition to the state, and, at

[85] Harling, 'Limits of Repression', p.111; Lobban, 'From Seditious Libel to Unlawful Assembly', pp.324, 327-332.
[86] See chapter seven.

times, loyalism. Their authority on this subject became so complete that opposition to the jury trial, criticism of its actions, or any suggestion of restricting its rights, became the greatest of political taboos.[87] The success of radicals in defining the discourse on juries and effectively rebutting criticism of them, made it almost impossible for anyone to step beyond these boundaries. For radicals this presented a unique opportunity: over no other issue would they acquire such a tight grasp during the revolutionary period. And as chapter two will explore, it was not merely an authority limited to the Whig radicals discussed here. It was England's plebeian radicals who truly took forward this position and turned the discussion of juries into a bastion of radical politics.

[87] Harling, 'Limits of Repression', p.131.

Chapter Two

The London Corresponding Society and *The Englishman's Right*

1793

I

On 3 June 1793 publisher, deist and Paineite Daniel Isaac Eaton was indicted for publishing Thomas Paine's *Rights of Man*, the first high-profile trial since Fox's Libel Act. His arraignment represented the crest of a concerted effort by government to stamp out a work deemed the most seditious publication then circulating.[1] Felix Vaughan, Eaton's lawyer, argued that to convict a bookseller for publishing Paine's work without the passages previously deemed seditious (Eaton having omitted these) defied the spirit of English justice, and would leave the people unclear as to what the Crown actually considered seditious libel. What remained he declared, amounted to an innocuous commentary upon English government which the authorities had not identified as criminal before: to do so now constituted the height of duplicity. On these grounds, Vaughan appealed to the jury for an acquittal, noting the recently enacted Libel Act and its provisions in favour of general verdicts.[2] The verdict however exposed a weakness in the Act, the jury returning Eaton 'guilty of publishing, but not with a criminal intention'. This was a problematic verdict, for it found yet denied criminality, exactly the situation the Act was designed to avoid.[3] Despite pleas to the jurors from John Gurney,

[1] I. McCalman, *Radical Underworld: Prophets, Revolutionaries and Pornographers in London 1795–1840* (London: Cambridge University Press, 1988), chs. 1 and 2; only two trials before June 1793 were acquittals, the radical printer Thomas Spence and John Thompson, a Birmingham printer, see G. Vale, *The Life of Thomas Paine &c.* (New York: G. Vale, 1841), pp.108-111.
[2] Cobbett, *State Trials,* vol.22, pp.767-778; Barrell, *The King's Death*, pp.127-130.
[3] Cobbett, *State Trials*, vol.22, p.780.

Vaughan's co-counsel, that they ought to deliver a general verdict if they disbelieved any part of the charge, the jury was intransigent. They were either unaware as Gurney intimated or unwilling to exercise their full powers under the Libel Act. Consequently, the judge refused to concede that the verdict had acquitted Eaton, interpreting it to mean the jury had not decided the criminal element and had left it to the court. These events laid bare that the Act, for all its theoretical potential, was not widely understood. It was declaratory legislation, which only constant enforcement could validate.[4] In response, radicals spearheaded by the London Corresponding Society (hereafter LCS) instigated a campaign of education regarding the powers of English juries, intending to secure the effectiveness of Fox's Act by appealing directly to the jurymen of England: the middling sorts.[5]

This chapter explores this campaign, beginning by understanding both the LCS's constitutionalism and the relationship of the society to trial by jury. The LCS was, by mid–1793, the most mature and well connected of English radical organisations. The chapter focuses on the Society's public campaign, specifically its republication of a seventeenth-century pamphlet, *The Englishman's Right*. It offers a detailed study of this pamphlet, building on the work of Thale and John Mee to understand its appeal, sale, readership and success in revitalising discussion on jurors' rights.[6] Mee argued that the pamphlet was not a financial success, but this is to assume that the priority of the LCS was turning a profit on the venture.[7] This chapter posits that the LCS's key interest, at least where jury trial was concerned, was extensive circulation even at the expense of profit, resulting in a campaign that exceeded the Society's expectations. Readership analysis and social mapping are combined with a study of

[4] Cobbett, *State Trials*, vol.22, pp.821-822.
[5] J. Hawles, *The Englishman's Right: A Dialogue Between a Barrister at Law and a Juryman &c.* (London: LCS, 1793, orig. 1680), p.7.
[6] Thale, *Papers of the ... Society*.
[7] J. Mee, *Print, Publicity and Popular Radicalism in the 1790s: The Laurel of Liberty* (Cambridge: Cambridge University Press, 2016), pp.60-63.

the LCS's account books, correspondence and sales figures to explore the circulation of *The Englishman's Right* in London and beyond.

II

The LCS was unique in eighteenth-century radicalism, as a movement founded not by aristocratic reformers but artisans and tradesmen. Instituted by shoemaker Thomas Hardy in early 1792, it aimed to provide working men with a political voice: 'that the number of our members be unlimited' was among the first resolutions.[8] Aside from this, it differed little from the aristocratic and middling reform societies that dominated British radical politics since the 1760s. The fact its membership was largely plebeian in social origin did not dictate its political outlook, something made especially clear by the Society's deep support and affinity for trial by jury, an institution Paine and some other republicans distrusted.[9] It similarly sought the reform of parliament and to uphold the principles of the constitution.[10] The Society took its lead from contemporary Whiggism, striving to be accepted in the face of loyalist attacks, paranoia and suspicion. Much of the LCS's early search for respectability was the direct product of outside influence and interference. The Society's first chairman, Maurice Margarot, grew up surrounded by gentlemen reformers, including Major Cartwright and Horne Tooke.[11] The latter was vital in maturing the LCS. A member of the SCI and friend of Hardy, Tooke

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[8] Thompson, *English Working Class*, p.19.
[9] Weinstein, 'Popular Constitutionalism', p.39; E. Royle, *Revolutionary Britannia?* (Manchester: Manchester University Press, 2000); also Epstein, '"Our Real Constitution": Trial Defence and Radical Memory'. For historiography from the left: Thompson, *English Working Class,* pp.22-27; D. Mayfield, S. Thorne, 'Social History and its Discontents: Gareth Stedman Jones and the Politics of Language', *Social History* 27:2 (1992), pp.165-188; G. Alderman, *Modern Britain 1700–1983* (London: Croom Helm, 1983), p.59; on nature of the LCS, B. Hilton, *A Mad, Bad and Dangerous People? England 1783–1846* (Oxford: Oxford University Press, 2008), p.294; Davis, 'The Mob Club?' pp.21-36.
[10] *The London Corresponding Society's Address and Resolutions… April 1792* (London: 1792), pp.1-2, loyalists cast the Society as Jacobin. This was its public image but one that tailored discourse and middling patronage could overcome, see Davis, 'The Mob Club?', pp.21-36; D.E. Ginter, 'The Loyalist Association Movement 1792–93 and British Public Opinion', *Historical Journal* 9:2 (1966), pp.179-190.
[11] Philp, 'Fragmented Ideology of Reform', p.50.

frequently edited LCS publications both at Hardy's request and without permission.[12] For instance, the Society's first address was almost certainly edited and printed at Tooke's direction, the veteran radical appearing to have even forged Hardy's signature. Elements of the document, including those regarding the admittance of members and debate procedures were lifted, sometimes word for word, from SCI material, Tooke seeking to imprint Whiggish principles on the LCS.[13]

Margarot used his role as chairman to encourage only respectable debate. On one occasion he expressed outright incredulity at members of the Society's committee publishing a letter in *The Argus* in June 1792 unreservedly supportive of Paine's *Rights of Man*. For Margarot, this acclamation did not reflect the sentiments of the Society's members or those of allied societies.[14] Motions such as that of the LCS's twenty-eighth division 'recommending the expulsion of Persons who shall be found guilty of propagating levelling principles' demonstrated the truth of Margarot's claim and that support for Whiggish principles pervaded the grassroots.[15] As he explained, 'The Constitutional Society [SCI] have, by not adopting our expression, sufficiently censured it'.[16] Margarot's other problem was that their expressions might be misrepresented or 'twisted' by loyalists to imply they threatened the polity, corrupting their true intent.[17] The LCS was not Paineite and Margarot was determined it never would be. He sought to build a movement and ideology participating in the dominant consensus, by

[12] Weinstein, 'Popular Constitutionalism', pp.41-42; Barrell, *The King's Death,* p.325; J. Cartwright, F.D. Cartwright, *The Life and Correspondence of Major Cartwright* (2 vols; London: A.M. Kelley, 1826), vol.1, pp.205-206.
[13] Cone, *The English Jacobins*, pp.122-126; Weinstein, 'Popular Constitutionalism', p.41; Barrell, *The King's Death,* p.397.
[14] British Library (BL), Add MS 27812, ff.20-23.
[15] BL, Add MS 27812, f.182.
[16] BL, Add MS 27812, ff.22-23, The SCI was more moderate than the LCS, according to Cartwright, frequently 'erred in judgement' on whether to accept the Duke of Richmond's plan or something more modest, *Life and Correspondence*, vol.1, p.203.
[17] BL, Add MS 27812, f.22, Paine envisaged a world where rights pre-dated society, implying men could exist as individuals and owed nothing to society. Loyalist propagandists pointed out the logical conclusion of this was something akin to anarchy.

adopting its forms and language.[18] And while he had no problem adopting parts of Paine's modern democratic idiom to provide an impetus for reform, he combined this with the legitimating precedents of English history and scorned social upheaval. To Margarot political reform was one thing, but public association with Paine's 'social chapter' was another, something the LCS would not again endorse.[19] After the *Argus* affair only works endorsed by the committee consisting of the Society's leading members were published, its leadership set on maintaining Whiggish principles. This is not to deny differing views taken by other LCS members, infighting and factionalism, or the LCS's 'unrespectable' public reputation.[20] But despite loyalist slander, the Society genuinely sought respectability in itself, adopting the tone and form of its Whig predecessors.

Constitutionalism held sway in the LCS. Almost all its leading members had been brought up in this tradition, particularly Hardy who remained devoted to the Duke of Richmond's vision of reform.[21] The 'Whig Canon' dominated LCS gatherings, Hardy reading Cartwright's *Give us our Rights* (1782) at the Society's inaugural meeting.[22] The LCS was not new, rather 'a child of the eighteenth century', more interested in looking to English constitutionalism than an ill-defined Paineite future.[23] This was vital for the LCS's maturation, becoming accepted among established societies as a constitutional organisation with which to correspond.[24] It gave the LCS access to other societies' networks which were vital in circulating

[18] Eagleton, *Function of Criticism,* p.24.
[19] Paine's concepts of redistributive changes to British taxes and society, and acceptance of individual natural rights. The LCS, shrank from supporting these ideas.
[20] Davis, 'The Mob Club?, pp.21-36; McCalman, *Radical Underworld*, ch.2; H. Collins, 'The London Corresponding Society', in J. Saville, ed., *Democracy and the Labour Movement* (London: Lawrence & Wishart, 1954), pp.103-134.
[21] BL, Add MS 27814, f.2-5. Richmond's *Letter … to Colonel Sharman,* was described as 'the bible for the LCS'.
[22] Robbins, *Eighteenth-Century Commonwealthman*, pp.322-323, 362-364; BL, Add MS 27814, f.25; Weinstein, 'Popular Constitutionalism', p.43.
[23] G.S. Veitch, *The Genesis of Parliamentary Reform* (London: 1913), pp.205-207; Weinstein, 'Popular Constitutionalism', pp.47-48
[24] Several members of the SCI also took honorary membership of the LCS, including Tooke.

The Englishman's Right, providing the Society opportunities to develop as a leading radical voice. Under the tutelage of Tooke, Margarot and Hardy, the LCS's world view centred on Whig constitutionalism, which while utilising the idiom of democracy rejected Paine's scepticism about the constitution.[25] Politically this confined 'the LCS to a conservative and oddly aristocratic vision of reform'.[26] Yet a deeply held belief in constitutionalism made the Society plausible advocates of Whig jury discourse, an idea that could only be articulated authentically through this paradigm.

The LCS's committee continuously placed the preservation of trial by jury on par with the attainment of parliamentary reform. To the Society, it represented an inviolable constitutional liberty, the linchpin of constitutional excellence and hallmark of quality which their ancestors had stoically defended.[27] References to trials by jury littered LCS addresses and the minutes of meetings, these texts locating their origin and rights in the twenty-ninth clause of Magna Charta (1297), and most frequently discussing them in relation to restrictions imposed in excise cases or the use of *ex officio* indictments.[28] So intrinsic was the principle of jury trial to the LCS that its unwritten and later codified constitution contained a system of jury trial to adjudge the behaviour of members.[29] During the early months of the Society, the system operated with the Committee of Delegates acting as the jury, both accused and accuser giving their evidence and the jury voting on a verdict.[30] From mid-1794, the system was

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[25] *Address of the British Convention, Assembled at Edinburgh, November 19 1793 &c.* (Edinburgh: 1793), p.14. See M. Steinberg, *Fighting Words: Working Class Formation, Collective Action and Discourse in Early Nineteenth Century England* (London: Cornell University Press, 1999); Thompson, *English Working Class,* pp.22-23 on LCS as Paineite.
[26] Weinstein, 'Popular Constitutionalism', pp.40-46.
[27] BL, Add MS 27812, f.63, 135.
[28] *At a General Meeting of the London Corresponding Society, held at the Globe Tavern, Strand, January 1794 … Address to the People of Great Britain and Ireland &c.* (London: 1794).
[29] *The Report of the Committee of Constitution, of The London Corresponding Society, Printed for the use of the Members* (London: T. Spence, 1794), section XI.
[30] The system was used twice, once in 1793 when a member named George Lynham was accused of spying and with similar charges in the 1794 case of John Groves. Both were acquitted. Both were spies. TNA, TS 11/956, ff.56-60, 90 contain notes of Lynham's trial.

updated to reflect the common–law mode of trial including a randomised pool of jurors drawn from across the Society's divisions.[31] To the Society, no element of the polity or constitutional framework was more vital for securing liberties or resisting repression. It alone could legitimately check abuses of power and shield those prosecuted for political purposes from severe and often mercilessly administered punishments. For some in the LCS, Thelwall most notably, so important was the trial by jury, that overt government impingement upon jury independence marked the political boundary at which violent dissent became legitimate.[32] Once lost, Thelwall argued, 'the time for action' would be arrived; the British state could never peacefully be expected to again surrender judicial power to the people.[33] For radicals throughout the late eighteenth and early nineteenth century, this was the critical reason trial by jury had to be buttressed. With failure came despotism and revolution.

III

For the LCS's leaders, confronting the threat posed by ignorance was critical. As one meeting concluded, 'fraud has subdued what force could not,' the failure of Eaton's jurors to acquit in fact threatening juror independence by permitting the bench to usurp their office.[34] The campaign undertaken by the LCS to redress this negligence revolved around the republication of *The Englishman's Right*. This seventeenth-century work by Sir John Hawles, Solicitor General to William III, consisted of a dialogue in which a barrister explained to a juryman the sanctity

[31] See appendix VI for outline of LCS jury trial process.
[32] In 1797 Justice Ashurst justified such expressions of violence. Charging the jury on the trial of LCS member John Binns, Ashurst said, 'If you think Mr Binns only recommended force in cases of a deprivation of the trial by jury and the liberty of the press, you will acquit him for it is possible that cases may arise in which resistance would not only be lawful but commendable', J. Binns, *The Trial of John Binns, Deputy of the London Corresponding Society for Sedition … August 12, 1797* (Birmingham: J. Belcher, 1797), p.82; Lobban, 'From Seditious Libel to Unlawful Assembly', p.324.
[33] TNA, TS 11/957, f.60, note that Thelwall spoke specifically in relation to jury trial, and in no other circumstance openly avowed violent dissent. His general view was similar to that of other leading LCS members, Barrell, *The King's Death*, p.392.
[34] BL, Add MS 27812, ff.64-65.

of jury trial and his duties. At a meeting on 11 July 1793, the Society's committee 'joyfully' received and discussed the work, resolving the following week to issue a new edition in its name.[35] That they settled on Hawles's pamphlet is unsurprising. While there was no shortage of recent material, *The Englishman's Right* had a strong pedigree as part of the traditional Whig canon.[36] Running to nine editions before 1793, the work exuded constitutional legitimacy while its author was beyond reproach as a respected legal authority and supporter of the Glorious Revolution.[37] Hawles's extensive use of legal authorities ensured *The Englishman's Right* presented a strong historical precedent, a prized and legitimating commodity among contemporaries.[38] The LCS placed great emphasis on publishing the work unedited to exploit these innate qualities. Coke, Vaughan and various members of the Whig establishment were cited by Hawles in support of jurors' rights, undoubtedly endearing the work to Hardy and Margarot.[39] The pamphlet's arguments chimed with the LCS's leadership and strongly reflected ideas and beliefs prevalent in wider society. The Society inherited an understanding of the importance of appealing to men of the middling sort and engaging them in discourse, with Hawles' work playing on their sense of entitlement, particularly to political liberty and influence.[40] Jury duty was couched as an honourable obligation that propertied, honest Englishmen owed to their peers by virtue of their social status, claims to liberty and

[35] BL, Add MS 27812, f.126-127.
[36] It is worth noting Hardy was the delegate from division two. He was possibly the impetus behind the division's resolution, Thale, *Papers of the … Society,* p.22.
[37] Mee, *Print, Publicity and Popular Radicalism,* p30.
[38] P. Withington, 'Agency, Custom and the English Corporate System', in H. French, J. Barry, eds, *Identity and Agency in England, 1500–1800* (London: Macmillan, 2004), pp.200-222, p.200.
[39] See Hawles, *The Englishman's Right*, pp.4-7, 9-10, 21-22, 26-28 for references.
[40] TNA, TS 11/966, f.245, on the middling sorts, their nature and appeals to them, J. Barry, 'Introduction', in Barry, Brooks, eds, *The Middling Sort,* pp.1-27, pp.20-23; D'Cruze, 'The Middling Sort in Eighteenth-Century Colchester, pp.181-207; K. Wrightson, 'Sorts of People in Tudor and Stuart England', in Barry, Brooks, eds, *The Middling Sort*, pp.28-51 notes the origin of 'middling localism' and identity in this era.

membership of the political nation.[41] The jurors' privileges were 'every *Englishman's* in and by them', failure to serve 'fatally, though insensibly, undermin[ing] our just birth-rights'.[42]

Among the themes of *The Englishman's Right* was the uniqueness of England's jury trial, and the advantage Britons derived from possessing this superior form of justice.[43] This enabled the pamphlet to play on key contemporary political discourses of patriotism and English particularism, ideas which had come to dominate popular politics in the era of the French Revolution.[44] A xenophobic impulse to discredit all things French harnessed the idea that England was exceptional, favoured by God (the 'Elect Nation') and blessed with justice and unique liberties, to patriotism.[45] Unlike its continental neighbours, England was unadulterated by absolute monarchy or anarchy, and had thrown off the shackles of Catholicism. Its polity and government was pure and indigenous. Above all, England's reliance on consent and civil authority was held to make its constitutional settlement the envy of other peoples.[46] Through constant and loud assertions regarding the duty of obedience to England and its superior polity, the loyalist movement and state-sponsored propagandists ensured approaches to the nation hardened: service to the country was made synonymous with Englishness, anything less approached with suspicions of treachery. Bowles and the other loyalist writers referenced earlier personified this perfectly. Their unabashed praise for the constitution, suggestions of

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[41] On eighteenth century questions and concerns about middling men avoiding jury service, see Durston, *Crime and Justice in Eighteenth-Century East Anglia*, pp.247-251.
[42] Hawles, *The Englishman's Right*, pp.1-2.
[43] Hawles, *The Englishman's Right*, pp.3-9, 30-32.
[44] H. Cunningham, 'The Language of Patriotism 1750-1914', *History Workshop Journal* 12:1 (1981), pp.8-33, p.14. On ideas of patriotism see M.G. Dietz, 'Patriotism', in T. Ball, J. Farr, R. Hanson, eds, *Political Innovation and Conceptual Change* (London: Cambridge University Press, 1989), pp.177-193, pp.186-192; Mori, 'Languages of Loyalism, pp.33-35; Eastwood, 'Meanings of Patriotism', pp.266-275; for patriotism as antithetical to radicalism see R. Dozier, *For King, Constitution and Country* (Lexington: Kentucky University Press), pp.172-177.
[45] K. Kumar, *The Making of English National Identity* (Cambridge: Cambridge University Press, 2003), pp.112-115; M. Pittock, *Inventing and Resisting Britain: Cultural Identities in Britain and Ireland 1685–1789* (London: Macmillan, 1997), pp.172-176.
[46] J. Vernon, 'Narrating the Constitution: The Discourse of 'the real' and the Fantasies of Nineteenth-Century Constitutional History', in, Vernon, *Re-Reading the Constitution*, pp.204-238, p.225.

disloyalty in those who questioned its superiority and chauvinistic comparisons with France, exemplify this union of patriotism and particularism. To stave off revolution, the English constitution had to be accepted as the perfect model, something which with the exception of the limited franchise, both radicals and loyalists broadly concurred with. Both invoked patriotism in defence of the same ideas, but used it against different foes, as chapter three's exploration of the 1794 state trials examines.

The Englishman's Right fitted neatly into a public discourse dominated by this shared idiom. By choosing to publish it, the LCS's leaders displayed their patriotism. While other peoples were subject to the whims of despots, Hawles had argued 'twelve honest, substantial [and] impartial men' had first to be convinced before an Englishman could be deprived of his liberty.[47] The superiority of English justice was rooted in this notion, as was the duty of the English people to defend it. To Hawles, middling Englishmen who claimed liberty and membership of the political nation yet abdicated such responsibility betrayed their fellows and risked their unique base of legitimate political power: 'to withdraw yourself in such cases, is a kind of sacrilege, a robbing of the public of those duties which you justly owe it'.[48] In no other nation were the middling sorts afforded the right and privilege to check the elite and, as Hawles argued, guard their own interests.[49] Failure to do so was the height of folly and an invitation to despotism.

The pamphlet's direct relevance to contemporary events was striking. The challenge facing the LCS, of jurymen bringing in half-verdicts and vacating their role as arbiters of justice

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[47] Hawles, *The Englishman's Right*, pp.6-7.
[48] Hawles, *The Englishman's Right*, p.1; Colley, *Britons*, pp.377-384; A. Shepard, 'Honesty, Worth and Gender in Early Modern England 1560-1640', in French, Barry, eds, *Identity and Agency*, pp.87-105 notes the longstanding role of honour; also see E.P. Thompson, *Customs in Common* (London: Merlin, 1991), ch.5 on morality and dominant 'moral economies'.
[49] See D. Eastwood, 'Patriotism and the English State in the 1790's', in Philp, ed., *The French Revolution*, pp.146-168.

preoccupied Hawles. Throughout the dialogue, he posed several hypotheses, asking jurymen what they would do were perverse and harsh laws to be enacted criminalising trivial actions, and fellow jurors to insist on only considering the 'fact'.[50] Hawles dismissed the prospect of a partial verdict, as was delivered in Eaton's case, arguing this violated the purpose of juries by *de facto* combining the province of the jury with that of the judge.[51] Directly addressing the problem facing radicals, Hawles unpicked the argument that such verdicts satisfied the juryman's oath: 'how do you well and truly try … when indeed you do but deliver him up to others to be condemned'.[52] Hawles could have been writing in 1793, so closely did he mirror current events.[53]

The other key part of Hawles' appeal was reference to God and spiritual honour to underpin his arguments.[54] Religion was infused in fundamental jury practices.[55] The answer given by prisoners, when asked how they would be tried was 'by God and my country', an arcane custom dating from the period where trial by ordeal was optional.[56] The jury represented the nation and while men could decide according to the facts presented and temporal laws, only God possessed the omniscience to pass ultimate judgement.[57] The concept of jurymen deciding according to conscience was predicated on the idea that God knew jurors' minds and whether they acted perjuriously.[58] The theory was that jurors followed their

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[50] Hawles, *The Englishman's Right*, p.12-20.
[51] Hawles, *The Englishman's Right*, p.13.
[52] Hawles, *The Englishman's Right*, p.14.
[53] See Stanhope, *Rights of Juries Defended*, pp.162-164; Green, *Verdict According to Conscience,* pp.328-348.
[54] Appeals to morality were particularly relevant in 1793, with a major shift in public religion towards ideas of social cohesion. The established church shunned discussion of the Glorious Revolution in favour of sermons urging civil obedience, to reaffirm personal morality, see R. Hole, *Pulpits, Politics and Public Order in England 1760-1832* (Cambridge: Cambridge University Press, 1989), p.97.
[55] Colley, *Britons*, pp.53-55.
[56] Green, *Verdict According to Conscience*, pp.17-20; Groot, 'The Early Thirteenth-Century Criminal Jury', p.10 notes it was a matter of consenting to trial by man rather than God.
[57] Green, *Verdict According to Conscience*, pp.26-27.
[58] Green highlights the theory that in the middle ages, jury verdicts were taken to be the will of God, enacted through the consciences of the jury, hence why verdicts were not challenged, Green, *Verdict According to Conscience,* p.19.

consciences or risked damnation, a concept Hawles evoked by calling jury trial a '*foro concientiæ*,' a tribunal of conscience.[59] For him, verdicts brought in merely to conform to law were acts of temporal and moral injustice, which debased the souls even of the well-intentioned juror.[60] Hawles made clear that jurymen must try the whole cause, not just in defence of their liberties, but because God expected it: 'that man abets an evil, who prevents it not, when it is in his power'.[61] Such appeals were formidable, speaking directly to a sense of individual morality, concepts of higher loyalty and, by making jury verdicts a moral issue, undercutting political disagreement.[62]

Republishing *The Englishman's Right* in the context of vocal loyalist, patriotic, xenophobic and moralising propaganda made sense for the LCS. Hawles's work expressed sentiments that could be presented as reflecting these ideas, something which as the rest of this thesis demonstrates, radicals had few qualms about doing where preservation of jury trial was concerned. Hawles's appeals were made on a political and moral plane, slipping seamlessly into wider discussion focused on such appeals and reflecting the dominant moral code in public discourse, and bigotry inherent in wartime expressions of Englishness. They would have resonated in a climate where personal morality and duty were continuously extolled by loyalists. The republication of *The Englishman's Right* signified the beginning of radical efforts to relate the jury to religious duties and divine commandment more substantially in jury discourse, as a moral bulwark and legitimating idea. Such efforts, coming to fruition during 1794, underpinned attempts to play on public insecurities nurtured by Pitt's repression.

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[59] Hawles, *The Englishman's Right,* p.23, the same logic was also used to ensure witnesses were honest. There was no uniform oath for witnesses, but they swore upon the bible, see appendix IV.
[60] Hawles, *The Englishman's Right*, p.19.
[61] Hawles, *The Englishman's Right*, p.2.
[62] Colley, *Britons,* pp.54-55, Rule, *Albion's People*, pp.148-152; R. Hole, 'English Sermons and Tracts as Media of Debate on the French Revolution', in Philp, ed., *The French Revolution,* pp.18-37, pp.24-25; Hole, *Politics and Public Order*, pp.100-103.

IV

The LCS placed great importance on its new campaign, demonstrated nowhere better than in the careful preparation and advertising of the pamphlet. On the question of preparation, Jon Mee has given a good account of the process between July and September, noting how cautious the Society was about communications bearing its name.[63] Their addition of an appendix related to recent repression was undertaken with extreme caution, repeatedly redrafted to ensure its accuracy.[64] John Martin, described as 'Solicitor to the Society', was summoned for a legal opinion on 9 September and the presses halted when a substantive mistake was identified: no matter how minor, errors would only serve to discredit the pamphlet.[65] That numerous copies of *The Englishman's Right* survive in the Treasury Solicitor's papers demonstrate that ministers were looking to exploit any slip in LCS publications.[66]

The Society's careful consideration of pricing also stemmed from a desire to avoid state scrutiny. Copies cost 2*d* to print and were marked with a retail price of 4*d*. The LCS committee decided that copies be available to members at cost and 'strangers' (external retailers) at 3*d*.[67] This pricing strategy was two pronged. Firstly, beyond its own membership, the Society never sold *The Englishman's Right* directly, instead retailing the pamphlet through other societies and booksellers.[68] The price was designed to increase circulation, making for an attractive business prospect for a small bookseller by allowing a minimum 1*d* profit per copy assuming they were retailed at 3*d*. Most pamphlets, books and newspapers were sold for an extremely marginal

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[63] Mee, *Print, Publicity and Popular Radicalism*, pp.30-32.
[64] Hawles, *The Englishman's Right,* pp.36-41; see BL, Add MS 27812, f.58-60, f.70 for redrafting. An appendix discussing broadly the issue of jury packing was also added.
[65] BL, Add MS 27812, f.32, f.70.
[66] See TNA, TS 24/3/49. July saw the conviction of dissenting minister William Winterbotham for sermons on the Glorious Revolution. This and the *Argus* affair showed radicalism the value of caution, see J. Epstein, 'Sermons of Sedition: The Trials of William Winterbotham', in M. Davis et al, eds, *Political Trials in an Age of Revolution* (London: Palgrave, 2019), pp.109-136.
[67] BL, Add MS 27812, ff.57-58.
[68] The accounts for the pamphlet's sale have partially survived, see TNA, TS 11/959, ff.217-219.

profit: excepting advertising revenue, James Perry (editor of the *Morning Chronicle*) estimated that one 6*d* newspaper in 1807 made ½*d* profit, which had to cover operating costs, wages and provide a suitable investment return.[69] And while Perry could fall back on advertising revenue, small booksellers such as radical republican Richard Lee, who retailed pamphlets for 1*d*, worked with tiny profit margins.[70] Most small publishers were hampered by excessive stamp and paper duties.[71] Eaton, who retailed *The Englishman's Right* sold his radical journal *Hog's Wash* at 2*d* which considering duties, printing costs and wages would have made for an extremely marginal profit. In this context, a guaranteed return of 1*d* per copy would have made an attractive venture. In many cases the LCS appeared to sell the pamphlet at a discount. Bookseller James Ridgway purchased 50 copies for 10*s* 5*d*, while publican John Barton bought 30 copies for 6*s* 2*d*, each working out just under 2.5*d* per pamphlet.[72] This at least partially accounts for the popularity of the work among booksellers and other societies, with the Society shipping well over the two thousand copies of the initial print run. Its apparent popularity among non-radical booksellers such as Ridgway and Simmonds indicates economic incentives likely encouraged retail beyond radical circles, reinforcing the work's respectable image.[73] But it also highlights that the Society's main interest was publicity not profit. Mee misrepresented the attitude of the LCS when he commented that *The Englishman's Right* failed to bring in the anticipated profits 'if the LCS was calculating a return of 2*d* a copy or more'.[74] The society sold the work at reduced rates as a strategy to enhance the pamphlet's viability to potential retailers, a decision made before *The Englishman's Right* entered the market. As Hardy emphasised in

[69] T.R. Nevett, *Advertising in Britain* (London: Heinmann, 1982), pp.45-46.
[70] Barrell, *The King's Death*, pp.608-616.
[71] See S. Dowell, *History of Taxation and Taxes in England* (London: Routledge, 2013, orig.1965), pp.324-330 on paper duty. While stamp duty could be avoided, paper duty was imposed on the manufacturer, increasing the final price.
[72] TNA TS 11/959, f.217.
[73] Ridgway and Symonds purchased three-hundred and eleven copies between them.
[74] Mee, *Print, Publicity and Popular Radicalism,* p.32.

correspondence, most clearly in a circular dispatched in mid-August, 'as we seek merely to defray the Expense of the printing, the Committee have fixed the price so low as 25*s* per hundred'.[75] There was simply no serious expectation of profit. It is also worth noting that the marked price of 4*d* was itself strategic. It not only guaranteed attractive profits but ensured the work was aimed firmly at the middling sorts, matching the price of London's daily newspapers and placing *The Englishman's Right* beyond the reach of individual working men.[76] The LCS committee intended the republication to be within the reach of the middling sort, respectable enough in reputation to be circulated among them.

The advertising of *The Englishman's Right* is harder to pin-down. What can be discerned from the LCS papers is that the Society appointed a sub-committee in August 1793 to 'regulate' advertising of the pamphlet, a unique move and testament to the importance the LCS's leaders placed on an effective campaign.[77] The sub-committee's actions are however unclear. Comprising of members well-versed in advertising, including tailors Richard Hodgson, Matthew Moore and bookseller John Smith, the LCS's minutes reveal only that they ordered the production and distribution of 'posting bills' and handbills (none of which appear to have survived), refraining from extensive newspaper advertisement.[78] The advantage of bills was their cheap and untaxed nature, where newspaper advertisements were subject to a 3*s* tax per insertion.[79] The average cost was roughly 6*s* per advertisement, which the sub-committee clearly decided was not cost effective.[80] Equally, bills pasted on public walls or handed out in the

[75] TNA, TS 11/956, f.74.
[76] *The Times, Morning Chronicle, Morning Post, St James's Chronicle, Sun* and *Oracle* retailed for 4*d* in December 1793, H. Barker, *Newspapers, Politics and Public Opinion in Late Eighteenth-Century England* (Oxford: Clarendon, 1998), p.4.
[77] BL, Add MS 27812, f.58.
[78] The other members were George Walne, a founding LCS member and Joseph Field, BL, Add MS 27812, f.58; Wood, *Radical Satire*, pp.18-19 notes growth of such advertising methods.
[79] Nevett, *Advertising*, pp.18-25.
[80] In the one instance of *The Englishman's Right* being advertised in a paper it appears in a small advertisement with other items, *Gazetteer and New Daily Advertiser* (London), 27 August 1793.

streets appeared alongside or were circulated with other advertisements, news, government announcements and satire. By virtue of existing alongside reports of major events and state notices, radical bills possessed an 'intrusive significance' in public discussion.[81] Handbills in particular acted as amplifiers able to stimulate public debate often far beyond their place of origin, the irritation shown by loyalists towards radical bill-sticking underlining their pervasive nature.[82] For instance, when the LCS met at the Globe Tavern in September 1793, they posted several members on Fleet Street to distribute seven hundred handbills (possibly advertising *The Englishman's Right*), intended to provoked discussion, questions and raised the profile of jury discourse.[83] Beyond this example, no evidence survives of wider advertising by the sub-committee. Yet the response of government ministers, buying up half a dozen copies of *The Englishman's Right* for examination, suggests their efforts were intrusive enough to alert authorities.

V

Despite the patchy advertising history of *The Englishman's Right*, it is possible to trace its circulation in detail, the Society's accounts providing a wealth of information including retailers, sales figures, revenues and related correspondence. It is important to acknowledge that this information is in places confused and incomplete, some entries missing key details while some transactions referenced in correspondence are absent altogether. For instance, the

[81] Wood, *Radical Satire*, pp.28-30.
[82] Wood, *Radical Satire*, p.21, the actions of ministers, in launching several prosecutions against LCS billstickers such as William Carter emphasise this further, see J. Barrell, 'Bill Posters Will be Prosecuted': Radical Broadsides of the 1790s', *Critical Quarterly* 59:4 (2017), pp.54-80, pp.60-62.
[83] BL, Add MS 27812, f.65. On the discursive power of small, printed ephemera, K. Grimes, 'Spreading the Radical Word: The Circulation of William Hone's 1817 Liturgical Parodies', in M. Davis, ed., *Radicalism and Revolution in Britain 1775–1848* (London: Palgrave, 2000), pp.144-156.

seven hundred copies which LCS members subscribed for during August are unaccounted for.[84] Even without these, the accounts tell of a pamphlet in demand.[85]

The Society published *The Englishman's Rights* on or before 30 September, the first orders being recorded on this date, the LCS having printed an initial two thousand copies. In London, its initial takers were exclusively radical, with booksellers Spence and Smith (both active LCS member) purchasing twenty-five copies each, Margarot a hundred and Hardy sixty. Of note is the fact they paid 2½*d* per copy, demonstrating that from its publication, the LCS lowered their asking price to maximise uptake.[86] The pamphlet's success was instantaneous, Spence swiftly purchasing fifty-two further copies and Smith twenty-five, something which as booksellers with fine profit margins suggests both were confident they would sell. Perhaps most tellingly, LCS members John Lovett and Joseph Field, took six and five copies respectively on 30 September as a tentative investment. That both returned the following day and purchased over fifty copies each, suggests they were quickly convinced of the work's viability.[87] On the first day of sale alone, 241 copies were sold, with 407 shifted the following day. That several booksellers from beyond the radical milieu, having waited about a week perhaps to gauge the work's profitability, bought large numbers was telling. Ridgway and Symonds purchase of over three hundred copies between them (the former across multiple visits) indicated a considerable level of faith and giving the LCS's work access to the crucial commercial bookselling circles of the capital. In all, by the end of the first month, three quarters of the initial print run had been sold. Strikingly, this total did not include the aforementioned seven hundred copies LCS members subscribed for, only sales to outside parties. *The Englishman's Right* exceeded the

[84] BL, Add MS 27812, f.57.
[85] For all figures relating to sale /circulation of *The Englishman's Right* TNA, TS 11/959, ff.217-219.
[86] Mee, *Print, Publicity and Popular Radicalism*, p.31.
[87] Another member, John Franklow, returned three times on 1 October for copies (a total of forty-six), suggesting a similar realisation.

Society's expectations within weeks, and further copies must have been printed to keep-up with demand.[88]

Individual LCS members also helped to broaden the pamphlet's circulation through informal circulating networks, cultural hubs based around shared political views and the exchange of information, a practice encouraged by the Society 'as a proof of the purity of our principles'.[89] Many members undoubtedly dispersed it among family, friends and associates. A letter from an Alexander Richardson in Paisley, Scotland, to an unnamed cousin in the LCS shows just how pervasive informal networks could be, writing 'I am much obliged for the tract you have favoured me with. I do not know how to repay you but by showing them to friends which are well received'.[90] Numerous members are recorded purchasing a few copies such as James Davison (fifteen in three visits), Thomas Hartly (twelve), John Pearce (twelve), Thomas Shiff (nineteen) and James Dawson (six). With none of these men employed in bookselling, and two (Hartly and Dawson) lacking permanent addresses, it is likely these copies circulated via informal networks.

The pamphlet appears to have circulated beyond London. Hardy dispatch a circular letter to many other radical societies in August, advocating the uptake of *The Englishman's Right* and lamenting the national ignorance on the subject of juror's rights and duties.[91] How many received this letter is unclear, though Thale notes it reached societies in Derby, Manchester, Sheffield, Stockport and Nottingham.[92] It is also clear that Hardy wrote independently to societies at Norwich, Bristol, Coventry and Edinburgh. The LCS sought a national discussion

[88] Figures from London, the wider nation and internal circulation suggest the LCS exceeded the initial print run by at least one thousand copies.
[89] BL, Add MS 27812, f.31.
[90] TNA, TS 11/966, ff.65-66, in another instance, a Thomas Proper wrote to LCS member John Harrison that he had circulated several LCS publications including *The Englishman's Right* at a meeting of independent reformers, who desired further copies to hand-out locally, TNA, TS 11/953/3497, ff.104-105.
[91] TNA, TS 11/956, f.62-64.
[92] Thale, *Papers of the... Society*, p.79.

through *The Englishman's Right,* believing it as Hardy wrote to Norwich, 'a book that ought to be in the possession of everyone as it contains the Rights and Duties of a Juryman'.[93]

These entreaties produced a significant uptake largely resembling the patterns in London, societies either purchasing small numbers as initial investments or, following Symonds's example, waiting for others to test the water.[94] The Sheffield Society for Constitutional Information pursued the former path, making two tentative investments of twenty-five copies, first through their secretary, Matthew Campbell Browne on 7 October and subsequently through founder Joseph Gales. The pamphlets were patently a success in Sheffield, Browne enquiring after one hundred more copies in an earnest to Hardy on 9 December, 'we have now a good while expected them with anxiety [and] should be very glad if you will please to forward them to this society as soon as may be … your compliance with which will highly oblige'.[95] Simultaneously, societies at Norwich and the SCI in London appeared to have followed Symonds's course. Hardy had written to the respective secretaries eulogising the pamphlet's content and advertising it as an attractive business prospect. These societies, like the LCS, were deeply pragmatic, seeking assurances of viability before committing their name and efforts.[96] That the LCS canvassed its own membership before printing began underlined their need for caution, given the propensity of the Crown to take legal action even against works imbedded in constitutionalism. This motivation likely explains the month-long gap between the pamphlet's publication on 30 September and the purchase of both these societies,

[93] TNA, TS 11/953, ff.104, 108-110, distribution issues appear to have plagued the Society, Hardy receiving curt letters more than once, such as from Bristol in December 1793, 'we have now a good while expected them with anxiety … [and] should be very glad if you will please to forward them to this society as soon as may be', TNA, TS 11/956, ff.19-20.
[94] The only exception was Thomas Walker, founder of the Manchester Constitutional Society, who purchased one hundred copies on 5 October.
[95] TNA, TS 11/966, f.162-163.
[96] Weinstein, 'Popular Constitutionalism', pp.56-57; J.R. Dinwiddy, *Radicalism & Reform in Britain 1780–1850* (London: Bloomsbury, 1992), pp.94-95.

first assessing the work's success in London. Indeed that the SCI initially requested a small number of copies to peruse before writing to Hardy on 12 November stating they 'can dispose of many- [and] think them good things' seems to confirm this.[97] The SCI ultimately ordered twelve dozen copies, with seventy-two dispatched to Norwich. It is worth noting that these English societies appear to have found a market for *The Englishman's Right* in growing industrial towns with a burgeoning, politically frustrated middling sort. Sheffield for instance had no borough constituency, and the county of Yorkshire did not poll between 1742 and 1807. That the work appears to have circulated well in unrepresented towns suggests a correlation between urban centres whose residents lacked access to formal political participation and a desire to understand alternative means of exercising legitimate political power.

The largest circulation of *The Englishman's Right* beyond London was in Edinburgh from December 1793. These were sent at the behest of Margarot, then in Scotland attending the British Convention, a deeply controversial gathering of English and Scottish radicals to debate reform.[98] Margarot and Joseph Gerrald were chosen as the LCS's delegates in late October, traveling to Scotland with jurors' rights forefront in their mission, sworn by their 'articles of instruction' to advocate:

> 3rd That the Election of Sheriffs ought to be restored to the People
> 4th That Juries ought to be chosen by lot
> 5th That active means ought to be used to render everyman acquainted with the Duty & Rights of a Juryman.

[97] TNA, TS 11/966, f.63, other societies, such as the Bristol Constitutional Society requested small numbers of copies to assess, suggesting pragmatism was common, see TNA, TS 11/966, f.91.
[98] A. Wharam, *The Treason Trials, 1794* (London: Leicester University Press, 1992), ch.5 and 6; B. Harris, *The Scottish People and the French Revolution* (London: Routledge, 2015), pp.89-107; Barrell, *The King's Death*, pp.142-169.

This emphasis on juries and criminal procedures was both a continuation of the LCS's campaigns in England and an attempt to identify with the struggles of Scottish radicals, the Scottish jury system being in the pocket of the judiciary. In Edinburgh, the Sheriffs of the three Lothian counties would send a list of forty-five names to the court, from which the Lord Justice-Clerk selected fifteen to serve as jurors.[99] No practical provision existed to challenge a juryman as in England, with verdicts in political trials a largely foregone conclusion. This corrupt system was displayed with ruthless efficiency only months after the convention. In the spring of 1794, the leading attendees at the gathering including both Margarot and Gerrald were arrested, tried, condemned and ultimately transported. It was an event that invariably showed radicals in England both the value of their juries and the importance of advocating their independence.

The LCS's instructions were aimed at tackling these injustices. Their solution was to encourage Scottish radicals to seek reform of their jury system by presenting them with the ideal English model. Margarot felt this aim achievable and having assessed the market in Edinburgh was convinced of two things. First, that the LCS could have a significant influence, with many of those gathered in Edinburgh looking to the Society's representatives for guidance and encouragement.[100] Second, that *The Englishman's Right* would serve as an ideal herald for their ideas and that there was a market for encouraging support of English jury ideals. He told Hardy, 'you have done us a material injury by neglecting to send us a parcel of our publications and a number of Copies of the Juryman's Rights. Pray do not delay them any longer'.[101] Margarot believed the pamphlet could be profound in broadening understanding of jurors'

[99] Charles James Fox outlined the issue in parliament in March 1794, J. Ridgway, *Speeches of the Right Honourable Charles James Fox in the House of Commons* (6 vols; London: J. Ridgway, 1815), vol.5, p.219.
[100] TNA, TS 11/954, f.54.
[101] TNA, TS 11/954, f.55-56.

rights, so much so that, as with Hardy he was willing to accept financial loss in return for circulatory success. Writing elatedly at their arrival, he made his feelings clear:

> I yesterday received the Box you sent me… with 270 copies of the Englishman's Rights &c. &c. The carriage came to £1.1.9 but had it been thrice that Sum the utility of those books would have over balanced the expense.[102]

The pamphlet apparently had similar success north of the Tweed. Accounts in Margarot's hand record that by early January 1794, 'not above 4 or 5 shillings worth' (19/24 copies) remained with the LCS's delegates. Of those he had circulated, roughly half had been sold, mainly to bookseller Bony and journalist Alexander Scott, the rest given away including between fifty and sixty copies to William Skirving, a Scottish radical serving as secretary to the British Convention.[103] Margarot's decision to hand out *The Englishman's Right ad gratis* is significant, especially given his role as the Society's chairman: financial losses on the pamphlet evidently did not faze him. They were acceptable in pursuit of the circulation of knowledge relating to trial by jury. Propaganda, not profit, was the objective of *The Englishman's Right*.

VI

The Englishman's Right was a retail success. The questions then, becomes who exactly generated this demand and whether the pamphlet reached the middling sorts as the LCS hoped? The price restricted circulation, but accounts of retailers like Bony, Spence or Ridgway do not exist to corroborate this. However, the LCS's sales figures for London do survive, and by marrying up these with contemporary maps, it is possible to construct a social map of the pamphlet's

[102] TNA, TS 11/954, f.63-64.
[103] TNA, TS 11/959, ff.106-107, Skirving was a Scottish radical and secretary to the British Convention.

distribution and readership in the capital. This reveals a correlation similar to that apparent beyond London between retail success and an affluent urban population lacking the franchise. It is important to note that while this does not guarantee those living in areas where the pamphlet sold well were its sole patrons, it is a strong indication that the pamphlet's subject appealed strongly to those resident in the city's affluent boroughs, especially given its comparative failure in poorer areas of the city.

The pamphlet's top retailers excepting Symonds and Piccard, were based in the City's western boroughs of Marylebone, Mayfair and Soho. These areas had become particularly fashionable during the eighteenth century, housing London's aristocratic and mercantile classes. While the City of London and Southwark stagnated, Marylebone and Mayfair saw increasing development and rising rents.[104] Margarot for instance, retailing from Marylebone High Street, resided in an area of expansion dominated by small business owners (the largest and thus most consequential group of middling Londoners) epitomising *The Englishman's Right's* target audience.[105] Ridgway, Field and Symonds also appear to have retailed the work in areas similarly occupied. For Ridgway, based in York Street, St James's Square, his clientele could have included not only shopkeepers, but merchants, traders and warehouse men serving the needs of St James, London's most fashionable neighbourhood. Close to both St James's street and Pall Mall, the latter famed for its 'picturesque' shop signs and luxury goods and remarked upon by foreigners for its superiority to Paris's fashionable Rue St Honoré, Ridgway's shop was surrounded by affluent shopkeepers and merchants.[106] Many were likely at the top

[104] G. Rudé, *Hanoverian London 1714–1818* (London: Secker & Warburg, 1971), p.15 for Southwark, p.17 for Marylebone and p.60 for Mayfair.
[105] Rudé, *Hanoverian London*, pp.57-58.
[106] A.S. Turberville, *Johnson's England: An Account of the Life and Manners of his Age* (Oxford: Clarendon, 1933), vol.1, p.175; H. Philips, *Mid-Georgian London: A Topographical and Social Survey &c.* (London: Collins, 1964), pp.52-63.

end of the rent bracket for middling Londoners (around £40–£50), with a plethora of royal warrant holders, bankers, stockbrokers and merchant warehousemen, all eligible as jurors.[107]

Field, retailing a short distance away in King Street, Golden Square had a similar local social demographic, but a slightly higher proportion of merchants. By the 1770s, Golden Square had been largely abandoned by the aristocracy, given over to 'professional and commercial' inhabitants.[108] With rents ranging from between £10–£80, the square was home to affluent middling families, with the rents of individuals such as solicitor Robert Woodgate (£25 yearly) and Richard Barker (£19 yearly) typical.[109] Among its residents, the square counted several surgeons, merchants, a land surveyor, portrait painter and the showrooms of upmarket furniture makers Ince and Mayhew, with surrounding streets similar in composition to those adjoining St James's Square.[110]

The same can also be said for Symonds retailing from Paternoster Row, St Paul's, albeit with a greatly increased mercantile community. St Paul's Church-Yard and its four adjoining streets including Paternoster had fourteen warehousemen, seven professionals and upwards of twenty-two merchants, not to mention innumerable shopkeepers and tradesmen. It was a noted address for booksellers and printers since the 1710s with eighteen according to the 1794 tradesman's directories. Equally, the significant number of up-market coffee houses and pastry shops attracted many of London's literary and learned sorts: the very people the LCS hoped to reach. Symonds's situation was similar to Piccard's, at Gun Street, Spitalfields. Home of London's silk trade, the streets surrounding Piccard boasted twenty-six merchants, particularly

[107] Rudé, *Hanoverian London,* pp.58-60; E. Hobsbawm, *The Age of Revolution 1789–1848* (London: Abacus, 1977, orig.1962), pp.49-59.
[108] Philips, *Mid-Georgian London,* p.299; Rudé, *Hanoverian London,* p.235.
[109] J. Christie, *Particulars and Conditions of Sale of a Valuable Freehold Estate &c.* (London: 1790), p.5.
[110] Philips, *Mid-Georgian London,* pp.236-239, 299-300; P. Kirkham, 'The Partnership of William Ince and John Mayhew 1759–1804', *Furniture History* 10 (1974), pp.56-60.

silk traders and master weavers.[111] And while the area was hardly fashionable for affluent habitation (unlike Golden Square or St Pauls), its social makeup nonetheless comprised many middling households.[112]

These examples illustrate that *The Englishman's Right* retailed well in London's affluent boroughs, pointing to a significant level of popularity among the city's middling sorts who, with rents rarely below £8–£10, formed the mainstay of London's juries.[113] It also suggests that, even in a city with two electoral boroughs, middling men were interested in understanding other forms of political influence. Rather than London being a cradle of democratic participation, the success the LCS had promoting an alternative form of power only available to middling men suggests that the middling sorts did not view their circumstances quite so favourably. As occurred elsewhere, limited franchises and infrequent ballots (especially in Middlesex, which accounted for 70% of London's suburbs by 1800 but did not poll between 1784 and 1802) appear to have helped drive middling men towards radical jury discourse, supplementing their influence as a substitute for legitimate electoral rights.

That it was the middling sort and their search for political power driving sales is further substantiated when considering where the pamphlet appears to have sold poorly. The work did not appear to be retailed in Southwark (south of the Thames), nor (with the exception of Piccard in Gun Street) in east London, including Wapping, Whitechapel and Langbourn.[114] Its apparent absence from these areas, by the late eighteenth century in social decline and with stagnating populations, certainly appears to fit the pattern of middling affluent boroughs

[111] E. Royle, *Modern Britain: A Social History 1740 – 2011* (London: Bloomsbury, 2012), pp.44-46.
[112] Rudé, *Hanoverian London*, p.60.
[113] Rudé, *Hanoverian London*, p.58.
[114] Two retailers are recorded south of the Thames, but on the western side in Lambeth: LCS member Franklow and bookseller Lambeth.

generating the demand.[115] Similarly, there were several retailers in other parts of London who evidently failed to sell the work. Bookseller William Low of Grub Street and Robert Boyd, proprietor of the Bell Tavern, Exeter Street are the key examples. Neighbouring the impoverished Moorfields and St Giles rookery, Grub Street was synonymous with prostitution, brothels and poverty.[116] Exeter Street, while in the more respectable borough of Soho off the Strand, also had a reputation for prostitution and petty crime. Both Low and Boyd initially purchased a handful of copies, as investments similar to those of Lovett and Field, but neither purchased further copies. And while Boyd was a publican rather than a bookseller and may simply have wanted to share them with friends or patrons, when the fact that John Barton, innkeeper of the Red Lion, Grosvenor Square took fifty copies in three transactions is considered, it again suggests that the interest of the middling sorts dictated the pamphlet's fortunes.[117]

VII

The LCS's achievements in the case of *The Englishman's Right*, in both circulation and influence, were a powerful example of success in the face of adversity. The impression that emerges is one both of a very carefully managed and considered campaign, and one that at times appeared to preoccupy the Society's leadership: the number of letters Hardy sent and received about the pamphlet suggest it was never out of mind. Equally, while the sources have their limitations, it is fairly certain that the LCS achieved their ultimate aim to disseminate

[115] Rudé, *Hanoverian London,* p.15; J.F. Field, 'Economic Change in a London Suburb: Southwark 1601–1881', *The London Journal* 43:3 (2018), pp.243-266; T. Hitchcock, *Down and Out in Eighteenth Century London* (London: A&C, 2004), pp.9-12.
[116] See R. Norton, *Mother Clap's Molly House: The Gay Subculture in England 1700–1830* (London: GMP, 1992), ch.4.
[117] Grosvenor square, along with St James's, was among the most fashionable residential squares in west London, Philips, *Mid-Georgian London*, pp.256-258.

knowledge about the rights of jurymen to England's middling jurors, firmly buttressing the independence of libel trial juries against both encroachment from the bench and ignorance.

The Englishman's Right constituted possibly the most effective and consequential radical propaganda campaign of the 1790s, exploiting the antagonisms between middling England and the old order chapter one identified and mobilising the interests of the former to obtain increased political influence. Where the subject of jury trial was concerned, the LCS was able to override the normal barriers that limited its influence. The true power behind jury discourse lay with the middling sorts who by their patronage enabled the LCS – the 'folk devils' of 1790s popular politics – to circulate ideas without resistance and not unknown to the state that manifestly undermined Crown authority, urging the disregarding of law in favour of popular justice.[118] The Society succeeded on this specific subject for the same reasons they failed elsewhere: it was in the interest of middling men. The elite, as was evident in the opposition to the Libel Act in 1792, attempted to follow the same delegitimising stratagem; to place the concept of jurors deciding fact and law beyond the boundaries of acceptable discourse.[119] The middling sorts dissented, because it was in their interest to expand and utilise the power of trial by jury in the absence of the franchise.[120] The jury room was the only legitimate political power base of England's middling sorts in their contest for political authority with the elite, every trial a chance to check, confirm or reject the elite's attempts to re-draw or define social and moral

[118] On radicals operating both within and outside of political society, M.C. Finn, 'Henry Hunt's Peep into a Prison: The Radical Discontinuities of Imprisonment for Debt', in Burgess, Festenstein, *English Radicalism 1550–1850,* pp.190-216, pp.190-193; T. Eagleton, *The Function of Criticism* (London: Verso, 1984), pp.20-25; M. Warner, *Publics and Counterpublics* (London: Zone, 2005), pp.62-65; N. Fraser, 'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy', *Social Text* 25:26 (1990), pp.56-80, pp.60-62; Mee, *Print, Publicity and Popular Radicalism*, p.32.
[119] H. Dickinson, 'Popular Loyalism in Britain in the 1790's', in E. Hellmuth, ed., *The Transformation of Political Culture: England and Germany in the Late Eighteenth Century* (Oxford: Oxford University Press, 1990), pp.503-533; Barrell, *The King's Death*, pp.352-354.
[120] Colley, *Britons,* pp.379-380.

boundaries.[121] It was this which resulted in the LCS's success. Patriotism and the other elements of jury language embodied in *The Englishman's Right* were all vital, ensuring the campaign was respectable. But ultimately, the triumph of the LCS's efforts was born from the fact that the middling sorts, as readership analysis and social mapping lays bare, actively circulated and legitimised that which was in their own interests. [122]As chapters three, four and five will explore, this reality dictated not only the success of jury discourse (and the movement of later Chartist radicals away from supporting it) but also the behaviour of English – especially London – juries. As the trials for high treason in autumn 1794 and those of post-Napoleonic war radicals made patent, in political cases the real issue on trial was rarely the criminal guilt of the prisoner, but the limits of state oppression and the balance of power between England's middling sorts and the old order.

[121] M. Scrivener, *The Cosmopolitan Ideal in the Age of Revolution and Reaction 1776–1832* (London: Pickering & Chatto, 2007), pp.35-37.
[122] Some scholars identify the origins of the nineteenth-century 'middle class' in the 1790s and struggles for political authority with the state, see J. Rule, *Albion's People: English Society 1714–1815* (New York: Longman, 1992), pp.90-92; H. Perkin, *Origins of Modern English Society* (London: Routledge, 2003, orig.1969), pp.170-177.

Chapter Three

Justifying the 1794 Treason Trial Verdicts: Patriotism and Providence

I

On 8 November 1794, a radical handbill began circulating in London (Figure 1), depicting radical and LCS secretary Thomas Hardy in profile, illuminated by the eye of providence.[1] Below was a list of jurors who, having deliberated on his life or death had acquitted him of a charge of High Treason, on the 5 November. These 'apostles of liberty', it was suggested, had with God's grace saved the nation from disaster and Hardy from the scaffold. In stark contrast, in a collection of eighteenth-century handbills in the British Library, resides this document's complete antithesis.[2] The work, published by radical bookseller John Burks, depicts a grotesquely crude woodcut of William Pitt hanging from a gibbet, with a satire of his life and instructions for constructing his effigy to be publicly 'executed' (Figure 2). The reason given for this punishment, 'his most horrid Crimes on the 5 of November … *the Anniversary of the Acquittal of Thomas Hardy*'.

The 'crimes' in question were the trials of several leading radicals, including the LCS's secretary, in late 1794 on charges of high treason.[3] The Crown alleged that a radical plan to convene a political convention – similar to that attended by Maurice Margarot, in late 1793 –

[1] *Twelve Apostles of Liberty* (London: Collings & Clearson, 1794).
[2] *A Full, True, and Particular Account of the Birth, Parentage and Education, Life, Character and Behaviours of that most notoriously notified Malefactor Willy Pitto &c.* (London: J. Burks, 1795), copy in BL, GRC 816.m.3.(168.).
[3] The arrests occurred in May, although some defendants had been imprisoned longer. Thomas Spence was arrested five times between December 1792 and December 1793, before being arrested again 20 May 1794. Hardy was the first arrested in 1794, on 12 May, M. Scrivener, *Seditious Allegories: John Thelwall and Jacobin Writing* (Harrisburg: Pennsylvania State University Press, 2010), p.138; Barrell, *The King's Death,* p.190.

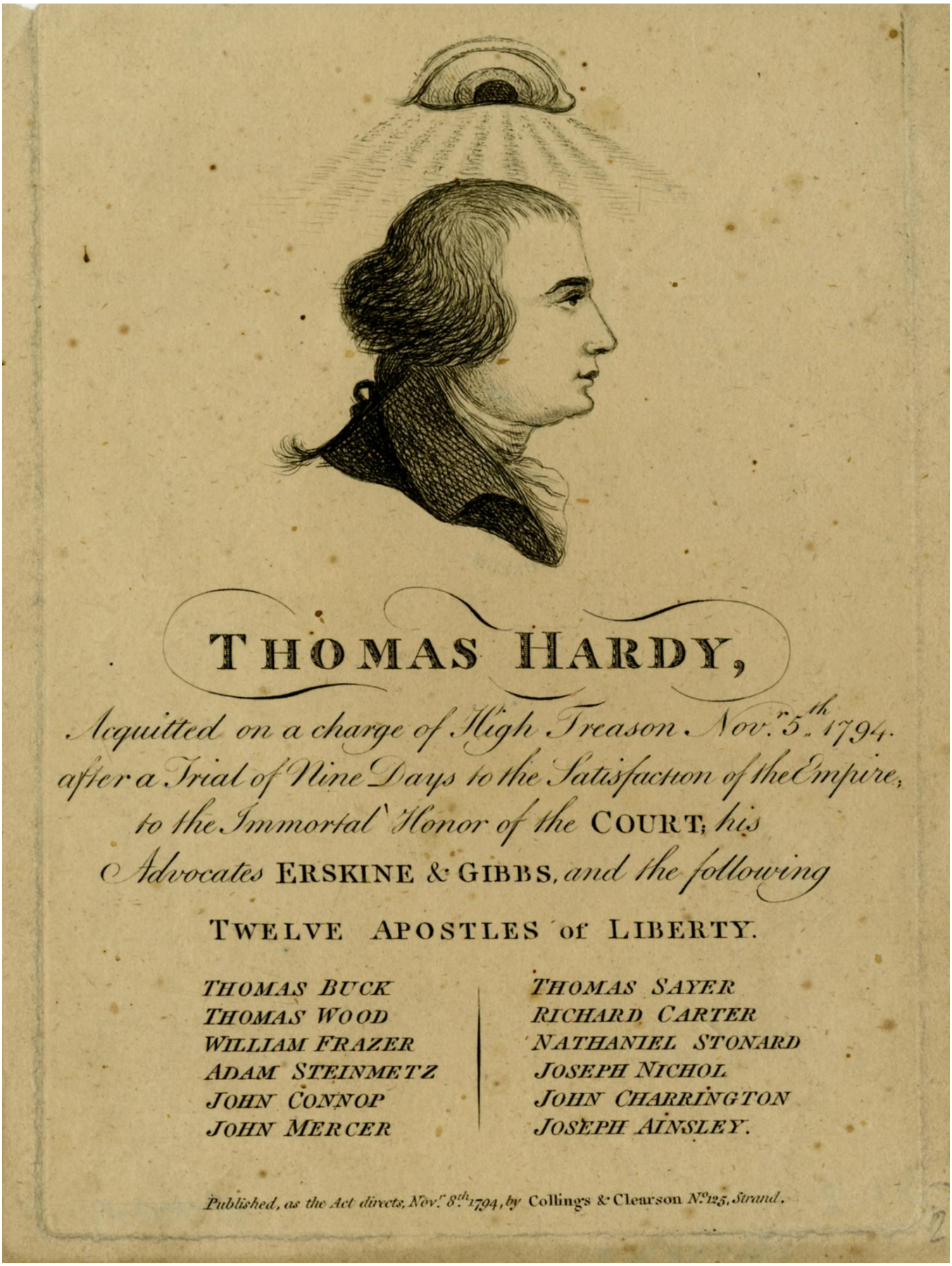

Figure 1 Twelve Apostles of Liberty (London: Collings & Clearson, 1794)

A full, true, and particular Account of the Birth, Parentage and Education, Life, Character and Behaviour

Of that most notoriously notified Malefactor

WILLY PITTO

Who is to be Executed *in EFFIGY* for his most horrid Crimes

On the 5th of November next *being the Anniversary of the Acquittal of Thomas Hardy;*

On Kennington Common and every other Common and Market Place in the Kingdom.

THIS profligate young man came of tolerably honest parents; his father, indeed, like himself, was rather fond of setting people together by their ears and then dipping into their pockets, he also very much hurt his character among his honest neighbours who had been wont to call him plain WILL by taking to himself the Ridiculous addition of an *alias* CHEAT'EM.

His parents, however, did not neglect to teach their children to write and read, and perciving that WILL, whose late evil ways would have broken their poor hearts, was a very 'Cute lad, they very considerately put him out to a Lawyer. Here WILL remained untill he found that even the profession of a lawyer did not yield him sufficient opportunities to pilfer, he therefore took to the profession of a *pick-pocket*, and well did he judge, for although he possessed not wisdom enough for the former Calling he possesed just sufficient Cunning for the latter.

Just about this time, the *Lord of the Manor* in which WILL lived, was vexed with the frequent complaints made by the people for his extortion &c. for it is very true that so greedy was this GREAT MAN of filthy lucre, that not satisfied with the great Sums he obtained from the tenants in what is called *the regular way*, he bought an enormously large farm with part of their money and then sold its produce to the people at an enormous price. *Will* who had a good deal of the gift of the *gab* slily promised the Lord of the Manor that he would fill all his coffers with the people's money and at the same time persuaded the tenants that all the fault lay with Bailiffs and Stewards, that they were the greatest rogues under the Sun and that if they would but join him, he would *oust* the old bailiff and put every thing in a right train. Will was chose bailiff and every thing went on ten times worse than before.

Will being seated in the Saddle of power, soon shewed

Country round: then they would fall on the tenants, rob them of their property for fines, put them into dungeons, send them over Sea and even hang them upon Gibbets and then swear this was all done to punish them for breaking those laws of which the people knew nought about; and besides the poor people said if they did even know them they knew no right that *Deep Will* and his gang had to make laws for them; but Will kept on plundering all he met to fill his own pockets and those of all his relations, even of his most distant Cousins.

If this shocking young man had as many necks as crimes he would perhaps escape the punishment he merits since they would require so many halters that no hemp would be left to furnish cordage to our fleet.—Murder seemed however to be the Crime in which he most delighted. But not choosing to risque his own person in the executing of his murtherous plans he always employed for this purpose a set of poor deluded Butcher's boys at the trifling pay of *Six-pence* a day: who would go and burn, ravish and murder wherever *Will* or *the Lord of the Manor* chose to send them. The people of a neighbouring manor having made some regulations respecting their Lord of the Manor which Will feared if Copied in his town would prove the downfall of him and his horrid gang, he directly Sent the choicest of his Crew of butcher's boys to cut the throats of these people, but they valiant in a just cause fought valiantly for many days so that many thousands was murthered on both sides by his villainous horrid schemes. Victory however declared against Will whose Crew was defeated every where. He being now totally in despair engaged some foolish renegadoes from this neighbouring town to go by night and cut the throats of all their townsmen but Will's murderous plans again failed him and all his myrmidons were cut to pieces.

Seeing that Will was likely to ruin all

Figure 2 A Full, True, and Particular Account of the Birth, Parentage and Education, Life, Character and Behaviours of that most notoriously notified Malefactor Willy Pitto &c. (London: J. Burks, 1795)

amounted to a treasonable conspiracy, under the 1351 Treason Act.[4] In arresting Hardy and eleven others, the political elite signalled their intention to make treasonable any meeting to propagate reform, and dispute the constitutional right of political dissent.[5] The ensuing state trials represented the most important political event in Britain since the Glorious Revolution,

[4] See Barrell, *The King's Death*, pp.29-44 for treason law, ch. 3, 4 and 5; Wharam, *Treason Trials,* pp.145-150. For Hardy's trial, I have used Joseph Gurney's four volume edition, J. Gurney, *Trial of Thomas Hardy for Treason &c* (4 vols; London: Gurney, 1794-1795), vol.2, pp.106-108. 25 Edw. III (1351), defined treason as 'to compass or imagine the death of our Lord the King', proved by 'overt act', see E. Blackstone, *Commentaries on the Laws of England* (London: Clarendon Press, 1765-1769), vol.4, pp.75-94.

[5] Preparatory trials, especially that of Manchester Radical Thomas Walker in April 1794, were employed to manufacture precedents against the prisoners, see Barrell, *The King's Death,* ch.5, see pp.276-284, see appendix VII for summary of alleged treasonable acts.

the elite attempting to redefine the laws of treason to apply them also to peaceable radicals. The acquittals, in November and December 1794, utterly humiliated the old order, reverberating for over half a century among both radicals and a succession of Tory governments. Pitt's competence was questioned, even by some in his cabinet.[6] The names of the three radicals tried, Hardy, John Horne Tooke and John Thelwall, were elevated to near sainthood in radical circles. But above all, the acquittals ensured the status of trial by jury as both a 'Citadel of the Constitution' and seat of popular justice, democracy and the political power of the middling sorts.[7]

The next three chapters examine the juries of 1794 from several previously unexplored angles, continuing to analyse the radical approach to defending the trial by jury and emphasising its role as a power broker for the middling sorts. The juries are still largely overlooked in historiography. While they have, to a degree, received more significant attention in recent scholarship, the jurymen of 1794 still tend to be seen out of context, both of the power struggle inherent in the jury box, and the preceding years of radical campaigning on jurors' rights, duties and powers.[8] I suggest that the juries were not passive participants open to persuasion by either side, but political agents of the middling sorts, engaged in the trial process and with interests of their own in the outcome. Both radicals and those supporting the

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[6] Notable critics included Solicitor General John Mitford, who alleged Pitt had 'lost his lustre', Devon Heritage Centre (DHC), Sidmouth Papers, 152M/C1795/OZ, ff.20-23.

[7] *Substance of Earl Stanhope's Speech, delivered from the Chair, at a Meeting of Citizens … 4th of February 1795 &c.* (London: Burkes, 1795), p.8.

[8] Barrell takes the campaign for libel law reform in 1792 into account, but only in explaining the 1794 legal arguments. The impact of 1792 on jurors, or that of *The Englishman's Right* is absent, see Barrell, *The King's Death,* pp.354-362. Other work on the trials also give little regard to the juries e.g., C. Emsley, 'Terror and the Rule of Law in England During the Decade of the French Revolution', *English Historical Review* 100:397 (1985), pp.801-825; M. Scrivener, 'John Thelwall's Political Ambivalence: Reform and Revolution', in Davis, ed., *Radicalism and Revolution in Britain,* pp.69-83, especially pp.73-80; M. Davis, 'The Noise and Emotions of the Political Trials in Britain During the 1790's'; and N.E. Johnson, 'Literary Justice: Representing the London Treason Trials of 1794', both in, Davis et all, eds., *Political Trials,* pp.137-162 and 163-184 respectively.

government knew this, and their respective engagement with the subject of the juries, their role and ultimately their verdicts, was undertaken with this in mind.

This chapter discusses the radical approach to the trials. It examines how jurors were addressed on their duties in the months and weeks before the trials and subsequently, how radicals sought to justify the acquittals. Examining the discourse on duties, I focus on how patriotism, constitutionalism and religion continued to play a central role in jury-related discussion. Exploring political appeals to jurymen by loyalists and radicals in the month before the first trial in late October, I argue that they appealed to patriotism, and linked national survival to their desired trial outcome. Supplementing this on the radical side were appeals to individual jurors' faith and religious duty to their fellow citizens, drawing heavily on *The Englishman's Right* campaign.

After the trials, the radical employment of language remained largely the same. However, while work by John Barrell, Frederick Burwick and others, has extensively explored the political reaction to the acquittals, the role religious language and imagery continued to play following the verdicts has been ignored.[9] The latter part of this chapter focuses on this aspect. In the context of the jurors' decisions and loyalist suggestions that their verdicts did not in fact prove the defendants innocent, the use of religion by radicals introduced providentialist, exceptionalist and anti-Catholic aspects.[10] Their aim was to nullify any suggestion that the prisoners were morally guilty, by presenting the acquittals as instances of divine favour, tying the verdicts to ideas of English exceptionalism and the belief that England was God's elect

[9] F. Burwick, 'The Language of High Treason: Thomas Hardy, John Horne Tooke and the Edinburgh Seven', *Huntingdon Library Quarterly* 63:3 (2000), pp.263-275; J. Barrell, 'Imaginary Treason, Imaginary Law: The State Trials of 1794', in J. Barrell, *The Birth of Pandora and the Division of Knowledge* (London: Macmillan, 1992), pp.119-144.

[10] On anti-Catholicism and Englishness see J. Black, *Natural and Necessary Enemies: Anglo-French Relations in the Eighteenth-Century* (London: Duckworth, 1986), pp.160-167.

nation.[11] Providence, radicals argued, was exercised through the free will of England's Christian jurymen. The trials of 1794 were thus contextualised, as the latest moment in the national story of resistance against oppression aided by the divine will, through the use of songs, poetry, ballads, handbills and parody. Jurors, and the middling sorts more broadly, remained radicals' primary audience. However, in response to the trials – and indeed, those of later radicals in 1817 (see chapter six) – radical writers sought to broader their appeal, using methods of communication characterised by popular outreach, appeals to the illiterate, and different forms of address, both serious and satiric.

II

For months before the opening of Hardy's trial on 28 October 1794, the narrative of his arrest, the charges against him and, in trying the cause, the duties of England's jurymen, were dominated by loyalism.[12] Radicals limited their commentary, desiring to appear peaceable, restrained and respectful of the legal process. What reaction there was generally focused on criticising the suspension of the Habeas Corpus Act following the arrests, and the lengthy, arbitrary imprisonments.[13] With the exception of a few addresses and an LCS pamphlet objecting to parliamentary prejudice, radicals did not mount a significant campaign until

[11] On providentialism and the 'elect nation' see H. Grabes, '"Elect Nation": The Founding Myth of National Identity in Early Modern England', in H. Grabes, ed., *Writing the Early Modern English Nation: The Transformation of National Identity in Sixteenth and Seventeenth-Century England* (Amsterdam: Rodopi, 2001), pp.173-190; R. Hertel, *Staging England in the Elizabethan History Play: Preforming National Identity* (London: Taylor & Francis, 2016), pp.6-8; W. Haller, *The Elect Nation: The Meaning and Relevance of Foxe's Book of Martyrs* (New York: H&R, 1963), pp.248-255; T. Claydon, I. McBride, 'The Trials of the Chosen Peoples: Recent Interpretations of Protestantism and National Identity in Britain and Ireland', in T. Claydon, I. McBride, eds, *Protestantism and National Identity* (Cambridge: Cambridge University Press, 1998), pp.3-30; Colley, *Britons,* pp.19-22.

[12] Within days of Hardy's arrest, two prejudicial reports by a secret parliamentary committees were published: *First Report from the Committee of Secrecy appointed by the House of Lords* (London: J. Debrett, 1794); *The Second Report of the Committee of Secrecy of the House of Commons* (London: J. Debrett, 1794); Royle, *Revolutionary Britannia?* p.18.

[13] *Morning Chronicle*, 16 May 1794; *Morning Post*, 29 May 1794; *An Account of the Seizure of Citizen Thomas Hardy, Secretary to the London Corresponding Society, with Some remarks on the Suspension of the Habeas Corpus Act* (London: LCS, 1794).

September. Rather than attempting to combat the ubiquitous rhetoric of treason, conspiracy and xenophobia occasioned by the arrests, radicals elected to choose their own ground. There was evidently a recognition that attempting to directly counter loyalist propaganda founded on fear and paranoia was foolhardy, and would risk radical writers looking defensive and unassured. The result was a lengthy period of prejudication by loyalists, in which the prisoners were tried, condemned and executed in the government-supporting press.[14] This has been discussed at length by a number of scholars.[15] A brief overview of the loyalist position is nevertheless important, with their propaganda and most interestingly, their divisions of opinion over the trial's propriety, foregrounding both radical appeals to jurors and ultimately the response of the middling sorts explored in chapter four.

The majority of loyalists pursued a prejudicial tone. It was most apparent in the propaganda of John Bowles, who continued to support the government, arguing that the primary responsibility of jurors was to follow the legal letter, and to protect the state.[16] Paramount in his writing was a reliance on patriotism and, in particular, its derivative paradigm of national preservation. An idiom given meaning by the revolution in France and the fear of its export, it featured prominently throughout the eighteenth-century at moments of national emergency, its effectiveness owed to the middling sorts' desire to maintain law and order.[17] Bowles sought to exploit this, calling on jurymen directly to sacrifice the prisoners for the sake of preserving the nation's polity and their own institution, playing on the middling sorts' broad

[14] Burwick, 'The Language of High Treason', pp.266-268.
[15] Barrell, *King's Death,* chs.3-9; J. Barrell, 'An Entire Change of Performances?' The Politicisation of Theatre and the Theatricalisation of Politics in the mid-1790s', *Theatre of the World,* 17, (1998), pp.11-50, pp.15-19; Wharam, *Treason Trials,* ch. 8 to 11; Johnson, 'Literary Justice', pp.163-166; Thompson, *English Working Class,* pp.144-150; C.J. Gibbs, "Securing the Nation: Radicalism and Security in 1790s Britain" (Masters Thesis, University of York, 2013), ch.1.
[16] E. Vincent, 'The Real Grounds of the Present War': John Bowles and the French Revolutionary Wars 1792-1802' *History* 78:254 (1993), pp.393-420, pp.393-395.
[17] Hay, 'The Palladium of Liberty', pp.311-316, 348-357; King, *Crime, Justice and Discretion*, pp.246-252.

support for the constitutional settlement. Underpinning his position were the sentiments he had expressed during the libel bill debates, contending that when 'examples' were required to suppress radicals, discretion or leniency were detrimental to the constitutional order. 'Severity is humanity' he declared, 'when mercy and forbearance would be cruelty to the state', or rather, would undermine the power of the political elites.[18] Typical of reactionary loyalism, Bowles aimed to deflect attention away from radical heritage and the legitimacy it provided, instead focusing jurors' minds on current events. Loyalists needed to distract from the heritage of constitutionalism the LCS wedded itself too, in order to present them as a new, modern threat produced by the French revolution. It was simply not possible, argued the writer turned political commentator John Stewart, mere weeks after Hardy's arrest, for radicals to achieve their stated goal of universal manhood suffrage while preserving the constitution.[19] Political stability and radical politics were, loyalists had concluded, mutually exclusive.[20] Juxtaposing English excellence with French deficiency, Stewart called on jurors to forestall a British revolution, and to find against the defendants.[21]

Viewed in light of events in France and associated with gallophobia, radicals were easily cast as pro-French traitors.[22] However, when placed in the context of Hampden, Sydney and Russell, or of Pitt who previously supported reform, the societies appeared not as 'new' threats, but the latest generation of a political tradition. Tooke called Pitt and the Duke of Richmond

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[18] J. Bowles, *Reflections Submitted to the Consideration of the Combined Powers* (London: J. Debrett, 1794), p.8.
[19] Stewart was generally known for travel writing. The French Revolution brought him to loyalism, see J. Stewart, *Second Peal of the Tocsin of Britannia; or Alarm Bell of Britons &c.* (London: J. Owen, 1794), p.45.
[20] *The Times*, 6 September 1794 epitomised this, its front page a parody, 'The New Times', detailing events following a revolution. Eaton was a government publisher, Paine Archbishop of Canterbury, Margarot Mayor of London, Hardy 'President of the Committee for the sale of the Effects of the Nobility' and Thelwall 'President of the National Convention'.
[21] Stewart, *Second Peal of the Tocsin of Britannia,* pp.3-4, 46, 50; J. Stewart, *The Tocsin of Britannia: With a Novel Plan for a Constitutional Army* (London: J. Owen, 1794).
[22] On gallophobia/francophobia see J. Black, 'Ideology, History, Xenophobia and the World of Print in Eighteenth-Century England', in J. Black, J. Gregory, eds., *Culture, Politics and Society in Britain 1660-1800* (Manchester: Manchester University Press, 1991), pp.184-204, pp.201-204.

as witnesses for this reason, and Gerrald in Scotland cited their efforts as justification for the British Convention.[23] To counter this, loyalists provoked moral panic, presenting the prisoners as 'folk devils' in the service of a foreign threat, intent on subverting England's social fabric[24]. The punishment of the prisoners and national survival were made interdependent, with the duty of English jurymen being to ensure both. Bowles encouraged jurors to consider their own moral values and honour as materially interested in convictions. Refusal to act as the authorities wished, he told them, was no less dangerous to the polity than the treachery of the prisoners, arguing that those who tried the causes ought to be 'distinguished by their zeal' in ensuring the conviction of the defendants.[25]

Not all loyalists or supporters of the Tory administration believed this prejudication to be legitimate. Their concern was not that radicals were innocent and thus wrongly accused, but the consequences of pursuing them without regard for legal integrity. This was epitomised in July 1794 by pensioned government pamphleteer Joseph Cawthorn's condemnation of ministers' actions in an anonymous pamphlet. Possessed of what Barrell calls 'unusually independent views' for a government author, Cawthorn's apprehension was that arbitrary measures, from ministerial warrants to indefinite imprisonment, would have the opposite effect of that intended by the Crown.[26] He recognised that the British compact relied on a level of consent, particularly from the middling sorts, exercised through their liberties and the jury trial.[27] Both the prosecutions and the pressure being placed on jurors, Cawthorn contended, would threaten this arrangement, strengthen radicalism and weaken the Government, because

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[23] Wharam, *Treason Trials,* pp.210-211; Mee, *Print, Publicity and Popular Radicalism,* pp.95-97, for Richmond's former beliefs, *A Letter of His Grace the Duke of Richmond &c.* (London: J. Stockdale, 1783).
[24] Barrell, 'Politicisation of Theatre', p.16; S. Cohen, *Folk Devils and Moral Panics, Third Edition* (London: Psychology Press, 2002, orig.1972).
[25] Bowles, *Reflections Submitted to the Consideration,* pp.7-10.
[26] Barrell, *King's Death,* pp.245-246; A. Aspinall, *Politics and the Press c.1780–1850* (London: Home and Van Thal, 1949), pp.163-165, 167.
[27] S. Behrendt, *Romanticism, Radicalism and the* Press (Detroit, Wayne State University Press, 1997), p.18.

they manifestly overstepped the agreed boundaries of justice.[28] Ministers, not the accused, represented the dangers Bowles and others were warning of, employing measures 'illegal, unnecessary and dangerous, neither authorised by Law, or warranted by necessity'.[29] The problem was that such measures were un-English, resembling the ignorance and despotism associated with foreign regimes, which would not be tolerated by the political nation.[30] Cawthorn employed traditional Whig tropes to imply an equation between aims of the Tory elite, especially their repressive political policies, and the despotism which, to many in England, continental nations (especially Catholic ones) embodied. Despite this criticism, Cawthorn was not seeking to attack the government. Rather, he warned that ministers risked undermining their own position. His principal fear was that the elite, by overzealously defending their political position and degrading long legitimate liberties, were driving a wedge between themselves and those that, through the jury trial, legitimated their power.

Where Stewart and Bowles believed a few examples could quash dissent, Cawthorn anticipated they were likely to bring radicalism and the middling sorts closer, by exhibiting the legal process as tyrannical. His warning was clear, that minister's actions were the true danger, that it was paramount for law to appear just, or risk the middling sorts questioning the elite's legitimacy as custodians of political authority. For Cawthorn, ministers overcome by paranoia and suspicion, pursuing 'arbitrary act[s] congenial to an absolute and tyrannical Government', endangered England's otherwise stable social relations.[31] This risked, he implied, emulating France, where such actions had driven revolution and continued to define revolutionary 'justice'. The denial of rights and liberties long held by the English people, he cautioned, would

[28] *A Letter to the Right Honourable the Lords of His Majesty's Most Honourable Privy Council &c.* (London: J. Parsons, 1794), p.15, Barrell attributes the work to Cawthorn, *King's Death*, p.246.
[29] *A Letter to the Right Honourable the Lords*, pp.11-13.
[30] *A Letter to the Right Honourable the Lords*, p.49.
[31] *A Letter to the Right Honourable the Lords*, p.13.

'produce the most serious consequences when the nation is in ferment, and the irritation of the people is favoured by the restless temper of the times'.[32] Cawthorn understood the English polity as being balanced by the jury, through a relationship of cooperation and mutual accountability. If justice were to appear prejudiced, as in Bowles' remarks, the assumptions relating to law and truth would disintegrate.[33] He thus laboured heavily the point that 'all men are equally amenable to the law: the people for Treason against the Government, and Ministers for Treason against the Constitution', an extraordinary statement from a pensioned Government writer.[34]

Radicals did not actuate a response to these persistent accusations until late September, less than a month before the trials began. This strategic silence was beneficial to the prisoners, allowing for a noticeable shift in public mood, characterised by increasing sympathy for the defendants.[35] By the autumn, the threat Cawthorn warned government ministers against had become a reality. Yet, among those imprisoned there was foreboding, a belief they must be convicted and executed. Tooke in particular was melancholy, expressing his belief that, upon receipt of the list of his potential jurymen, 'of 228 Jurors, I see 11 honest men'.[36] Many still feared that the government could corrupt the juries, or otherwise prejudice the proceedings. There existed a general opposition to the prosecutions, and desire for acquittals. 'The evil had been universally felt', wrote future US president John Quincy Adams, then staying in London, because for the first time since 1688, the continuance of the English political settlement was

[32] *A Letter to the Right Honourable the Lords,* p.18.
[33] On this balance, see Thompson, *Whigs & Hunters*, pp.202-210.
[34] *A Letter to the Right Honourable the Lords,* p.15, in private, others elites shared these feelings. Henry Addington, later Viscount Sidmouth, expressed relief at Hardy's acquittal, DHC, Sidmouth Papers, 152M/C1794/OZ, f.43, Mitford expressed similar feelings, implying he had been a reluctant participant, DHC, Sidmouth Papers, 152M/C1795/OZ, ff.20-23.
[35] Opposition newspapers claimed broad sympathy by the public: *Morning Post,* 29 May, 1 October, 14 October 1794; *Morning Chronicle*, 13 October 1794.
[36] Wharam, *Treason Trials,* p.134.

being called into question.[37] Cawthorn's deepest fear, that prosecuting radical leaders on inflated charges might 'prove dangerous, at least to the present order of things', was justified. As the post-trial celebrations and the particular involvement of the middling sorts would demonstrate, the charges forced middling England to re-assess where its political interests lay, identifying them with the prisoners rather than the state.

Radicals sought to exploit this, contesting loyalists' patriotic claims and ensuring no middling Englishman could doubt where his loyalties or interests lay. This was built on long standing themes, specifically the presentation of jurors as collective representatives of the political nation and guardians of the constitution, employed in both justifying the Libel Act and encouraging wider understanding of the juryman's duties during 1793. At its heart was the notion of the 'constitution threatened'. In 1794, owing to the unique crisis precipitated by the Crown's decision to bring charges of treason, radicals argued the trials were not simply a question of delegitimising particular opinions, as in cases of seditious libel or conspiracy, but whether the British Constitution itself should be preserved. This made it, as one anonymous radical pamphlet warned its readers, 'the most important [challenge] that has occurred since the æra of the Revolution' and the establishment of the current polity.[38]

Where loyalists directed attention away from the defendants, radicals focused jurors' minds on what they represented: the English tradition of political dissent. Current events were not indicative of the prisoners' beliefs or intentions, but were being brought forward 'to attach the deepest criminality to opinions which would formerly have been regarded as the mere dreams of speculation'.[39] Radicals warned that fear, francophobia and the 'demure' warnings of loyalists regarding public order were masking tyranny by presenting the prisoners as something

[37] MHSAFP, Adams Family Correspondence, Vol.10 (January 1794–June 1795), ff.244-246.
[38] *A Calm Inquiry into the Office and Duties of Jurymen in Cases of High-Treason* (London: J.S. Jordan, 1794), p.49.
[39] *Duties of Jurymen in Cases of High-Treason*, p.44.

uniquely subversive to the polity.[40] The trials, it was alleged, were based on falsehoods, the old order attempting as they dared not openly before, to manipulate the political nation into voluntarily surrendering its heritage and rights.[41] 'All ranks of people', declared Eaton in *A Warning to Judges and Jurors*, must 'perceive that these state trials were nothing more than an attempt to make the people give up their few remaining rights in a moment of terror and delusion artfully kept up'.[42] The consequences of convictions were made clear: they would mean the end of the Englishman's right to speak freely. More seriously, because the defendants were accused of constructive treasons (crimes which had not actually occurred, and which were not set out in statute), verdicts for the Crown would create a dangerous precedent, allowing prosecutors to interpret anything as potentially treasonous. This, it was argued, would leave the English at the mercy of tyrannical despotism, no-one ever able to be sure that their words or deeds would not be construed as criminal. 'In your rightful verdict', jurymen were thus told, 'lies the last fragment of our freedom. You are the only hope'.[43]

In the coming trials, radicals argued that the jurors had a duty to acquit, not condemn. They may not necessarily have identified politically with the accused – something loyalists, by highlighting a supposed threat to national preservation had tried to exploit – but the defendants' fates were nonetheless tied up with the middling sorts' political interests and liberties. As such, the trials represented a potential moment of social unity for the middling sorts. Expressions of this sentiment were frequent, embodied in a letter published by Eaton in *Politics for the People*.[44] Published weekly at two pence to maximise popular readership, *Hog's*

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[40] *Observations on the Law of Treason; Wherein it is Attempted to be Shewn that Conspiring to Levy War is Not Treason by the Law of England* (London: J. Johnson, 1794), p.42.
[41] *Duties of Jurymen in Cases of High-Treason*, p.41.
[42] D.I. Eaton, *A Warning to Judges and Jurors on State Trials; being an Abstract from an Ancient Lilliputian Chronicle &c.* (London: D.I. Eaton, 1794), pp.45-46; Barrell, *The King's Death*, pp.307-309.
[43] Eaton, *A Warning to Judges and Jurors*, p.35.
[44] On Eaton's journal, D.L. McCue, 'Daniel Isaac Eaton and *Politics for the People*', unpublished PhD thesis (Columbia University, 1974).

Wash as it was commonly called, comprised an eclectic mix of commentary, correspondence, satire, song and poetry.[45] The letter was addressed from Sheffield, a growing industrial centre and radical hotbed, and reiterated the importance of shared interests among middling England. The anonymous author, writing under the guise of a 'juryman', argued that convictions based on any desires to satisfy the bloodthirst of loyalists or the wishes of the authorities would 'sacrifice our own interests'.[46] Addressing London's jurors, whom he claimed were his fellows, the author suggested that instead of arbitrarily convicting, a juryman had every right to acquit irrespective of evidence, if this satisfied his conscience and social interests. For this writer, the primary responsibility of the capital's jurors had to be to each other, demonstrating a sense of collective interest. The alleged facts were condemned as irrelevant in such a case, because it was not really the prisoners who were on trial, rather the freedoms they – whether an individual agreed with their politics or not – represented. As the anonymous 'Juryman' concluded, acquittals were the juryman's duty in this case, checking the state of primary importance. It was necessary in the letter's words, to sacrifice even a jurors 'reputation of veracity' in the eyes of the political elite, 'when the social relations require'.[47] The authenticity of the letter is unclear. It may have been by Eaton himself, using anonymity to manufacture legitimacy.[48] And yet it does not read like Eaton's wider commentary on the trials, and is as likely to have been genuine, especially in the context of the outpouring of middling support for the acquittals detailed in the next chapter. It shows an individual using the office of

[45] M. Davis, 'Daniel Isaac Eaton, January 1753 to August 1814)', in G. Kelly, E. Applegate, eds, *British Reform Writers 1789–1832* (Detroit: Gale, 1996), pp.94-102; M. Davis, '"That Odious Class of Men Called Democrats": Daniel Isaac Eaton and the Romantics 1794-1795', *History* 84:273 (1999), pp.74-92, pp.74-78; M. Durey, *Transatlantic Radicals and the Early American Republic* (Lawrence, University Press of Kansas, 1997), pp.43-44.
[46] D.I. Eaton, *Politics for the People* II:19 (October 1794), pp.298-300. On Sheffield radicalism F.K. Donnelly, J.L. Baxter, 'Sheffield and the English Revolutionary Tradition 1791-1820', *International Review of Social History* 20:3 (1975), pp.398-423.
[47] Eaton, *Politics for the People* II:19 (October 1794), p.299.
[48] On anonymity, E.P. Thompson, 'The Crime of Anonymity', in Hay et al, *Albion's Fatal Tree,* pp.255-308.

the juror to identify their social status, demonstrating a consciousness of and concern for middling social and political interests at the national level, expressed directly through the prism of trial by jury.

The death of liberty was not the only threat radicals and the middling sorts perceived in any potential convictions. Making a similar case to Cawthorn, radicals reversed the loyalist case, arguing that convictions threatened the constitution and national integrity. 'Power which knows no bounds shall know no security', argued the anonymous *Observations on the Law of Treason,* and any government that corrupted the laws to prosecute its own subjects, must encourage the people to do likewise against the state, by undermining the legitimacy of the law.[49] Where Stewart and Bowles cast convictions as patriotic, radicals reinvigorated the patriotic idiom as a language of opposition, declaring convictions the height of disloyalty.[50] Drawing on Cawthorn's arguments, they reiterated his point that if established understandings of law and justice were subverted, 'the boundaries of right and wrong become indeterminate', threatening the social fabric. Radicals admitted that a conviction might seem the patriotic course to take, as a result of the paranoia created by loyalist propaganda. But they warned this was based upon a false sense of duty propagated by loyalism, which failed to comprehend or wilfully ignored the potential ramifications of destroying English liberty. Convictions, paradoxically, endangered the King's life by undermining his authority and faith in justice, creating a 'vortex' in which political society would inevitably collapse.[51]

To the LCS, guilty verdicts would demonstrate the inability of trial by jury to protect English liberties. The potential consequence would be to break the primary link between radicals and constitutionalism. Thelwall and other LCS leaders expressed this view, believing

[49] *Observations on the Law of Treason*, p.44.
[50] D. Eastwood, 'Robert Southey and the Meaning of Patriotism', *Journal of British Studies* 31:3 (1992), pp.265-287, pp.265-268.
[51] *Observations on the Law of Treason*, pp.43-44.

unjust convictions were likely to bring revolutionary elements to the fore.[52] This was the warning given in one of the Society's addresses, asking those in power what they believed convictions would achieve, other than forcing the people to reconsider their attachment to the existing system and polity.[53] In presenting convictions as patriotic, loyalists endangered the nation by clothing the state's power grab in constitutionalist language. The suggestion was that loyalist patriotic appeals were illegitimate, deliberately misconstruing patriotism as blind loyalty to state, rather than to the nation and its people; to a political authority rather than England's property, kinship and liberty.[54] Indeed, Bowles did so openly, when he warned that 'mercy and forbearance' would be harmful, not to the nation or people, but explicitly, the state. Radicals appreciated this plea was no accident, loyalists sought to promote their own form of patriotism.

The historic connection between 'liberty' and 'patriotism' was not easily broken.[55] 1794 made this especially apparent, because it pitted the elite against the middling sorts. This meant that loyalist patriotism had to ask jurors to stand 'patriotically' with the authorities and against their own political interests and liberties, hence the clumsy call for loyalty to the state.[56] The questions of social division clearly played an important part, as they had in the preceding years, in these arguments, and would ultimately contribute heavily to the elite's failures.[57] As the remaining chapters of this thesis highlight, this would be a recurring theme into the nineteenth century. In 1794, radicals urged England's jurymen to avert constitutional catastrophe. For

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[52] TNA, TS 11/957, f.60.
[53] *A Vindication of the London Corresponding Society* (London: J. Smith, 1794), p.14.
[54] *Observations on the Law of Treason*, p.43.
[55] L. Colley, 'Radical Patriotism in Eighteenth-Century England', in R. Samuel, ed, *Patriotism: The Making and Unmaking of British National Identity* (London: Routledge, 1989), pp.169-187, p.182; H. Cunningham, 'The Language of Patriotism', in Samuel, ed., *British National Identity*, pp.57-89, p.64.
[56] On loyalist patriotism, K. Gilmartin, 'Study to be Quiet': Hannah More and the Invention of Conservative Culture in Britain', *English Literary History,* 20:2, (2003), pp.493-540; K. Gilmartin, 'In the Theatre of Counterrevolution: Loyalist Association and Conservative Opinion in the 1790s', *Journal of British Studies* 41:3 (2002), pp.291-328. Patriotism and loyalist were not universal bedfellows, see Eastwood, 'Meaning of Patriotism', pp.268-270; J. Bradley, *Religion, Revolution and Radicalism: Non-Conformity in Eighteenth-Century British Politics and Society* (Cambridge: Cambridge University Press, 1991), pp.424-427.
[57] Cunningham, 'Language of Patriotism', pp.65-67.

jurors to conflate patriotism with loyalty to the state betrayed their own interests, in an act likely to bring about the demise of an independent judicial system and the trial by jury, 'betray[ing] the sacred trust which they hold from their country'.[58] A truly patriotic juryman, declared *A Calm Inquiry* was one who loved the constitution and, in every verdict, ensured its preservation was his primary concern. Their duty, radicals explained, was to take a 'noble stand … [on] behalf of the constitutional rights of the subject, in opposition to every species of delusion'.[59] Preservation of the nation's liberties, not the present Tory administration, was the patriotic juryman's task.

III

This conflict over patriotism was overshadowed, as far as radicals were concerned, by the imperatives of religion employed to address jurors before the trials and defend their acquittals. As with the LCS's decision to republish *The Englishman's Right,* radical use of religious language and motif was strategic and a genuine espousal of their own beliefs. The 1790s was a deeply religious age, and while there were radical deists, most were practicing Christians. Radical appeals to religion were not simply expressions of faith. The aim was to present jury duty and ultimately their verdicts, as 'act[s] of piety and not merely … administrative competency', relocating the debate over jurors' rights to the spiritual plane, combining this with wider ideas of constitutionalism and, at times, chauvinism and xenophobia.[60] Little was beyond the pale in defence of jurors' rights.

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[58] *Duties of Jurymen in Cases of High-Treason*, p.25.
[59] *Duties of Jurymen in Cases of High-Treason*, pp.34-35, 49.
[60] Q. Skinner, 'Language and Political Change', in Ball, Farr, Hanson, eds, *Political Innovation*, pp.6-23, p.16. Religion was a 'safety net' to catch those unpersuaded by political arguments, see Hole, *Politics and Public Order,* ch.7; Hannah More's 'counterrevolutionary moral reform' in K. Gilmartin, *Writing Against Revolution: Literary Conservatism in Britain 1790-1832* (London: Cambridge University Press, 2007), ch.2.

Radical appeals to faith and religion varied, from appeals to individual faith akin to those made by Hawles, to arguments about the fundamental questions of good versus evil, and the preservation of the English as God's chosen people. In the two months before the prisoner's arraignments on 25 October, the first two of these dominated radical texts. Appeals to individual jurymen echoed the warnings to jurors delivered in Hawles' *The Englishman's Right*. The price of failure to do their duty, jurors were warned, was not merely the loss of liberty, but infamy and damnation. The foundation of this warning was the fact that, as Hawles had argued, jurors' verdicts were long held to represent God's will, because, in theory, no juror would deny the resolve of his conscience in the sight of God. Doing so, especially by remission of duty, risked one's soul. The LCS's *Vindication of the London Corresponding Society* embodied these arguments, recapitulating themes from *The Englishman's Right* which, alongside newer publications, the Society continued to recommend to potential jurors as a source of instruction for their coming duties.[61] Their new work cited the recent case of Thomas Walker, a radical and Manchester merchant, tried and acquitted in April 1794 for 'treasonable practices'. The case against him, prosecuted by Edward Law, the future Chief Justice Ellenborough, was exceedingly weak, based almost entirely upon the evidence of informers, one of whom, with Law's knowledge, had invented much of his testimony. This was exposed by the cross-examination of the defence, led by Thomas Erskine. 'No Juryman can recollect, but with awakened dread and caution', warned the LCS, how prosecutors had tried to deceive jurors, with the false evidence of spies, to perjure their consciences and convict their innocent countrymen.[62] Only by emulation of Walker's jurors who recognised the ruse, could justice be

[61] The LCS recommended *The Englishman's Right* to jurors, *Morning Post,* 17 October 1794.
[62] *Vindication of the London Corresponding Society*, pp.13-15; P. Keen, *The Crisis of Literature in the 1790's: Print Culture and The Public Sphere* (Cambridge: Cambridge University Press, 1999), pp.87-96; C. Heydt, *Moral Philosophy in Eighteenth-Century Britain: God, Self and Other* (Cambridge: Cambridge: 2018), chs.2 and 4. Fear of spies and informers prevailed through the revolutionary era: C. Emsley, *The English Police: A Political and Social History*

ensured and the duplicity of the Crown defeated. Appealing to individual faith, radicals forwarded an argument which undercut political differences by stimulating basic moral obligations to defend innocence. 'How severe must have been the self-reproaches of the Jury', asked the LCS, 'if in consequence of their verdict, the defendants had been deprived of their lives, and the perjuries … afterwards detected?' This would leave jurors, fooled by the corrupt, to live knowing they had abjured God's teachings of mercy, and sacrificed innocents to the whims of the state: 'awful indeed must be those reflections which result from a consciousness of having, by remiss performance of a most solemn duty, subjected the innocent to the machinations of the cunning and the cruel'.[63]

If Walker's jury was worthy of emulation, there were jurors whose failure provided bitter lessons. *Observations on the Law of Treason* categorised jurors who refused to employ their discretion, had by their apathy been misled, or who simply did as the authorities bid them, as traitors to the people. They were to be remembered alongside Jeffreys, Scroggs and the other principle figures of Whig demonology. Such a juror was little more than an abettor of injustice and tyranny, his sin made all the greater because, unlike the infamous judges, the decision over life and death lay with his conscience: 'scaffolds have, in former times, streamed with the blood they have shed'.[64] Radicals were unequivocal, that independence was paramount for English jurymen, whose first duty was to God. Central to this idea was a persistent message, that the prosecutions were not just about the twelve prisoners, but essentially good and evil, and that anything but adherence to their oaths and consciences risked facilitating the latter. Even heeding judges was cautioned against, jurors warned that, as Satan had often appeared and spoken as a 'minister of grace', so judges in times past and recently in libel trials, preferred

(London: Longman, 1996), pp.6-64; J. Barrell, *The Spirit of Despotism: Invasions of Privacy in the 1790s* (Oxford: Oxford University Press, 2006), pp.91-93, 135.

[63] *Vindication of the London Corresponding Society,* p.15.

[64] *Duties of Jurymen in Cases of High-Treason*, p.II

opinions under the guise of law which were the antithesis of justice.[65] As in *The Englishman's Right,* such appeals to the juryman's oath – its 'supposed religious and moral force' – drew on reverberations from the 1680s, with Whigs like Hawles eager to encourage jury independence in party interest.[66] Radicals argued not that jurors would be punished for conscious perjury, for this was self-evident, but that they faced eternal punishment for perjury committed accidentally.[67] 'Depend upon it', wrote Eaton, that 'if your verdict this day be lightly given, that the day will come when you will be weighed in the scale and found wanting'.[68] Jurors might not knowingly commit perjury, but a failure of duty was no defence.

The most forceful appeal to individual jurors' consciences, however, was made by devout millenarian Richard Lee's, *The Rights of the Devil.*[69] It presented what Jon Mee terms 'an ironic tour of Hell', imagining that Satan had 'special rights of property' to the powerful and wealthy, his kingdom mirroring England's social and political order.[70] Kings and elites were the primary object of Lee's satire, as were those who aided them. His fundamental message was the coming 'doom of tyrants' and their servants. Primary among the latter, he placed perjurious jurymen, for whom Lee reserved a special place in his hell:

> I have known juries go thither, the whole twelve in a box together like blind beggars, with their snouts muzzled and even covered with blood in their masters' service. I need not inform you that they have rings through their noses, through which goes a cord, and that

[65] *Duties of Jurymen in Cases of High-Treason*, p.44.
[66] J. Oldham, 'Truth-Telling in the Eighteenth-Century English Courtroom', *Law and History* 12:1 (1994), pp.95-121, p.100; B. Shapiro, *'Beyond Reasonable Doubt' and 'Probable Cause': Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley: California University Press: 1991), pp.69-76.
[67] *Duties of Jurymen in Cases of High-Treason*, pp.I-II.
[68] Eaton, *A Warning to Judges and Jurors,* p.33.
[69] Millenarianism centred on an imminent the apocalypse destroying the existing and corrupt society.
[70] J. Mee, '"The Doom of Tyrants": William Blake, Richard "Citizen" Lee and the Millenarian Public Sphere', in J. DiSalvo et al, *Blake, Politics and History* (London: Routledge, 1998), pp.97-114, pp.106-107.

> the judge has one end … it would be injustice not to allow them some considerable right to the favour and protection of Lucifer, as no tribe can serve him better.[71]

In Lee's hell, such jurors were depicted as the worst of Lucifer's servants, because the oath they broke was a religious one. Jurors were almost unique in that they never swore to the King or nation but, often on pain of their salvation, to God. Take for instance this 1815 example of the jurors' oath: 'You swear by God, and as you shall answer to God at the great Day of Judgement, that you shall well and truly try these issues, and a true Verdict give according to the Evidence'.[72] The religious meaning behind the oath was perhaps not quite as strong by the late eighteenth-century as in previous centuries, yet the jurors' oath and the trust which it represented were still deeply revered.[73] This was what radicals looked to highlight in their campaigning. At a moment when the character of the god-fearing Englishman was contrasted with the profane Frenchman, particularly in loyalist propaganda, the potential resonance of such messages is apparent among a populace already suspicious of the Crown's intentions.[74] Radicals argued that it was un-English and un-Christian to be servile. Yet as Lee emphasised, this was what ministers and their acolytes desired, in order to preserve their political power. Any juryman who wished to be considered faithful, pious and an Englishmen had a duty, to the constitution and their souls, to resist these efforts to corrupt both.

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[71] R. Lee, *The Rights of the Devil, or, Consolation for the Democrats &c.* (London: R. Lee, [1794?]), pp.11-12.
[72] See appendix III for further examples of jurors oaths.
[73] Oath-taking was contentious throughout the 1790s. The Unlawful Oaths Act 1797 made administering and taking 'illegal oaths' punishable by transportation: M. Durey, 'Loyalty in an Age of Conspiracy: The Oath-Filled Civil War in Ireland 1795–1799', in Davis, Pickering, eds, *Unrespectable Radicals?*, pp.71-90; J. Archer, *Social Unrest and Popular Protest in England, 1780–1840* (London: Cambridge University Press, 2000), pp.51-54; Thompson, *English Working Class*, pp.556-561.
[74] Hole, *Politics and Public Order,* pp.101-102; Hole, 'English Sermons and Tracts', pp.32-37; A. Goodrich, *Debating England's Aristocracy in the 1790s: Pamphlets, Polemics and Political Ideas* (London: Boydell & Brewer, 2005), pp.139-165; R. Wells, 'English Society and Revolutionary Politics in the 1790s: The Case for Insurrection', in Philp, ed., *The French Revolution*, pp.195-203.

Lee's appeals to the individual were certainly evocative and characteristic of his wider satire. Eaton however, as the more mainstream and popular writer, was the undisputed master of these individual appeals, and those founded in providence and national history. *Hogs Wash* drove home his view that the trials were a test of England's moral integrity, through vivid satire and parody. Following his trials for libel in 1793 and again in February 1794, his style became what Marcus Wood has called 'experimental', both in terms of methodology and the material which formed its basis.[75] Crucially, in the context of the treason trials, it also possessed something Lee lacked: a direct relevance to the present, borrowing contemporary characters to populate the satire.

Eaton's most impactful pre-trial interventions embodied the battle between good and evil, in parody which addressed not just the individual juror's soul, but that of the nation also. Perhaps the most striking was a satirical conversation between the loyalist propagandist John Reeves, and Lucifer. The scene is reminiscent of Christopher Marlows' sixteenth-century telling of the Faust legend. With Reeves taking Faustus' place, it satirised those conversations between Faustus and Mephistopheles regarding the former's doubts about their 'diabolical pact'. As in Marlow's play, Reeves, Pitt and others are complicit in Lucifer's plan, but deceived regarding their fate: 'Dev (*aside*). Didst thou but know how nigh thy fate is; what a warm corner I have prepared for you'.[76] Likewise, Reeves questions his actions and, like Faustus, dismisses the possibility of salvation, believing it impossible and his duty to fulfil Lucifer's pact, no matter the cost to himself or his countrymen: 'Conscience again checks me … but I will not think – I cannot, I dare not reflect! – Lay still foolish conscience … I will endeavour to outdo the *blackest*

[75] Wood, *Radical Satire,* p.91; also on Eaton's style, Behrendt, *Romanticism, Radicalism and the Press*, pp.18-20.
[76] Eaton, *Politics for the People* II:22 (October 1794), pp.337-340, this mimics expressions of Mephistopheles in *Faust*: 'Mephist (*aside).* O, what will not I do to obtain his soul?' and, when Faust doubt Hells' existence, 'Ay, think so still, till experience change thy mind', C. Marlowe, *The Tragical History of the Life and Death of Doctor Faustus* (London: W. Simpkin, 1818, orig. *c.*1594), p.15, 17.

of dæmons!'[77] In choosing this model, Eaton was making a powerful point, not only that Reeves had sold his soul for diabolical assistance in crushing English liberty, but that he and government ministers had also lusted, as Faustus did, after supreme power at any cost. The question was thus asked: who were the real traitors?[78] Righteous men unduly arrested? Or Reeves, Pitt and the ministry colluding to terrorise their nation and 'sacrifice the virtuous?'

The parody was deliberately provocative. Lucifer and Reeves were convinced that jurors would be pathetic, easily misled into aiding their plots. A troubled Reeves questioned the potential success of their plan; his one fear, that English juries might reject perjured witnesses:

> our juries are summoned; proper ones; or at least we have taken all possible means to get proper ones – *I hope they will not disappoint us* … [but] I dreamed last night, that Virtue was *triumphant*; all our plots were *frustrated*; that the *Juries* were *honest*.

Yet his fears were dismissed by Lucifer as unfounded, because their plot would only be detected 'when man is determined to be upright', implying jurors were not so inclined. He reassured Reeves of juror's servility, that misinformed by '[my] subjects … you, Billy, Harry and Paul' they posed little threat: 'you take care and instruct the witnesses; they ***must*** give their verdict accordingly … if you act firmly, the Jury ***must*** decide accordingly; you instruct the witnesses, and S_____ will do the rest'.[79] The message was that loyalists, as Eaton's Reeves made clear, not only desired jurymen be pliant and damn themselves by believing perjured witnesses, but as the insouciant tone of Eaton's Lucifer showed, expected it. This was a parody of what John Bowles

[77] Mirroring Marlow's *Faust*, 'Thou needs to be damn'd, and canst thou not be sav'd: What boots it, then, to think of God or heaven? Away with such vain fantasies, and despair; Despair in God, and trust in Beelzebub'.
[78] K. Johnston, *Unusual Suspects: Pitt's Reign of alarm and the Lost Generation of the 1790s* (London: Oxford University Press, 2013), pp.29-40.
[79] 'Billy' referred to Pitt, 'Harry' to Henry Dundas, Viscount Melville and Pitt's trusts associate, and 'Paul' to Paul Le Mesurier, Tory Lord Mayor of London.

had argued, mocking his expectation that jurors would deliver verdicts as directed. The parody was as much a challenge to jurors as a satire on Reeves' biddable conscience, to defeat satanic plots against England, and prove wrong the assumptions of loyalists.

It was a challenge repeated throughout Eaton's pre-trial work, his focus almost always on the assumption by members of the elite, that jurors were gullible, and easily suborned. He argued that nothing was more likely to destroy the polity, constitution and liberty, for the elite would of necessity employ perjured witnesses, to try and trick the unwary juror into a conviction.[80] The Crown had recent form on this, warned Eaton, citing the cases of several Scottish radicals tried for treasonable conspiracy, and that of Walker at Manchester. The crux of the matter was that under present circumstances, Crown witnesses could not be trusted. If jurors believed their lies, Eaton contended, accusations would become tantamount to conviction, vindicating the use of perjured evidence.[81] Eaton drew effectively on the past two years of debate, especially regarding jurors' competence. By hinting at elite expectations of incompetence, he highlighted these antagonisms in an effort to convince jurymen that loyalist support for their institution was opportunism; that in reality elites viewed them with contempt. Emphasis on this was designed to focus minds on the material danger posed by perjured witnesses, planting seeds of doubt over the validity of Crown evidence.

Eaton's most biting pre-trial satire however, struck a slightly different tone, foreshadowing the emphasis on providence that would characterise radical interpretations of the acquittals. The parody played on the Christian litany, a form of prayer consisting of petitions to God. As with Marlows' *Faust*, Eaton was familiar with biblical models of parody

[80] Eaton, *Politics for the People* II:11 (July 1794), pp.168-169.
[81] Eaton, *Politics for the People* II:16 (August 1794), pp.241-253; the Scots were Robert Watt and David Downie. Tried for treason in early October, their plot was fantastical and Watt likely an agent provocateur, see Barrell, *The King's Death*, ch.9; Wharam, *Treason Trials*, pp.137-142.

and its long-standing tradition since the reformation.[82] It was something that appeared relatively frequently in *Hog's Wash's* anti-Pitt campaigning, notably *Te Deum Pitticus* and *A Crambo Epistle to Mr Pitt.*[83] Eaton imagined the litany being sung by the King's ministers, its contents altered to reflect the coming trials. His most significant modification was to replace the frequent pleas for God's deliverance with appeals to juries:

> Remember all their offences, and the offences of their forefathers, take vengeance of their sins; spare them not, spare not the people whom we have imprisoned, but shed their blood, and deserve our thanks forever,
>
> *Spare them not, O Jury.*
>
> From Conventions of the People, and all Clubs and Societies,
>
> *O Jury deliver us,*
>
> From Parliamentary Reform, and from enlightening the People.[84]

By inserting juries in place of God, Eaton made a fundamental point about the jurors' role, which could be interpreted in two ways. On the one hand, it may have been intended to suggest that the jury was in a literal sense God, or at least that they held ultimate power over life and death. More probably, Eaton hoped to portray the jury as a symbol or embodiment of divine providence. For him, the jury was the institution through which God exercised his 'special providence' and favour towards the English people and, Eaton no doubt hoped, his benevolence.[85] Eaton laid the groundwork for post-trial accounts of providence and divine intervention, making reference to the idea of England as the elect nation. In doing so, he also

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[82] Wood, *Radical Satire*, p.3.
[83] Eaton, *Politics for the People* II:23 and II:24 (November and December 1794), pp.368-373; Wood, *Radical Satire*, pp.89-95.
[84] Eaton, *Politics for the People* II:21 (October 1794), pp.321-325.
[85] A short poem published in *Hog's Wash* in September reflects this belief, calling on jurors to deliver the nation: 'O ye, in whom we trust repose,|Arise, defend us from our foes;|If long supine you heedless lie,|And not for our deliverance try', Eaton, *Politics for the People* II:27 (September 1794), p.271.

began to crystallise the narrative basis that would define 1794 as a popular martyrdom. A martyrology and demonology were evident in his writings. Eaton associated the Crown with Lucifer, and the jury with God.

IV

The verdicts of acquittal delivered for Hardy, Tooke and Thelwall, provoked widespread public celebration. They vindicated radical calls for jurors to protect the liberties of England, and scotched the propaganda of loyalists, that such verdicts would result in revolution. It brought a new significance to the ideas of providentialism and divine interference. Acquittals were secured and broadly welcomed by the people, but the narrative of what they represented was open to contest. Loyalism and the elite, although wounded, did not permit their humiliation to go unchallenged, instead manufactured the idea of the 'acquitted felons'. This acknowledged the prisoners to be legally innocent, but maintained that they were morally guilty, in a flagrant effort to devalue the verdicts as checks on elite power.[86] While Barrell and others have discussed this in some detail, along with the outraged radical and opposition response, they have overlooked the counter-narrative revolving around the elect nation, and the role of jury trial within it, which the remainder of this chapter examines.[87] Using popular culture my discussion focuses on the radical effort to paint the trials and acquittals as providential.

In making their unprecedented attack, loyalists alleged that there existed a difference between 'legal' and 'moral guilt'. This was not necessarily a new philosophical distinction, but it was the first time this contrast had been applied to jury verdicts. It sought to undermine the

[86] The phrase 'acquitted felons' was coined by Secretary at War William Windham: Barrell, *The King's Death*, p.430.
[87] On the political response to these accusations see Barrell, *The King's Death*, pp.424-433; C. Emsley, 'Repression, Terror and the Rule of Law in England During the Decade of the French Revolution', *English Historical Review* 100:397 (1985), pp.801-825, pp.809-811; J. Issitt, *Jeremiah Joyce: Radical, Dissenter and Writer* (London: Routledge, 2006), pp.45-49.

essential unspoken premise that gave jury trial its legitimacy, that the free will of the jurors embodied God's providence, and so their verdicts were unquestionable both legally and morally.[88] Predictably, Bowles reacted with frustration to the acquittals, complaining that his pre-trial warnings were unheeded. Justifying his pronouncements on the prisoners' guilt, he argued that a jury's verdict did not, in Barrell's summation, 'ascribe to a defendant innocence in the sight of God as well as in the eye of the law'.[89] In rather technical arguments, loyalists suggested that English jurors answered the question 'guilty or not guilty', rather than 'guilty or innocent', only declaring an absence of proof rather than proof of innocence.[90] This, while strictly true, obviously perverted the common sense understanding of a not guilty verdict as equating to innocence, without which as radicals argued, there could be no legal, constitutional or moral way of absolving accused persons of wrongdoing.[91] These accusations were, in reality, a roundabout way of calling the three defendants traitors and undermining jurors' verdicts as tools of political power.

These loyalist arguments were countered by radicals in two distinct ways. The first was through expressions of outrage, warning of a threat to the integrity of the jury trial from loyalists and extolling the superiority of trial by jury as a democratic mechanism for checking state abuses. This has been explored substantially by Barrell in his study of the treason trials.[92] The second radical response, arguably the most effective and long-lasting, centred on ideas of providentialism and intended to undermine the idea of 'moral guilt'. The radical premise was

[88] Green, *Verdict According to Conscience*, pp.19-27.
[89] Barrell, *The King's Death*, p.432.
[90] Barrell, *The King's Death*, pp.430-433, see Bowles' anonymous *Letters of the Ghost of Alfred &c.* (London: J. Wright, 1798, orig.1794–1795) originally published in *True Britton*; also W. Hawkins, *Regal Rights Consistent with National Liberties* (Oxford: J. Cooke, 1795), pp.30-33; *Sun* (London), 11 December 1794; *True Britton*, 31 January 1795.
[91] *Substance of Earl Stanhope's Speech*, p.14.
[92] Barrell, *The King's Death*, pp.424-433

simple: if providence had saved the prisoners, and their acquittals had, contrary to loyalist claims, taken place in the sight of God, they could not be morally guilty.[93]

In doing this, radicals evoked what was perhaps Britain's most powerful national myth, the elect nation. Colley summarises it thus: 'God, Britons were encouraged to believe, watched over them with a particular concern. Nothing in their troubled past had escaped his notice or eluded his influence, for they were special'.[94] The concept of the elect nation had been cultivated by church and state in England since the Elizabethan era, as a critical part of national identity.[95] Its origin lay primarily in the Protestant reformation, identifying the English as heirs to the Hebrews of Israel with both, as Ian McBride summarises, defined by their struggles against hostile, unbelieving neighbours.[96] The notions of exceptionalism and particularism that dominated both loyalist and radical concepts of patriotism, flowed largely from this idea. In this telling of history, Catholicism, the French and the Spanish persisted as the eternal boogeymen, having long haunted England's steps towards enlightenment.[97] Anti-Catholicism in particular permeated these perceptions of the past, driven by the need to unite the English against threats both foreign and domestic. The myth centred on key moments in English history, linked by a notion that providence had, on each occasion, favoured the chosen people. Taken together, they provided evidence of an 'international conspiracy' of Catholics against England. Most notable were the defeat of the Spanish Armada in 1588, the 1605

[93] Barrell, *The King's Death*, pp.431-433.
[94] Colley, *Britons*, p.20.
[95] Haller, *The Elect Nation*, pp.250-252 provided early definitions for this concept, and its alteration into the eighteenth-century; see also Claydon, McBride, 'The Trials of the Chosen Peoples', pp.3-8. Grabes notes how from the sixteenth-century, ideas of the 'elect nation' were routinely tied to notions of civil liberty, '"Elect Nation": The Founding Myth of National Identity', pp.183-187.
[96] I. McBride, 'Memory and National Identity in Modern Ireland', in I. McBride, ed., *History and Memory in Modern Ireland* (Cambridge: Cambridge University Press, 2001), pp1-42, p.19.
[97] On anti-Catholicism see C. Haydon, 'I Love my King and My Country, But a Roman Catholic I Hate': Anti-Catholicism, Xenophobia and National Identity in Eighteenth-Century England', in Claydon, McBride, *National Identity,* pp.33-52; Black, *Natural and Necessary Enemies,* pp.160-167; Grabes, '"Elect Nation": The Founding Myth of National Identity', p.177.

Gunpowder Plot, the Restoration, and the Glorious Revolution all evidence of God's covenant with the English.[98] Negative events, including the reign of Queen Mary, prosecutions of William Russell and Algernon Sidney, and the actions of Judge Jeffreys, were similarly included, evidence as Herbert Grabes suggests, of 'the particular hostility of Satan' against God's elected people.[99] Through church services, education, acts of parliament, popular memory and remembrance, this story effectively governed England's civic life and commemorative customs.[100] By invoking providence, radicals sought to write the trials into this story as the next chapter in Britain's history.

There were numerous avenues through which the narrative of providence was perpetuated. The most widespread was the use of popular media, primarily song, parody and satire. That songs formed a significant part of radical efforts is not surprising: they required no literacy from the majority singing them, only the ability to pick up an often repetitive chorus often sung to a familiar air. This, as authorities gradually recognised during the revolutionary period, made them immensely powerful and potentially dangerous forms of communication.[101] An entire crowd, room, meeting or street could be engaged in politics through one refrain, which in turn could be remembered and repeated elsewhere. Equally, the cheap printing of these songs in the press, on broadsides and in radical periodicals, made for a versatile and highly durable message, ensuring the same songs were reprinted and sung for decades.[102] A particularly trenchant example is an untitled song appearing across the Whig press in early 1795. Written in verses of six lines with the last three repeated to form a chorus, it acted as a

[98] Colley, *Britons*, pp.19-30; McBride, 'Memory and National Identity', p.19.
[99] Grabes, '"Elect Nation": The Founding Myth of National Identity', p.175.
[100] The Observance of 5 November Act (1606) required national thanksgiving for the Gunpowder Plot's failure, accompanied by church bells, appropriate readings including the Act itself and commemoration of William III landing (also 5 November), McBride, 'Memory and National Identity', p.19.
[101] Mee, *Print, Publicity and Popular Radicalism,* pp.112-114; K. Horgan, *The Politics of Songs in Eighteenth-Century Britain 1723-1795* (London: Pickering & Chatto, 2014), ch.4.
[102] E.g., *Arouse ye Britons* (February 1795) was sung well into the nineteenth century, BL, Add MS 27817, f.62.

call and response, each verse ending in a variation of the phrase 'While a Trial by Jury remains'.[103] Another penned by poet and radical sympathiser George Dyer used the same technique, ending each stanza with 'Let Britons wake the festive glee|And hail the Day with three times three!'[104] Other frequent radical tactics included writing songs to popular melodies to ensure transmissibility or make political statements. Eaton for instance, employed the *Tulloghgorum* (a Scots strathspey) as the basis for a mock-loyalist song to attack the Scottish Secretary of State for War Henry Dundas, ending in an acknowledgement that the people 'hail[ed] an *upright* Jury'.[105] Similarly, he used the tune to *Rule Britannia* in another political song to celebrate the acquittals as a victory for British liberty, employing a variant of 'yet Britons ever, ever will be free|and still cry, death or liberty' as a chorus.[106]

The acquittals featured in a variety of forms throughout radical post-trial propaganda. The most overt link to providence, was an assertion that the acquittals were the direct work of God. This was most clear in Richard Lee's songs *Hymn to the God of Freedom for the Fifth of November* and *The Tribute of Civic Gratitude*, published in his December 1794 collection, *Songs From the Rock*.[107] Lee depicted the trials as tests from God, with the acquittals as emanating from his direct intervention.[108] This was an extreme position, explicitly declaring that the jurors were not autonomous, but direct instruments of God, an idea even voiced by Erskine in court

[103] See *Morning Chronicle*, 11 February 1795.
[104] Printed in full *Moring Post*, 7 November 1796.
[105] Eaton, *Politics for the People* II:24 (December 1794), pp.283-284.
[106] Eaton, *Politics for the People* II:23 (November 1794), pp.365-366. On radical songs, M. Scrivener, 'Reading the English Political Songs of the 1790s'; J. Beal, 'Why Should the Landlords have the Best Songs?' Thomas Spence and the Subversion of Popular Song', both in J. Kirk et al, eds, *United Islands? The Languages of Resistance* (London: Routledge: 2015), pp.35-50, 51-62.
[107] R. Lee, *Songs from the Rock &c.* (London: R. Lee, 1794), pp.104-112. On Lee see Mee, *Print, Publicity and Popular Radicalism,* ch.5; J. Mee, 'The Strange Career of Richard "Citizen" Lee: Poetry, Popular Radicalism and Enthusiasm in the 1790's' in T. Morton, N. Smith, eds, *Radicalism in British Literary Culture 1650–1830* (Cambridge: Cambridge University Press, 2000), pp.151-166.
[108] Mee, *Print, Publicity and Popular Radicalism,* pp.68-69 notes Lee's poems as indicative of religious differences in the LCS, sharpened by Lee's committed faith. This was a long-standing narrative among radicals, see J. Issitt, 'The Life and Work of Jeremiah Joyce', unpublished PhD thesis (Open University, 2000), pp.74-76, 88-98.

while defending Tooke during a passionate outburst.[109] The handbill referenced at the opening of this chapter is another powerful example. Referring to the jurors as 'apostles of liberty', the inference was that Hardy was Christ-like, and that his trial and acquittal were as such preordained, destined to occur in God's divine plan. This was, however, a view not shared by most radicals. It implied the verdicts were not products of free will, something which made Lee's suggestions extremely problematic. If the jurors had not exercised independent judgement, then any celebration of them lost all meaning.

To counter accusations of moral guilt effectively, radicals required an interpretation of providence, in which God superintended rather than directed events. Most avoided simply attributing the verdicts to 'omnibenevolence' or divine intervention to protect innocence, instead evoking the concept of providence through ideas of the 'elect nation', chosen and guided by God. Critical to this was a focus on highlighting the origin of trial by jury as being uniquely English, and remaining so as a marker of their elect status. 'While a Trial by Jury Remains' characterised this approach, notably in its fifth and sixth verses:

Let WINDHAM, O, Shame!
In the Senate exclaim,
That *true men* are fellows in grain!
We pity his head,
While the Statue of NED,
And the TRIAL BY JURY remain.
A glass let us fill,
To NED, ALFRED and WILL,
Who brighten'd with Freedom our plain
Let their names be enrol'd
In letters of Gold,

[109] Gurney, *Trial of John Horne Tooke,* vol.1, p.366.

While a TRIAL BY JURY remains.[110]

Each of the names referred to important moments in the history of England and trial by jury. 'NED' referred to Edward III, whose Treason Act of 1351 had codified treason law and provided for a trial by jury in treason trials, while 'WILL' denoted William III, the Glorious Revolution and Bill of Rights that affirmed the right of trial by jury and jurors' status as freeholders. That of 'ALFRED' was most significant, evoking the memory of the ninth-century Saxon King Alfred the Great, and the cult of adoration that surrounded him particularly the attribution of trial by jury to his intervention.[111] Alfred, as Simon Keynes argues, 'has long been regarded as the archetypal symbol of the nation's perception of itself … [who] battled fiercely and suffered heroically in leading his people to their eventual victory'.[112] He was also a symbol of justice having, according to legend, hung forty-four judges in one year for corruption.[113] The resulting 'Alfredophilia' was at its height during the late eighteenth and early nineteenth-centuries. Juries were widely held to originate from his reign especially in popular culture, with cartoons, sculpture, plays, books and pamphlets all contributing to this idea. Notable contemporary examples included King Alfred's Tower (completed in 1772), built by Whig Henry Hoare on his estate at Stourhead, with an inscription attributing jury trials to Alfred's benevolence. Artists also depicted Alfred presiding over the first jury trial.[114] Radical pamphlets and satire, especially those relating to the constitution made the same point, notably the 1795 religious parody *A Constitutional Catechism* by the Bristol radical bookseller John Rose, which

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[110] *Morning Chronicle,* 11 February 1795, 'WINDHAM' referred to Secretary at War William Windham.
[111] R. Davis, 'Alfred the Great: Propaganda and Truth', *History* 56 (1971), pp.169-182; A. Simmons, *Reversing the Conquest: History and Myth in Nineteenth-Century British Literature* (London: Routledge, 1990), pp.25-36, 176-201; J. Parker, *'England's Darling': The Victorian Cult of Alfred the Great* (Manchester: Manchester University Press, 2007), ch.1.
[112] S. Keynes, 'The Cult of King Alfred the Great', *Anglo-Saxon England* 28 (1999), pp.225-356, p.225.
[113] Keynes, 'King Alfred', p.235.
[114] Keynes, 'King Alfred', pp.320-322; also M. Kelsall, 'The Iconography of Stourhead', *Journal of the Warburg and Courtauld Institutes* 46 (1983), pp.133-143, pp.141-143.

attributed trial by jury to Alfred and declared juries in other nations to be 'name only'.[115] Radical and loyalist writers decried foreign claims to trial by jury's origins, part of a concerted effort across the revolutionary period to assert England's claim to constitutional pre-eminence and defeat any foreign or domestic criticism of her liberties.[116] Frequent claims by Swedish writers, that juries originated with their Viking ancestors, were readily rejected, on grounds that their modern system operated with life-appointments and hereditary principles; proofs of historic imperfection.[117] As another anonymous song celebrating the acquittals signed 'B.P' declared, juries were 'tho' Europe's envy, Britain's proudest boast'.[118] French revolutionary juries were also attacked for similar reasons, as were any suggestions, especially by Irish Catholic associations, that Catholicism played a part in the origin of juries.[119] That Alfred was a Catholic was unhelpful to English writers, and thus simply ignored. In this jingoistic view of the past, his nationality was all that mattered. Similarly overlooked was the fact that, as many contemporaries including Blackstone acknowledged, juries originated after the Norman invasion. Yet, the cult of Alfred, buttressed by xenophobia and anti-Catholicism, persisted in national myth, that English liberties were of English origin, merely adopted by the Normans who recognised their advantage.[120]

In referencing Alfred, radicals sought to tether the idea of England's insular uniqueness, derived from divine providence, to the juries of 1794. The aim was to draw a direct line between the supposed first juries that sparked England's march towards enlightened liberty and the meaning of the acquittals of 1794 as confirmations of this freedom, embodying

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[115] J. Rose, *A Constitutional Catechism &c.* (Bristol: J. Rose, 1795), p.40, 49.
[116] Radical Earl Stanhope for instance, attacked foreign nations for 'imitating' England's juries, *The Parliamentary Register &c.* (London: J. Debrett, 1792), vol.33, pp.325-326; Vernon, 'Narrating the Constitution', p.225.
[117] *Gentleman's Magazine*, November 1828.
[118] *Morning Chronicle*, 17 November 1794.
[119] *Anti-Gallican Monitor and Anti-Corsican Chronicle*, 22 May 1813.
[120] Keynes, 'King Alfred', pp.283-284; Blackstone, vol.3, pp.350-352.

the spirit of Alfredian juries. The anonymous 'B.P' for instance, inferred that the 'glory' of the prisoners' verdicts should be taken as a prophetic message from God regarding the sanctity of English liberty, instigated by their forbears.[121] Similarly, another popular song by the Welsh radical poet Edward Williams, sung repeatedly at celebratory meetings, concluded:

Boast, BRITAIN, thy JURIES! thy glory! Thy plan! †
They treat the *stern Tyrant* with scorn!
O! bid them descend, the best Guardians of Man,
To millions of ages unborn;
Far and wide as the light, of true FREEDOM the soul,
Be thy BLEST INSTITUTION proclaim'd,
With ERSKINE, with GIBBS, on Eternity's roll,
In the language of glory be nam'd.
† The principle of Trial by Jury originated in Britain.[122]

In casting juries as part of the 'plan', Williams suggested they were a direct derivative of the nation's elect status from its earliest inception, and that their verdicts were symbolic of the nations' favoured position. Unlike any other liberty, jury trial had never been suspended or removed, even by the worst of tyrants. Efforts had repeatedly been made to infringe upon its outworks, as John Thelwall (one of the 'acquitted felons') noted in a 1795 lecture commemorating the trials, from William of Normandy through the Plantagenets, Tudors, Stuarts and Cromwell.[123] Yet, the institution stood defiant against their collective artifices having 'repeatedly preserved the liberties of the country'. With its remarkable endurance, the

[121] *Morning Chronicle*, 17 November 1794.
[122] E. Edwards, *English-Language Poetry from Wales 1789–1806* (Cardiff: University of Wales Press, 2013), pp.147-148, 287. On Williams, M.A. Constantine, E. Edwards, '"Bard of Liberty", Iolo Morganwg, Wales and Radical Song', in, Kirk et al, *United Islands?* pp.63-76.
[123] J. Thelwall, *The Tribune* (3 vols; London: H.D. Symonds, 1794-1796), vol.3, pp.221-229; J. Hostettler, *The Criminal Jury Old and New: Jury Power from Early Times to the Present Day* (Reading: Waterside Press, 2004), chs.2 and 5; Green, *Verdict According to Conscience*, chs.4-6.

notion of trial by jury as evidence of God's favour almost wrote itself, forming a powerful tool for radicals because, as Thelwall detailed, it was demonstrably true.

The most striking radical songs and propaganda were those that directly narrated the national myth, slipping the events of 1794 in as the next chapter. Most noteworthy was the anonymous 'The Brave English Jury', a ballad repeated widely in the radical press and at celebratory meetings over several decades. The song opened with the following stanza:

> The landing of William is now an old story,
> Though it gave us great George, with a reign full of glory;
> Nor sing we of Jamie, and Gunpowder Treason;
> Our theme is far nobler- the triumph of reason,
> When Patriots encounter'd corruptions wild fury,
> By virtue sustain'd, and the brave English Jury.[124]

The events mentioned here, namely the landing of William of Orange during the Glorious Revolution and the Gunpowder Plot, were the most commonly referenced in literature regarding 1794. This was partly because they were the most significant within the national myth, but primarily because they shared the date of November fifth with Hardy's acquittal. Radicals seized on this coincidence, because it provided enormous credence to the notion that the acquittals were another chapter in the nation's story. George Dyer's 'Hail the Day', by far the most popular and frequently recited celebratory songs, made this clear, narrating these events in successive stanzas. Each was evidence of God's favour at moments of a national peril, a continuing thread of heavenly benevolence throughout English history:

> As when the Sun's bright beams appear,

[124] *Morning Post*, 7 November 1796.

And lowering tempest die away,
So midst a dark revolving year,
Returns this bright auspicious Day
Let Britons wake the festive glee,
And hail the Day with three times three.

Three cheers, our sacred Country's due,
We raise for Popish Plots reveal'd,
Thus vanish Superstition's crew,
Though deep as Hell they lie conceal'd,
Let Britons wake &c.

And shout to see a Tyrant fly,
Thus may Britannia's Saviours live,
Her Tyrants thus inglorious die
Let Britons wake &c.

Three times we shout for equal Laws,
And in a virtuous Jury toast,
Let Hardy, and the People's Cause,
Be ev'ry gen'rous Briton's toast!
Let Britons wake &c.[125]

The fifth of November was presented as an 'auspicious day' for the English people, the 'Anniversary of Joy', assigned by God upon which the nation's liberties had repeatedly been renewed.[126] As radicals at Sheffield declared, November fifth was to 'be consecrated for ever to liberty', sanctified as the elect day upon which God's providence had thrice revealed itself in

[125] *Morning Post*, 7 November 1796.
[126] *Morning Post*, 23 January 1795.

defence of England's uniqueness.[127] The coincidence of the dates was held up as a sign that Britons were special.[128]

In some instances, the significance of these events was publicly debated, most notably at the London Forum on 5 November 1795. A 'respectable and popular' debating society, the debate asked which of the events sharing the same anniversary 'has contributed most to the happiness and liberties of this country'.[129] This was remarkable because this was not a radical organised event, but one indicative of broader support for the idea of providence and the trial by jury among middling Londoners. It demonstrated that people were prepared not only to associate but compare the influence of these events. In other words, the impact of Hardy's trial was seen as comparable to that of the Glorious Revolution, the foundation of the modern constitutional settlement. This belief would form the basis of over sixty years of celebrations, held annually on November fifth, to reinforce its sanctity through an evolving message.

During 1795, these ideas were widely disseminated in the press and at celebratory meetings, with anti-Catholic sentiments becoming prominent. Dyer's 'Hail the Day' made it clear that this myth was, at heart, about vanquishing 'popish plots', employing a traditional trope of union between the Pope and Satan to suggest they remained dangerous 'though deep as Hell they lie conceal'd'.[130] This argument reiterated that made by Cawthorn, that the trials embodied the sentiments of Britain's eternal foes. While not plotted overtly by Catholics, the prosecutors could be seen to represent the continuance of this same threat to the elect nation,

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[127] *Morning Post*, 5 January 1795.
[128] See also Eaton's 'A New Song' in *Hog's Wash*, which claimed the verdicts as evidence of England's elect status, 'Since bounteous Heaven protects your cause|Again assert each Briton's right|Secure, protected by their laws', Eaton, *Politics for the People* II:23 (November 1794), pp.365-366.
[129] *Morning Chronicle*, 5 November 1795; M. Thale, 'London Debating Societies in the 1790s', *Historical Journal* 32:1 (1989), pp.57-86, pp.59-60. See also D.T. Andrew, 'Popular Culture and Public Debate: London 1780', *Historical Journal* 39:2 (1996), pp.405-423.
[130] *Moring Post,* 7 November 1796.

characterised as its latest incarnation. Opposition newspapers, in particular, insinuated this, none more bluntly than the *Chester Chronicle*:

> On *this* day [November fifth] we were delivered from the machinations of a *Popish faction* which aimed to destroy at one blow, out glorious constitution … we were a second time delivered from *despotism* and *popish priestcraft*, by a revolution … [and] by the acquittal of Thomas Hardy, other rights equally dear to Englishmen have been rescued![131]

For radicals, 1794 was but another test for the chosen people who, because they lived under the watchful eye of God, had once again triumphed over the forces of evil. Though as one anonymous song declared 'A CHARLES, a JAMES, pollute th' historic page', they had as with the tyranny promised by convictions, been 'swept by the whirlwind of a People's rage'.[132] This was best encapsulated by Thelwall, in his lengthy address to the open-air radical meeting at Copenhagen Fields in November 1795.[133] Closing his speech, he argued that were trial by jury ever abolished, there would 'be but one trial left' to the English, which would demonstrate 'that the voice of the [English] people is the voice of God'.[134] He was reiterating the point, that some form of revolutionary action would be mandated, and that the people would be justified in rising to defend jury trial because they would be doing God's will. For radicals, trial by jury was both politically and religiously sacred. Its defenders and the jurors themselves embodied God's providence and, in doing so, the history of a people resistant to tyranny, Catholic or otherwise.

This invocation of historic Catholic treachery as analogous to modern ministerial tyranny was mild however, in comparison to its use in some radical satire. This was again

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[131] *Chester Chronicle*, 21 November 1794.
[132] *Morning Chronicle*, 17 November 1794.
[133] Thale, *Papers of the … Society*, pp.314-318, Royle, *Revolutionary Britannia?* p.22.
[134] G. Claeys, *Political Writings of the 1790s* (4 vols; London: Pickering & Chatto, 1995), vol.4, p.421.

epitomised in Eaton's *Hog's Wash.* His own personal beliefs and animosities became particularly noticeable in his work regarding the acquittals. An ardent deist bordering on non-belief, his disdain for Catholicism was melded with his radical beliefs to attack both Rome and Pitt's ministry. He did so most strikingly in a January 1795, in a parody entitled *A Poetical Epistle from the Pope to the Devil.* Eaton presented the trials as the direct work of Satan and the Pope, with Pitt 'our champion, our sweet darling boy' essentially their puppet (along with Holy Roman Emperor Francis and Frederick William of Prussia).[135]

The first half of the parody was composed of an allegory, both evocative and carefully chosen. It related in poetic verse, the actions of biblical queen Jezebel, specifically relating to her supposed execution of a subject, Naboth, on false charges using perjured witnesses. The analogy between this story and Pitt's efforts would not have been lost on contemporary readers. Just as Jezebel had encouraged and tricked the people of Jezreel to convict and execute Naboth, through the use of false witnesses and mendacious charges, so Pitt had attempted to fool the people of London, represented in their juries, into executing the radicals of 1794.[136] This comparison was also intended to be prophetic, implying Pitt and the Pope, like Jezebel, were apostates acting in direct contradiction to God, another common anti-Catholic motif.[137] In doing so, Eaton was also indirectly mocking Pitt's sobriquet, the 'heaven-born minister', a title given to him in the popular loyalist press to infer his divine appointment. Instead, Eaton indicated that he was in fact a false prophet, in league with England's enemies. The underlying suggestion was that, as God had delivered judgement on Jezebel, so he would do likewise against Pitt, for having transgressed in an identical manner against providence. And he had

[135] Eaton, *Politics for the People* II:28 (February 1795), pp.444-446; Wood, *Radical Satire,* pp.89-95.
[136] 'Mitford – thy sombre arguments do seem|A Specimen of eloquence most deep|For since thou know'st the plot is but a dream|Thou try'st to set the Jurymen asleep', *Morning Chronicle*, 1 December 1794.
[137] It was one levelled frequently at Pitt by Eaton, notably in his *A Crambo Epistle*, attacking Pitt's failure to remember attending reform meetings, Eaton, *Politics for the People* II:23 (November 1794), pp.368; Wood, *Radical Satire,* p.92.

done so, the Pope's character revealed, at his behest, and as part of what Eaton presented to be a Catholic conspiracy to kill radicals and dissenters:

Then the people of Naboth's own city how loyal,
How kind to comply with th' injunctions royal,
To set up their Jacobin townsmen on high,
And accuse and condemn him for treason to die.
'Tis true, our good cousins have lately begun,
At *Vienna* and *Naples* the same kind of fun;
And in countries more distant, in hopes to succeed,
They conjur'd up *plots,* that vile *traitors* to bleed;
Nay so *loyal* and *pliant in isles far away*,
That they really sent *some* to *Botany Bay*.[138]

Eaton declared Pitt's tyranny not simply reminiscent of past Catholic oppression, but its latest iteration.[139] Undoubtedly, he hoped to evoke both historic hatred and contemporary suspicions, particularly of French Catholic émigrés, and the many Jesuit priests who had fled France, to whom Pitt's ministry had shown hospitality.[140]

This was a fear Eaton exploited frequently following the trials. For instance, in parodies mocking London Lord Mayor Paul Le Mesurier, he made repeated reference to his 'French' name, implying his loyalties were elsewhere.[141] In another, Eaton characterised Le Mesurier as

[138] Eaton, *Politics for the People* II:28 (February 1795), p.445, this last couplet a reference to the Scottish radicals transported during 1794.
[139] Whether Pitt was in favour of Catholic emancipation is debated. The radical attacks here were founded on his perceived sympathy for foreign Catholics, see C.J. Fedorak, 'Catholic Emancipation and the Resignation of William Pitt in 1801', *Albion* 24:1 (1992), pp.49-64.
[140] There was sympathy for émigrés especially the upper and middling classes, yet an undercurrent of alarm… suspicion and distaste' existed: R. Davison, 'Friend or Foe? French Émigrés Discover Britain', in K.H. Doig, D. Medlin, eds, *British-French Exchanges in the Eighteenth-Century* (Newcastle: Cambridge Scholars, 2007), pp.131-148, pp.142-148. See D.A. Bellenger, 'Fearless Resting Place' The Exiled French Clergy in Great Britain 1789–1815', in K. Carpenter, P. Mansel, *The French Emigres in Europe and the Struggle against Revolution 1789–1814* (London: Macmillan, 1999), pp.214-229.
[141] Eaton, *Politics for the People* II:22 (October 1794), pp.341-343.

displaying 'uniform Jesuitical behaviour', referencing a prevalent belief in England that Catholics were by their nature, predisposed to tyranny and repression, while ultimately remaining yoked to the church in Rome. Indeed, by presenting Pitt as a Catholic conspirator, Eaton undoubtedly aimed to evoke this idea, as an indirect method of questioning his loyalty to King and Nation without making direct accusations, the swiftest way to a libel charge. By having the Pope and Devil refer to Pitt as 'our champion', 'our cousin' and '*Billy* our friend', Eaton invited the reader to infer Pitt's true allegiances, and through this the actual purpose of the trials.

Other parodies by Eaton evoked these fears, notably *A New Litany to be used every Sunday by the Swinish Multitude.* An ironic reply to Eaton's own pre-trial mock litany written for ministers, *A New Litany* ridiculed political corruption, especially of justice. Its call, for jurors to 'sacrifice' ministers and others to 'insulted justice', mimicked the words of Bowles and other loyalists, sarcastically suggesting they had been right about radicals' intentions. Eaton also borrowed phrases directly from his pre-trial work, notably the refrain 'Spare them not, O Juries'.[142] This implied that, while any could appeal to jurymen, and through them to God, only the people would be heard, a theme Eaton referenced frequently in his wider response to the trials.[143] On the fear of Catholic tyranny, Eaton suggested the people ought to plead for especial protection, 'from the employment of French Jesuits, by our Lord Mayors, and descendants of the Stuarts, by Ministers'.[144] It is unclear whether Eaton referred to particular individuals here, but his aim was to implicate Pitt in a plot, orchestrated from Rome, to sabotage English justice and society.[145] The petition directly following the above, that the

[142] Eaton, *Politics for the People* II:23 (December 1794), pp.370-373.
[143] Eaton, *Politics for the People* II:23 (December 1794), pp.367-368.
[144] Eaton, *Politics for the People* II:24 (December 1794), p.370.
[145] During the course of the French Wars, Britain took in around 150,000 French émigrés, c. 7000 were Catholic priests, D.A. Bellenger, *The French Exiled Clergy in the British Isles after 1789: A Historical Introduction and Working List* (Bath: Downside, 1986), p.1.

people be saved 'from every arbitrary stretch of Power, and the encreasing *[sic]* influence of the _____' was, considering the context, almost certainly a reference to the Pope, Catholicism or Jesuit priests in England.[146]

Eaton made this point most explicitly in another religious parody, his *Te Deum Pitticus*. Here, he identified Pitt as an apostate, friend to the Catholic church and worst, accomplice in the establishment of subversive groups in England: 'The Founder of a new order: of Jesuits'.[147] The persistent allegations of involvement by Pitt in Jesuitical societies were intended to further question his loyalties, recalling images of 1605 and the treacherous Jesuits implicated in the Gunpowder Plot.[148] Throughout his satire, Eaton was presenting the trials as yet another chapter in the national story and struggle against despotism and Catholicism, another conspiracy against her superior polity.

The result was that the jurors of 1794 appeared the true defenders of England's constitution, with loyalties unquestionable and integrity unimpeachable in the face of foreign Catholic-inspired subversion. The second half of Eaton's *Epistle* reinforced this conclusion, the Pope railing against Pitt's failure to ensure convictions. The principle object of the pontiff's ire however, was the institution that checked their progress:

What a pity our *Billy*, that statesman divine,
Could not the damn'd laws of the realm undermine,
What a pity he could not by cunning succeed,
In proving a *plot* to the *South* of the Tweed!
But the curs'd *British Jury* pretended, their laws,
Would not sanction his *intended rope-dancing* cause;

[146] Eaton, *Politics for the People* II:24 (December 1794), pp.371.
[147] Eaton, *Politics for the People* II:24 (December 1794), pp.369-370.
[148] *Misprision* is failure to disclose knowledge of treasonable conspiracy, Blackstone, *Commentaries*, vol.2, pp.83-86; M. Nicholls, *Investigating Gunpowder Plot* (Manchester: Manchester University Press, 1991), pp.62-75 on Jesuit involvement in 1605, especially Henry Garnet, Jesuit leader in England.

On the *law,* and the *fact* permitted to reason,
They pronounc'd *Billy's traitors* NOT GUILTY of *treason*![149]

The use of the phrases 'damn'd' and 'curs'd' to refer to central democratic element of the English constitution repeated throughout the parody, are significant. They evoked fears of Catholic traitors seeking the destruction of England's institutions, symbols of her excellence and the work of providence. Eaton was suggesting that, to the Pope as a Catholic and Pitt as his puppet, England's laws and especially juries were contemptable. In Eaton's conceptualisation of the trials, they represented as Guy Fawkes, James II, Jeffreys and Scroggs had in former times, the efforts of Satan to corrupt God's work. Blame for the plots' failure was laid squarely by the Pope at the door of trial by jury, and its increasing powers and rights, a nod to the debates of 1792 and the opposition then offered by the elite to the rights of jurymen. In this way, the character of the Pope could be read as a personification of the English elite, bemoaning the failure of its champion to assert their authority (equally personified in the tyranny of Catholicism), and the growing power of the middling sorts exercised from the jury box, which had risen to check their efforts. As the Pope exclaimed in frustration, 'But the curs'd *English trial by Jury* I swear,|Has made things, if possible, worse than they were!|O dear, Mr Devil, pray what shall we do?|Since GOD will not hear us – we fly now to you'.[150] Arguably, this entire parody was a metaphor for Britain, playing out the conflict between the elite whom 'God will not hear' and the 'curs'd' middling sorts who defended the institutions, appointed by providence, to the elect people.

[149] Eaton, *Politics for the People* II:28 (February 1795), pp.445-446.
[150] Eaton, *Politics for the People* II:28 (February 1795), p.446.

V

The radical response to the treason trials of 1794 was unprecedented and powerful, going far beyond the political response explored in existing scholarship. No trial juries, even at the height of post-war repression in 1817, came close to this level of adulation. They were depicted as defenders of freedom and agents of the divine will, appointed by providence to protect England's God-given liberty. In this way, the prosecutions themselves appeared as evidence of elect nationhood, instigated by Satan and his agents to challenge God's work and thwarted, as they had been before, on the sacred 5 November. Radical propaganda in 1794 demonstrated how effective the preceding years of previous campaigning had been. The defence of jurors' competence in 1792 for instance, provided a foundation for radicals to delegitimise pre-trial loyalist appeals to jurymen as corruptions of patriotic duty. *The Englishman's Right* underpinned many appeals to jurors' consciences in response to these loyalist pleas, and provided a foundation for radicals to broaden their presentation of the trial by jury through a religious lens.

In preceding campaigns, radicals positioned themselves as natural defenders of the jury and its rights, and this was the role they sought to fill before and after the treason trials. It was their discourse in support of juries that circulated most widely and, as the next chapter explores, across the length and breadth of England and beyond. In the face of radical efforts, even some ministerial papers, who had previously supported calls for the jurors to convict, resigned themselves to accepting the radical narrative of the trials, agreeing that they did indeed exhibited England's superior constitution and polity.[151] As the editor of the government supporting *Oracle,* concluded:

[151] See *Times*, 8 November 1794. *St James's Chronicle* argued 'the progress of these trials proves the superior excellence of the British Laws, 20–22 and 22–25 November 1794.

> The acquittal of Hardy is improperly treated by some people as the triumph of a *Party,* whereas, in fact, it is the TRIUMPH of the CONSTITUTION, which includes in itself a tribunal so dispassionate and impartial. In France, a tenth of the moral presumption which appeared against this man would have sent hundreds to the scaffold.[152]

In their immediate aim of defeating loyalist accusations of 'moral guilt', radicals were successful. Some loyalists continued to make this point in the following years. Most appeared to accept that the verdicts were legitimate. Bowles would return to these suggestions decades later, following the acquittals for blasphemous libel of William Hone in 1817 (see chapter six), but this was little more than sour grapes and frustration, that jurors had again acted independently.

There was much more to the radical justifications of the verdicts than mere triumphalism. In harnessing a long-standing national narrative of exceptionalism and divine providence, they sought to write the acquittals of 1794 – and by extension the trial by jury – into English history, as a moment of national deliverance, akin to the discovery of the Gunpowder Plot, or the landing of William of Orange. That they shared the same date cemented this idea, the acquittals were another act of divine favour that required annual thanksgiving. Yet, as chapters four and five will argue, these efforts to defend the jurors' verdicts in the nation's memory were not limited to radicals. Nor, in the long-term, were they mere flashes in the pan. While, as chapter five explores, many of these stories and ideas of providence and articulations of anti-Catholicism and xenophobia had a short shelf life, they nonetheless marked the start of a fifty-year effort, begun the moment Hardy's verdict was

[152] *The Oracle*, 7 November 1794.

announced to the populace, to celebrate and commemorate the jurors of 1794 as defenders both of the nation's liberty, and the interests and identity of the middling sorts.

Chapter Four

Celebrating the State Trial Jurors of 1794: Crowds, Parades and the People

I

The wider celebration of the 1794 jurors and their verdicts is another overlooked subject in scholarship of the treason trials. As noted in the previous chapter, efforts to defend the verdicts transcended the radical movement. Spontaneous celebrations, meetings, parades and illuminations, organised by radicals or independent of their leadership greeted each verdict, acknowledging jurors as heroes of the nation, constitution, the middling sorts and their political interests. This chapter focuses on the role trial by jury played in bringing members of the middling sorts together, and uniting them behind its power, exploring the celebrations in the weeks following Hardy's acquittal. It argues that through the multitudes of gatherings and assemblies precipitated by the trials, the verdicts represented a social unifier for many in the middling sorts. The trial by jury was a critical element of the struggle between the middling sorts and elite, with radicals, members of the middling sorts and elite viewing it as such, because of the jurors' actions and the nationwide outpouring of joy.

The chapter first briefly explores crowd reaction to the acquittals, and the symbolism inherent in their actions, developing the discussion of the 1794 trial crowds by Barrell and Wharam.[1] It next contextualises this with an analysis of the social makeup of those involved, exploring celebrations in London and beyond the metropolis. I draw on the work on public

[1] Barrell, *King's Death*, pp.364-365, 402-405; Wharam, *Treason Trials*, pp.184-193.

space by Navickas and Robert Poole, that explored how radicals contested ownership and meaning of sites with the authorities.[2] Celebration of the treason-trial verdicts represented such a contest, but it took place not only between the elite and radicalism, but in the political nation between the elite and middling sorts.[3] The crowds, for instance, gathered to receive Hardy's acquittal, were no swinish multitude, but middling Londoners assembled of their own volition to contest control of space and express a collective identity through the verdicts of their peers.

A wide variety of material is studied, including medals, handbills, other radical ephemera and a survey of metropolitan and provincial papers. This chapter approaches these items from a new angle, assessing their symbolism and messages in relation to trial by jury, and in the context of the extensive involvement of the middling sorts in celebration of the acquittals.[4] It argues that the language lionizing the jurors possessed multiple meanings when spoken, written and published by middling celebrants, as did the repetition of jurors' names. They symbolized not only jurors' triumph but, through them, that of the middling sorts.

II

As radicals hoped, public interest in the cases was immense, the object of the prosecutions widely understood as the destruction of political liberty.[5] From the start of Hardy's trial on 28

[2] Navickas, *Politics of Space,* pp.2-6.
[3] Poole, 'The March to Peterloo', pp.109-153; S. Poole, 'Till our Liberties be Secure': Popular Sovereignty and Public Space in Bristol; 1750–1850', *Urban History* 26:1 (1999), pp.40-54; also see Barrell, *Spirit of Despotism*, ch.2; P. Pickering, 'A "Grand Ossification": William Cobbett and the Commemoration of Thomas Paine', in P. Pickering, A. Tyrrell, eds, *Contested Sites: Commemoration, Memorial and Popular Politics in Nineteenth-Century Britain* (London: Routledge, 2017), ch.2.
[4] On culture and legal history see K. Barclay, A. Milka, 'Public Justice: Legal History and the Cultural Turn', in, K. Barclay, A. Milka, *Cultural Histories of Law, Media and Emotion: Public Justice* (New York: Routledge, 2023), pp.11-27.
[5] *Bury and Norwich Post*, 5 November 1794 concluded 'in all the coffee houses and places of public resort' the prosecutions were the principal topic, 'the trials [having] no less for [their] object than the existence or annihilation of political societies in this country', also see *Morning Chronicle*, 4 November 1794, 2 December 1794; *Morning Post*, 5 November 1794, 6 November 1794; *Oracle*, 8 November 1794; *Chester Chronicle*, 7 November 1794.

October, to Thelwall's acquittal on 5 December, no other subject rivalled them for public attention. Besides the press, the primary avenue through which this interest manifested, was in the sizeable daily gatherings. These demonstrated solidarity with the prisoners and defiance in the face of the constables and soldiers guarding the Old Bailey.[6] The result was a contest for key elements of London's public space. The multitudes that daily thronged the sessions house were among the largest metropolitan crowds since the Gordon Riots, able by weight of number to force their way into the Old Bailey on days when only the City of London constables were present. On the day of Hardy's acquittal, accounts put the number at between forty and sixty thousand; at Tooke's, the crowds thronging the Old Bailey, Ludgate Hill, Snow Hill, Fleet Lane and Newgate Street were among the largest in living memory.[7] Not until the Queen Caroline Affair in 1820, would a radical cause produce such a significant and sizable display of popular oppositional sentiments on the streets of London.[8] The trial crowds of the 1810s were, while large, not in the same order. The 1794 crowds posed a significant challenge to control of space even before the acquittals. On several days during Hardy's trial, the Royal Artillery Company and Light Horse Volunteers were summoned by Lord Mayor Le Mesurier to control the crowds, creating conditions for a physical contest for the streets as meeting places for those favouring the prisoners. It was a conflict ultimately won by the people, their numbers enough to prevent Le Mesurier calling troops on the final day of Hardy's trial, fearful no doubt that in the event of convictions, their presence could incite violence.[9]

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[6] Around sixty thousand marched with Gordon to Parliament, I. Gilmour, *Riot, Risings and Revolution: Governance and Violence in Eighteenth-Century England* (London: Pimlico, 1992), pp.348-349.
[7] *Morning Post*, 5 November 1794; *Times*, 5 November 1794 on Hardy's acquittal; *Morning Chronicle*, 26 November 1794; *Times*, 26 November 1794 on Tooke's.
[8] T. Fulford, 'Cobbett, Coleridge and the Queen Caroline Affair', *Studies in Romanticism,* 37:4, (1998), pp.523-543, p.526, 531; T. Laqueur, 'The Queen Caroline Affair: Politics as Art in the Reign of George VI', *Journal of Modern History,* 54:3, (1982), pp.417-466, pp.424-425, 444; J. Fulcher, 'The Loyalist Response to the Queen Caroline Agitations', *Journal of British Studies,* 34:4, (1995), pp.481-502, p.486; Navickas, *Politics of Space,* pp.101-104.
[9] See J.E. Cookson, *The British Armed Nation 1793–1815* (London: Clarendon, 1997), ch.7 on troops in public order.

As it was, their presence was unnecessary. Each acquittal was received with unbridled jubilation from the gathered Londoners, news of the verdicts traveling across the capital quickly. As a special correspondent, dispatched to London by the *Hull Advertiser* to follow Hardy's trial reported, the verdicts were met:

> [by] the most vehement exclamations in favour of the acquitted; the spirit of satisfaction animated every countenance and each seemed to feel as if he had been the accused person. The same spirit of gladness pervaded every description of people throughout the metropolis and the joyful news flew like lightening … nothing has been heard for these two hours past but "Hardy's acquitted, Hardy's acquitted"; nothing but exultations at the news, and praises bestowed upon an *upright English Jury* … in short, never did the verdict of a Jury give such universal satisfaction as has reigned throughout London since this event took place.[10]

After each acquittal, the crowds sought to parade the defendants through the streets. Two defendants (since Tooke avoided the crowds) were drawn in triumph by the populace along routes choreographed to make strong political statements. Hardy's 'parade' passed down several of the city's major thoroughfares, including Fleet Street, the Strand, Pall Mall and St James's, while Thelwall's also added lengthy diversions to St Paul's and Downing Street.[11]

This was a symbolic claiming of public space and a challenge to traditional civic use of several locations.[12] This is evident in the decision to pass through and, in Hardy's case, stop at

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[10] *Hull Advertiser*, 8 November 1794; on emotions in the reporting of the 1794 trials see D. Lemmings, 'Thomas Erskine and the Performance of Moral Sentiments: The Emotional Reportage of Trials for "Criminal Conversation" and Treason in the 1790s', in, D. Lemmings, A. May, eds, *Criminal Justice During the Long Eighteenth Century: Theatre, Representation and Emotion* (New York: Routledge, 2019), pp.199-217.

[11] Whether the routes were planned is unclear. They appear to have been spontaneous, with the stop at Charing Cross on 5 November possibly the result of large crowds, and the detour to Downing Street during celebration of Thelwall an impulsive move intended to mock Pitt.

[12] Poole, 'The March to Peterloo', pp.117-143; on processions, routes, and their meanings Navickas, *Politics of Space,* pp.177-188.

Charing Cross. Doing so was highly confrontational, contesting the use of an area closely associated with authorities. A major intersection and public space, Charing Cross had long been a central part of London's civic life. Playing host to a pillory, the reading of royal and other proclamations, announcements of war and peace and frequent patriotic, military and royal processions, it symbolised the old order's legal, military and political power. Parodying declarations of military triumph and royal pleasure, the acquittal was announced to vast crowds, occasioning cries of 'Long Live the upright Jury!' and 'Hardy for ever!'[13] This made for a powerful statement, constituting a performance of the constitution intended to exhibit jury trial as its peerless core tenet.[14] This challenged the elite's master narratives, which saw the value of both constitution and polity in military prowess, elite governance or the monarchy.[15] The people's moral and political triumph was declared on London's streets. The performance was repeated outside both Carlton House (the home of the Prince of Wales) and St James's Palace (a royal residence) cementing this message. The meaning of these performances was clear. As Barrell puts it, they marked an 'unmistakable … victory for those living north and east of Charing Cross over the inheritance of the West End, especially the king and the members of both houses of the corrupt parliament'.[16]

Despite the lack of a parade, the celebrations following Tooke's trial rivalled those on 5 November. This time, the people were ready and an acquittal anticipated. The streets around the Old Bailey were torch lit, and unlike at Hardy's acquittal, illuminations were organised across the city, with the streets 'blazing' as Erskine and Vicary Gibbs, the prisoners' counsel,

[13] *Hull Advertiser*, 8 November 1794.
[14] Hardy's crowd 'huzzaing *[sic]* and imploring blessings on the twelve men who had acquitted him', *Courier*, 6 November 1794.
[15] Hampsher-Monk, 'Linguistic non-performance', p.149; on narrative P. Joyce, 'The Constitution and the Narrative Structure of Victorian Politics', in Vernon, *Re-Reading the Constitution*, pp.179-203, pp.179-182.
[16] Davis, 'Noise and Emotions', pp.147-148; Barrell, *Spirit of Despotism,* p.33.

were drawn home.[17] Part of the 'urban victory ritual', such displays of public satisfaction normally celebrated military triumph. They were usually accompanied by elation and unease, with violence common, especially from loyalist mobs.[18] It was yet another constitutional performance to subvert the meaning of public illuminations. Rather than celebrating military strength and leadership, they acclaimed a popular cause: the superiority of democratic elements of the constitution and polity over authoritarian components. The decision to illuminate the metropolis for Tooke's anticipated acquittal, and the scale of public involvement is striking. There was no formal organisation, and no messages circulated in the press. No mobs enforced observance, or punished non-compliance with violence. While earlier instances of illumination were routinely criticised as detrimental to social harmony, such as those which followed the Glorious First of June which were accompanied by reports of brick-bat wielding loyalist mobs attacking property and even extorting money, November's efforts were praised for their respectability. Even the loyalist press exploited their nature to present the acquittal as a triumph for English constitutional excellence.[19] After months of government domination of public spaces by propaganda, spies, informers and the military, Londoners reclaimed their streets in the name of trial by jury. They did exactly what radicals pleaded with them to do, showing their recognition that these jurymen were national saviours. Recent loyalist celebrations could not hold a candle to those inspired by the jurors' acquittals, because the celebrations of November 1794 were different. They seemed the genuine expression of the people's will rather than products of state organisation or loyalist cajoling. As the Whig

[17] It is unclear whether the 'illuminations' included windows or just the streets, *Courier*, 24 November 1794.
[18] T. Jenks, *Naval Engagements: Patriotism, Cultural Politics and the Royal Navy 1793–1815* (London: Oxford University Press, 2006), pp.42-46; Navickas, *Politics of Space,* pp.106-117; Gilmour, *Governance and Violence*, pp.402-404. On loyalist mobs, A. Booth, 'Popular Loyalism and Public Violence in the North-West of England 1790–1800', *Social History,* 8:3 (1983), pp.295-313; M.I. Thomis, P. Holt, *Threats of Revolution in Britain 1789–1848* (London: Macmillan, 1977), pp.21-25.
[19] *Morning Chronicle*, 13 and 14 June 1794. On loyalist violence, J. Stevenson, *Popular Disturbances in England, 1730–1848* (London: Longmans, 1992), pp.137-143.

Morning Chronicle summarised, 'the satisfaction was as general as the interest which was felt in the cause'.[20] They are perhaps the most authentic indicators of public opinion in the 1790s.

The crowds at Tooke's trial also appear to have treated his jurors with especial favour. Hardy's jurors were able to slip away from court during the outburst of public euphoria, although their names, apparently well known to those present, were shouted throughout the city and printed in the press as 'the saviours of British Liberty'.[21] Tooke's jurymen were greeted by a vast sea of Londoners, the acquitted defendant succeeding in leaving the court undetected. The crowd waited 'in order to pay their respects' to Erskine and Gibbs and the twelve ordinary citizens who were now popular heroes. When two of the jury appeared outside the session house, the street and those around it were 'rent with plaudits'. The people, many carrying torches (and some, laurel) formed a lane along which the jurors passed, marking the short journey to the London Coffee House on Ludgate Hill. On their arrival, 'the company, who amounted to about five hundred gentlemen, immediately arose, took off their hats, ranged themselves on each side as they passed through, saluting them with huzzas and applause of the most animated sort'.[22] One individual reportedly addressed the room from atop a table: 'Gentlemen: YOU HAVE SAVED YOUR COUNTRY!' In reply the foreman declared the jurors' thanks and gladness at finding 'the verdict they had given so satisfactory to the public at large'.[23]

[20] *Morning Chronicle*, 24 November 1794.
[21] *Cambridge Intelligencer*, 29 November 1794.
[22] *Courier*, 24 November 1794. The London Coffee House was the destination, only a few minutes' walk away at No.24–26 Ludgate Hill and the largest indoor venue close to the Old Bailey.
[23] *Oracle*, 24 November 1794.

III

Londoners undoubtedly welcomed the acquittals. The celebrations were 'far beyond every thing of the kind ever seen before'.[24] The identities of those gathered on cold, wet November nights to hear the verdicts, and contest the control of the capital's streets are obscure in previous scholarship.[25] Understanding crowds, parades and celebrations can be problematic, and often relies on anecdotal evidence, especially symbolism, routes and material culture, rather than trying to analyse those involved beyond those speaking or who organised the event.[26] Some crowds, like electoral gatherings or radical meetings are more easily characterised than spontaneous meetings, or those without an obvious organised force. Navickas, in discussing Peterloo, notes the 'conspicuous' presence of female reformers, and is able to comment on the various gatherings responding to the massacre, through analysis of official and private papers, and newspaper reports.[27] There is the thorny question of engagement: whether it is possible or desirable to distinguish between 'activists' within a crowd and the passive majority whom they influence.[28] In regards to 1794 this differentiation is unhelpful. The people gathered to celebrate the acquittals were not examples of the social protesters, rioters or radical-organised assemblies in which these divisions are often identified.[29] No one organised the crowds in 1794. Those who attended the Old Bailey were aware of what was taking place and what their presence meant. As Epstein notes regarding early nineteenth-century trial

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[24] *Cambridge Intelligencer*, 22 November 1794.
[25] It 'rained most violently thought the evening,' *Caledonian Mercury*, 8 November 1794.
[26] Navickas, *Politics of Space,* pp.82-93, pp.177-188; Thompson, *English Working Classes*, pp.748-759. For route focus see D. Gilbert, 'The Geographies of Protest Marches', in M. Reiss, ed., *The Street as Stage: Protest Marches and Public Rallies Since the Nineteenth-Century* (Oxford: Oxford University Press, 2007), pp.41-48.
[27] Navickas, *Politics of Space*, pp.87-93.
[28] See for instance early work by G. Rudé, *The Crowd in History 1740–1848: A Study of Popular Disturbances in France and England* (London: Lawrence & Wishart, 1981, orig. 1964), pp.210-212; P. Bagguley, Y. Hussain, *Riotous Citizens: Ethnic Conflict in Multicultural Britain* (London: Taylor and Francis, 2016), pp.25-27.
[29] Rudé considered only such crowds to be significant; more recent scholars turned to electoral crowds and hustings, see M. Harrison, *Crowds and History: Mass Phenomena in English Towns 1790–1835* (Cambridge: Cambridge University Press, 2002), pp.9-14.

crowds, these congregated 'not merely as curious spectators but as enforcers of notions of popular justice, attempting to impose communal expectations on the jury'.[30] Those who converged on the court decided to be there and by their presence alone participated in the judicial process.

Scholars tend to assume the crowds were plebeian, driven by some desire to revel in government misfortune. Others overlook them altogether, underappreciating the impact of the trial in English civil society. Examination of the press and private letters from 1794 sheds light on the composition, which was dominated by London's middling sorts. The LCS and other radical societies did not organise any type of gathering, having in fact spent months dissuading their members from assembling for fear of being labelled a 'mob'.[31] So strong was the desire to avoid this moniker, the Society refused even to organise mourners for Lydia Hardy's (Thomas' wife) funeral in August, seeking instead to 'marginalise' the crowd in their politics of commemoration.[32] Lord Mayor Le Mesurier, although fearful of LCS-orchestrated mobs in case of convictions, and the presence of 'a great number of Jacobins from Country Societies', had 'no suspicion' that radical organised crowds would otherwise congregate.[33]

Le Mesurier provided his political masters with a markedly different picture of the Londoners assembled at Hardy's trial. Although referred to ubiquitously in his letters as 'mobs', his complaint was not violence but the noise which disrupted the public space and the

[30] Epstein, *Radical Expression,* p.64.
[31] See M. Davis, 'Reformers No Rioters: British Radicalism and Mob Identity in the 1790s', in M. Davis, ed., *Crowd Actions in Britain and France from the Middle Ages to the Modern World* (London: Macmillan, 2015), pp.146-162.
[32] N. Rogers, *Crowds, Culture and Politics in Georgian Britain* (Oxford: Clarendon, 1998), pp.2-20.
[33] TNA, HO 42/33/10, ff.26-27.

court.[34] Le Mesurier was clear regarding their composition, in an anxious letter to Pitt, detailing arrests for affray during Hardy's trial:

> I committed Tuesday Seven, Yesterday Eleven and this day Eight Persons … among those are a Student of the Inner Temple, Edward Mainwaring, two or three Attorney's Clerks, two Students in Physick *[sic]* at St Thomas's, Shoemakers, Taylors, Clerks and others of a middling and inferior condition in life one of them Robert Manning, an officer in the Courtroom (Jury Room).[35]

Tellingly he felt it necessary to relate the occupations of those he arrested, making it explicit to Pitt the nature of the crowd his prosecutions had revealed. Le Mesurier was indicating that the trials, although failures, had precipitated an alarming unity among middling Londoners, centred on opposition to the elite. His comment that of the whole number of those he arrested, '*only one* [was] of a low cast' reveals a belief that many of the people gathering to celebrate the acquittal, were from the middling ranks of Londoners'.[36]

This view is substantiated by press reports. Of those arrested, twenty eight by the Lord Mayor's account, twenty-three were tried for riot or affray, a spiteful attempt by an indignant Lord Mayor, to challenge and disrupt the middling sorts' use of public spaces to celebrate the acquittals and express opposition sentiments.[37] The charges were evidently trumped-up: the evidence, given almost exclusively by the city constables, proved merely that the accused participated in either 'riotous or tumultuous' shouting and huzzahing.[38] In perhaps the most

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[34] TNA, HO 42/33/171, ff.347-349. See J. Epstein, 'Equality and no King': Sociability and Sedition–The Case of John Frost', in G. Russsell, C. Tuite, eds, *Romantic Sociability: Social Networks and Literary Culture in Britain 1770–1840* (Cambridge: Cambridge University Press, 2002), pp.43-61; Davis, 'Noise and Emotions', pp.148-151.
[35] TNA, TS 11/966, ff.44-45.
[36] Le Mesurier went on to report that the one 'low cast' person he arrested was a soldier, TNA, TS 11/966, ff.44-45.
[37] *Morning Post*, 13 February 1795; *Ipswich Journal*, 14 February 1795.
[38] The actual charge stated the defendants, 'by shouts, huzzas, and hisses, interrupt[ed] the course of public Justice in breach of the public peace, and to the great terror of the King's subjects'.

ridiculous case, a warehouseman, John Harper, was accused of riot, having during Hardy's trial, joined the 'mob' outside the sessions house, '[given] a *huzza,* and declared he was a *Jacobin'*.[39] That he was intoxicated, perhaps after visiting the coffee houses or taverns local to the Old Bailey, did not stop his arrest. Harper, and all the other defendants tried for their 'shouts, huzzas and hisses' were acquitted. Le Mesurier was mocked by Whig papers for having 'taken against the common Enemy, *the Hissers and Groaners!*'[40]

Examination of the defendants reveals a significant proportion of middling men were among those detained. The Whig *Lloyd's Evening Post* made a point of describing those arrested as entirely 'of the middling class of life'.[41] It was, of course, in opposition interests to depict the crowds as middling, to add legitimacy and respectability to events. Yet their claim was no exaggeration. Of the twenty three men charged, names can be attributed to sixteen, and of these, ten are identifiable as merchants, tradesmen or artisans, including a goldsmith, grocer, linen draper, two warehouseman and a 'gentleman' from Chester on business in London.[42] These do not include the two students from St Thomas's, nor the attorneys' clerks noted by Le Mesurier and several newspapers.[43] Taking the unnamed individuals in Le Mesurier's account, and the ten identifiable defendants, it is likely that of the twenty-eight arrested, over half were of a middling station.

It was not only in the Old Bailey that the Lord Mayor encountered celebrations by middling Londoners. While illuminations were largely reserved for the later trials of Tooke and

[39] *Morning Post*, 13 February 1795.
[40] *Morning Post*, 15 November 1794.
[41] *Lloyd's Evening Post*, 7–10 November 1794.
[42] TNA, TS 11/966, ff.44-45; *Morning Post*, 7 November 1794 and 13 February 1795, *Chester Chronicle*, 20 February 1795, the other professions included a barrister (Edward Mainwaring), Robert Manning (the courtroom officer), tallow chandler George White and merchant tailor William Haywood.
[43] *Lloyd's Evening Post*, 7–10 November 1794.

Thelwall, Le Mesurier recorded at least one instance during Hardy's case.[44] He told the Duke of Portland of the accidental discovery of illuminations in Silver Street near St Pauls 'proceeding from the house of one Savage … he had a transparency with the Words "The Glorious Acquittal of Thomas Hardy" and lights in his windows'.[45] As at the Old Bailey, Le Mesurier was hostile, 'reprimanding' Savage and 'with some difficulty' and before a small crowd (whom the Lord Mayor characterised as supportive of his actions), effecting entry and forcibly removing the offending lights and transparency.[46] The offender was probably James Savage, a warehouseman with premises at No.28 Wood Street.[47] A merchant of some wealth, his case adds to the sense that the celebrations were principally held by the middling sorts. There do not appear to be further reports of illuminations. Le Mesurier, so active in recording events, left office between Hardy and Tooke's trials when the vast majority of illuminations happened. His replacement, Whig Thomas Skinner, made no arrests and his political affiliation left him with no need to record for government the nature of the celebrations.

Another clue as to the crowd's composition is the case of a 'respectable housekeeper', taken up violently by a constable on Ludgate Hill, 'active in huzzaing Mr Erskine and attempting to take the horses from the carriage' during Tooke's trial.[48] Appearing before city aldermen, it was made apparent he was wrongfully arrested, another constable and a 'respectable' householder with his three daughters declaring his innocence.[49] The defendant also noted his membership of a Livery Company, while 'a Gentleman of the Bar' gave 'a candid

[44] *Caledonian Mercury* (Edinburgh), 10 November 1794, an exception was the prisoners in Newgate, who lit their cell windows.
[45] TNA, HO 42/33/171, ff.347-349, illumination reported variously as 'The glorious fifth of November, and the Honest Jury', *Caledonian Mercury*, 10 November 1794.
[46] Le Mesurier notes the crowd consisted of c.50 persons. Whether they gathered to view the transparency or watch its removal is unclear.
[47] R. Wakefield, *Wakefield's Merchant and Tradesman's General Directory for London… 1794 &c.* (London: T. Davison, 1793), p.271.
[48] *Morning Post*, 25 November 1794.
[49] The three ladies were not present on Ludgate Hill, testifying instead that the accused man had been at their family residence before going to the Old Bailey.

detail of the infamy of the Constables'. This individual's non-plebeian status is clear, as are those of several individuals nearby in the crowd.

These examples suggest that middling London united behind the defendants' causes, that trial by jury pulled them together across occupational boundaries, in celebration and recognition of their collective rights and interests. The extent to which the arrested persons and others were indicative of those celebrating the acquittals on the streets is uncertain. If the arrested individuals were representative of the crowds across all three trials, it would be fair to conclude that the assemblies were an embodiment of political and social unity among middling Londoners. The large crowds, and efforts made especially at Charring Cross and Pall Mall, take on new significance in this context, as statements of political power expressed through a juries' verdict unlike anything witnessed before. Never had the middling sorts of their own volition, and in open dissent against the old order, congregated to send such a powerful message. Cawthorn's pre-trial fears were certainly justified, the prosecutions acting to split the elite from their support base by threatening the integrity of justice. Following the trials, others such as Speaker of the House of Commons Henry Addington (later Viscount Sidmouth) concurred with Cawthorn's assessment. Addington noted his belief that the 'surprise & uneasiness' he perceived from others in Parliament and government were unfounded and the trials counterproductive. 'It is of more consequence', he wrote:

> to maintain the credit of a mild & unprejudic'd administration of justice, than even to convict a Jacobin. I believe the case to have been fairly made out, but I can see no warrantable ground of imputation upon the Jury for their verdict.[50]

[50] DHC, Sidmouth papers, 152M/C1794/OZ, ff.42-43.

Cawthorn, Addington and, to an extent Le Mesurier, realised what the vexatious charges had done, kindling a flame of resistance to their authority, from people not to be dismissed as members of a mindless, unpropertied and uneducated plebeian mob. In mid-nineteenth century commemoration it would be this idea of resistance that marked the trials of 1794 as a point of demarcation in social relations, between the elite and the middling orders. The crowds represented, as several contemporaries identified, a level of what Earle termed 'collective confidence' and 'self-surety' among middling Londoners, that would be seized upon by those seeking to attack Tory politics in the 1840s and 50s, and who would present the trials from this perspective.[51]

In the trials' immediate aftermath, celebration and the involvement of the middling sorts extended beyond the metropolis. As news of the acquittals spread so did spontaneous public reaction and celebration. In most places news of Hardy's acquittal on 5 November was known within seventy-two hours, arriving in Norwich the following morning, Nottingham and Hull that evening, Edinburgh and Perth two days later and Belfast by 12 November.[52] As in London, festivities and celebrations of the trial by jury, often attended by the middling sorts, duly followed. Meetings were reported in urban centres, notably Chester, Exeter, Nottingham, Perth, Norwich, Bristol, Colchester, Sheffield, Dublin and Cork before the end of the year, all avowing respectability, with several organised by mercantile associations, notably in London and Bristol.[53] Other meetings were more identifiably radical in nature, particularly those at Norwich and Perth. At Perth thirteen local reform societies joined in celebration. In a letter published in the metropolitan newspapers, the honesty, manliness and patriotism of those

[51] Earle, 'The Middling Sort', pp.157-158.
[52] Thompson, *English Working Class,* p.148, *Cambridge Intelligencer*, 22 November 1794, *Hull Advertiser*, 8 November 1794, *Morning Post*, 10 December 1794.
[53] In London, livery companies and the 'Ancient and Honourable Lumber Troop', a gentleman's drinking club met. At Bristol two hundred members of the Anchor Society, an association of merchants, *Morning Post,* 27 November 1794; *Cambridge Intelligencer*, 22 November 1794.

involved for the defence was praised, the verdict 'confirm[ing] to honest men' the right of prioritising 'the love of their country', in a clear statement of re-invigorated radical patriotism.[54] Those who met at Norwich forwarded similar congratulations, even dispatching delegates on a lengthy and costly trip to London to wait on Hardy, Erskine and Gibbs.[55]

The grandest were those held concurrently on 4 February 1795. The biggest, at the Crown and Anchor tavern in London, was attended by numerous Whig and Radical bigwigs including Earl Stanhope, Major Cartwright, Richard Sheridan, Tooke and Thelwall.[56] With over nine-hundred attending, it was the largest and most exclusive meeting with tickets at 7*s* 6*d* putting attendance beyond ordinary Londoners. The meeting was dominated by the middling sorts with half of the stewards identifiable as such, accompanied by nine MPs and a variety of military officers and other professionals.[57] Meetings at the Rose and Crown and by an association of freemasons called the Constitutional Whigs, as well as in Hull, Norwich and Maidstone, also demonstrate organisation to coordinate celebratory events.[58]

The character of these meetings is made clearest by the lists of subscribers recorded for a collection, organised nationwide, to coincide with these 4 February gatherings.[59] In the capital, it confirms that the meeting was exclusively attended by middling Londoners. Few gave donations below £1 1*s*, with the smallest donation 5*s* – from an anonymous hosier – itself not an insignificant sum. Many of the merchants, artisans and tradesmen listed are identifiable. Individuals such as watch and clock maker William Hornblower, apothecary Joseph Littlefear, grocer A. Wills (all gave £1 1*s*), cooper Philip Mallett, haberdasher J. Love and gilder J. Killick

[54] *Morning Post,* 23 January 1795.
[55] *Morning Post*, 17 November 1794.
[56] For discussion of this meeting, see Wharam, *Treason Trials,* pp.229-230, Issitt, *Jeremiah Joyce*, pp.60-62; D. Worrall, *Radical Culture: Discourse, Resistance and Surveillance 1790-1820* (London: Harvester: 1992), pp.24-25.
[57] *Morning Post,* 3 February 1795.
[58] *Morning Post,* 7 and 14 February 1795; *Hull Advertiser,* 14 February 1795; *Cambridge Intelligencer,* 7 and 14 February 1795.
[59] This collection was separate from a small-scale subscription organised before the trials.

(all gave £5 5*s*) typical of those in attendance.[60] Many gave larger amounts, some having collected from parishioners (in the case of several nonconformist ministers), while others gave from their own pockets, a representation of how broad sentiment in favour of the acquittals was among middling Londoners. One W. Maxwell, a wine and brandy merchant of Tottenham Court Road, gave £20, while others including shoe warehouseman Henry Gawler, weaver R. Reynolds and shipwrights Messrs. Perry and Gray gave £10 10*s* each.[61]

Beyond London, the subscription lists reveal a similarly diverse range of subscribers, donating money from across a wider network of celebratory events than were reported by the press, notably centred in established and growing centres of commerce and industry. Donations were forthcoming from Shrewsbury, Birmingham, Warwick, Bury, Wokingham, Rochford, Leeds, Manchester, Cambridge, Derby, Crompton and Stirling, implying that in each, collection meetings coinciding with events on 4 February had taken place. The funds accumulated were sizable, with £84 being sent from Birmingham and another £71 from Derby.[62] As in London, those donating belonged to the middling sort.[63] Of the total of £990 collected, about a third originated from outside London, indicating expressions of unity and identity sparked by the acquittals went beyond the metropolis.[64]

At these meetings and celebrations the jurymen were the principle object of adoration. This fact and the language through which the jurors were regularly praised further indicate the central presence of the middling sorts at celebratory gatherings. As was common at public

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[60] For subscribers, *Morning Post,* 15 and 25 April, 19 May 1795.
[61] Professions of these individuals identified in Wakefield, *Wakefield's Merchant and Tradesman's General Directory*.
[62] See press reports in *Courier*, 27 March and 8 May 1795; *Morning Post,* 15 and 25 April 1795. There was also a list of approved collectors for donations based in London, Rochester, Norwich, Bury St Edmund's, Leicester, Harleston in Norfolk, Cambridge, Derby, Carlisle, Newcastle, Nottingham and Banff.
[63] From Derby, some typical subscribers included merchant Samuel Wright, farmers James and Robert Bennett and nonconformist preacher John Davies, all of whom gave £1 1*s*. As in London, there were more affluent donors, like yeoman William Strutt and 'gentleman' Samuel Fox, both giving £10 10*s*. The donors from Norwich include merchants George Watson, William Firth and William Bernard; saddler, ironmonger and hemp merchant Richard Dinmore (all giving £5 5*s*) and grocer John Cozens who gave £4 4*s*, *Morning Post*, 15 April 1795.
[64] *Morning Post*, 19 May 1795.

meetings, toasts and resolutions formed the primary method for expressions of approbation, their publication in newspapers intended to disseminate the message and convey the character of meetings as respectable.[65] Refrains along the lines of 'The Independent Jury', 'The Independent London Jury that acquitted Thomas Hardy' and 'Mr Buck and the INDEPENDENT JURY that Acquitted Hardy' seem the most common at meetings in the metropolis and beyond.[66] There was persistent reference to 'independence' when recalling the jurymen, a theme echoed in newspaper descriptions of the 'upright, impartial and independent *English Juries*'.[67] Independence was an idea often associated with English jurors. Held to be among their greatest qualities, it was an expression of honesty and integrity, signifying jurors' separation from the state and their ability, if not always willingness, to deliberate without regard for judicial opinion or direction. In the context of significant opposition to the trials among the middling sorts, this language took on a dual meaning, as expressive of social identity. Part of what Jonathan Barry has termed 'an elaborate social vocabulary' to describe the values of middling England, expressions of 'independence' beyond the jury room referred to non-reliance on patronage or elite custom, possession of 'moral and economic autonomy' and inalienable legal rights.[68] They also, as Matt McCormack argues, 'connoted not just autonomy, but the condition in which self-mastery, conscience and individual responsibility could be exercised'.[69] Jury duty, especially in political cases, manifested this very condition. These ideas

[65] Mee, *Print, Publicity and Popular Radicalism*, pp.26-28, 81-82.
[66] Buck was foreman of Hardy's jury, *Morning Post*, 17 November 1794; *Cambridge Intelligencer*, 22 November and 6 December 1794. For further examples, *Morning Post,* 26 November 1794, 5 and 23 January 1795; *Morning Chronicle,* 8 November and 1 December 1794.
[67] *Cambridge Intelligencer*, 29 November 1794; *Chester Chronicle*, 14 November 1794; *Morning Chronicle*, 8 November; *Oracle*, 7 November 1794.
[68] J. Barry, 'Bourgeois Collectivism? Urban Association and the Middling Sort', in Barry, Brooks, eds, *The Middling Sort*, pp.84-112, pp.101-104.
[69] M. McCormack, *The Independent Man: Citizenship and Gender Politics in Georgian England* (Manchester: Manchester University Press, 2005), pp.1-11, on independence versus old corruption, see pp.162-186.

formed a crucial part of identity for many in the middling sorts. The ability to claim 'independence' or have it conferred on oneself was highly prized.

A critical component of this was a long recognised reliance on collective responsibility among members of the middling sorts, that individual independence was 'conditioned by duties and dependence', on the ability to take collective action and thus exert social or political influence.[70] In the increasingly fractious 1790s, as the state increased use of political trials to repress radicals and manage the boundaries of political society, trial by jury became a source of power for the middling sorts, used to bolster their political independence at a national level. The uptake of *The Englishman's Right* in 1793, and the large-scale public support for the acquittals in 1794 were no coincidence, but evidence that among England's middling sorts, there existed a recognition that their independent status rested increasingly on the exercise of influence through jury verdicts. The toasts at meetings in 1795 were also expressions of identity, suggestions that social and economic independence went with a duty to justice, that the superior nature of English jurisprudence lay in the independence of the middling sorts.

The role of this language in conveying the social identity of those celebrating 1794 is clearest in the long-term context. Descriptions of the jurors as 'independent', while prevalent in the immediate wake of the trials, were largely absent from commemoration in the decades before 1832 when 'purity' or merely the institution of trial by jury were commonly toasted. In the decades after reform, as the next chapter examines, when commemoration of the acquittals was abandoned by England's new Chartist radicals but taken up by later Victorian liberals, references to the jurors of 1794 as independent made a marked comeback. This indicates that, for the liberals the language of 'independence' possessed a special meaning in the context of

[70] Barry, 'Bourgeois Collectivism?' pp.102-103.

the 1794 trials and their own social position, having obtained the franchise.[71] As will be explored, these expressions featured in commemorative gatherings into the 1840s and beyond, those present readily characterising the jurors of 1794 not merely as virtuous, honest or upright, but representations of political, social and moral independence among England's middling orders.

In 1794 there were other ways in which the people celebrated the jurors or in the case of the middling sorts expressed collective identity. The symbolism of parades means this activity was important. The largest were held at Perth, Norwich and Sheffield.[72] A radical centre and industrial hub, Sheffield had the greatest number of celebratory events outside of London, including three meetings, and the accounts of these are detailed.[73] Accounts of the trials of Hardy and Tooke were read at gatherings on the first and sixth of December, along with toasts to 'the Independent Juries … may their memories be held sacred by Posterity, and their conduct inspire emulation'.[74]

The largest event to take place in Sheffield was a parade on 20 December 1794. It was the grandest celebration outside London, coinciding with the return of local radicals William Camage, Henry Hill and William Broomhead, all held in London on treason charges since May. The Sheffield Society for Constitutional Information which Camage, Hill and Broomhead belonged to, and the Sheffield Corresponding Society, organised and led the procession. These organisations had a varied membership, the latter closer to the LCS in

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[71] McCormack, *The Independent Man*, pp.187-200.
[72] For Norwich, *Morning Chronicle*, 27 December 1794; Perth, *Morning Chronicle*, 29 December 1794.
[73] For discussion of Sheffield radicalism, F.K. Donnelly, J.L. Baxter, 'Sheffield and the English Revolutionary Tradition 1791-1820', *International Review of Social History* 20:3 (1975), pp.398-423; J.A. Hone, *For the Cause of Truth: Radicalism in London 1796–1821* (Oxford: Clarendon, 1982), pp.13-19, 264-265; A. Goodwin, *The Friends of Liberty: The English Democratic Movement in the Age of the French Revolution* (London: Taylor & Francis, 2016, orig. 1979), pp.157-177, 185-186, 192-195, 208-214, 220-238, 251-252, 276-279; Barrell, *King's Death,* pp.147-149; Emsley, 'Repression, Terror and the Rule of Law', p.802; Emsley, 'An Aspect of Pitt's 'Terror', pp.158-161,164-167, 171; Cunningham, 'The Language of Patriotism', p.12; Rogers, *Crowds, Culture and Politics*, pp.211-213; Thompson, *English Working Class*, pp.81-82, 85, 459-460, 720-722, 760.
[74] *Cambridge Intelligencer*, 6 December 1794.

plebeian origins and makeup, while the Constitutional Society reflected its namesake in London, possessing a moderately more affluent membership.[75] The level of organisation, ornate decoration and symbolism was significant. The returning radicals were met by an estimated eleven-thousand strong party a mile from town. The parade proceeded through the principal streets, all 'greatly crowded, as well as the windows and tops of the houses … every eye beamed delight, and every voice testified joy; and the business appeared to give a most universal satisfaction'.[76] At the front walked boys, and two hundred men carrying torches, all adorned with blue and white ribbons symbolising 'loyalty and innocence'.[77] The ribbons are noteworthy as cheap, easily manufactured and 'recognisable as symbols of political adherence'.[78] Most in the procession were similarly adorned, suggesting these ribbons marked public support for the acquittals, demonstrated 'political adherence' to the defendant's cause and the victory over the state represented in the verdicts.[79] The choice was deliberate, with the blue, traditionally associated with Toryism, having local meaning in Sheffield as the colour worn by the Sheffield Blues who employed it to express loyalist sentiments.[80] The blue ribbons were an expression of radical patriotism designed to play on local conditions, reiterating that the acquittals, as Eaton had told his readers before the trials, represented acts of loyalty to constitution and people. Given that 'the Blues' were called onto the streets during the parade, it created a stark contrast between the wealthy men of the blue-uniformed loyalist yeomanry

[75] Camage (inkstand maker) and Broomhead were secretaries to the society. Broomhead and Hill were cutlers, Barrell, *King's Death*, p.191.
[76] *Morning Post*, 27 December 1794.
[77] *Chester Chronicle*, 2 January 1795.
[78] K. Navickas, '"That Sash will hang you": Political Clothing and Adornment in England 1780–1840', *Journal of British Studies* 49:3 (2010), pp.540-565, pp.545-546. On clothing as symbolism, J. Epstein, 'Understanding the Cap of Liberty: Symbolic Practice and Social Conflict in Early Nineteenth-Century England', *Past & Present* 122 (1998), pp.75-118; P. Pickering, 'Class without Words: Symbolic Communication in the Chartist Movement', *Past & Present* 112 (1986), pp.144-162.
[79] In common law, anyone wearing clothing, badges, ribbons or similar identifiers was considered a rioter regardless of personal conduct. There may also have been an element of collective protection in wearing them, Lobban, 'From Seditious Libel to Unlawful Assembly', pp.341-342.
[80] W. White, *History … of the Borough of Sheffield &c.* (Sheffield: W. White, 1833), pp.60-63.

and the 'loyalty' they represented, and the unarmed, peaceable parade, embodying loyalty to the nation.

Behind the first group in the parade a second carried large flags, banners and transparent lanterns.[81] Lanterns were a popular medium during public celebrations, usually made from paper or linen coated with a turpentine solution. The largest displayed the words 'INDEPENDENT JURIES' in capitals, with the names of various jurymen who had brought in the acquittals also on display.[82] Following the trials, the printing of jurors' names and sometimes occupations, was almost as ubiquitous as references to independence.[83] Few would have recognised the names of a biscuit baker, optician, meal man or corn factor, especially beyond London. But in these names was symbolism, of a middling sort associating their collective identity and interests with the powers of jury trial, in a way that cut through geographic, trade or local divisions. Their appearance in handbills and posting bills, in toasts, resolutions, newspapers and periodicals, on the walls of meetings in London, Sheffield, Norwich (and even, as in Maidstone on white satin accompanied by the words '*Behold! Thus shall the Men be respected, whom the People delighted to* honour') testified to this.[84] These Englishmen, of 'character, connections and property' had by acquitting refused to sanction an effort to weaken the political freedoms of middling England. The crowds, meetings, toasts and parades, presented solidarity and social unity.[85] Even thirty-eight years later at Hardy's funeral the names retained their symbolic significance, embroidered in gold on a purple tablet carried at the front of the huge funeral cortège through streets lined with spectators from Charing Cross to Bunhill Fields.

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[81] The largest flag carried the words 'The Liberty of the Press'.
[82] *Chester Chronicle*, 2 January 1795.
[83] E.g., *Chester Chronicle*, 14 November 1794; *Cambridge Intelligencer*, 14 February 1795; *Oracle*, 7 November 1794.
[84] *Cambridge Intelligencer*, 14 February 1794.
[85] *Morning Chronicle*, 8 November 1794.

The names of particular jurors were of little consequence to most of those celebrating them, but what they represented mattered, as examples to follow. They exemplified the duty of every middling Englishman to safeguard the independence of all. An important example of this was the striking of tokens and medals following the acquittal, with several bearing jurors' names.[86] Tokens were used widely in the 1790s by radicals, loyalists and tradesmen alike, as cheap propaganda or advertising. They were usually struck as halfpenny pieces, and served as legal tender, owing to neglect of the nation's copper coinage.[87] As a result, they could circulate prodigiously in the locales where they were most often struck, notably London, Birmingham, Sheffield and Bristol, and beyond. Medals were ornate memorabilia for sale and collecting.[88] Both were made and circulated in early 1795, with a variety of messages relating to the trials. The jurors' names appeared, with one exception, exclusively on highly finished medals aimed at collectors, rather than on cheap tokens. For instance, the most ornamental medal bearing the names of the three defendants and counsel along with all thirty-six jurors, was priced at 1*s* 6*d* in bronze and £1 11*s* 6*d* in silver. It was apparently sold exclusively as part of the 4 February meeting at the Crown and Anchor, at which attendance was limited to more affluent Londoners.[89] Demand was so great, that most appear to have been struck in cheaper pewter rather than bronze.[90]

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[86] For earlier use of medals see M. Pittock, *Material Culture and Sedition 1688–1760* (London: Palgrave, 2013), pp.125-132. On 1794 medals, Barrell, *The King's Death*, pp.404-409; Wharam, *Treason Trials*, pp.237-239; Wood, *Radical Satire*, pp.73-81; J. Barrell, *'Exhibition Extraordinary!!' Radical Broadsides of the mid-1790s* (London: Trent, 2001), p.XIII.

[87] Thomas Spence especially used tokens and many from 1795 are attributed to him, see Wood, *Radical Satire*, pp.68-81, on tokens see J.R. Whiting, *Trade Tokens: A Social and Economic History* (Newton Abbot: David & Charles, 1971), pp.12-30; G. Russell, *The Ephemeral Eighteenth Century, Print, Sociability and the Cultures of Collecting* (Cambridge: Cambridge University Press, 2020), ch.3.

[88] See L. Brown, *A Catalogue of British Historical Medals 1760–1960* (2 vols; London: Seaby, 1980), vol.1, pp.27-35, 42.

[89] *Morning Chronicle*, 3 February 1795; *Morning Post*, 11 February 1795.

[90] Brown, *British Historical Medals*, vol.1, pp.87-89.

The most commonly surviving medal, bearing Hardy's bust and the names of his jury (Figure 3) was as expensive, costing 1*s* 6*d*. Among the most copied, with numerous small variations, the use of multiple dies points to popularity in London and beyond, Robert Bell attributing at least one die to Birmingham.[91] Other medals, notably one portraying Erskine, Gibbs and the defendants, and another similarly depicting the counsel alongside an allegory of the jury, were similarly priced well beyond reach of the plebeian buyer, at 3*s* 6*d* and one guinea (21*s*) respectively.[92] This suggests a link between the presentation of these names and medals designed, struck and priced for a more affluent audience. They were intended to provide 'at such a trifling expense … a lasting memorial of the result of these important trials', to connect their owners, then and in the future, to the jurymen and all they represented.[93] These medals and the jurors' names they carried were talismans of a collective victory by the people, and the

Figure 3 Medal, M.5019, 'Copper alloy medal. Draped bust of Thomas Hardy facing, bare head turned to left' (1794)

[91] R. Bell, *Political and Commemorative Pieces Simulating Tradesmens' Tokens 1770–1802* (Felixstowe: Schwer, 1987), p.105.
[92] The second medal could be had in gold for 8 guineas: *Morning Chronicle*, 25 February and 5 November 1795. Tokens commonly cost a shilling for 24, *Morning Post*, 25 February 1795.
[93] *Morning Chronicle*, 27 November 1794.

middling sorts in particular. They made clear, and sought to enshrine to posterity the role of jury trial at the centre of the middling sorts' power and independence.[94]

The juries were depicted at the centre of a great transparency in the Sheffield parade, showing '*The Goddess of Liberty*'. Before her, a character held a Pileus cap, signifying the bestowing of liberty on the English, and surrounded by dark clouds from which arose the sun. This, reported the *Chester Chronicle,* was 'emblematic of the People rising from the black shades of Ignorance, Superstition and Oppression'.[95] In the other hand was depicted an unfurled scroll, bearing the names of the prisoners' counsel and the Sheffield radicals along with the words 'The Independent Juries' in large letters. The meaning here was as elsewhere, that the democratic element of the constitution was the true and only source of England's rights and freedom, preserved and conferred upon the nation by the verdict of a jury. This was one of several allegories created after the trials to reinforce the idea of the jury as giver and defender of liberty. They appeared on medals, including one by radical printer and tokenist Thomas Spence, depicting Thelwall in profile with Liberty and a cap of liberty on the obverse. The inscription read 'truth for my helm & justice for my shield'.[96]

A striking commemoration was made by medallist John Milton. It depicted Britannia seated limply on a chair, her spear topped with a Pileus cap.[97] Over Britannia is 'Justice', her arms outstretched to offer support, another allegory of the juries as the nation's deliverers. This is indicated by the accompanying caption: 'Returning Justice Lifts Aloft Her Scales'. This was a reference to Alexander Pope's 1712 poem *Messiah,* heralding Christ's birth and the return of previously absent virtues, principal among them Astræa, Greek goddess of justice. A sequel to

[94] Barry, 'Bourgeois Collectivism?' p.103; Earle, 'The Middling Sort', pp.155-158.
[95] *Chester Chronicle*, 2 January 1795.
[96] R. Dalton, S. Hamer, *Provincial Token Coinage of the Eighteenth Century* (London: B.A. Seaby, 1967, orig. 1910), p.177.
[97] J. Milton, 1794, silver medal [coin], London: British Museum, Coins and Medals. M.5011.

Pope's *Pastorals* (1709), *Messiah* represented spring and rebirth following directly from the death and despair of the last pastoral, *Winter*.[98] In this allegory as in wider post-trial celebration, the essence of liberty, and the rejuvenation of English freedom, were attributed to trial by jury.

IV

The message of post-trial celebrations was emphatic. The jurymen, in fulfilling their duties, had defended England's exceptionalism and the interests of the middling sorts, making an unambiguous assertion of political power. In the context of the 1790s, the role of the trial by jury in the struggle between the middling sorts and the old order could not be clearer. The authorities, in trying Hardy, Tooke and Thelwall, overstepped the agreed boundaries of justice, seeking to obtain by corruption and fear what they could not through a fair application of the law. The alarm exhibited by Cawthorn, Addington and Le Mesurier also takes on a new meaning in light of this analysis. It makes evident that their motive, especially in Cawthorn's case, was not moral opposition to the abuses of state power. Rather, it was a more fundamental concern for the future of the polity. If acquittals could bring about this level of unity, what convictions would have heralded can well be imagined. Cawthorn and Addington did just this, hence their opposition to the Crown's prosecutions. They recognised that the English constitution and government relied on popular consent – specifically the middling sorts' – exercised through the jury. They knew that convictions, whether achieved through trickery and perjury, or packing and corruption, would destroy the democratic pillar of the polity and show the administration as tyrannical. To the relief of Addington, the jurors saw through the ruse, and the middling sorts in the capital and elsewhere rallied behind their verdicts. In doing so,

[98] M. Battestin, 'The Transforming Power: Nature and Art in Pope's Pastorals', *Eighteenth-Century Studies* 2:3 (1969), pp.183-204, pp.201-203.

they did as much to justify the acquittals as radicals had, marking 1794 as a movement of social and political unity for the middling ranks of English society.

Chapter Five

Remembering 1794: The Legacy of the Treason Trials

I

The long-term legacy of the 1794 jurors is overlooked. It was the product of the radical efforts discussed in chapter three, and the celebrations, especially those attended by the middling sorts, explored in the previous chapter. As with the heritage of other events, groups and individuals from the revolutionary period, it would be portrayed and re-interpreted by different groups across several decades of commemoration, to suit their aims and tell their stories. This final chapter on the jurors of 1794 explores this process, and how the memory of the acquittals evolved through the nineteenth century. It focuses on the annual commemoration of the verdicts, held annually on 5 November in London until 1854, since these were the only events held and reported with any regularity.[1] These gatherings endured throughout the wars with France, years of post-war repression and the Reform Act of 1832, when plebeian radicalism were betrayed by the newly enfranchised middling sorts.[2] A consequence of this was the souring of the relationship between popular radicalism and the memory of the 1794 jurors. Commemoration of those events can be divided into that which occurred before and after reform in 1832.

[1] There were also other gatherings reported irregularly. In 1798 a government spy reported having attended four separate commemorative gatherings in London. Twenty-two gathered at the Sign of Saint Lukes, 60 at Long Lane, seventy at the Nags Head and 150 at the Sugar Loaf in Queen Street, TNA, PC 1/43/150, ff.1-8.
[2] On 1832 and limited reform, J. Parry, *The Rise and Fall of Liberal Government in Victorian Britain* (New Haven: Yale University Press, 1993), pp.72-106; C. Bossche, *Reform Acts: Chartism, Social Agency and the Victorian Novel 1832–1867* (London: John Hopkins University Press, 2014), pp.115-128; Thompson, *English Working Classes*, pp.189-190, 198-915.

The chapter first examines the period before reform, when popular radicalism principally organised commemorations of the treason trial verdicts. The form and the underpinning rhetoric of commemoration altered significantly from the initial radical narratives of the trials. Radicals manipulated the memory of 1794, blurring the lines between 'genuine' and 'artificial' tradition.[3] Building on the scholarship of Ian McBride, Paul Pickering and others, I show that a narrative about the jurors was used to express contemporary concerns by distilling and simplifying a complex historical period.[4] The chapter then explores the impact that reform in 1832 had on popular radicals and their relationship with the jury trial. It was a watershed after which groups such as the Chartists all but abandoned the commemoration of 1794.[5] Instead this was taken up by the now enfranchised middle class and liberal politicians who re-interpreted the memory of the trials to reflect their conflicts with the Tory elite. For those facing renewed state oppression in the post-1815 period and liberal middle-class celebrants opposed to Tory politics, the jurors and their acquittals served as a shared experience, a story of collective triumph and suffering vital to their respective identities.[6]

[3] McBride, 'Memory and National Identity', pp.6-16.
[4] P. Pickering, A. Tyrell, 'The Public Memorial of Reform: Commemoration and Contestation', in Pickering, Tyrrell, *Commemoration, Memorial and Popular Politics*, ch.1; E. Williams, *Stories in Stone: Memorialization, the Creation of history and the Role of Preservation* (Wilmington: Vernon Press, 2020), ch.3.
[5] On Chartist links to radical past see M. Hovell, *The Chartist Movement* (Manchester: Manchester University Press, 1966, orig. 1918), pp.1-6; P. Pickering, *Chartism and the Chartists in Manchester and Salford* (London: Springer, 1995), pp.34-35, 167, 205; D. Thompson, 'The Languages of Class', in S. Roberts, *The Dignity of Chartism* (London: Verso, 2015), pp.35-46, pp.38-39.
[6] On nineteenth-century radicals and memory: M. Sanders, *The Poetry of Chartism: Aesthetics, Politics and History* (Cambridge: Cambridge University Press, 2009), ch.1 and 5; M. Roberts, *Chartism, Commemoration and the Cult of the Radical Hero* (London: Routledge, 2020), ch.3 and 4; Q. Outram, K. Laybourn, '"A Divine Discontent With Wrong": The People's Martyrology', in Q. Outram, K. Laybourn, eds, *Secular Martyrdom in Britain and Ireland: From Peterloo to the Present* (London: Palgrave: 2018), pp.1-25, p.12; J. Cozens, 'The Making of the Peterloo Martyrs, 1819 to the Present', in Outram, Laybourn, *Secular Martyrdom in Britain and Ireland,* pp.31-58, pp.37-40.

II

Commemorative meetings celebrating the acquittals of 1794 were never wholly concerned with the events of that year. Anniversary rituals, as McBride suggests, were not exercises in nostalgia but provided impressions of continuity and a claim on the past.[7] For the radical movement, 1794 served this purpose. Firstly the subjects of trial by jury and the acquittals were discussed in relative proximity to contemporary issues and subjects, as a way of associating the two. And secondly the 'story' of 1794 was re-invented to reflect contemporary concerns, specifically a need to criticise the political elite as corrupt by continuing to exaggerate the seriousness of the threat posed by the state.

References to the jury and wider issues primarily took the form of toasts at annual celebratory meetings, as well as the wider topics raised for discussion by attendees. The meetings were chaired largely by popular radicals and some Whigs. After dinner, there followed broadly the same series of toasts, which differed significantly from those at the first celebrations of the verdicts in February 1795. Their order would remain an almost unaltered ritual until after 1832. The ceremony invariably began with a toast to 'the sovereignty of the people' or a similar phrase, implying that the verdicts of 1794 embodied this sovereignty, and with it the superiority of the democratic element of the constitution. It served as a challenge to loyalism, and the expectation to open public meetings by drinking the King's health. This was common at radical meetings into the 1830s, symbolically asserting popular power, here embodied in the jury, over other elements of the polity.[8] A toast to 'the King' was sometimes inserted subsequently but not invariably.[9] Some meetings avoided it altogether and a handful drank 'A

[7] McBride, 'Memory and National Identity', p.26.
[8] Epstein, *Radical Expression*, pp.183-184.
[9] See *The Examiner*, 12 November 1809.

King' or 'The King, and the principles which put his family on the throne', each nods to a view that the monarch was an office holder under the constitution.

This deliberate substitution of a toast to the King with one to the people, implied the jurors of 1794 represented a heritage of popular democracy. Through this, they continued to challenge the traditional link between 5 November and official narratives of British history. This was compounded by radicals opting to drink to the trial by jury second. Doing so conveyed a hierarchy of the polity, in which trial by jury (and the people's sovereignty) were placed above King, Lords and Commons on the constitutional pyramid, as a personification of the people's power.[10] The toast to jury trial was always proceeded by a lengthy and emotive panegyric on the subject, in which the 'story' of 1794 was told, the content of which I turn to later.[11] These speeches tended to conclude similarly, urging the maintenance of jury trial as the responsibility of the people. The events of 1794 and more recent persecutions such as those of William Hone and Thomas Wooler in 1817 were cited as warnings against repression and as examples of the importance of honest juries.[12] The image presented was one of a continuity of radical struggle and state oppression, jurors in recent political trials embodying the same spirit that actuated those of 1794. The aim was to employ the commemoration of 1794 as an annual counter-statement (to quote James Epstein) 'to the conventions of elite dining and to the existing calendar of loyalist observances'.[13] Radicals continued to exploit the date of Hardy's acquittal, asserting their own constitutional beliefs alongside those of their opponents, on a day that remained sacred to both.

[10] Epstein, *Radical Expression*, pp.185-186.
[11] For instance, *The Morning Advertiser*, 6 November 1819 and 8 November 1825; *Morning Chronicle*, 6 November 1829.
[12] Similarly, during the early 1820s the threat of renewed jury packing in London (see chapter seven) was often raised, *Morning Chronicle*, 6 November 1823.
[13] Epstein, *Radical Expression*, p.184.

Evident in these toasts was the mingling of contemporary struggles, especially in the post-war period, with commemoration. As McBride asserts it was usual for the memorialisation of events to be 'overlaid with contemporary occupations'.[14] Radical commemoration of 1794 was no different.[15] Of these wider topics, the most frequently raised were those of parliamentary reform and press freedom, reflecting ongoing radical campaigns to secure these.[16] The frequent attendance, especially in the post-war years, of leading radical writers including Wooler (who chaired meetings in 1822 and 1826), William Hone and Richard Carlile, ensured they remained a central theme, often discussed in relation to 1794. At the 1822 commemorations the acquittals of the defendants who had 'laboured in the barren waste', were heralded as bringing about 'the cultivated plains of Reform at the present time', creating the circumstances in which liberty could flourish.[17] These subjects were presented as natural successors to the victory secured in 1794, their procurement predicated on the independence of English juries, and the defeat of constructive treason.

Moments at which these objectives were threatened were often raised as evidence of the need for radicals to remain united, following the example of 1794. As the chair of one meeting argued, the trials of 1794 'showed what in some cases the public could do' when united, urging that 'there should be no disunion between the Reformers'.[18] Events including the Peterloo Massacre in 1819, the passage of the Six Acts in 1820, and the renewed threat of jury packing during the early 1820s (see chapter seven) were referred to in this light.[19] In this way radicals

[14] McBride, 'Memory and National Identity', pp.25-26.
[15] On at least two occasions, in 1796, and 1819, the conduct of meetings elicited complaints. At the first, attendees protested that Hardy's name had not been toasted. This was not an omission that occurred again. The focus instead appeared to have been on the question of reform, *Morning Post*, 7 and 11 November 1796; *Morning Advertiser*, 6 November 1819.
[16] E.g., *Courier*, 14 November 1795; *Examiner*, 12 November 1809.
[17] *Morning Chronicle*, 6 November 1822.
[18] *Morning Chronicle*, 6 November 1822.
[19] Thomas Wooler told attendees at the 1822 meeting, provided 'they could find twelve honest Englishmen who acted from conscience, it was still worth the while of all lovers of freedom to drink "Trial by Jury"', *Morning*

contextualised and presented their contemporary struggles through those of the past. The Manchester massacre and corruption of juries were not 'new' threats to liberty but products of the same 'spirit of despotism' that oppressed the people in 1794. As had occurred in the immediate aftermath of the acquittals, these modern instances of repression became part of a shared heritage, although in this instance, the treason trials themselves were the focus.[20] Those who gathered did so not merely to remember history, but to remind themselves of their forebears' victory, how their struggles related to it, and their duty to preserve the legacy of the 1794 acquittals. In doing so, they annually renewed their claim on the mantle of liberty.[21]

The 'story' of 1794 was altered to suit contemporary needs. The memory of the trials had to be rendered capable of reflecting the ongoing experience of repression felt by radicals. Perhaps the biggest change radicals made was to largely set aside the xenophobia, chauvinism and anti-Catholicism that characterised their initial responses. After the first commemorations in November 1795, these themes were marginalised. Many of the ideas associated with anti-Catholicism and xenophobia, used to justify the acquittals, were abandoned. Besides the songs discussed in chapter three, now sung infrequently, and references to the significance of 5 November as emblematic of popular sovereignty, there was little concerted effort to maintain the narrative of the immediate aftermath of the trials. Accounts of providence and the national story now served a limited purpose to blunt loyalist attacks. A reliance on divine intervention as an explanation for the jurors' actions was problematic especially for post-war radicalism.[22] In

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Chronicle, 6 November 1822. For references to Peterloo, *Morning Advertiser*, 6 November 1819; *Morning Chronicle*, 6 November 1823.

[20] McBride, 'Memory and National Identity', pp.13-15.

[21] Other toasts of note included to Thomas Paine. During the early 1820s, revolutionary movements in Greece, Portugal, Spain and Italy were celebrated, as was South American revolutionary Simon Bolivar. These toasts were always made towards the close of meetings, and attended with little discussion, *Morning Chronicle*, 6 November 1822; *Morning Advertiser*, 8 November 1825.

[22] The suggestion that God's providence was enacted through the free will of jurors was also not suitable given the rise of radical deism and atheism, D. Berman, *A History of Atheism in Britain: From Hobbes to Russell* (London: Taylor & Francis, 2013), pp.191-206.

the context of the increasing employment of libel prosecutions by *ex officio* informations from 1816, and the open use of packed juries by the Crown before their reform in 1825 (see chapter seven), providentialism lost its usefulness. The question raised by these later events, was not whether God favoured the English, but whether the people could overcome the corruption and unjust prosecutions. The discussion was secularised and while some notions of providentialism survived these were generally side-lined. The juries of 1794 were still sanctified but in order to make them relevant they were celebrated in their own right as an emblem of English liberty. To radicals in the decades after the prosecutions, the jurymen were champions of freedom not because God intended, guided or planned the acquittals, but because as patriotic Englishmen the jurors had done their duty to the people.[23]

It is also likely that alongside the changing priorities of radicals many were sensible to the problem in retaining a divisive language beyond its natural usefulness. For all their post-trial gusto and the genuinely enthusiastic bigotry of Eaton, most radicals were uncomfortable with employing these paradigms. They were a means to an end and as early as November 1795 that end had been achieved. The national story and 5 November in particular were occasions characterised by chauvinism, Gallophobia and intolerance, evocation of which did not suit the radical community in the decades after 1794.[24] Instead, they sought to tell their own competing story of that date, able to instruct, enlighten and encourage, as their discussions show. Retaining too many links to the initial celebrations risked, as John Thelwall warned, navel-gazing rather than ensuring the acquittals remained inspirational for future generations of

[23] BL, Add MS 27817, ff.34-35, 56; *Morning Advertiser*, 8 November 1825; *Morning Chronicle,* 6 November 1828.
[24] Traditional celebrations of Guy Fawkes Night were 'clearly associated with anti-Catholicism and demonstrations of loyalty to the Anglican Church, the State and the Crown', not something radicals wanted to tie their memorialisation of the 1794 acquittals to in the long run: J. Neuheiser, *Crown, Church and Constitution: Popular Conservatism in England, 1815-1867* (Oxford: Berghahn, 2016), pp.154-161. See Colley, *Britons,* pp.330-341; I. Machin, 'British Catholics', in R. Liedtke, S. Wendehorst, eds, *The Emancipation of Catholics, Jews and Protestants: Minorities and the Nation State in Nineteenth-Century Europe* (Manchester: Manchester University Press, 1999), pp.11-32; W. Hinde, *Catholic Emancipation: A Shake to Men's Minds* (Oxford: Blackwell: 1992), pp.90-157.

radicals. The integration of post-war radicalism into this cult of memorialisation makes clear that this aim was achieved.[25] It even inspired Thelwall to suggest, and later celebrants to found, a society intended to communicate the story of 1794 to futurity: 'The Jury Club of 1794'. This organisation should, Thelwall explained, 'attract the young members of future and present society, so that corruption, peril, persecution or the fear of death, would be as nothing in the way of the assertion of the noble principles of liberty and independence'.[26]

The story of 1794 told in the years before 1832 mixed fact and fiction. It was the product of what Alon Confino refers to as the 'inherent strangeness' between past and present, and the conflict created when attempting to memorialise the past, between contemporary needs and the natural limits of cultural resources.[27] The threat of tyranny, the eloquence of Erskine, and stoicism of the prisoners were common themes. But these were not enough to make the treason trials a useful event. Radicals needed the memory of 1794 to be more critical of the state, the Tories and Pitt's legacy; more relevant to the corruption of justice they faced. The solution was to embellish the events of the past. Radicals invented a series of myths, or conspiracies, to vilify the persecutors of 1794 and heighten a contrast between a corrupt Crown and honest juries.[28]

The result was a group memory of the prosecutions, rooted in several invented traditions.[29] Among the most frequently repeated, was a fiction that the government spent over a hundred thousand pounds in prosecuting Hardy, Tooke and Thelwall. This exorbitant sum

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[25] Williams, *Stories in Stone: Memorialization*, pp.17-22.
[26] No records appear to exist of this society or its gatherings. See *Morning Chronicle*, 6 November 1833 for Thelwall's suggestion and *Daily News*, 6 November 1852 for establishment.
[27] A. Confino, *Germany as a Culture of Remembrance: Promises and Limits of Writing History* (Chapel Hill: University of North Caroline Press, 2017), p.67; McBride, 'Memory and National Identity', p.13.
[28] McBride, 'Memory and National Identity', p.16.
[29] R. Foster, 'Remembering 1798', in McBride, ed., *History and Memory in Modern Ireland*, pp.67-94, p.67; A. Wood, 'The Pedlar of Swaffham, the Fenland Giant and the Sardinian Communist: Usable Pasts and the Politics of Folklore in England c.1600–1830', in F. Williamson, *Locating Agency: Space, Power and Popular Politics* (Cambridge: Cambridge Scholars, 2011), pp.161-192, p.180.

was intended to highlight the disparity between the prisoners and the resources of the Crown, and dramatise the jury as a great leveller and guarantor of equity and justice. In the context of persecution during the war years, and the decade after 1815, it also helped to draw a parallel to 1794. The implication of this myth was that Pitt had attempted to buy justice, using paid witnesses and spies to trick unwary jurors.[30] This allowed radical to draw links to the present-day payments of special jurors, who were responsible for trying the large number of libel prosecutions brought in the early nineteenth century. The corruption of special juries (see chapters six and seven) was presented as the continuation of previous oppression: the Crown still tried to pay for favourable verdicts in cases where it knew no honest jury would convict. The result was that in radical commemoration 1794 was a shared experience, the threat it embodied presented as identical to that facing later opponents of the state.[31]

This idea of a shared experience was reinforced with other myths. Among them was the claim that the Crown had attempted to pack Tooke's jury. This was founded on actual events: the Attorney General challenged a number of Tooke's potential jurors, to the point that the panel was exhausted with only nine jurymen sworn. Radical commemorations deliberately misread the purpose of what was a standard procedure in state trials, attaching a nefarious intent to the Attorney's actions. They alleged that the Crown sought to ensure the remaining three jurors were drawn from those already challenged by Tooke, who were potentially hostile to the defence.[32] As with the previous myth, the objective was to create a lineage of oppression, through which later radicals could understand the packing of juries in later trials. In reality neither Tooke nor the Attorney had behaved irregularly. For the ploy to work, the Crown had

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[30] E.g., *Morning Chronicle*, 7 November 1809; *Examiner*, 6 November 1816; *Kentish Weekly Post*, 10 November 1826; Barrell, *The King's Death*, p.393, 409-411. On spies in LCS, Emsley, 'Repression, Terror and the Rule of Law', pp.802-804, 810-812.
[31] McBride, 'Memory and National Identity', p.13.
[32] Gurney, *Trial of John Horne Tooke*, vol.1, pp.7-21 for process of Tooke's jury selection. For examples, *Morning Chronicle*, 7 November 1795 and 7 November 1823; *The Charter*, 10 November 1839.

to show cause for its challenges, something which when asked it was completely unprepared to do.[33] The Attorney gave up his challenges to avoid disadvantaging Tooke. This fact was simply overlooked, an example of how the 'selection' of what was remembered relied entirely on the needs of the community commemorating the event.[34]

Another fabrication centred on an allegation that upwards of eight hundred warrants were prepared, to be served the moment Hardy was, as the Crown expected, convicted. This was often the most eloquently articulated element of the 1794 story, as in this example from 1829:

> had not those juries done their duty … had they not stood in the breach of the Temple of Liberty, not twelve lives, but the lives of three hundred individuals would have been sacrificed; a reign of terror would have been commenced and the liberties of Englishmen perhaps lost forever.[35]

There is no evidence that these warrants existed, despite most scholars taking it as gospel.[36] Erskine's clerk claimed to have a list of those named upon them which, despite repeated promises he never published.[37] The purpose of this conspiracy theory and the others was simplicity. Radicals desired to distil the memory of 1794, from the celebrations and justifications of 1795, as a struggle against corruption. The jurors had checked not just a political prosecution but a state-sponsored conspiracy to ensure the defendants were found guilty. For those commemorating the treason trials, it was a plot which continued to be

[33] In treason causes the defendant possessed the right to challenge thirty-five jurors peremptorily. The Crown had to show cause (i.e. justify) any of its challenges but this was done by convention only if the whole panel was gone through, see Blackstone, vol.4, pp.409-411.
[34] McBride, 'Memory and National Identity', p.13.
[35] *Morning Chronicle*, 6 November 1829.
[36] Barrell, *The King's Death*, p.367. On the question of packing, acknowledging absence of credible evidence, C. Emsley, *An Atlantic-Democratic Revolution?* (Maidenhead: Open University Press, 1971), pp.135-136.
[37] *Morning Chronicle*, 6 November 1838.

enacted, and against which juries remained the surest defence. Radical celebration of the jury verdicts served to legitimate ongoing resistance to state repression, contextualising it in a heritage of oppression and of triumph over tyranny.[38]

The commemorative meetings persisted in this form for almost forty years, radicals maintaining the memory of 1794 as a source of legitimation, education and warning. The greatest indicator that this had been achieved came in October 1832 when Thomas Hardy died. His funeral marked the last major public commemoration of the treason trials attended *en masse* by popular radicals. Alexander Galloway, Henry Hunt, Thomas Wooler, Sir Richard Philips and Henry Revell rode in over a dozen mourning coaches behind the hearse. The National Union of the Working Classes, a popular radical organisation, in which Revell was a leading member, led the procession with flags and banners.[39] The *Liverpool Mercury* described the cortege as comprised primarily of the lower orders:

> the foot procession was formed, consisting principally of respectable artisans and mechanics, who marched six abreast … the streets were lined, and the houses thronged with spectators, all of whom seemed to take a deep interest in the solemn occasion, and many thousand persons accompanied it to Bunhill-fields … when the funeral train arrived within the precincts of St Luke's, scarcely a house was to be found which had not paid to the illustrious dead [a] tribute of respect. A number of flags and banners emblematic of liberty and union, but bordered with crape, were displayed from different houses, or were suspended across the road.[40]

At the graveside it was the themes developed in the previous thirty-eight years that featured in John Thelwall's eulogy. Before a crowd estimated at between twenty and forty thousand

[38] McBride, 'Memory and National Identity', pp.40-42.
[39] *Bell's New Weekly Messenger*, 21 October 1832, accompanied by a portrait of Hardy in the dock during his 1794 trial.
[40] *Liverpool Mercury*, 26 October 1832.

mourners the triumph of the juries in 1794 was again proclaimed, alongside the state's wrongdoing.[41] The number of mourners was remarkable, considering the fact that Hardy retired from political (and public) life after his acquittal. Evidently the legacy of Hardy's stand against Pitt's terror survived in the popular consciousness. The repetition of these myths, as well as the wider story of 1794 told at his funeral, suggests they had played an important part in securing this. The greatest monument to Hardy, Thelwall declared, was that his name and the acquittals associated with it, '[inspire] future generation with a determination to act on the same upright, conscientious and disinterested principles' which had actuated Hardy, and which his jury had vindicated.

III

The 1830s saw a change in attendance and the tone of commemorations dedicated to the juries of 1794. The major popular radical movements of the 1830s and 1840s, namely the trade union and Chartist movements, with the exception of Hardy's funeral, boycotted commemoration of 1794 in the years after the Reform Act.[42] The juries and their acquittals now became the subjects of middle–class commemoration. The annual meetings were now appropriated by those who benefited from reform. Along with the memory of the acquittals, they were refashioned as part of middle class cultural inheritance. The rest of the chapter explores this process, first exploring the reasons 1794 fell out of favour with popular radicalism.

For popular radicals after the disappointment of 1832, the treason trials quickly lost relevance as the political objectives and goals of the newly-enfranchised middle class and

[41] Also reported in *Morning Post*, 12 October 1832; *Sun*, 19 October 1832; *Times*, 20 October 1832; *Sheffield Independent*, 20 October 1832.
[42] Matthew Roberts discovered only one instance of Chartists commemorating Hardy's acquittal during the entirety of their existence (1838–1857), Roberts, *Cult of the Radical Hero,* p.87.

unenfranchised working men drifted apart.[43] The result was that jury trial, which remained firmly a middling institution, became associated with a betrayal of the lower orders.[44] Juries once symbolized liberty but partial reform effectively realigned the interests of England's jurors with the political elites against any proposition of further franchise reform.[45] Partial reform fundamentally upset the balance of political power, eroding a democratic check and balance in the constitution.[46] The result was a political elite seeking more than ever to 'ingratiate themselves' with the middle classes, by turning on their new collective enemy: working–class radicalism. As the radical newspaper *The Poor Man's Guardian* argued after the convictions of the Dorchester labourers known as the Tolpuddle Martyrs in 1834, it was the elite who 'pounced on these unfortunate men … [but] the middlemen [who] saw and approved. "A nation of shopkeepers" looked on with satisfaction' as their interests, namely suppressing trade unionism and collective bargaining, were protected.[47] The way in which jury trial legitimated the powers of the state was perverted, no longer respecting boundaries of justice that were now altered to quash political dissent.[48]

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[43] On nineteenth century class conflict, see G. Claeys, 'The Triumph of Class-Conscious Reformism in British Radicalism 1790-1860', *Historical Journal* 26:4 (1983), pp.969-985, pp.975-985; J. Belchem, *Popular Radicalism in Nineteenth-Century Britain* (London: Palgrave, 1996), ch.5; G.S. Jones, 'The Language of Chartism', in J. Epstein, D. Thompson, eds., *The Chartist Experience: Studies in Working-Class Radicalism and Culture 1830–1860* (London: Palgrave, 1982), pp.3-58; D. Thompson, *The Early Chartists* (London: Macmillan, 1971), pp.7-10; Thompson, *English Working Class,* pp.888-909; Colley, *Britons,* pp.341-368,

[44] R. Sykes, 'Early Chartism and Trade Unionism in South-East Lancashire', in Epstein, Thompson, eds., *The Chartist Experience,* pp.152-193; R. Ashcraft, 'Liberal Political Theory and Working-Class Radicalism in Nineteenth-Century England', *Political Theory* 21:2 (1993), pp.249-272; Hovell, *The Chartist Movement,* pp.51-54, 63.

[45] M. Finn, *After Chartism: Class and Nation in English Radical Politics 1848–1874* (Cambridge: Cambridge University Press, 1993), p.191.

[46] Thompson, *English Working Class*, p.683; G.S. Jones, 'Working-Class Culture and Working-Class Politics in London 1870–1900', *Journal of Social History* 7:4 (1974), pp.460-508, pp.462-467.

[47] *Poor Man's Guardian*, 18 July 1835; Finn, *Class and Nation in English Radical Politics*, p.141.

[48] See J. Saville, *1848: The British State and the Chartist Movement* (Cambridge: Cambridge University Press, 1987), pp.172-175; J.F. Ariouat, 'Rethinking Partisanship in the Conduct of the Chartist Trials, 1839–1848', *Albion* 29:4 (1997), pp.596-621, pp.606-608; G.S. Jones, *Languages of Class: Studies in English Working Class History 1832–1982* (Cambridge: Cambridge University Press, 1983), pp.70-146.

For radicals, the relationship between jury trial and justice now shattered.[49] Within a few years of reform popular radicals began to express distrust of the trial by jury, believing that the enfranchised middling sorts had corrupted the institution for their own purposes, into an instrument of political tyranny. Such sentiments largely revolved around political trials, with more general expressions of support for 'the theory of trial by jury' still common enough among radical groups.[50] Flash points during which anti-jury sentiments flared included the 1834 Tolpuddle trials and large-scale prosecutions of Chartists in 1839, 1840, 1842 and 1848. The juries were depicted among the villains, as 'the real tyrants of society' and 'engine[s] of oppression and cruelty'.[51] For radicals, the jury had turned from a check on authority into a rubber stamp.

In the decades after 1832, many felt that to be charged with a political crime was to be condemned, irrespective of whether the jury was a London or country one.[52] This was no exaggeration, as contemporary conviction figures show. Ninety-seven percent of all Chartists brought before the courts in 1848 were convicted. Even in the context of the revolutions on the continent, this was a remarkable figure when compared to the national average of seventy-five percent found guilty at assize in the 1840s. Jacqueline Ariouat found that in every year between 1839 and 1848 the percentage of Chartists convicted was above this average.[53] This figure of ninety seven percent is even more striking when compared to the conviction rates for political crimes before 1832. The Pittite state could but dream of such success rates in prosecuting its opponents. Between 1817 and 1822, during the height of post-Napoleonic repression, a mere thirty-eight percent of libel defendants reached sentencing. In what Philip

[49] See by one of the Tolpuddle six, G. Loveless, *The Victims of Whiggery* (London: H. Hetherington, 1838), pp.3-7.
[50] *Northern Star*, 15 July 1848 and 9 August 1851.
[51] *Poor Man's Guardian*, 29 March 1834.
[52] This view was particularly strong among Chartists. A rumoured sympathy for Chartism was enough to get any defendant convicted, *Northern Star,* 29 July and 23 December 1848.
[53] Ariouat, 'Rethinking Partisanship', p.614.

Harling termed a 'period of intensive prosecution' between 1808 and 1812, that number was twenty percent.[54] Not even violent political disorder came close to the Chartist conviction rates, with only about a third of the swing rioters prosecuted between 1830 and 1831, found guilty.[55]

Following 1832, middle-class jurors developed a penchant for convicting political dissenters that did not exist before, when it had not suited them to quash political dissent. This alteration in jury behaviour was a consequence of the Reform Act, which 'legitimately' corrupted and nullified the (middle-class) democratic part of the constitution by uniting it with the authoritarian element. The concept of 'honest' jurymen fell apart and as the Chartist *Northern Star* argued, jury packing virtually ceased to exist, 'there [being] no need to incur the odium of packing juries when it is well known beforehand how the jurors will give their verdict … [the] *Broad Cloth* in the jury box will bellow out **GUILTY**'.[56] An article in December 1848, summarised the consequences of partial reform for popular radicalism:

> [when] the middle classes dabbled in sedition, their leaders, spokesmen and instruments [i.e. radicals] generally were acquitted … but times have changed. The bourgeoisie, if they have not obtained all they want, have obtained sufficient power to enable them to accomplish any further change … they therefore no longer sympathise with the advocates of organic reform … 'Trial by Jury' is one of the "great safeguards" of despotism.[57]

The jury was fundamentally a political institution. Justice especially in contentious cases, was an adaptable construct, founded on nothing more than what politically, socially, financially, morally or even religiously, suited the middling jurors. Radicals had understood this, basing

[54] Harling, 'Limits of Repression', pp.109-110.
[55] Ariouat, 'Rethinking Partisanship', pp.614-615; E. Hobsbawm, G. Rude, *Captain Swing* (London: Lawrence & Wishart, 1969), p.257.
[56] *Northern Star*, 29 July 1848.
[57] *Northern Star*, 23 December 1848.

campaigns on exploiting this reality. But their strategic inability to call for the widening of the jury franchise, for fear of damaging their relationship with the middling sorts, came home to roost after 1832. The middling sorts, wanting to secure their political position, had exploited the radical movement for its vociferous backing of jury trial while it suited them. Partial reform altered fundamentally the political and social relations of England, exposing the frailty of this decades-long relationship.[58] As the Chartist leader James Bronterre O'Brien explained in 1841, the middling sorts knew 'that a power to make laws is nothing without the power to execute them … and that the only way to ensure that was to usurp the Jury-box'. 'The consequence is,' concluded O'Brien, that to the detriment of working people, 'the power of the middle classes [is nowhere] more absolute than it is over trial by jury'.[59] As Frank McLynn has summarised, even before 1832 'striking workers and loom-cutters were beyond the pale of sympathy of the middling men who sat on the juries'. Reform exasperated this reality,[60] It changed much, but not the role of the jury. It had always acted in the interests of middling England and continued to do so.

In this climate, it is easy to understand why commemoration of 1794 lost its usefulness to England's mid-century political radicals. It memorialised an institution increasingly associated with class conflict. Continued 'glorification' of the event served to highlight the hypocrisy radicals now saw in notions of English liberty and the concept of a fair trial by jury. Leading radical groups wanted no part in remembering events which were now seen as irrelevant. Commemoration of 1794 was thus left almost entirely to the now enfranchised middle class, for whom, as will be explored below, the acquittals retained resonance. Those politicians closely associated with working-class radicalism, for instance the six MPs led by

[58] *Northern Star* characterised the situation as one in which 'the middle class are being armed with deadly weapons, to use against the people', *The Northern Star,* 29 July 1848.
[59] *Northern Star*, 3 April 1841.
[60] McLynn, *Crime and Punishment in Eighteenth Century England*, p.232.

Daniel O'Connell, who met with William Lovett and five others in 1837 to draft the People's Charter, avoided attending 1794 memorials.[61] Equally, none of the 1837 radical delegation were ever recorded as having made an appearance. For both groups, venerating the justice that had been, became hollow in the face of the jury-sanctioned repression that was. In a climate of post-1832 oppression, it was simply not appropriate for popular radical to cosy up to the middle-class traitors.

To popular radicals into the 1840s, attendance at celebrations of 1794 became a marker of political infidelity.[62] Attendance demonstrated that an individuals' sympathies lay with the middle class rather than with a broader-based radicalism.[63] Even those middling sorts who continued to attend, recognised 'that the working classes had not been with them', no longer sharing in their adoration of trial by jury.[64] This was unsurprising, given the patronising tone and contemptuous language often directed towards working people. An attendee at the 1839 commemoration bemoaned, 'there had not been expressed in that room adequate sympathy', for those who had not hitherto benefited from franchise reform.[65] Chartists, as Matthew Roberts argues, instead invented their own traditions.[66] These looked to their modern martyrs, like John Frost, Fergus O'Connor or the Tolpuddle labourers, and republicans of the past, such as Sidney, Russell and Paine.[67] Their encounters with bellicose judges and unyielding

[61] The exception was Thomas Thompson, who chaired the 1847 meeting.
[62] Of the popular radicals mentioned, only Major Revell (in 1838) and Richard Taylor (in 1841) were ever recorded as attending the commemorations after 1832.
[63] *The London Dispatch and People's Political & Social Reformer*, 12 March 1837.
[64] *Morning Chronicle*, 26 November 1841.
[65] *The Charter*, 10 November 1839.
[66] On Chartist awareness of their past, Hovell, *The Chartist Movement,* p.4; Outram, Laybourn, 'The People's Martyrology', p.12; Roberts, *Cult of the Radical Hero*, ch.1.
[67] Recently deceased radical advocates for universal suffrage, including Major Cartwright (d. 1824), Henry Hunt and William Cobbett (both d. 1835) and the Tolpuddle labourers, were often remembered for their confrontations with the law, see M. Chase, *Chartism: A New History* (Manchester: Manchester University Press, 2013), pp.56, 67, 120-124, 157-166; P. Pickering, *Chartism and Chartists in Manchester and Salford* (London: Palgrave: 1995), pp.34-35, 167; C. Griffiths, 'From Dorchester Labourers to Tolpuddle Martyrs: Celebrating Radicalism in the English Countryside', in Outram, Laybourn, *Secular Martyrdom in Britain and Ireland,* pp.59-84, pp.60-66; Sanders, *The Poetry of Chartism*, p.143. Others such as United Irishman Theobald Wolfe Tone (d. 1798) or Robert Emmet (d. 1803) were Chartist martyrs, D. Thompson, 'Chartism as a Historical Subject', in S. Roberts,

juries, made their memories more relevant to the experiences of the contemporary radical community.

The trials of Hardy, Tooke and Thelwall on the other hand, became increasingly un-relatable. The great irony of 1794, was that had the defendants been convicted and executed, they would have been the greatest candidates for martyrdom in the view of Chartism, and indeed wider British radical politics. They would have died on the scaffold in the name, specifically, of universal manhood suffrage. The very fact of their acquittals meant they could not be remembered in the same way as other contemporaries. The likes of Paine, or the Scottish Martyrs (including the LCS members Maurice Margaret and Joseph Gerrald) had suffered at the hands of the law.[68] As noted in the introduction, the context of the Edinburgh trials differed significantly to that of the LCS prosecutions. The Scottish juries had been packed, and the trial judge, Lord Braxfield, was a belligerent and aggressive advocate for convictions (where, in England, Lord Eyre was notably reserved).[69] Conversely, because they had lived, the London radicals and especially Thomas Hardy (having been tried first), were irretrievably connected to the subject and celebration of the trial by jury. This, and this alone, discounted the shoemaker and the others from Chartist commemoration.

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ed., *Collection of Essays: The Dignity of the Chartists, By Dorothy Thompson* (London: Verso, 2015), pp.13-22, p.16; G. Vargo, 'Chartist Drama: The Performance of Revolt', *Victorian Studies* 61:1 (2018), pp.9-34, pp.24-29. The victims of Peterloo remained in memory and commemoration into the late-nineteenth century, Pickering, *Chartists in Manchester and Salford*, p.35, 86.

[68] These men, with Scots Thomas Muir, Thomas Fyshe Palmer and William Skirving, were convicted in January-February 1794 for sedition in Edinburgh, having organised the British Convention. All were transported. These five radicals were often commemorated by popular radicals. A monument to their suffering was erected in 1844 in Edinburgh following campaigning by Joseph Hume MP. Its unveiling was Whig dominated, causing Chartist protest: A. Tyrell, 'Paternalism, Public Memory and National Identity', *History* 90:1 (2005), pp.42-61, p.46; A. Tyrell, 'Bearding the Tories: The Commemoration of the Scottish Political Martyrs of 1793-94', in Pickering, Tyrrell, *Commemoration, Memorial and Popular Politics*, ch.2, p.40-42; Chase, *Chartism: A New History,* p.56.

[69] The nomination of juries in Scotland, as Cockburn notes, proceeded at the judge's 'absolute, unexplained, unchecked, unquestioned, unquestionable, mysterious pleasure', Henry Cockburn, Scottish lawyer and jurist, quoted in E. Macleod, 'The English and Scottish State Trials of the 1790s Compared', in Davis et al, eds., *Political Trials*, pp.79-108, pp.88-89.

In a climate of almost certain conviction, persistent celebration of 'honest jurymen' must have sounded sardonic. The *Northern Star*, commenting on the commemoration of 1794 in 1848, summarised the radical view in a caustic editorial, undoubtedly influenced by the ongoing mass prosecutions and convictions of Chartists nationwide:

> I have not forgotten the historical fact of the acquittal of Horne Tooke, Thelwall and others which acquittal is celebrated every year at Radley's Hotel, Blackfriars, by a set of *bourgeois* liberals and political adventurers, who meet to guzzle and glorify each other, and toast 'Trial by Jury'. The celebration of 'the glorious triumph of Trial by Jury' is in these times a glorious exhibition of humbug. 'Trial by Jury', like most of 'our excellent institutions', is a very good thing for the rich and the *bourgeoisie,* but as regards the poor, they would not be much worse off were they subjected to trial by court-martial![70]

For this writer and many in the wider movement, the memory of 1794 had become too disconnected from their contemporary experience to be of practical use. The concept of what constituted honesty and integrity in juries was subjective. Although they might suggest it publicly, few, especially in the radical movement, truly believed jurors either did, or were supposed to, decide on the basis of facts alone. Neither Chartists nor others opposing the authorities in the middle decades of the nineteenth century felt they were afforded a fair trial, as they understood it. In the period after 1832, the communal requirements of working-class radicals simply did not include the lionisation of an institution regularly employed to oppress.

IV

While the memorialisation of 1794 lost relevance for plebeian radicalism after 1832, it retained some importance to those in the middling sort who benefitted from reform. To them, the

[70] *Northern Star*, 23 December 1848.

jurors of 1794 were predecessors in their struggle for political power and enfranchisement. The verdicts were seen as important, having checked an attempt to shrink the bounds of public debate and exhibited a sense of unity among the middling ranks of society. As radical groups abandoned their commemoration of the treason trials, the middle classes appropriated them as part of their heritage, key elements in the story of how reform was, for them, obtained.

Within a couple of years post-reform, the whole demeanour and audience of 1794 memorialisation altered, epitomised by the increase in the number of meetings chaired and attended by Members of Parliament. Before 1832, no meeting appears to have been chaired by an MP. Between 1834 and the last official London commemoration in 1854, half were chaired by Whig politicians.[71] Some undeniably expressed reformist sentiment, or favourable opinions of Chartism, but they nonetheless typified the clique of 'bourgeois liberals and political adventurers' many in the working–class radical movements saw as faithless. The form of the meeting however changed little, although the various songs and radical fantasies were abandoned, in favour of a simplified commemorative ceremony. The core messages and sentiments of the meetings prior to reform were adopted almost in their entirety, retaining a strong resonance for the middle classes.[72] Above all, the defeat of constructive treason, 'torn to pieces by the battering ram of juries', continued to be lauded, and although the myths employed by radicals were largely retired by the late 1830s, the issues they explored were still discussed.[73] Even the opening toast, traditionally given to 'the sovereignty of the people' was retained, although this was almost certainly done for its symbolic value, as a legitimating link to

[71] These included Charles Buller, Thomas S. Duncombe, John Bowring, Thomas P. Thompson and Peter A. Taylor and William J. Fox.
[72] A. Hawkins, *Victorian Political Culture: Habits of Heart and Mind* (Oxford: Oxford University Press, 2015), ch.1 and 6.
[73] *Morning Chronicle*, 6 November 1845. For examples also see *Sheffield Independent*, 24 November 1838; *Morning Chronicle*, 6 November 1840; *Morning Advertiser*, 6 November 1846 and 7 November 1847; *Reynold's Newspaper*, 12 November 1854.

past radical ceremonies. Later celebrants watered down and qualified its meaning, as signifying only the people's general support for the existing polity.[74]

Trial by jury remained at the centre of proceedings, toasted without fail and given appropriately passionate eulogies. Those attending the gatherings in memory of 1794 still proclaimed trial by jury the pinnacle of liberty, 'a fence against oppression … [and] the people's court of equity'.[75] The divergence forged by reform could not be more evident. Alongside the jury, press freedom and parliamentary reform continued to dominate discussion, later commemorative gatherings no less entangled in contemporary concerns than their pre-reform counterparts. Other questions pertinent to the times were also frequently raised, notably the Corn Laws (until repeal in 1846) and wider social issues, including education and the Poor Laws.[76] On the question of parliamentary reform, the meetings were generally divided, with the majority on balance in favour of further change. Attendees still called for universal manhood suffrage on occasion, and disparaged those who thought reform complete.[77] But the meetings were not Chartist. For every genuine friend of universal suffrage, there was a supporter in rhetoric, an equal number who viewed the House of Commons as being amply reformed in the face of the demands made by radical groups.[78]

For all these similarities at the heart of celebratory meetings from the mid-1830s onwards, there was a new approach to the memory of 1794. This reflected the middle class view of their own history, and the place of the acquittals, defendants and juries in their political and social heritage. Central to this was a belief that, as chapter four argued, the jurors

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[74] Finn, *Class and Nation in English Radical Politics*, pp.40-41, 66.
[75] Similarly, the 1845 meeting declared jury trial 'a great barrier erected, not only against the despotism of individuals, but against the despotism of law', not something apparent to Chartist prisoners, *Morning Advertiser*, 6 November 1845.
[76] E.g. *Morning Chronicle*, 6 November 1840.
[77] Several of the MPs who chaired meetings, notably Thomas P. Thompson in 1847, were advocates for universal suffrage, *Northern Star*, 12 November 1842.
[78] *Morning Advertiser*, 6 November 1845.

verdicts had unified the middling sorts of the 1790s. For those who commemorated their actions in the mid-nineteenth century, the trials came to represent a significant moment on the path towards a social and political identity for the middle ranks of society.[79] As Vernon has argued, the liberals of mid-nineteenth century England, 'moralised' the nation's history, into a struggle between the aristocracy, and the 'virtuous, Protestant, freeborn, middle-Englishmen'. It was this latter group of propertied, metropolitan men, who constituted 'the people'; the past and future guarantors of liberty.[80] Middle class commemoration of 1794 reflected this narrative, romanticising the stand their 'ancestors' had taken against the 'Tory Oligarchy'.[81] The jurors' verdicts were thus understood, not just as a shield against repression, but as an expression of dissent by a unified middling sort against the old order. This was woven into a wider story of progress, the acquittals conceptualised as having drawn a new and profound political, legal and social boundary which advanced the political position of the middle class.[82] In publishing the third volume of his 1878 *History of England* for use in public schools, James Bright, Master of University College, Oxford, summarised this view of the 1794 verdicts, which had prevailed since the early 1840s:

> The excitement about the trials was intense, the speeches of the rival barristers were listened to with extreme interest, and the acquittals were hailed with the wildest enthusiasm. It was plain that a considerable change had taken place in the feelings of the people; the strings of repression had been drawn too tight; the line between class and class was becoming more sharply marked.[83]

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[79] Finn, *Class and Nation in English Radical Politics*, pp.145-150.
[80] Vernon, 'Narrating the Constitution', pp.221-228.
[81] McBride, 'Memory and National Identity', p.15.
[82] See *Freeman's Journal*, 10 November 1837, *Southampton Herald*, 24 April 1858.
[83] J. Bright, *A History of England: Period III: Constitutional Monarchy, William and Mary to William IV 1689–1837* (London: Rivingtons, 1878), pp.1180-1181.

By the latter third of the nineteenth century, this view was common currency, the previous memorialisation of the treason trials before 1832 largely forgotten. As the barrister William Thompson explained in his 1887 history of English democracy, the trials demonstrated the role played by middle England in securing the nation's progress, representing a clash between the elite and the middling sort. 'So disgusted even the middle class jurors at length became with the prosecutions and the malpractices of the governing classes', he argued, 'that [the] prisoners brought before them were found "not guilty"'.[84]

With this approach to the trial by jury came numerous changes in language. Among the most profound were alterations to how the acquittals were described. They remained as 'triumphs' and 'victories', but those attending later gatherings also added new political terminology. Most notable, were the new metaphors employed when discussing the cause and meaning of the jurors' decisions, including words such as 'dissent', 'protest' or 'complaint'.[85] The trials had always been political, but these terms represented a new perspective. They constituted an assertion, that the acquittals were in fact the middling sorts using the jury trial as a substitute for voting and other political rights, as an alternative source of power to make a political protest. Some went as far as to term the verdicts a 'revolt' of the middling sorts against the old order, in which 'the common sense of the nation, as represented in the jury box, rebelled'.[86]

At the heart of this was the belief – which radicals had championed repeatedly during the 1790s and the early nineteenth century – that the middling sorts had been responsible for the protection of liberty during the Pittite terror and post-war repression; that their historical 'protests' had been for the advancement of general freedom. As one newspaper claimed, 'the

[84] W. Thompson, *The Rise of the English Democracy* (London: W. Reeves, 1887), pp.7-8.
[85] E.g., *Morning Chronicle*, 7 November 1843; *Southampton Herald*, 24 April 1858; *Morning Chronicle*, 6 November 1845.
[86] *Daily News*, 6 June 1882.

verdict of the juries in the cases of Thelwall, Hardy, and Horne Tooke were protests against the attempt of servile and bigoted courtiers to arrest the English people in their progress towards the attainment of extended liberties'.[87] These, it was claimed, had subsequently been achieved as a direct result of the 1794 verdicts, at least for the middle classes. In the observances of these later commentators, the 'valiant' middling jurors in the treason trials and elsewhere, had contributed significantly to the development of modern political society. Attendees at commemorative gatherings and later writers alike, sought to identify the verdicts as being part of the middle-class story of origin, an event on the path towards the ultimate enlightenment of the 1832 Reform Act. The prosecutions were presented as a political choice between two distinct directions, with the middling sorts through their jurymen, electing to set the nation on a course towards freedom:

> the [jurors] declined to hold, that association [with the cause of reform constituted] high treason … it is an undoubted fact that many valuable changes [have been] hastened if not caused by the refusal of juries to obey directions from the Bench.

The gatherings, declared the 1851 meeting, were not about celebrating 'a mere institution', but 'the action of a living spirit': that of a middling sort possessed of shared purpose and identity. The trial by jury and those it embodied were, they concluded, 'in fact the best specimen of the English living spirit'.[88]

Reinforcing this reading of the trials was another significant alteration in language, concerning how the jurors and indeed defendants were spoken of. The latter were adopted by middle class celebrants as yet further representatives of their social class, its origins and

[87] *Southampton Herald*, 24 April 1858
[88] *Daily News*, 7 November 1851.

heritage. This was principally achieved through frequent references to the defendants as martyrs, specifically to the cause of the middling sorts. As William Fox, a radical orator and Unitarian minister, told the 1846 meeting, 'they were men in the middle walk of life, men who were the representatives and martyrs of principle', whose acquittals 'had saved the present generation from the dangerous and pestilential' actions of the old order.[89] Often, as in Fox's speech, the defendants and their beliefs were significantly misrepresented, aligning the defendant's social class and apparent views with the ultimate results of reform. This made it easier to attribute the rise of modern politics to the verdicts, implying that the jurors had saved members of their own social class, in pursuance of their own interests. As late as the 1880s, such arguments continued to be advanced. The London based *Daily News,* commenting on the importance of juries, told its readers in 1882 that, 'it would have been a disgrace to the country had the result been different, for the principle object of the prisoner was to procure the adequate representation of large towns'.[90] This was a deliberate misstatement of LCS's aims, and the reasons for which Hardy, Tooke and Thelwall had been persecuted. As with previous radical memorisation, the truth didn't really matter. Instead, attendees combined genuine and artificial traditions in order to construct a heritage that suited their needs.[91] It was for the cause of the 'middle sorts', meetings in the early 1850s therefore asserted, for which the prisoners, 'good, true, brave men … were ready to be martyrs'.[92]

The claiming of defendants and jurors by later celebrants was primarily intended to counter the Tory narrative of the revolutionary period. The reason for Britain's relatively stable course, the commemorative meetings contented, was not the careful management of Pitt, but the willingness of the middling sorts to uphold the nation's liberties. It was this, they argued,

[89] *Morning Chronicle,* 6 November 1846.
[90] *Daily News,* 6 June 1882.
[91] McBride, 'Memory and National Identity', p.12.
[92] *Northern Star,* 9 November 1850.

that caused England's political advancement. Eulogies at meetings sometimes referred to the characters of 1794 as the 'fathers' of present political society, in whose actions could be located its beginnings. 'By [their] resistance, and the result of it, it might be said that the jaw-teeth of tyranny had been broken' argued the 1841 chair, Common Councilman Richard Taylor, paving the road towards a liberal society unfettered by 'the abettors and exercisers of arbitrary power'.[93] Jurors and prisoners were viewed as sources of inspiration and instruction. Attendees to the 1837 meeting for instance, were told to look upon the protagonists of 1794 'as our political fathers … [and] to inquire the course of conduct which would be most acceptable to them, were they now the witnesses' to modern political questions.[94] Others made the link between the defendants, jurors and reform even more explicit, the chair of the 1839 meeting, the teacher and mathematician George Heppel, proclaiming them pioneers of democratic rights. 'They were met that day' he explained, 'to commemorate the glorious pioneers who led them on to victory … [without which] they would never have got the moderate measures of parliamentary reform which a liberal administration had given'.[95] Speakers in the years after 1832 were careful to associate themselves and their fellows with what had occurred decades before, helping to create, as popular radicals had previous done, a sense of shared experience and identity. 1794 was not merely 'a' victory for liberty, but 'their' victory. It was a collective triumph for middle England, and an example of what their unity of purpose could accomplish. To the enfranchised middle class attendees who gathered in the late 1830s and 1840s, the protagonists of the 1794 trials 'were the confessors of liberty', and talismans of their political advancement, who had avowed faith, through their collective defiance, in English liberty constitutionalism and enlightenment.[96]

[93] *York Herald*, 13 November 1841.
[94] *London Dispatch,* 12 November 1837.
[95] *Morning Chronicle,* 7 November 1839.
[96] *Northern Star*, 9 November 1850.

For mid-century celebrants of 1794, the treason trial verdicts were a marker on the road of progress. This was made evident by the addition of new toasts post-1832, notably to the Whigs, Tories, political establishment and monarch. While every meeting without fail continued to open with 'the sovereignty of the people' – although by the mid-1840s a largely token gesture retained to ensure continuity – the King (Queen after 1837) was toasted annually, before the jury trial. Toasts to the Whig (later Liberal) ministry whenever it was in power were also common, along with some both criticising and praising Tory administrations.[97] If anything embodied the middle class perception of 1794 and its place in history it was these. Later attendees toasted modern politics alongside the trial by jury, because unlike their radical predecessors, they essentially viewed them as interdependent, one the product of the other. For working-class radicals, before 1832 and during the 1830s and 1840s, toasting elements of the established political order remained opposed to their core beliefs, and ran contrary the heritage of resistance they held the treason trial verdicts to represent. In their eyes, political society remained largely stagnant. For the enfranchised middle classes on the other hand, the opposite was true, meaning toasts to the monarchy and all it embodied were perfectly congruent with celebrations of trial by jury. The same went for the Whigs, whom it was argued repeatedly, were only in a position to grant reform because of the jurors' verdicts in 1794.[98]

The alterations of language by middle class celebrants were designed to frame the heritage of 1794 in such a way as to present themselves, or rather historical actors they considered representative of them, at the forefront of history and improvement of society. As the mid-century lawyer William Forsyth wrote in his *History of Trial by Jury*, it was an institution capable of guiding the whole of society, with 1794 an exemplar of its excellence. Quoting the

[97] *Northern Star*, 12 November 1842. Other examples, *Morning Chronicle*, 6 November 1838 and 6 November 1840; *Daily News*, 7 November 1851.
[98] *Morning Chronicle*, 7 November 1839.

French writer and diplomat Alexis de Tocqueville, Forsythe summarised astutely the attitude underwriting the later commemorative meetings, arguing that:

> the jury is above all a political institution … the man who judges criminals is therefore really the master of society. Yet the institution of the jury places the people themselves, or at least a class of citizens, in the seat of the judge. The institution of the jury therefore really puts the management of society in the hands of the people, or of this class.[99]

The presentation of the treason trial verdicts as occasioning modern society, and with toasts to the Queen, Whigs and Tories, had the effect of moving the socio-political location of the meetings. For popular radicals, they had been gatherings occurring in opposition to the established political order, to celebrate the defence and protection of waning liberties and discuss how to procure the advancement of reform. Post-1832, middle-class attendees re-interpreted the trials as acts of social improvement, embodying a historical unity among the middling sort. The memory of the acquittals therefore, essentially became a part of the political nation, and of the annual, official celebrations of its origins.[100] 'What more need [I] say in remembrance of those men', asked William Fox, by 1854 MP for Oldham, 'whose principles were asserting themselves in our national policy – in our legislature – aye, and in our courts and cabinets'.[101]

V

As much recent scholarship has discussed, neither the memory of the 1790s nor their framing were exclusive to any given group in the century that followed. There were often what John

[99] W. Forsyth, *History of Trial by Jury* (London: J. W. Parker: 1852), p.418.
[100] The 1840 meeting listed the various anniversaries sharing the 5 November, signifying the acquittal of Hardy as the most significant, *Morning Chronicle,* 6 November 1840.
[101] *Reynold's Newspaper*, 12 November 1854.

Oldfield calls 'a multiplicity of memories, as well as conflicts between memories'.[102] The legacy of the treason trials and the London juries of 1794 epitomise this. For radicals before 1832 and middle class and liberal attendees in the post-reform decades, the objective in memorialising the verdicts of 1794 was the same: to, Emily Williams puts it, 'make the past usable in the present'.[103] Both sought to link their generation to that of the 1790s, emphasising as Confino puts it, 'the longevity of traditions, real or invented, thus connecting the past and present'.[104] That which the verdicts represented was a political and social construct, defined first in the immediate aftermath of the acquittals, and subsequently reinterpreted to suit the needs of those who continued to commemorate the treason trials.

The most striking element of the commemoration of 1794 though, was its transition from a symbol of radical resistance to one of mid-nineteenth-century class identity. This later memorialisation appears to confirm the contemporary views of Joseph Cawthorn, Henry Addington, and Paul Le Mesurier regarding the political impact of the prosecutions. The trials were undoubtedly a victory for radicalism. But, the reaction they had elicited was predominantly among the middling sorts, and it was this that later gatherings highlighted, in order to characterise the memory of 1794 as being part of a middle-class heritage. The legacy of 1794 was highly versatile, the trials having essentially united much of the nation against the authorities, and in praise of the jury trial. The sixty years of commemoration by both popular radicalism and those who benefited from reform bear this out, each 're-incarnating the political energies stored in the past', to quote Mike Sanders' words, to their own ends.[105] The jurors'

[102] J. Oldfield, *Chords of Freedom: Commemoration, Ritual and British Transatlantic Slavery* (Manchester: Manchester University Press, 2007), p.4.
[103] Williams, *Stories in Stone: Memorialization,* p.18.
[104] Confino, *Germany as a Culture of Remembrance*, p.42.
[105] Sanders, *The Poetry of Chartism*, p.217.

memories were reinterpreted and manipulated repeatedly over the course of nearly a century to tell the story of 1794, and reiterate the importance of their institution to the nation's history.

Chapter Six

The Contested Image of Trial by Jury in England 1817–c.1820

I

1817–1825 was a testing period for English radicalism, its approach to jury trial, and resistance to state repression. The end of war in 1815 saw a nation ravaged by poverty and governed by a political class indifferent to the suffering of the poor. The English people were politicised by their circumstances and the conflict, which prompted many who had fought or otherwise suffered economic hardship to demand recompense. Consequently, the lower orders in particular were more ready to engage with popular politics, especially cheap radical periodicals, satires and parodies critical of the government.[1] Radicalism was buoyed by renewed calls for reform. The exponential growth of the press as an organ of radical expression enabled the movement to exploit this febrile atmosphere at moments of crisis, notably the Peterloo Massacre in 1819 and Queen Caroline Affair in 1820.[2] Leading radical publications, especially William Cobbett's *Political Register* and Thomas Wooler's *The Black Dwarf,* had a regular circulation in the tens of thousands, each copy read by between twenty and thirty people, many more listening in coffee houses and other popular venues.[3] Radicals printed other materials in copious amounts, especially satires and broadsides. Those from William Hone, for instance his infamous liturgical parodies of 1817 or *The Political House that Jack Built,* his most successful

[1] H. Barker, *Newspapers and English Society 1695–1855* (London: Taylor & Francis, 2014), pp.20-22, pp.194-200; M. Mann, *The Sources of Social Power: The Rise of Classes and Nation-States 1760-1914* (London: Cambridge University Press, 1986), pp.8, 20; Thompson, *English Working Class,* pp.660-665, pp.712-713.
[2] Hone, *Cause of Truth,* p.304; Gilmartin, *Print Politics*, pp.73-88; Wood, *Radical Satire,* pp.149-154.
[3] Grimes, 'Spreading the Radical Word', pp.146-150; J. Marsh, *Word Crimes: Blasphemy, Culture and Literature in Nineteenth-Century England* (New York: University of Chicago Press, 1998), p.337; D. Ewen, D. Kent, eds, *Regency Radical: Selected Writings of William Hone* (Detroit: Wayne State University Press, 2003), pp.14-16.

work published in 1819, were hugely popular. The parodies led the Home Secretary to instruct Justices of the Peace to target and suppress them.[4] In volume and reach, the radical press peaked in the post-war years.

Consequently, the state and reactionary loyalism were equally if not more paranoid than in 1794, fearing the influence of radical thought reaching the lower orders.[5] 1817 marked the beginning of a protracted crisis over press freedom lasting into the 1820s, and a series of threats to the independence of English juries. The primary cause was the failure in 1817 to successfully prosecute several radical activists, many held for months without trial under the Habeas Corpus Suspension Act of February. Most significant were Wooler, tried twice in mid-June, and Hone, arrested in May for his parodies and tried on three separate blasphemous libel indictments in late December.[6] Their acquittals humiliated the government, forcing the release of all other prisoners arrested for opposing the authorities in late 1816 and 1817.[7]

The remainder of this thesis explores two of the most significant threats to the independence of trial by jury precipitated by these events. The sanctity of jury trial secured in 1794 remained in principle, the authorities unable despite loyalist urging, to legally curb jurors' rights. This heritage could not preclude new efforts by increased public criticism and surreptitious corruption to undermine jurors' integrity. This chapter – two related case studies – deals with the first of these, continuing the discussion of the jury in popular culture explored in chapters three and four. It analyses the influence of previous depictions of the jury on post-

[4] Ewen, Kent, *Selected Writings of William Hone*, pp.15-16.
[5] Grimes, 'Spreading the Radical Word', pp.150-155; Thompson, p.712; Wood, *Radical Satire,* p.237.
[6] Also of significance was the June acquittal of James Watson, a revolutionary and Spencean Philanthropist acquitted of treason after the Spa Fields Riots in December 1816, J. Stevenson, *Popular Disturbances in England 1700-1832* (London: Taylor and Francis: 2014), pp.239-245.
[7] For salient commentary on these trials see M. Lobban, 'From Seditious Libel to Unlawful Assembly: Peterloo and the Changing Face of Political Crime 1660-1820', *Oxford Journal of Legal Studies* 10:3 (1990), pp.307-352, p.325; Harling, 'Limits of Repression', pp.114-117, pp.127-132; Hone, *Cause of Truth,* pp.328-339, Thompson, *English Working Class,* pp.790-795; Epstein, *Radical Expression*, ch.2; Wood, *Radical Satire,* ch.3.

war radicals, and how they and their loyalist counterparts evolved in their perception of the trial by jury. The two case studies centre on the satirical and iconographical presentation of the jury in response to two public crises: the acquittals of 1817 and the 1819 Peterloo Massacre.

The first study explores the prevalent narrative offered in the months following Hone's three acquittals in December 1817, of the jury triumphant. This was a tried and tested idiom with which post-war radicals – most importantly Wooler and Hone, owing to their involvement with commemoration of 1794 – were familiar. This was a critical element in the wider radical aim to manufacture a sense of victory over the government, focused on undermining the loyalist suggestion that the law was the font of justice. This was achieved through an array of satirical media, parody, songs, squibs and cartoons exploiting the general immunity Hone's acquittals granted comic burlesque.[8] The cartoons, along with the woodcuts explored in the second case study, were the most significant, accessible and widest reaching forms of radical propaganda. Cartoons were regularly exhibited in shop windows, on coffee-house walls and in other public venues, legible through the use of recognisable symbolism and caricature by literate and illiterate alike.[9] Woodcuts were similarly accessible, and although appearing in relatively expensive publications (Hone's *The Political House that Jack Built* for instance cost 1*s*), they often had many readers, and were intended to be performed publicly.[10] The woodcuts and cartoons have been examined in studies of radical satire, popular culture and the artistic composition of radical and loyalist parodists.[11] This chapter re-reads these images in the context

[8] O. Smith, *The Politics of Language 1790–1818* (Birmingham: Birmingham University Press, 1980), p.165; Grimes, 'Spreading the Radical Word', p.155; Ewen, Kent, *Selected Writings of William Hone*, p.21; Wood, *Radical Satire*, pp.54-56; A. May, 'Fiction of 'Faction'? Literary Representations of the Early Nineteenth-Century Criminal Courtroom', in, Lemmings, ed., *Crime, Courtrooms and the Public Sphere*, pp.167-192

[9] I. Haywood, *Romanticism and Caricature* (London: Cambridge University Press, 2013), p.7, 60; M. Baer, *The Rise and Fall of Radical Westminster 1780-1890* (London: Palgrave, 2012), ch.8; H. Atherton, *Political Prints in the Age of Hogarth: A Study of the Ideographic Representation of Politics* (London: Clarendon, 1974), pp.62-64; Wood, *Radical Satire*, p.41.

[10] Parolin, *Venues of Popular Politics in London*, pp.136-137.

[11] On Hone's trial cartoons see T. Hunt, *Defining John Bull: Political Caricature and National Identity in Late Georgian England* (London: Taylor and Francis, 2017), pp.203-205; Marsh, *Word Crimes: Blasphemy, Culture and Literature*,

of struggles over the jury trial. These satires communicated serious political messages regarding the future of the jury in constitution and polity – what Epstein calls the 'interplay … between jest and serious commentary' indicative of post-war radicalism – while allowing radicals to pretend the loyalist position was so ridiculous, that it was beneath critical engagement.[12]

Case Study One: The Acquittals of William Hone

Loyalists and government ministers were incensed by Hone's three acquittals in December 1817 and, in a sharp break from the discourse of the 1790s, openly criticised the jurors. Their verdicts, behaviour during political trials and place within the constitution were all questioned. They were driven by the fact that, whereas in 1794, loyalists and even members of the Tory elite appreciated the evidence was not substantial enough to warrant convictions, the verdicts especially for Hone were held to be contrary to the facts.[13] The authorities and their supporters could not reconcile these acquittals with the predominant concept of jurisprudence held by many loyalists, in which obedience to the written law was paramount, and guaranteed true justice.[14] For loyalists, this was an existential crisis, profoundly threatening their equation between the law and justice. Most striking were the explicit recognitions of jurors' power and the political nature of their decision-making absent from 1794. Numerous publications, most

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p.33-35; on *The Political House* and wider material see E. Rickword, *Radical Squibs & Loyalist Ripostes: Satirical Pamphlets of the Regency Period 1819–1821* (London: Barnes & Noble, 1971), pp.22-27; Wood, *Radical Satire*, ch.5.

[12] Epstein, *Radical Expression,* pp.54-58; Smith, *The Politics of* Language, p.166; Wood, *Radical Satire*, ch.5; on depictions of 'courtroom drama' including juries see R. Crone, 'Publishing Courtroom Drama for the Masses, 1820-1855', in, Lemmings, ed., *Crime, Courtrooms and the Public Sphere,* pp.198-201, 213.

[13] It was legitimate to suggest Hone had blasphemed. Even some supporters suggested they believed him a blasphemer. The list of subscribers to a post-trial appeal for Hone contains names such as 'No Scripture Parodist, but a Detester of Hypocrisy and Persecution' and 'One who disapproves of the Parodies, but abhors Persecution', W. Hone, *Trial by Jury and Liberty of the Press: The Proceedings at the Public Meeting, December 29th 1817 &c.* (London: Hone, 1818), pp.21-26.

[14] On loyalism, obedience and justice see J. Mori, 'Languages of Loyalism: Patriotism, Nationhood and the State in the 1790s', *English Historical Review* 118:475 (2003), pp.33-58, pp.43-48; J. Mori, *Britain in the Age of the French Revolution 1785–1820* (London: Taylor & Francis, 2014), pp.40-43; J.A.W. Gunn, *Beyond Liberty and Property: The Process of Self-Recognition in Eighteenth-Century Political Thought* (Montreal: McGill-Queen's University Press, 1983), pp.182-191.

notably one by William Firth, lamented acquittals he believed were founded on nothing but the political interests of 'generally corrupted' jurymen. These he asserted, constituted a 'curse' on the body politic, because they allowed the urban middling sorts to assert authority over policy and law.[15] This view was expressed at the highest levels of government. As lawyer Francis Holt wrote in a letter to his friend Home Secretary Henry Addington, metropolitan juries appeared not only disparaging of Crown evidence and critical of persecution, but opposed to convicting radical defendants even where the evidence was manifest, unless it was in their political interest. 'Something' he bemoaned, 'was necessary beyond guilt to ensure a conviction before them'.[16] Holt was right, recognising that as previously, the guilt or innocence of political defendants was not in issue; the consequences of conviction were what mattered. The middling sorts, having assessed the elite's proposals to draw tighter the reins of oppression had rejected them. This time however, the poverty of evidence that shielded the jurors of 1794 from open criticism was absent.

Presenting justice and the jury as triumphant over unjust or politically repressive legislation could effectively rebuke these loyalist attacks. Not only did the radical struggle for press freedom rely on appeals to juries being independent of the Crown, any suggestion that the law equated with justice was antithetical to the premise upon which jury trial had functioned since Bushel's Case. As Wooler explained, it was a fundamental tenet of the English social contract and constitutional settlement that 'LAWS are <u>only</u> to be obeyed by juries when they are founded *on justice*; for it is not *law*, but *tyranny*, to enact injustice'.[17] 'What has LAW to do with *justice?*' he asked readers in June 1817, suggesting loyalists were peddling a disingenuous 'mock jurisprudence', a frustrated reaction to current events which a reasonable

[15] W. Firth, *Remarks on the Recent State Trials and the Rise and Progress of Disaffection in the Country* (London: J. Rivington, 1818), p.98.
[16] DHC, Papers of Henry Addington, 152M/C1818/OH, f.14.
[17] Wooler, *Black Dwarf* II:10 (March 1818), p.150.

person could not subscribe to.[18] By questioning jurors' integrity and independence, loyalists were challenging the balance which stabilised the polity, with a desire to limit the freedom and independence of English juries. The threat was not rhetorical. However, in the light of Hone's acquittals, little effort was needed to portray the loyalist position as absurd. In failing to criminalise Hone's parodies before a court regularly descending into laughter, the authorities invited mockery and showed themselves incapable of suppressing it.[19] As Kyle Grimes suggests, Hone's trials demonstrated that faced with a satirical discourse, the British state was at its most vulnerable and courts were at their weakest. The seriousness with which they persecuted Hone undercut their efforts, making for a 'pompous, ridiculous and absurd' spectacle.[20]

Radical depictions of the trials and victorious jurors mirrored the farces played out in court. The most immediate and vivid were various forms of trial parody, satirising the Crown's failure and establishing a clear distinction between law and justice.[21] This was popular in early nineteenth-century England, part of a heritage employed 'to diffuse the fear and to tame the strange entangling conventions' of law.[22] What made trial parody effective was the way, alongside other material such as liturgical parodies, it used elements of official proceeding. As Wood explains, 'state authority is enshrined within, and defined by, the forms of official language and ceremony', and by stripping away the serious content, radicals could turn the empty but recognisable shell into a vehicle of ridicule.[23] Common in these satires was the employment of animals or animal trials, which featured in the radical defence of Hone's verdicts. This was a legacy of popular folklore, growing out of a tradition of animals being tried

[18] Wooler, *Black Dwarf* I:22 (June 1817), p.348.
[19] Hunt, *Defining John Bull*, p.204.
[20] Grimes, 'Spreading the Radical Word', p.155.
[21] On history of trial parody and its forms see Wood, *Radical Satire*, pp.100-102, 144-154.
[22] Wood, *Radical Satire*, p.145.
[23] The same is partially true of other popular forms of parody, notably those based on popular songs or nursery rhymes, Wood, *Radical Satire*, pp.144-148, 215-219; Smith, *The Politics of* Language, pp.166-168.

under human laws, and the transition of this into a parodic device towards the late seventeenth-century.[24] Use of animals recast events in a primitive fashion. It allowed parodists, even within the trial setting, to lose many of the trappings of human society and expose the essence of the subject: a struggle between natural justice and intransigent law. This was an approach with which Hone, his frequent collaborator, cartoonist George Cruikshank, and Wooler, were familiar. As Wood discusses in detail, Hone and Cruikshank published several trial parodies featuring animals before 1817. The most recent, distributed months before Hone's trials, was *Another Ministerial Defeat! The Trial of the Dog for Biting the Noble Lord,* a satire on the rumour that Lord Castlereagh was bitten by a rabid dog, which Hone wryly christened 'Honesty'.[25]

Unsurprisingly, many parodies following Hone's acquittals, produced largely by Cruikshank for various publishers, featured trials with animals in the place of courtroom characters. Among the most striking was *Great Gobble Gobble Gobble, and Twit Twittle Twit,* in which the King's Bench was transposed into a farmyard, presided over by a giant Turkey Cock with Chief Justice Lord Ellenborough's head (Figure 4).[26] Published by Hone as the front piece to an original comic song and separately as an etching, the scene was an allegory for the separation of law and justice.[27] The right side of the cartoon personifies the legal system. Ellenborough stands upon a raised platform, his head cocked back in indignation at being challenged by 'Little Tom Tit' (Hone). Above the Chief Justice, an owl with the face of Justice

[24] Wood, *Radical Satire*, pp.146-147.
[25] W. Hone, *Another Ministerial Defeat! The Trial of the Dog for Biting the Noble Lord* (London: Hone, 1817), p.2; Wood, *Radical Satire*, pp.145-149, 215-221; Hone, *Cause of Truth*, pp.327-329.
[26] Justice Abbott presided only over Hone's first trial. Ellenborough insisted on presiding over the second and third trials, W. Grimmer, ed. *Anecdotes of the Bench and Bar* (London: Hope, 1852), p.164.
[27] The sheet music was priced at 2*s*, indicating a more affluent audience. Being a song however, it was likely shared with relative ease beyond the initial purchaser. Equally, the separate appearance of the cartoon as a coloured etching and uncoloured print would have widened its potential audience through display in printshop windows. On political songs see Mee, *Print, Publicity and Popular Radicalism*, pp.112-114.

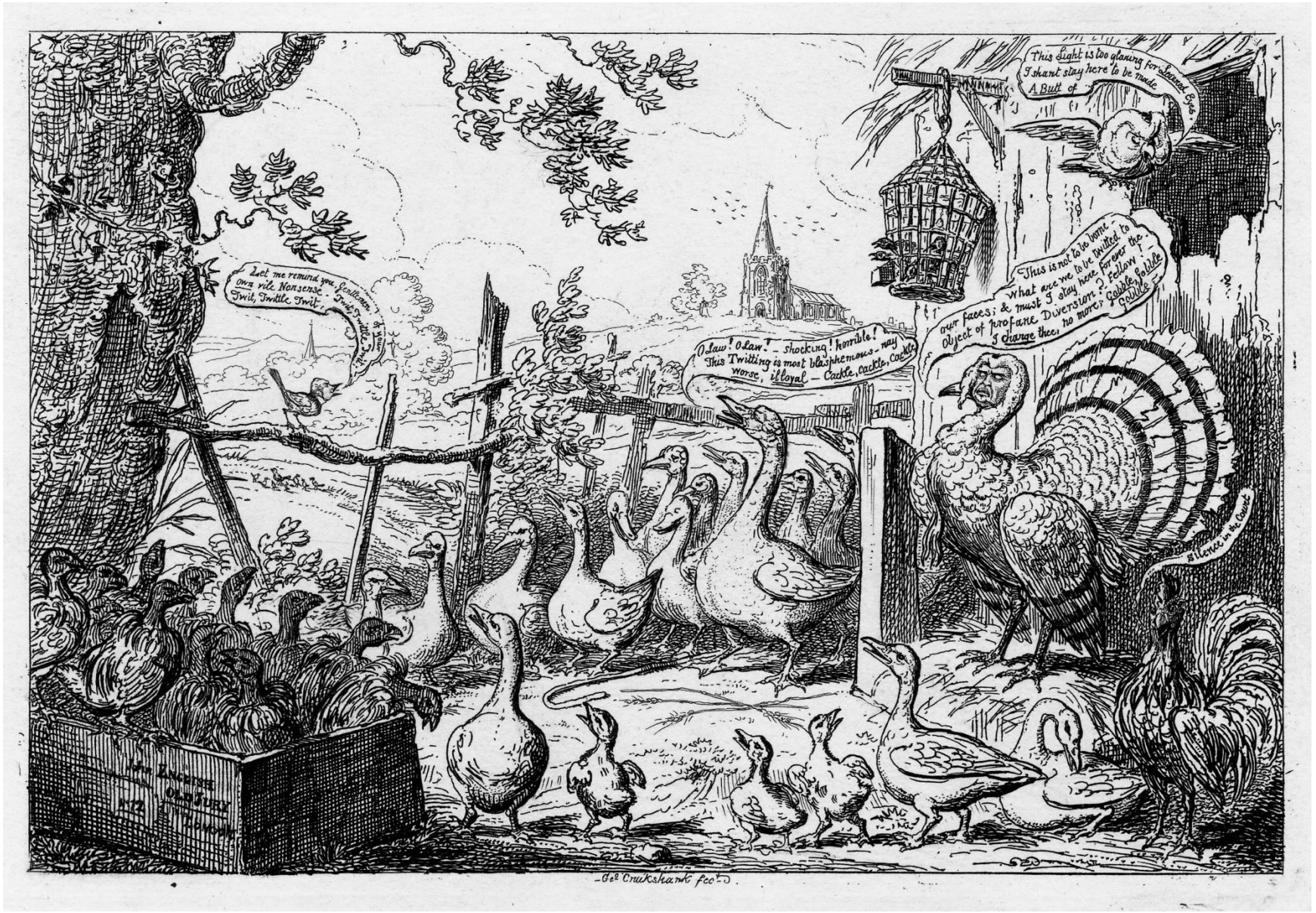


Figure 4 Cartoon, William Hone, plate for Great Gobble Gobble Gobble, and Twit Twittle Twit, or Law Versus Common Sense (London: W. Hone, 1818)

Abbott, who tried Hone's first case, conspicuously departs the court(yard) declaring 'this light is too glaring for my Learned Eyes, I shant stay here to be made A Butt of'. This, alongside the use of different animals for the respective judicial caricatures contrasted Abbott, representing the supposed wisdom of law, with the brash, arrogant Lord Ellenborough as the law in practice. This made for a widely recognisable political statement, especially in the context of contemporary belief that it had been the Chief Justice, against his colleagues' better judgement, who insisted on trying Hone on all three indictments.[28] His conceited faith in the ability of law to overawe justice and resulting humiliation, would be played on repeatedly to drive home the message, that justice embodied in an honest jury would, out of constitutional necessity, supersede legal niceties.

Another personification of law in Cruikshank's cartoon was Attorney General Samuel Shepherd, a large goose who, in the face of three verdicts, still declares Hone 'most blasphemous - nay, worse, illoyal'. Beside him lies a shepherd's crook, an attribute employed to mock his failure to corral the jury into verdicts favourable to the Crown. This joke appeared in several trial parodies. The most effective and humorous was radical publisher John Fairburn's *The Three Honest Juries: A Parody on 'The Roast Beef of Old England'* (Figure 5). This was a song that had long lent itself to parody, owing to popular familiarity with its tune, and its simple composition of three-line verses with a repeating two-line chorus, ideal for public reading and participation.[29] Each verse attacked various parts of the legal establishment, while the chorus gleefully proclaimed their defeat by Hone's jurymen, as in the third verse referring to Shepherd:

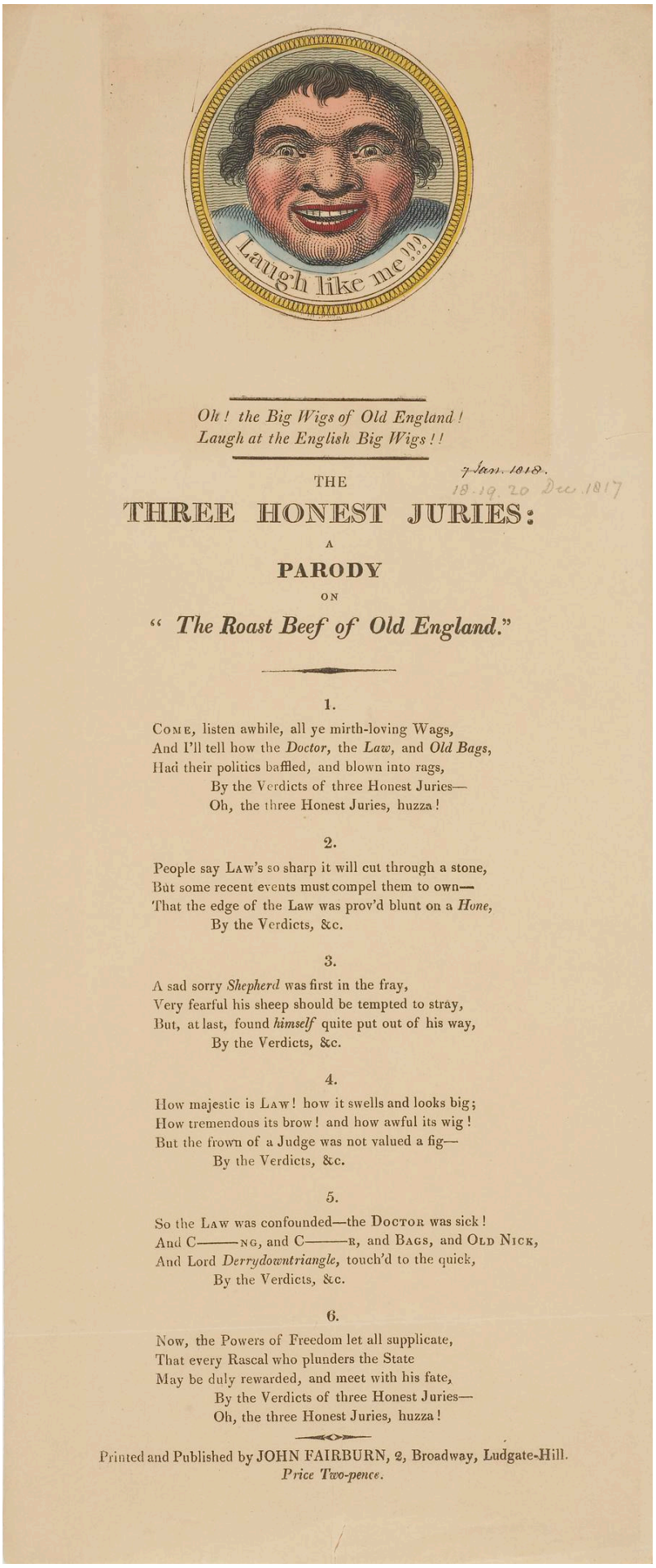
[28] S. Maccoby, *English Radicalism 1786–1832* (London: Routledge, 2001), pp.337-338; Hunt, *Defining John Bull,* pp.203-205; Ewen, Kent, *Selected Writings of William Hone,* pp.18-20.
[29] On songs as a medium for parody and politics see, Barrell, *The King's Death*, pp.99-101, 414-416, 494-498; Wood, *Radical* Satire, pp.225-235; Horgan, *The Politics of Songs,* ch.4.

A sad sorry *Shepherd* was first in the fray,
Very fearful his sheep should be tempted to stray,
But, at last, found *himself* quite put out of his way,
By the Verdicts of three Honest Juries –
Oh, the three Honest Juries, huzza![30]

As in Cruikshank's cartoon, the various legal and political characters were ruthlessly mocked. This was most strikingly done in the fourth verse which again played on Ellenborough's reputation for pomposity, and the fifth containing several word plays on the nicknames attributed to various ministers by radicals. Fairburn encouraged his audience of 'mirth-loving Wags' who, with the broadside priced at 2*d* would certainly have been plebeian, to revel in the Crown's defeat and laugh at the clothing, ceremony and forms that created the façade of law.[31] This embodied the wider radical aim: to disarm by ridicule those who claimed that only by following the law could justice be done. Ellenborough, Shepherd and the other political characters were held up to the scrutiny of an independent trial by jury and, with no genuine substance to their law or politics defeated by 'the powers of Freedom' and by jest.

Cruikshank's farmyard scene made a similar point. His jury sits together, twelve cockerels in a box labelled 'John English, Old Jury, No.12 London', an insinuation that their verdict had, like those of Hone's juries, been delivered for the people of England. Cruikshank distorts the usual layout of a court to place his jury directly opposite Ellenborough and the hapless Shepherd, flanked by a tiny Hone ('Tom Tit') and an ancient oak tree, a symbol of stoicism contrasting powerfully with a ramshackle shed erected behind the Chief Justice.[32] The contrast between the law and justice is apparent, Hone's trials presented not as the trial of one

[30] J. Fairburn, *The Three Honest Juries: A Parody on "The Roast Beef of Old England"* (London: J. Fairburn, 1818).
[31] Grimes, 'Spreading the Radical Word', pp.154-155; Wood, *Radical* Satire, pp.112-113, 125-140; Thompson, *English Working Class*, pp.792-794.
[32] On the oak as a symbol see Hunt, *Defining John Bull*, pp.142-145, 177, 286.



Oh! the Big Wigs of Old England!
Laugh at the English Big Wigs!!

7 Jan. 1818.
18.19.20 Dec. 1817

THE

THREE HONEST JURIES:

A

PARODY

ON

"*The Roast Beef of Old England.*"

1.

COME, listen awhile, all ye mirth-loving Wags,
And I'll tell how the *Doctor*, the *Law*, and *Old Bags*,
Had their politics baffled, and blown into rags,
By the Verdicts of three Honest Juries—
Oh, the three Honest Juries, huzza!

2.

People say LAW's so sharp it will cut through a stone,
But some recent events must compel them to own—
That the edge of the Law was prov'd blunt on a *Hone*,
By the Verdicts, &c.

3.

A sad sorry *Shepherd* was first in the fray,
Very fearful his sheep should be tempted to stray,
But, at last, found *himself* quite put out of his way,
By the Verdicts, &c.

4.

How majestic is LAW! how it swells and looks big;
How tremendous its brow! and how awful its wig!
But the frown of a Judge was not valued a fig—
By the Verdicts, &c.

5.

So the LAW was confounded—the DOCTOR was sick!
And C———NG, and C———R, and BAGS, and OLD NICK,
And Lord *Derrydowntriangle*, touch'd to the quick,
By the Verdicts, &c.

6.

Now, the Powers of Freedom let all supplicate,
That every Rascal who plunders the State
May be duly rewarded, and meet with his fate,
By the Verdicts of three Honest Juries—
Oh, the three Honest Juries, huzza!

Printed and Published by JOHN FAIRBURN, 2, Broadway, Ludgate-Hill.
Price Two-pence.

Figure 5 Broadside, John Fairburn, The Three Honest Juries: A Parody on "The Roast Beef of Old England" (London: J. Fairburn, 1818)

prisoner before the law, but a confrontation between popular justice, embodied in the 'Old Jury' (and on the side of Hone) and a hubristic, ridiculous and decaying legal system. It was, as the parody's subtitle declared it, 'law versus common sense'.

This distinction was reinforced by the associated song, an original composition by Hone written to the simple tune of a nursery rhyme. This, and the farmyard setting, tapped into another tradition of parodying children's literature, or employing it to transmit politically-charged messages. This was something Hone and Cruikshank mastered in the years after 1817, notably with *The Political House that Jack Built*.[33] With *Great Gobble Gobble,* Hone was cutting his teeth in this genre: silly and light-hearted, the cutting edge that characterised *The Political House* was not quite there. Rather, it was as Hone's title described it a 'twitting report', a taunt rather than a biting satire characterised by name-calling, 'why, what a great Ass, must thou be alas!/To make all this noise and this squabble' and persistent, childish repetition.[34] Nevertheless it was deeply political, Hone's 'Tom Tit' launching into a series of lectures regarding the freedom of the press and liberty of the subject, while Ellenborough's Turkey Cock remains largely silent and browbeaten, besides the occasional 'gobble gobble'.[35] Hone effectively reduced the seriousness of his trials, Ellenborough's brashness and the legal establishment to the level of a childish farce, questioning whether anything other than nonsense could come from following the judicial letter.

The legitimacy of the legal establishment was also the target for Cruikshank's more abstract satire, *Out witted at LAST – or Big Wig in the Wrong Box* (Figure 6). The scene was still

[33] Wood, *Radical Satire,* pp.215-235, loyalists too employed this method, A. Stott, *Hannah More: The First Victorian* (London: Oxford University Press, 2003), ch.8; M. Myers, 'Hannah Moore's Tracts for the Times: Social Fiction and Female Ideology', in M. Schofield, et al, *Fetter'd or Free? British Women Novelists, 1670–1815* (New York: Ohio University Press, 1986), pp.264-284.
[34] Wood, *Radical Satire*, pp.247-248.
[35] W. Hone, *Great Gobble Gobble Gobble, and Twit Twittle Twit, or Law Versus Common Sense* (London: Hone, 1818), pp.1-3.

evidently a trial parody populated with legal characters, playing on events that preceded the trials. Cruikshank presented, literally and figuratively, justice and the trial by jury as the nightmare of the law. Wooler had discovered, in late summer 1817, an insidious system of special jury packing employed to ensure convictions in libel trials (see chapter seven).[36] Assisted by solicitor Charles Pearson – who appears in Cruikshank's cartoon holding aloft a tome entitled 'NEW JURY BOOK' – he exposed the corruption, forcing the authorities to reform the nomination process for London's special juries. It was a defeat – temporary – that proved a great embarrassment for the authorities and a major setback to attempts to suppress radical publishers. Primarily, it meant that in Hone's cases, the worst possible scenario faced the Crown: a well-read and lucid defendant, strong public opposition and honest jurors. This was a nightmare for the prosecution, handing radicals much ammunition against their adversaries. It gave credence to the suggestion that law, unless checked by popular opinion and legislation, would pervert the judicial system in order to subordinate the jury and popular justice. As Wooler told his readers, law feared nothing more than an honest jury, for this alone embodied true justice; while the law could pretend to do so, it was always a fraud. The two were 'sworn brothers' he explained, but 'do not agree the better upon that account'.[37] Rather, the prospect of upright jurymen stalked the dreams of all Crown lawyers, a joke Wooler made numerous times, most saliently when peering into the dreams of Shepherd: 'We steal upon great lawyers schemings | And hear them in their midnight dreamings, | Cursing, in visionary fury | Some bold defence, or honest jury'.[38] To pretend law and justice were bedfellows was ludicrous, a lie told by alarmed loyalists to justify tighter controls on juries and the nomination process.

[36] Epstein, *Radical Expression*, pp.66-69.
[37] Wooler, *Black Dwarf* I:22 (June 1817), p.395.
[38] Wooler, *Black Dwarf* I:21 (June 1817), pp.329-330. In another similar jibe, Wooler imagined the scheming of judges in their dreams, *Black Dwarf* II:24 (June 1818), p.330.

Figure 6 Cartoon, George Cruikshank, 'Out Witted at Last– or big wig in the wrong box', (1817)

Cruikshank employed this same nightmare trope, his courtroom a satiric dream in which the law, again embodied by the Chief Justice and Attorney, is bedevilled by the spectre of an independent jury administering impartial justice. Ellenborough, towering over the court, possesses the heads of an owl and ass, the latter peering around the blankly-staring façade of the other in a personal attack on the Chief Justice's competence. The ass speaks the words of Shakespeare's Macbeth, afraid and alarmed at having been thrice haunted by the ghost of Banquo.[39] A parallel is drawn between Macbeth and the Chief Justice, both having killed their adversaries motivated by avarice, seeking to prevent them superseding their power and position. Macbeth had murdered Banquo to stop his heirs gaining the throne and break the witches' prophecy, while the English elites had tried to murder independent trial by jury to avert the inevitable predominance of justice it embodied. They were haunted by the apparitions of their victims, Macbeth by his friend and the law by justice, the appearance of each a portent of the ultimate failure of their persecutor.

The central vision that terrifies Ellenborough is a golden scale of justice tipped against him by a righteous Hone and a large rock inscribed 'TRIAL by JURY'. The image of Hone atop the jury trial was repeated as a symbol of triumph. Cruikshank's popular (and pirated) print, *William The Conqueror, or the Gamecock of Guildhall* reduced the events to the level of a cockfight, Hone victorious over Ellenborough and Shepherd while perched on a book (a reference to Wooler and Pearson's activities) inscribed 'Trial by jury'. In *Out witted at LAST*, the Chief Justice, voicing the panicked words of Macbeth –'can such things be, and overcome us like a summer's cloud, without our special wonder?' – treads upon the opposite scale

[39] *Macbeth* was a favourite of contemporary parodists for its themes of betrayal, vengeance, the occult and triumph over evil, D. Taylor, *The Politics of Parody: A Literary History of Caricature 1760–1830* (New Haven: Yale University Press, 2018), pp.101-131.

suspended by chains, unable to shift the balance.[40] In doing so, he addresses the court, questioning why no others appear concerned by the distressing visitation of justice while he is deeply affected, '[you] keep the natural ruby of your cheecks, when mine are blanch'd with fear'. Below him, instead of Macbeth's Thanes, a gaggle of miniaturised lawyers scamper about, alarmed not by the scale of justice or the acquittals, but the law's apparent dissent into madness. Their cry, 'what sights my Lord?!' echoes the response of Macbeth's entourage, unable to see Banquo's ghost. The effect is to imply that Ellenborough and the law he represented were, like Macbeth, bedevilled by horrors no one else could see, because only the law feared and was haunted by justice.

Others used this nightmare trope in response to attacks on Hone's acquittals. Published first by Wooler in the *Black Dwarf* in January 1818, *A Scene From The Disconcerted Hypocrites* was widely circulated, also appearing as a broadside and illustrated handbill sold by Fairburn (Figure 7).[41] A mock play scene reminiscent of Eaton's satire on John Reeves and Lucifer, it was both literary and representative of another satirical tradition of 'countertheatre', delivered outside the patent or formal theatres.[42] As with mock trials, it too was a legacy of folk tradition, capable of empowering the reader or performer to become the character being lampooned, a form of social inversion that gave theatrical parody its power, popularity and reach among the lower orders.[43] Wooler's satire encapsulated this, its jokes relying on events and characterisations that were well-known and often already possessed a wider currency in radical

[40] Scales tipped in this way demonstrated the rectitude of one party or infamy of the other, appearing often in Cruikshank prints, e.g., G. Cruikshank, *The Modern Prometheus, or the Downfall of Tyranny* (London: 1814); *The Manchester Heroes* (London: S.Fores, 1819).
[41] J. Fairburn, *The Disconcerted Hypocrites: A Scene from a Dramatic Entertainment, lately Preformed, with great applause, In London* (London: J. Fairburn, 1818).
[42] E.P. Thompson coined this term to refer broadly to the wider 'political behaviour' of the working classes, including riots, protests, singing and theatre, 'Patrician Society, Plebian Culture', *Journal of Social History* 7:4 (1974), pp.382-405, p.396-402.
[43] Parolin, *Venues of Popular Politics in London,* p.225-226; Grimes, 'Spreading the Radical Word', pp.122-123; Wood, *Radical Satire,* pp.156-157.

THE DISCONCERTED HYPOCRITES:

A Scene from a Dramatic Entertainment, lately performed, with great applause, in London.

Dramatis Personae.

LORD SADMOUTH.
LORD HELLBOROUGH.
OLD BAGS.
DERRYDOWN TRIANGLE.
GEORGE CUNNING.
THE GHOST.
VALET.

Lord Sadmouth is discovered sitting in his morning gown and slippers, reading a newspaper.

Oh! I am sick, I'm sick! terrific news!
Provoking dogs! no more can I peruse! [*Throws away the paper.*
Three times acquitted! here's a pretty joke!
Thrice baulk'd of vengeance! mercy! I shall choak!
My prosecution too! alas! no wonder,
In every thing I do I'm sure to blunder.
Witness my bill against dissenters rights,
My circulars—this job—the Norwich Knights!
How will the *people* joy, alas! alas!
At this result, and title me *an ass!*
Perhaps will call again their county meetings,
To give myself and Co. their special *greetings!*
Dub us a act of hypocrites, who strive
Under religious pretexts to deprive
The press of liberty, which most she treasures,
To censure us and our detested measures!
Demand we straight restore ('twill be their fact,)
The now suspended Habeas Corpus Act.
Enters a Valet.
I'm come to shave your lordship, if you please,
Sadmouth.—I'm *shaved* enough. Begone, nor longer teaze.
Valet.—This raizor, please you, is your lordship's own,
Just whetted too upon an *English* Hone!
Sadmouth.—Begone! (*Exit Valet.*) O direful day! I'm sick, I'm sick!
That English Hone——
Enters LORD HELLBOROUGH.
Nay, send him to Old Nick!
Sadmouth.—Fie, fie, my dearest lord.
Don't check my fury!
Hellborough.—
D——n Hone, I say, and d——n each blackguard Jury!!!
Sadmouth.—Don't swear, my dearest lord.
"Tis false as Hell,"
Hellborough.—
To say he's innocent——
I know it well.
Sadmouth.—
Enter BAGS *and* TRIANGLE.
Sadmouth.—Welcome my dear colleagues—sad news indeed!
Hone beat us all, and from our grasp is freed!!
Triangle.—A shocking business this, 'tis true, my lord,
By which, no doubt, we shall be sadly bored.
How the keen rascal has exposed us all!
In our whole lives we never look'd so small.
Upon my soul I'm quite ashamed to meet
Each friend I stumble on in room or street!
And more I've suffered from this legal bog,
Than from the teeth of that vile foreign dog!!
I wish, my lord——
Three times acquitted too——!
Bags.—
My dear Lord Sadmouth, do not look so *blue.*
You know your *gracious* lordship is a *Saint,*
And must not under Heaven's inflictions faint.
Triangle.—The people never had more cause to glory.—
Who could have thought he'd tell so clear a story.
Enters GEORGE CUNNING.
Ha.—ha.—my friends! all in the dumps I swear—
Well, Hone's acquittal is poor Christmas fare.
Sadly this chap has hauled me oer the coals.—
In short we all appear weak, knavish souls!
Indeed my Lord (*to Sadmouth*) you've blunder'd—'tis most true,
(*Once out of thrice, howe'er, I thought would do.*)
But as the jury was more fairly taken,
By our good luck we were, alas! forsaken!
But needs I must declare, this crafty Hone
We ought entirely to have left alone.
For nought could be more clear, 'twas his attack
Upon ourselves that put us to the rack;
Moved us to ruin this too clever wight:
And now *my parodies* again see light!
Bags.—Last night I could not sleep—help lords, be handy—
Lord Sadmouth faints!—a glass of cherry brandy!
Sadmouth.—I'm better now.——
Hellborough.— Zounds, man, keep up your spirits.
Sadmouth.—'Tis true I've blunder'd—but I have my merits.
Hellborough.—I must away:— my noble friends farewell
I say again the Verdict's "false as Hell!!"
(*Exit Lord* HELLBOROUGH.)
Triangle.—How much this bus'ness all our patience tries!
George.—Would they had ne'er been touch'd, these Parodies.
Bags.—We've run against a post—it is too clear;—
And meetings of the people much I fear.
George.—Would they were come—but let us quit this theme.
Sadmouth.—Last night, my Lords, I had a shocking dream;
Methought the Ghost of Brandreth 'fore me stood
And told me I was guilty of his blood,
That vengeance soon would all our souls surprise,
As vile employers of domestic spies!
Anon methought flew ope each prison door,
And twenty ruffians threw me on the floor;
Then dragg'd me to a *pump*,—but here I woke.
George.—Cold water in December is no joke.
Sadmouth.—Again I slept, and, 'mid a dreadful storm,
Methought a million voices bawl'd—reform!
While on a gibbet Oliver, our spy,
Cried, "hang the Doctor; he's as bad as I!"
All.—Ha, ha, ha!—
(*Thunder and Lightning—The Ghost of Pitt rises.*)
Ghost.—List! oh, list!!—
Cease, cease your mirth, weak jugglers are ye all,
Destined, I cannot doubt, ere long, to fall.
Vulgar employers of the meanest arts,
Made up of shallow heads and flinty hearts,
From purgatory, lo! behold me here,
To fill your souls with salutary fear;
To guard you 'gainst those errors once my own,
For which I still, by suffering, must atone.
My space is out—repent—reform must come,
Farewell! I go again to meet my doom.
(*Thunder and Lightning—The* GHOST *sinks—Lord* SADMOUTH *faints.—*Exeunt BAGS—TRIANGLE—*and* GEORGE *bearing him off.*)

W. R. H.

Bishops-Stortford, Jan. 7, 1818.

Printed and Published by JOHN FAIRBURN, 2, Broadway, Ludgate-Hill.
Price Three-pence.

Figure 7 Broadside, John Fairburn, The Disconcerted Hypocrites: A Scene from a Dramatic Entertainment, lately Preformed, with great applause, In London (London: J. Fairburn, 1818)

publications. Its pricing at three pence made it comparatively cheap and accessible, considering its parent publication retailed for four pence.

The themes of Wooler's play generally mirrored those in Cruikshank's cartoons, ridiculing the credibility of the law and wider political system when faced with independent juries. The latter is represented by an ensemble cast of Tory ministers, including 'Sadmouth' (Sidmouth), 'George' (George Canning), 'Derrydown Triangle' (Lord Castlereagh) and 'Old Bags' (Lord Liverpool). They blamed the jury list reform for their woes, lamenting their foolishness in pursuing Hone knowing their advantage had been eliminated.[44] Through their soliloquies they console and gibe at each other, Wooler hinting at the personal animosity and rivalries known by contemporaries to exist in the cabinet, a way of undermining the outward unity of the government for comic effect. The character of Sidmouth's valet , who ventriloquises Wooler's own snide views adds to this. The valet enters his master's drawing room, teasingly offering a shave, a reference to libel law and its propensity to cut both ways when employed injudiciously and without a guarantee of conviction.[45] As the valet explains to an irritated Sidmouth, he had been defeated by the democratic powers of the nation, 'this razor, please you, is your Lordship's own | Just wetted too upon an *English* Hone!'[46]

Ellenborough, standing in for the legal authority, is treated differently. In place of sophisticated rhymes, lengthy speeches and japery, 'Hellborough' resorts to shouting insults and swearing, much to the irritation of his colleagues. Blustering into the scene, he reproaches Sidmouth for trying to calm him, 'Don't check my fury! | D——n Hone I say, and d——n each blackguard Jury!!!' Besides this, he says very little apart from to twice repeat his belief that

[44] Wooler, *Black Dwarf* II:2 (January 1818), pp.31-32.
[45] Harling, 'Limits of Repression', p.107.
[46] This play on a 'hone' (a whetstone employed to sharpen razors) appeared in both radical and loyalist commentary, see *For Sale … this Defective Hone!!* (London: 1817); *The Dorchester Guide, or A House that Jack Built* (London: Dean & Munday, 1820), p.23, for radical examples see Hone's subscription list, where one subscriber signed 'Oil for the Hone!!', Hone, *Trial by Jury and Liberty of the Press*, p.23.

Hone's acquittals were 'false as hell!'[47] This was a phrase which, while employed here in reference to his known disgust at Hone's acquittals, originated in a speech given to the House of Lords in 1813, in which the Chief Justice had attacked his opponents caustically. Thereafter, it had appeared repeatedly in radical popular culture, characterising Ellenborough as vulgar, and incapable of being calm, judicious or fair.[48] Ellenborough's lack of eloquence is conspicuous, an indictment by Wooler of the language and legal technicalities that supposedly gave the law its pre-eminence over justice. As with Cruikshank's cartoons, the tatters of judicial pretension are exposed by an honest jury.

The most significant element of Wooler's play was his effort to contextualise Hone's acquittals, conjuring the ghost of William Pitt in order to link current repression to the Pittite terror.[49] This was symbolic of a wider movement, although nowhere near as prevalent as it had been following Hardy, Tooke and Thelwall's trials, to give Hone's acquittals a lineage. Radical propaganda and celebratory ephemera following the verdicts, bore striking resemblance to materials circulated following the treason trials in 1794. London printer and engraver James Head's *Trial by Jury: Triumph of the British Press* (Figure 8) resembled Collings and Clearson's 1794 handbill depicting Hardy and the names of his twelve 'apostles of liberty'. Hone's jurors are similarly immortalised as 'British Patriotism', depicted as an archetypal image of the Archangel Michael driving the devil of corruption from the Constitution.[50] Head made his

[47] The Chief Justice's attitude was mocked frequently, evident in the subscription lists following Hone's acquittals, where several subscribers signed their names with quote attributed to Ellenborough, see Hone, *Trial by Jury and Liberty of the Press*, pp.23-25.
[48] See satires by Charles Williams for examples, notably *A (key) to the Investigation, or Lago Distanced by Odds* (London: F.S. Fores, 1813) and *Paving the way for a royal Divorce* (London: J. Johnson, 1816).
[49] Following his death in 1806, Pitt was frequently resurrected by radicals to attack Tory policies, including on War with France, Tax and Ireland, see W. Heath, *Death Extraordinary!* (London: 1816); C. Williams, *The Property Tax!* (London: W. Holland, 1819). Loyalists used his ghost to attack radicals, see G. Cruikshank, *The Witch of Endor and the Unexpected Ghost!* (London: 1813).
[50] J. Head, *Trial by Jury: Triumph of the British Press* (London: J. Head, 1818).

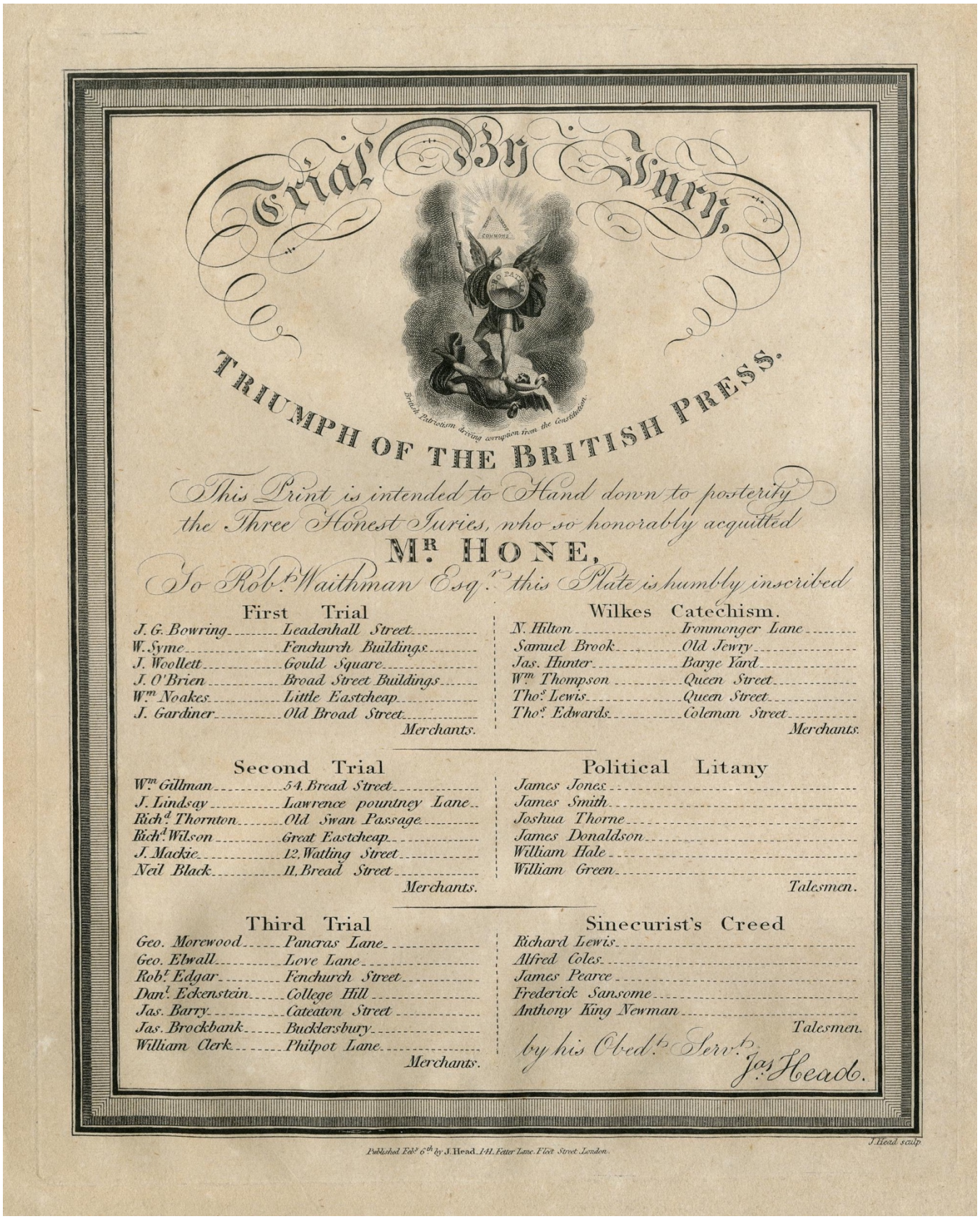


Figure 8 Broadside, James Head, Trial by Jury: Triumph of the British Press (London: J. Head, 1818)

purpose clear, 'to hand down to posterity the Three Honest Juries', as another example of the superiority of English constitutionalism and liberty.

Some radicals and, as it would appear from the limited evidence available, members of London's middling sorts, drew connections between 1794 and 1817, portraying the verdicts in Hone's trials as the same triumph for popular democracy and justice. For Wooler, Fairburn and others, they were part of the same story of oppression and resistance, characterised by the continued independence of the nation's juries. They saw both sets of trials as being motived by the same spirit of despotism. As for the middling sorts, the only readily accessible and reliable guide to their sentiments is the list of subscribers from the celebratory meeting for Hone's acquittals held on 29 December 1817.[51] The sums donated were not modest, few giving less than a pound and many contributing significantly more. As with the meetings in 1794, this was no gathering of the lower orders, the metropolitan middling sorts coalescing around Hone and the trial by jury. Of especial note were the number of subscribers who signed their names along with phrases including 'The Ghost of Judge Jefferies', 'The Ghosts of Jefferies & Sir William Noy' and 'An enemy to Jefferies'.[52] This demonstrates that the significance of history prevailed among many sympathetic to Hone's cause, although they predominantly linked his acquittals to an earlier period of repression. One supporter subscribed with the phrase 'Oh! Minions of Pitt', and other used monikers supportive of the trial by jury, Hone's acquittals and the constitution.[53] Those in attendance appeared to contextualise the verdicts of Hone's jurymen against the backdrop of historical repression, and as middling Londoners, their own contest for power with the state. As one of their number declared, Hone's trials were a struggle between 'Justice versus Law', with jurors of middling men the legitimate representatives of the former.

[51] Hone, *Trial by Jury and Liberty of the Press*, p.3.
[52] For other monikers, Hone, *Trial by Jury and Liberty of the Press*, pp.22-26.
[53] Hone, *Trial by Jury and Liberty of the Press*, pp.21-26.

This is confirmed by the number of attendees who, in signing their names, credited to the capital's 'Honest and Undaunted Jurors' with justice's victory.[54]

Wooler's phantom Pitt encapsulated this view of Hone's juries and 1817, as part of England's heritage of victory over oppression. Appearing to a thunderclap, he rebukes the Tory ministers for their mirth in defeat and repressive actions, especially their unremitting pursuit of Hone.[55] The ghost warns his successors that in pursuing Hone and defaming his jurors, they repeated his mistakes, 'For which I still, by suffering must atone.' The image created here is one of a direct link between the Pittite policy of the 1790s and Liverpool's administration, promoting a sense of perpetual struggle between the law backed by the authorities, and the people's justice. This was the core of radical messaging for decades. For Wooler, Cruikshank, Fairburn and others, there was a serious undertone to their mirth, a knowledge that to allow law and justice to be unified either by corruption, legislation or within the public consciousness was to invite a tyranny too terrible to realise. The radical ideal was for a *just* law, but radicals were pragmatic about the possibility. As Wooler joked with his readers following Hone's acquittal, '*Justice in a Court of Law!* Dids't thou ever hear of such an absurdity? [You] might as well have asked the Pope for religious toleration'.[56] Hone's acquittals represented, momentarily, a decisive victory over all these avenues of assault against the independence of English juries, radicals aiming to highlight the separation between justice and law they symbolised. Even Pitt returned from the grave to acknowledge the supremacy of justice and condemn successors' efforts to pervert the integrity of juries.

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[54] Others praised the juries with phrases including 'A Friend to an Impartial Jury', 'An Abhorrer of Tyranny and Oppression', 'An Admirer of Undaunted Juries', 'A conscientious Jury', 'An Admirer of Firmness in a Jury'.
[55] The image of Pitt Fairburn employed was purely for illustrative purposes, drawn from an earlier Cruikshank cartoon, G. Cruikshank, *The Ghost of Pitt! Said to Appear Frequently in Downing St Westminster* (London: Fairburn, 1812).
[56] Wooler, *Black Dwarf* I:48 (December 1817), p.787.

Case Study Two: The Impact of the Peterloo Massacre

Radical joy at Hone's verdicts was short-lived, as was their apparent victory. While 1818 represented a quiet year for political repression and trials, the summer of 1819 would bring the question of jury integrity back into sharp focus for radicals and their opponents. Peterloo and the excessive response of the authorities in favour of heightened repression, culminating in the Six Acts of December 1819, generated a fear for the security of basic civil liberties including trial by jury.[57] Early 1821 would prove these concerns to be well founded, as radicals became aware of a new system of jury packing intended to undo the changes brought about by Pearson and Wooler (see chapter seven). In the intervening period, radical anxiety produced increased references to the jury, its independence, place within the constitution and wider political role in radical and loyalist propaganda following the massacre. This second case study traces how the radical message shifted to offer a simplified narrative of the jury threatened, using responses to Hone's *The Political House that Jack Built* as a microcosm. I explore the loyalist response to this narrative, highlighting their conflicted views of the institution, how these appeared in counterpropaganda, and what this says about the state of jury discourse following the Peterloo massacre.

Almost overnight, the radical press across the nation and especially in the metropolis exploded, the massacre providing England's radicals with a unifying focus similar to that created by the attacks on press freedom in 1817.[58] Wooler and Richard Carlile redoubled publishing efforts in the *Black Dwarf* and *Republican*, Carlile in the latter printing his eyewitness

[57] R. Poole, *Peterloo: The English Uprising* (London: Oxford University Press, 2019), ch.14; K. Navickas, 'Political Trials and the Suppression of Popular Radicalism in England 1799-1820', in Davis et al, eds, *Political Trials,* pp.185-212, pp.192-193, 204; Thompson, *English Working Class*, pp.746-760, 779-780.
[58] Hone, *Cause of Truth,* p.301.

account from the Manchester hustings.[59] Numerous cheap weekly format publications were also founded in direct response to Peterloo, advocating both legal redress and a political call to arms including Thomas Dolby's *Democratic Recorder,* William Mason's *Radical Reformer or People's Advocate,* James Griffin's *Cap of Liberty, The White Hat and The Democratic Reformer, The Briton* and *The London Alfred.*[60] The innumerable pamphlets and broadsides that flooded the market sold well, while Londoners showed their feelings by welcoming *en masse* Henry Hunt back from Manchester in September 1819.[61] The massacre, and its attempted justification by government ministers and the Prince Regent, coupled with flagrantly corrupt efforts to ensure no adverse verdicts were returned in the coroners' inquests, provided considerable stimulus to calls for reform.[62] Government vacated the moral high ground, allowing radicals to dominate the public depiction of events and bring forth a wave of nationwide propaganda.[63]

At the forefront of this was *The Political House that Jack Built.* Appearing in December 1819, it was Hone and Cruikshank's most successful collaboration, running to sixteen editions and an estimated 100,000 copies.[64] An attack on the authorities and Peterloo, it exploited the immunity offered political satire by Hone's acquittals, embodying a rich heritage of nursery rhyme parody already familiar to its authors.[65] The original rhyme, *This is the House that Jack Built,* was a potent vehicle for satire owing to its style. As a cumulative narrative, it could be adapted to present a political story, for instance of oppression (as in the *Political House*), triumph or, for loyalists, struggle against the radical foe. The latter were often stodgy however,

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[59] This was published in *Sherwin's Weekly Political Register*, 21 August 1819, other notable narratives included *An Impartial Narrative of the Late Melancholy Occurrences in Manchester* (Liverpool: H. Fisher, 1819), and *Peterloo Massacre: Containing A Faithful Narrative of the Events &c.* (Manchester: J. Wroe, 1819).
[60] Hone, *Cause of Truth,* p.304; K. Gilmartin, *Print Politics: The Press and Radical Opposition in Early Nineteenth-Century England* (London: Cambridge University Press, 1996), pp.73-88.
[61] Hone, *Cause of Truth*, p.302.
[62] Poole, *The English Uprising*, pp.344-345, 350.
[63] H. Barker, *Newspapers and English Society 1695–1855* (London: Taylor & Francis, 2014), pp.200-204.
[64] W. Hone, *The Political House that Jack Built* (London: Hone, 1819); Rickword, *Radical Squibs & Loyalist Ripostes,* pp.22-24; Parolin, *Venues of Popular Politics in London*, p.136.
[65] Grimes, 'Spreading the Radical Word', p.155.

with the text lending itself more readily to the mockery of the powerful.[66] The popularity of the original also added to its effectiveness, parodists able to rely on the audience's knowledge of the text to give their versions meaning, adding a layer of unwritten commentary in the form of the position or depiction within any parody of particular ideas, objects or individuals. In the *Political House* for instance, Hone created a 'chain of oppression', replacing the marriage in the original with a depiction of the Peterloo massacre, creating a clear contrast between the events.[67]

The positioning of the jury in imitations of Hone's *Political House* formed an important part of the messaging and meaning for both radicals and loyalists. This was all the more important because the jury often appeared as part of the illustrations rather than the main narrative. To reiterate, its presence was an incidental product of wider fears, most commonly employed to illustrate radical concerns for liberties or loyalist fears of constitutional ruin. The union of Cruikshank's bold yet simplified illustrations combining a variety of popular styles on the same page as Hone's sophisticated satire, brought *The Political House* widespread success.[68] Few of those imitating Hone were able to emulate this, their rival texts and images often forced and overdeveloped.[69] Yet, it was this overdevelopment that allowed parodists to include the jury in their often broad political parodies.

In terms of the radical response to Hone's *Political House*, among the most evocative replies which clearly laid out radical fears of state encroachment was radical printer Thomas Dolby's *The Queen and Magna Carta, or the Thing that John Signed*. Its title was a reference to the

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[66] Smith, *The Politics of* Language, p.167; on prior use of *The House that Jack Built* in parody, Wood, *Radical Satire,* pp.228-235.
[67] Similarly, Wooler who had used the rhyme two years previously to celebrate Hone's acquittals, replaced the marriage with the verdicts of Hone's jurors in a triumphal narrative: 'This is the verdict recorded and found|By the Jury unbiass'd, unpack'd and *unfrown'd*', see Wooler, *Black Dwarf* II:3 (January 1818), p.45.
[68] Wood, *Radical Satire*, pp.236-246.
[69] This was an issue that afflicted loyalists in particular, see Wood, *Radical Satire*, pp.259-263.

embattled Queen Caroline, whose plight radicals had connected to the broader struggle for reform, her name becoming synonymous with the threat to silence those who opposed the Prince Regent and his Tory administration.[70] Dolby's work encapsulated the clunky approach of Hone's imitators, breaking away from the original rhyme almost immediately to offer a somewhat awkward tribute to the barons of Runnymede. The imagery was more complex than Cruikshank's, with various captions and annotations intended to spell out the message. The jury appears in the illustration to the eleventh stanza (Figure 9), a warning to readers that the constitution was under attack: 'These are The VERMIN, the RATS and the LEECHES | Which The Blood and the treasure of Britain Enriches, | Whose pestilent breath, if prolong'd, | Would consume the Fruits of our Country, its Verdure and Bloom'.[71] In the woodcut, the constitution, as a withered 'Tree of Liberty', is attacked and gnawed upon by several rats with the heads of ministers, while others gaze covetously at the tree's various fruits, among them 'Justice', 'Bill of Rights' and 'Fair Jury'.[72] The lowest hanging fruit, 'Magna Carta', is already assailed by a rat with the Duke of Wellington's head, while another prepares to consume the equally reachable 'honesty'. The position of the jury is significant, hanging noticeably higher than the other constitutional blessings, indicating its position as both the most secure and hardest to vitiate element of the constitutional system. Yet, as the tree itself is undermined, the

[70] R. McWilliam, *Popular Politics in Nineteenth Century England* (London: Taylor & Francis, 2012), pp.7-14, 57-59; Laqueur, 'The Queen Caroline Affair: Politics as Art'; J. Stevenson, 'The Queen Caroline Affair', in J. Stevenson, ed., *London in the Age of Reform* (Oxford: Blackwell, 1977), pp.117-148; D. Wahrman, '"Middle-Class" Domesticity Goes Public: Gender, Class and Politics from Queen Caroline to Queen Victoria', Journal of British Studies, 32:4, (1993), pp.396-432, pp399-400, 407-408; Colley, *Britons,* pp.265-268, on Queen Caroline see Wood, *Radical Satire*, pp.149-154.

[71] T. Dolby, *The Queen and Magna Carta, or the Thing that John Signed* (London: T. Dolby, 1820), pp.21-23.

[72] The liberty tree was a common feature in radical and loyalist parody. For radicals it almost always appeared as a positive representation, an emblem of that which Britons were defending, Mee, *Print, Publicity and Popular Radicalism*, p.149. For loyalists the tree was depicted as a decaying product of revolutionary principles, as in James Gillray, *The Tree of Death, with the Devil Tempting John Bull,* see Baer, *Rise and Fall of Radical Westminster,* pp.220-221, 234-236; Hunt, *Defining John Bull,* pp.68-70, 148-154.

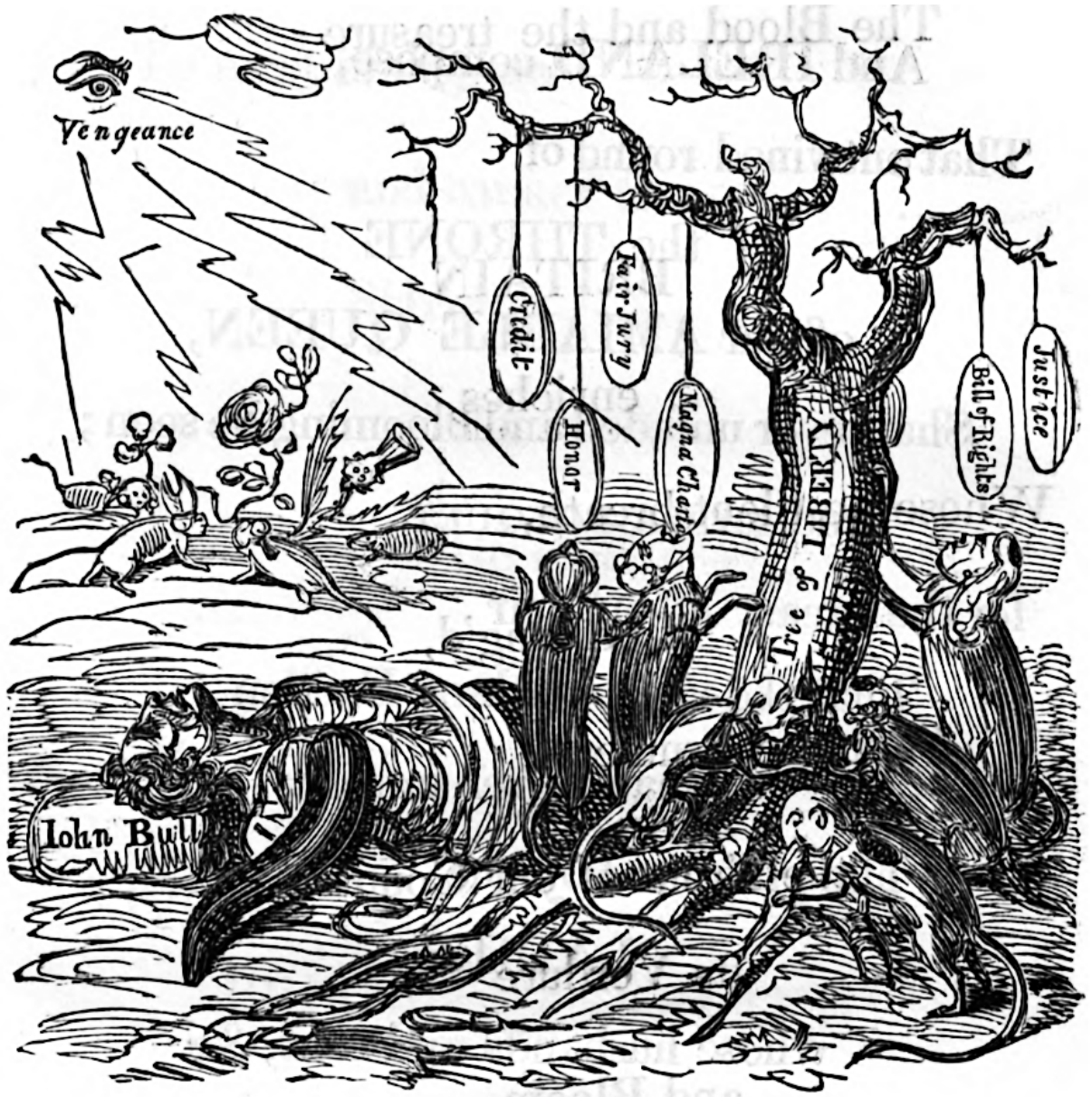

Figure 9 Woodcut, plate twelve in Thomas Dolby, The Queen and Magna Carta, or the Thing that John Signed (London: T. Dolby, 1820)

vulnerability of juries to corruption was made clear: if the people permitted the authorities to enrich themselves upon the low hanging fruits of the constitution without interruption, they must eventually garner the strength to set upon those harder to reach. This is driven home by Dolby's addition of the providential eye with the caption 'vengeance', intended to evoke images of past aggressions against the integrity of Britain's polity, and the role played by providence in resisting oppression.

The Queen and Magna Carta characterised the message sent by the vast majority of radical replies to Hone. For radicals in the shadow of Peterloo, the jury and wider constitution were truly threatened with destruction, the massacre an excuse for the authorities to act. Another of Dolby's parodies, *The Total Eclipse: A Grand Politico-Astronomical Phenomenon* argued this forcefully. While primarily a commentary on the campaign against Caroline, it commented on much else besides, describing the various effects of attempts by the Prince Regent to suppress the Queen's cause and *de facto* liberty.[73] Illustrated by Cruikshank, the sixth plate, 'Effects of the Eclipse in the 'Courts Below' (Figure 10), depicting Henry Hunt's trial following Peterloo, is remarkable for the absence of a jury. In its rightful place opposite a shackled Hunt, stand a group of hideously caricatured and grimacing soldiers with drawn sabres. This was a gesture to the 'justice' delivered those killed in St Peter's Field, and the act of the yeomanry to have been both jury and executioner. As the associated poetry made clear, were the authorities to continue unchallenged this would become the norm, especially given the ongoing problem of special jury packing in the provinces. Such juries had convicted Hunt and, in the coroners courts, refused to find verdicts of wilful murder against the yeomanry: 'When further, there are SPECIAL JURIES, | *Attach'd* to Courts of Law; so sure is, | Justice from thence to make retreat, | And leave to Force and Fraud the seat'.[74] A parallel is drawn between the soldiers and the packing of juries, each purveyors of indiscriminate and arbitrary repression, indistinguishable as tools of state power intended to justify each other's usage. The addition above the judges of a smiling Lady Justice, brandishing her sword towards the yeomanry and scales tipped decidedly towards Hunt created a further contrast between false and true justice,

[73] T. Dolby, *The Total Eclipse: A Grand Politico-Astronomical Phenomenon which Occurred in the Year 1820 &c.* (London: T. Dolby, 1820).
[74] Dolby, *The Total Eclipse*, p.16.

Figure 10 Woodcut, plate six in Thomas Dolby, The Total Eclipse: A Grand Politico-Astronomical Phenomenon which Occurred in the Year 1820 &c. (London: T. Dolby, 1820)

indicating the way an honest jury would have found. That within months of the massacre the Crown moved to guarantee packed juries in all misdemeanour trials, including in London (see chapter seven), demonstrates that these dramatized fears, were not idle paranoia.

Of the radical satires following the *Political House*, the threat and fear of jury corruption were most directly addressed in printer John Fairburn's *John Bull's Constitutional Apple-Pie, and*

the Vermin of Corruption.[75] A parody of the nursery rhyme *The History of an Apple Pie*, each letter of the alphabet indicating what various individuals did to the pastry, Fairburn imagines the pie as the Treasury fought over by a variety of ministers, placemen and other Tory acolytes. Illustrated again by Cruikshank its tone is comedic, and while there were some occasionally pointed jabs at various individuals and concern for the polity, both text and imagery are nonetheless light-hearted.[76] The only exception is when Fairburn addresses the letters I and J, the justices, judges and 'jobbers'. Part way through the attending rhyming verse the tone alters completely, breaking the fourth wall to address the reader directly on the question of jurors' independence:

Some *Juries* were easy, - others, - nought could persuade 'em,
To lose sight of our only remaining *Palladium*;
And three on *H - ne's* trials, so stuck to the stuff,
That *El – b – r – gh* walk'd to the grave in a huff:
'Tis something which keeps hold the layers in awe,
That *H - ne* could at once settle Justice and Law.
Since nought then remains betwixt us and slavery,
But *Trial by Jury*, let's defend it from knavery;
Whilst each *Juryman* dauntless his duty preforms,
Magna Charta exists, though much gnaw'd by the worms;
And though *Justices*, arm'd with strange powers assail us,
Nought on earth of our *Bill of Rights* e'er shall curtail us;
And as now *Independence* arising we see,
Be our *Juries* but *honest,* and we shall be *free.*[77]

[75] Fairburn was not avowedly radical, having as Wood describes 'fluctuating radical sympathies', Wood, *Radical Satire,* p.202.
[76] G. Cohen-Virgnaud, *Radical Orientalism: Rights, Reform and Romanticism* (London: Cambridge University Press, 2015), pp.119-220
[77] J. Fairburn, *John Bull's Constitutional Apple-Pie and the Vermin of Corruption* (London: J. Fairburn, 1820), p.15.

The language becomes possessive, no longer an abstract discussion of a fictitious pie but a commentary on the independence of British juries. The onus is shifted onto the reader, to recognise their interest and duty in the matter and to protect their collective inheritance upon which, Fairburn suggests, the survival of all other liberties depends. The power of independent juries is also highlighted in the rather barbed reference to the late Chief Justice Ellenborough, the implication that Hone's jurors had both literally and figuratively brought about the death of the injustice he represented. Fairburn's warning is nonetheless evident: the primacy of juries to the defence of liberty made them at once the people's strongest bulwark and a prime target for the 'knavery', 'worms' and 'strange powers' of the state. The importance of jury trial to radicalism remained largely unchanged in the post-war decades. As in Dolby's parodies, the trial by jury appears still as the most powerful and coveted fruit on the constitutional tree, its defence as paramount in 1819 as at the height of the Pittite terror.

For loyalists, however, events such as Hone's acquittals or Peterloo created a quandary: at what point did support for trial by jury, rhetorical or otherwise, become incompatible with wider loyalist beliefs, their opposition to radicalism and philosophy of justice? As Holt reported to Sidmouth in mid-1818, Hone and Wooler's trials and those of Hardy, Tooke and Thelwall were characterised by 'a like state of public delusion … [an] anarchical and irreligious contagion' that contaminated the minds of English jurors to the detriment of order.[78] To both men, the various trials were evidence of what Holt understood to be the greatest threat to the state: the propensity of English juries to override and ignore law altogether:

> it becomes a dead letter, a lifeless instrument, when Juries are misled to deem it their province to avert rather than to assist its operation … it is in vain that those laws exist, by which public order is maintained and private rights are secured, if the execution of them

[78] DHC, Papers of Henry Addington, 152/C1818/OH, f.2.

> be intercepted by the perverted and tainted feelings of juries … it is the ossification of the heart of the body politic.[79]

The conflicting view of juries held by radicals and loyalists, for all their supportive rhetoric, was unmistakable. For loyalists, juries were an extension and instrument of the law to be guided and in a sense controlled, independence especially in political trials a dereliction of duty. For radicals, jury trial was a separate legal institution beholden only to natural justice. Hone's contentious acquittals brought these opposing views to the surface, occasioning a marked increase in open hostility towards the jury trial.

While I have not focused extensively on loyalism, it is important to assess briefly its approach to trial by jury in the fevered atmosphere of 1819. The loyalist responses to Hone's *Political House* made clear the level of authority radicals had in discussing the subject of juries, and the corresponding weaknesses of the loyalist position. As noted in the introduction and explored further in the final chapter, these events were tipping points for many, generating groundswells of loyalist criticism of jury trial in both private and public. It is unsurprising that among the responses to Hone's *Political House* were satires that emulated the exasperation of Firth and Holt, playing into the radical narrative of the jury threatened. The most noteworthy was the anonymous *The Loyalist's House that Jack Built, or The British Constitution Triumphant.* Breaking from the original rhyme, the first verse combines the 'house that jack built' with the 'wealth' that lay within it (Figure 11).[80] The woodcut depicts a layered pyramid, topped by a naval anchor and union flag.[81] On the left face of the pyramid appear the three elements of

[79] DHC, Papers of Henry Addington, 152/C1818/OH, ff.2-3.
[80] In the original nursery rhyme, Hone's *Political House* and most other imitations, these were separated as the first and second verses respectively.
[81] *The Loyalist's House that Jack Built, or The British Constitution Triumphant* (London: S. Knight, 1820), p.2, the symbolism of the pyramid appears in several loyalist imitations of Hone's work, see G. Greenland, *The Palace of John Bull, Contrasted with The Poor 'House that Jack Built'* (London: Greenland, 1820), p.11, 14-15.

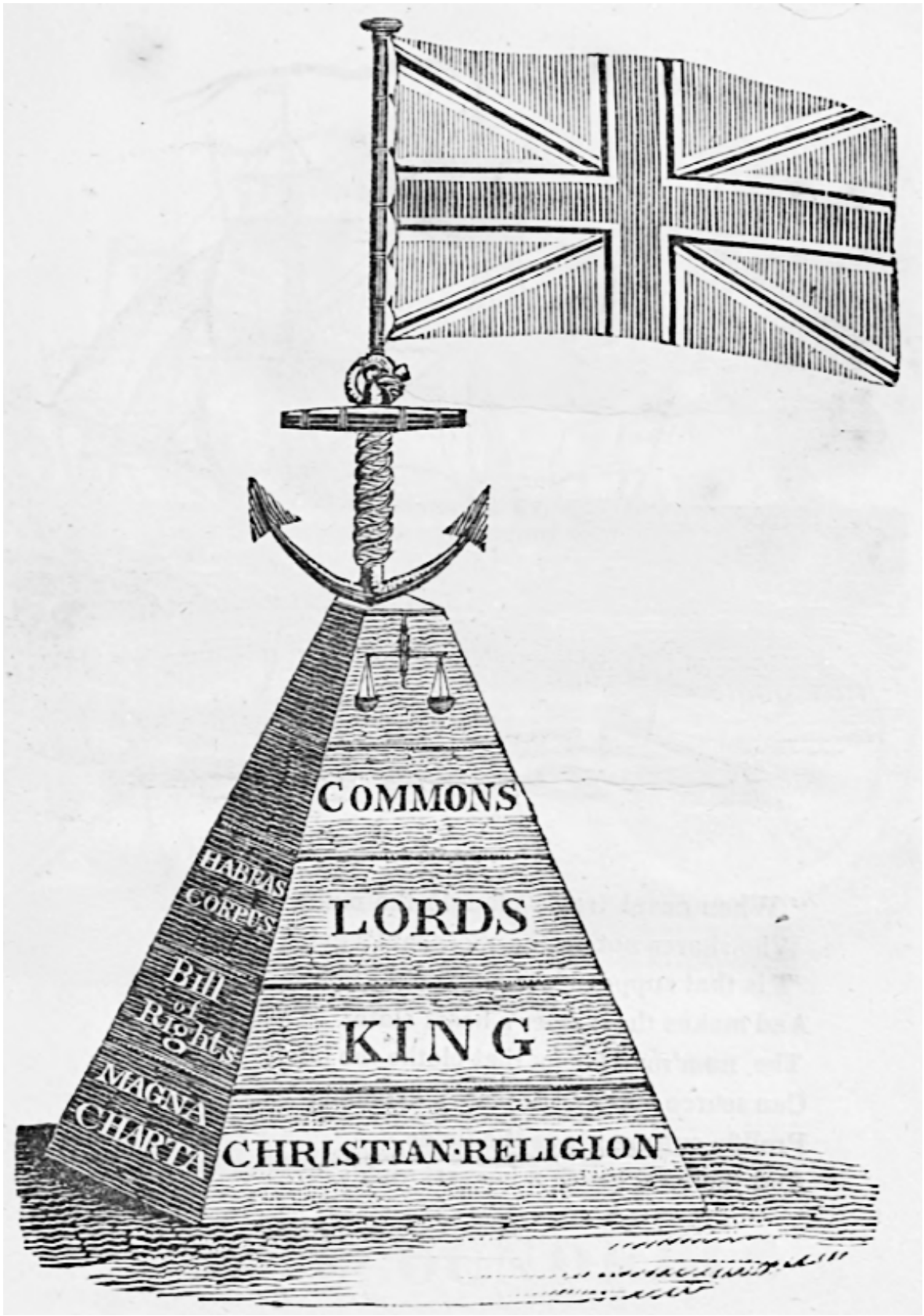

Figure 11 Woodcut, plate two in The Loyalist's House that Jack Built, or The British Constitution Triumphant (London: S. Knight, 1820)

the 'wealth' depicted in Hone's parody (Habeas Corpus, Bill of Rights and Magna Charta) while facing the reader are the core tenets of the 'house': King, Lords and Commons. *The Loyalist's House* however also added the 'Christian Religion' and a set of scales. The significance of this latter addition comes from the way it contrasts with the second woodcut, depicting 'the scoundrels that would plunder the wealth', a motley crew of radicals crammed into cart (Figure 12).[82] In the centre of the image, among a variety of banners calling for political and franchise reform is one displaying the words 'trial by jury'. Its inclusion here sent a number of messages, among them that radical support for the institution was as problematic if not as dangerous as their case for reform. Instead, changes radicals sought to the jury trial, for instance the end jury packing in London, were presented as undermining the constitution. This echoed the attacks launched on Hone's jurors, the separation of the scales of justice and the jury, so often depicted together in other loyalist responses, designed to imply that radical juries were unjust. To this loyalist author, trial by jury was not a part of the 'wealth' of Britain or a part of her constitutional inheritance but, at least in the independent form radicals advocated, among the vermin seeking to destroy it.

This view was extreme. At least as far as responses to Hone went, *The Loyalist's House* was an outlier in its approach and indicated opposition to juries. Yet it represented a broader opinion among loyalists, which opposed the idea of juries in political cases being wholly independent of the authorities. This, or rather the public expression of it, was new in post-war England, driven not by confidence in opposing the radical position, but desperation. As *The Loyalist's House* implied, for many loyalists including Firth and Holt, London's jurors were too close to the 'seat' of radicalism, too attached to organisations such as the Court of Common

[82] In other parades and the original, this depiction of 'the vermin' (Hone) or 'the rat' (original rhyme) is the third verse.

Figure 12 Woodcut, plate three in The Loyalist's House that Jack Built, or The British Constitution Triumphant (London: S. Knight, 1820)

Council that had dispensed with the packed lists.[83] From their perspective, packing did not equate corruption if the aim was the strict enforcement of laws as directed from the bench. The fact the metropolis' jurymen had rejected emphatically this view made their independence political and constitutional subversion. Holt, one of the more fanatical anti-jury loyalists, went as far as to have a draft bill drawn up and sent to Sidmouth, proposing to circumvent London

[83] Holt told Sidmouth, that the Common Council was little more than 'a licenced debating society … where everyone is heard with acclamation who abuses government on existing establishments', DHC, Papers of Henry Addington, 152/C1818/OH, ff.11-12.

juries by empowering the Attorney General to try an *ex officio* information filed in the King's Bench anywhere in England. The aim was to avoid the very problem *The Loyalist's House* complained of, 'the necessity of having recourse to trial by those juries who have lately so betrayed their duties'.[84]

Loyalism was not united behind this approach, especially in public discourse. Other loyalists were less direct although not necessarily any less critical. There was still a reticence to directly attack jurors among some loyalists, still persuaded that the value inherent in showing public support outweighed the perceived damage caused by the verdicts of 1817 or potential benefits of questioning the rights of juries. They advocated tighter control of juries, inverting the jury-threatened narrative to imply that radicals, not the state, jeopardised jury independence though intimidation and unwarranted influence. These accusations were nothing new, following almost every major trial defeat for the Crown including the treason trials and in 1817. It was alleged that threatening letters had been sent to Hardy and Tooke's jurors, and that so large were the crowds, according to Lord Mayor Le Mesurier, the jurors feared being murdered had they convicted.[85] Similar charges were levelled following Hone's acquittals, the editor of the loyalist *Shadgett's Weekly Review* claiming radical writers and the supportive 'mob' deterred convictions and encouraged unjust acquittals through intimidatory tactics.[86] In post-Peterloo satire and wider commentary, loyalists reiterated this belief that Hone had thwarted justice, the failure to convict him still considered among the most persuasive reasons for tighter controls on British jurymen.[87]

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[84] DHC, Papers of Henry Addington, 152/C1818/OH, ff.11-15, also see his letters discussing the subject at ff.21-24.
[85] Numerous loyalist newspapers trumpeted these claims, but were completely overawed by the weight of public opinion, see *Times*, 26 November 1794; *Sun*, 25 November 1794; *True Briton*, 28 November 1794.
[86] G. Bagshaw, *Shadgett's Weekly Review of Cobbett, Wooler &c.* 26 (July 1818), p.204.
[87] A loyalist imitation makes this argument, see *The Dorchester Guide*, pp.23-26, Hone's jurors were described in June 1820 by the loyalist *Anti-Jacobin* as 'perhaps the most stupid dozen which chance could well put together', *Anti-Jacobin Review* LVIII:265 (June 1820), p.371.

In loyalist responses to *The Political House*, claims that radical reform threatened the jury tended to appear as part of the second and third stanzas of the parody, those which in Hone's version outlined the 'wealth' within the political house and the 'vermin' who sought to plunder it. The closest imitation of this layout can be found in the anonymous *A Parody on The Political House that Jack Built: or The Real House that Jack Built*.[88] As with most loyalist replies to Hone's original, this was a simple inversion, substituting the 'radical leaders in the positions occupied in Hone's satire by the loyalist leaders'. The result was an awkward combination of eulogies and attacks on both radicals and labouring poor, neither of which the rhyme lent itself to effectively.[89] The element of the parody almost entirely unaltered was the second verse, displaying the 'wealth' of the constitution in a very similar fashion to Hone (Figures 13 and 14). *The Real House* appropriated the imagery of *The Political House,* noticeably adding a cap of liberty to imply its existence within the existing polity. Also new was a series of books labelled 'Blackstone' to represent the laws, and a scroll inscribed 'Trial by Jury'. The decision to include these demonstrates the previously mentioned overdevelopment in replies to Hone, the author seeking to force the interpretation onto the audience rather than allow readers to apply their own meaning. This depiction of 'wealth' is paired across the page with 'The Vermin', a busy image of crudely drawn radicals carrying a variety of flags and banners. This was a common loyalist trope, intended to suggest that radical calls for reform or liberty were disingenuous and dangerous. The decision to depict the radicals as a mob in place of Cruikshank's simpler, more symbolic original was intended to conjure images of alleged intimidation as a threat to the constitutional bounty, including trial by jury.[90]

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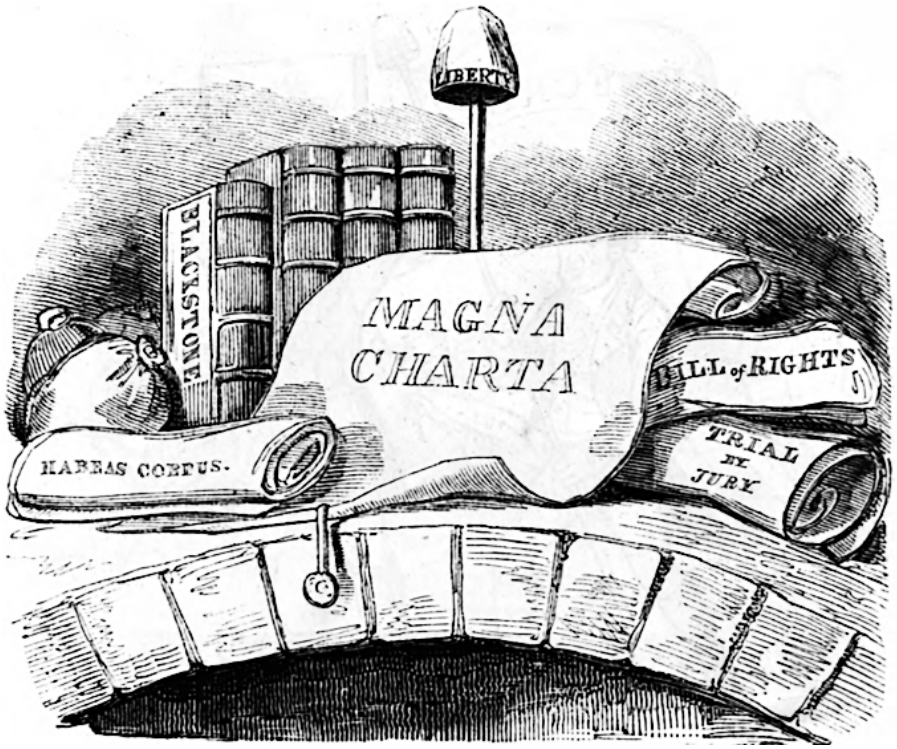
[88] M. Adams, *A Parody on The Political House that Jack Built: Or the Real House that Jack Built* (London: C. Chapple, 1820).
[89] Wood, *Radical Satire*, pp.259-263.
[90] The idea of the crowd or radical mob as a force of intimidation appeared in several loyalist works, including Greenland, *The Palace of John Bull*, pp.14-18; *The Radical House which Jack Would Build* (London: S. Hedgeland, 1820), pp.2-3, 6, 8.



Figures 13 and 14 Woodcuts, plates three and four in M. Adams, A Parody on The Political House that Jack Built: Or the Real House that Jack Built (London: C. Chapple, 1820)

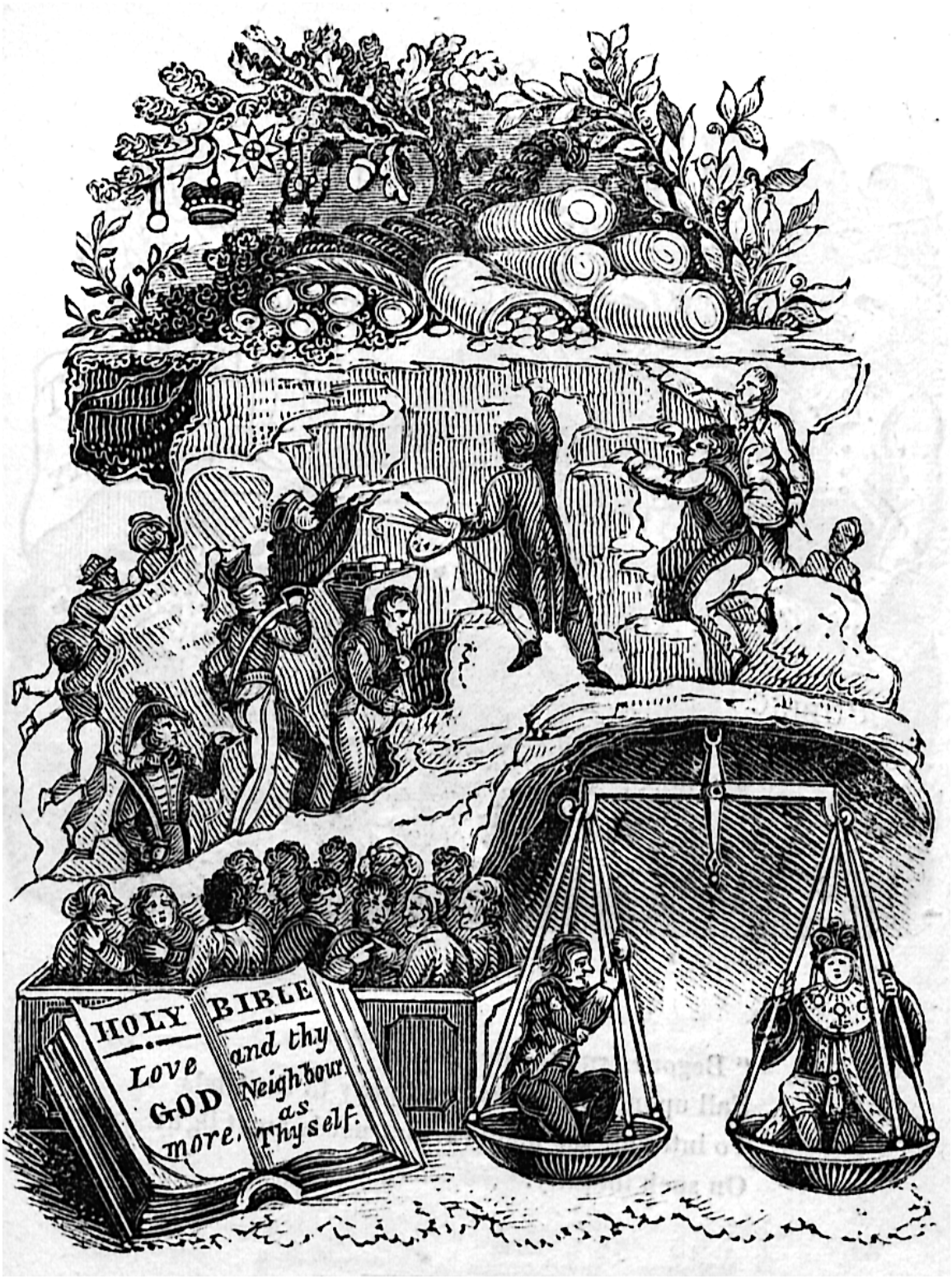


Figure 15 Woodcut, plate three in The True Political House that Jack Built, being A Parody on 'The Political House that Jack Built' (London: Dean & Munday, 1820)

Another loyalist imitation of Hone made these argument more vividly. Although purporting to oppose corruption and rebellion, with the exception of one verse, the work exclusively attacked radicals and other enemies of the British including Napoleon, an association that would not have been lost on readers.[91] Again, the jury appears in the constitution's wealth or 'blessings'. The woodcut was among the most detailed characterisations of the nation's polity, depicted as a rocky hillock (Figure 15). The symbolism of the tree appears again, here reminiscent of Gillray's characterisation of the bountiful constitutional tree, its fruits including a Crown, Star of the Garter, sacks of gold and various scrolls blooming atop the hill, reached for by a variety of recognisable British characters. The trial by jury appears at the base of the hill as the roots of the constitutional tree, twelve small characters cramped into a box in the process of discussing evidence. Alongside them hangs a balanced set of scales, a pauper on one side and the king the other, gesturing towards the idea of equality under the law which the jury, sat closest to the defendant, provided. The addition of a bible open against the jury box with the words 'Love God more, and thy neighbour as Thyself' reinforced these assertions, evoking the ideas of morality and faith inherent in jury duty, a reference to the jury as the people: the rightful judges of their neighbours.[92] The corresponding depiction of the vermin, here 'the reptiles', is equally striking. That this is the only woodcut which attacks both ministers and radicals is particularly telling, suggesting that both had the potential to strike at the base of the constitution, to 'root up the Blessings'.[93] The image is one of a dual threat to the integrity of jury trial, various ministers hand out public money to their retainers backed by the figures of the law, and the radical mob is directed by

[91] *The True Political House that Jack Built, being A Parody on 'The Political House that Jack Built'* (London: Dean & Munday, 1820).
[92] Green, *Verdict According to Conscience*, pp.19-27; Hole, *Politics and Public Order*, pp.96-97.
[93] *The True Political House*, p.4.

Hunt. The prevalence throughout the remainder of the parody of depictions of radical mob violence indicated which of these threats the author believed most severe.

II

For all their frustration and exaggerated fears, these loyalist parodists, whether following the more extreme line of Holt or this less aggressive format, grasped at straws. Only the most ardent loyalists seriously believe radicals intimidated juries. Most leading radicals had far too much respect to do so, even when they knew their jurors were packed or otherwise unfavourable to their cause, as I discuss in the following chapter. Even in cases characterised by patent Crown corruption, radical leaders were careful to extol tranquillity, their public image as supporters of trial by jury too valuable to risk tarnishing. In none of the major cases referenced in this thesis, including all three treason trials and those of Wooler, Hone or Watson in 1817, did radicals encourage supporters to gather, often pleading for the opposite. These loyalist imitations show that, on the subject of jury trial in popular culture, radicalism's opponents were largely toothless, left with a choice of either attacking jurors, or alleging they were influenced by radicals and thus incapable of being independent.

In this context, the shift to overt corruption of juries in response to Peterloo is understandable. The state and its supporters had, by 1819, comprehensively lost the battle of words. These case studies demonstrate the radical success in the discourse on juries by the post-war era. Radicals had a command of language, imagery and narrative to a prodigious degree un-replicated anywhere else in the political sphere, or over any other issue. The legacy of the 1790s clearly endured. Granted, country special juries were often packed. The reform of these was a triumph yet to come. But in London, corruption of juries had – temporarily – been crushed. As my final chapter explores, however, the aftermath of Peterloo saw the authorities searching

for a new method of corrupting the metropolis' jurors, more insidious and audacious than anything radicals had previously encountered.

Chapter Seven

Special Jury Corruption 1817–1825: Repression and Reform

I

If any part of England's' judicial system in the early nineteenth century could reasonably be termed corrupt, it was special juries. Born of medieval court practice which permitted the appointing of 'juries [comprising] men of quality' in cases where specialist knowledge was required, they decided civil, mercantile and excise disputes from the fifteenth century.[1] When the special jury was first written into statute in 1729, the cases in which it could be motioned for expanded to encompass criminal misdemeanours, notably libel, conspiracy and various forms of spoken sedition. The legislation remained vague as to who qualified to serve. They were merely to be 'men of higher standing'.[2] By the end of the eighteenth century, the courts interpreted this to mean only merchants in London and esquires in the counties.[3] The space for corruption, especially in politically charged libel cases was extensive, exacerbated by the fact that Crown officers were responsible for nominating these juries with defence representatives unable to participate or object to proceedings. The threat of a packed special jury was a perennial problem for radicals charged with seditious misdemeanours. Yet with a few exceptions it was unchallenged through the latter half of the eighteenth century.[4] Most radicals

[1] Oldham, 'Origins of the Special Jury', p.141, 153-154.
[2] Oldham, 'Origins of the Special Jury', pp.159-160, 173-209; P. Langford, *A Polite and Commercial People: England 1727-1783* (London: Clarendon, 1998) p.47, 300.
[3] In practice, it was down to the courts and specifically officers responsible for jury nomination to decide, J.C. Oldham, *English Common Law in the Age of Mansfield* (London: North Carolina Press, 2004), pp.22-23; J.C. Oldham, 'Special Juries in England: Nineteenth Century Usage and Reform', *Journal of Legal History* 8:2 (1987), pp.148-166, pp.148-150.
[4] John Horne Tooke levelled an attack on packing while on trial in 1777 see Lobban, 'From Seditious Libel to Unlawful Assembly, pp.314-319, the threat of packing was sometimes discussed by groups including the LCS and by Thomas Paine following his persecution in 1792, see Thale, *Papers of the ... Society,* p.276; T. Paine, *Letter Addressed to the Addressers on the Late Proclamation &c.* (London: J. Davidson, 1792), pp.20-27.

acknowledged the threat but deemed it of secondary importance. As was shown in the wake of Fox's 1792 Libel Act, not every special jury convicted. One independently-minded man in a packed jury could frustrate the system, an understanding underpinning *The Englishman's Rights* campaign in 1793.[5] So radicals were generally content to focus their efforts elsewhere.

It was not until 1817 that radicals led by Thomas Wooler and solicitor Charles Pearson moved to expose special jury packing and demand reform. Their labours in the second half of 1817 have been studied extensively. Beginning with Wooler's arrest and indictment for seditious libel in May, Epstein, Philip Harling, Michael Lobban and others have studied their investigations, including Wooler and Pearson's appeals to the courts for redress, public awareness campaign and most importantly their appeal to the Court of Common Council to investigate the jury lists used in the capital.[6] The results provoked widespread radical and liberal consternation as it emerged authorities had long been employing an illegal list from which special juries were drawn, largely filled with those considered reliable by the Crown. Of the 485 names, almost half (46%) were either dead or not householders in the city, with but 274 men called to serve on the last one hundred special juries. Even these were called infrequently: forty men serving on twenty or more cases, with one juror serving on fifty-five separate occasions.[7] The individual responsible for the nomination process, Master of the Crown Office Edmund Lushington (Chief Justice Lord Ellenborough's nephew) acted partially, something confirmed by the deathbed confession of his former clerk who deposed that

[5] As Henry Addington, the Viscount Sidmouth and Home Secretary put it following the 1817 acquittals of those involved in the Spa Fields Riots, 'I am sorry to hear it whispered that there are two notorious Jacobins on the Jury. What a pity, if this is the case, Mr Litchfield did not look to this', DHC, Papers of Henry Addington, 152M/C1815/OZ, ff.59-63.
[6] The Court was the decision making body of the City of London Corporation responsible for administering the City of London. Pearson, as an Alderman of the City was a member, and in a position to appeal to the Court.
[7] Harling, 'Limits of Repression', pp.117-118; Epstein, *Radical Expression,* pp.66-69.

Lushington and the Treasury Solicitor met frequently to discuss potential jurors.[8] The system was exposed as rotten. In response the Common Council ordered the list be destroyed and henceforth that special juries in the metropolis be struck from the lists returned by the Sheriffs and used to nominate common juries.[9]

Studies of packing in London generally end here, although Epstein and Lobban note the continuing more egregious problem of packing in the counties and ongoing radical campaigning on the subject.[10] Historians have tended to assume that Wooler and Pearson were successful and that the authorities were defeated in London, a view shared by many contemporaries.[11] However, a wider reading of contemporary radical material, court records and previously overlooked private papers show this belief to have been premature. While the lists were abolished the Master's discretionary authority to exercise his judgement and nominate jurors favourable to the Crown remained.[12] Within three years of the apparent victory in December 1817 a more brazen new method of packing London's juries was devised, reliant on these unreformed customary powers and leading to a radical campaign during the 1820s.

This chapter, building on existing scholarship, presenting a fuller picture of radical effort to reform the special jury, first explaining how and why this new form of packing came to exist. This resulted from a need for the authorities to regain control over London's special juries following Peterloo, and assuage loyalist concerns. I explore radical reaction to this development through the press, court proceedings and a petitioning campaign, resulting in the

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[8] C.H. Walker, *An Exposition of the Practices of the Prerogative Court &c.* (London: S. Sweet, 1828), pp.25-26, Wooler, *Black Dwarf* II:27 (July 1818), pp.427-430.
[9] Harling, 'Limits of Repression', p.117.
[10] Epstein, *Radical Expression*, pp.69-81; Lobban, 'From Seditious Libel to Unlawful Assembly', pp.328-322, 349-352.
[11] Epstein, *Radical Expression*, p.69; Wooler, *Black Dwarf* VII:15 (October 1821), pp.503-504.
[12] T. Wooler, *An Appeal to the Citizens of London Against the Alleged Lawful Mode of Packing Special Juries* (London: T. Wooler, 1817), p.10.

Juries Act of 1825. The importance of this legislation, constituting the true end of special jury packing, is overlooked by scholars. This campaign demonstrates the authority of radicals on jury trials and their strategic nous in maximizing the pressure on the authorities. The chapter modifies the existing account of the shift from libel as a primary method of political repression to public order laws: this campaign against London packing was important for this transition. [13]

II

The loss of the packed list in London was a blow for the Crown. Securing convictions in libel trials was notoriously difficult at the best of times and proceeding against a radical publisher without a packed jury was risky. Libel was a double-edged sword capable of financially and personally ruining those convicted but providing the most public of platforms for the state's opponents and vindication in case of an acquittal. Hone's trials in 1817 and the cutting satirical responses explored in chapter six embodied this reality. As Harling puts it, libel law was 'scattershot as best'.[14] In almost every case, especially after 1817, the Crown had to weigh this risk. Even with the renewal of packing in late 1819 it could not afford to be complacent.[15]

The extent of the problem was evident to ministers. As an anonymous writer told Home Secretary Sidmouth after Hone's acquittals, the 'improbity of Juries' no longer under Crown control was in danger of permitting sedition and blasphemy to go unpunished.[16] The embarrassment faced by the authorities in December 1817 left the authorities so rattled only one prosecution for libel was instituted nationwide during 1818, compared to forty-two

[13] See on this subject Lobban, 'From Seditious Libel to Unlawful Assembly'; Navickas, *Politics of Space,* esp. chs.4 and 5.
[14] Harling, 'Limits of Repression', p.107.
[15] Various cases submitted for the opinion of the Attorney and Solicitor Generals during 1818 and 1819 demonstrate an increased concern with the 'propriety' of prosecuting, with questions such as '[whether] a jury ought to convict the Publisher' increasingly common, TNA, TS 11/155/467, f.3. See files in TNA, TS 11/155, TS 11/156, TS 11/157, TS 11/170.
[16] DHC, Papers of Henry Addington, 152M/C1817/OZ, ff.43-44.

(twenty-three in London) in 1817.[17] Without the option of a packed jury the Crown dare not provide the platform of a public trial. When Wooler in the last months of 1818 published deeply critical articles in the *Black Dwarf* on forgery prosecutions by the Bank of England, neither the Attorney General nor the Bank's lawyers were willing to prosecute.[18] Both were convinced of their libellous nature, but without the old packed lists neither was willing to risk Wooler, in the words of the Bank's solicitor, raising 'so delicate a question as the legal powers of a jury in a prosecution for libel' before an open court, fearful no doubt that Wooler might repeat Hone's theatrics.[19] The authorities understood that before an independent London jury discretion was the better part of valour.

This left ministers unable to effectively censor the city's radical parodists and pamphleteers. They prosecuted hawkers, vendors and printers beyond the metropolis who helped circulate works published in the capital. Hone's three parodies, tried and acquitted in London in 1817, were prosecuted at Warwick in 1819 and Exeter in 1820, with packed special juries returning the regional printers guilty.[20] Yet the 'principal libellers' as Treasury lawyers began to term them remained unfettered. The authorities simply lacked any legitimate powers to support repression of radical writers in the metropolis. The legal mechanism (a writ of *Certiorari*) for an indictment or information filed in a particular county to be moved to a superior court could not be motioned for in the King's Bench: being the highest court, cases

[17] Harling, 'Limits of Repression', p.109, contains a table recording all indictments and informations filed in the King's Bench between 1790 and 1832.
[18] P. Handler, 'The Limits of Discretion: Forgery and the Jury at the Old Bailey 1818–1821', in J.W. Cairns, G. McLeod, eds., *'The Dearest Birth Right of the People of England': The Jury in the History of the Common Law* (Oxford: Heart Publishing, 2002), pp.155-172, pp.160-165; A.J. Dick, '"The Ghost of Gold": Forgery Trials and the Standard of Value in Shelley's *The Mask of Anarchy*', *European Romantic Review* 18:3 (2007), pp.381-400, p.390-392; on middling jurors sympathy towards those accused of coinage offences, McLynn, *Crime and Punishment in Eighteenth Century England*, pp.165-166.
[19] Bank of England Archives (BoE), Freshfield Papers, F2/204, ff.50-52, for further letters between Crown Law Officers and Bank's Solicitors regarding Wooler see ff.1-2, 3-5, 6-8, 10-14, 16-17, 47-49, 53-56.
[20] R. Carlile, *The Republican* II:2 (January 1820), pp.47-49, Wooler, *Black Dwarf* IV:2 (January 1820), pp.37-44.

brought before it could not be relocated.[21] Equally, it was possible under suspension of Habeas Corpus to imprison without charge alleged libellers, an effective deterrent often resulting in financial ruin but never a long-term solution. The Act (suspended in March 1817) was restored in February 1818, it being impolitic to remove such a fundamental right for an extended period.[22] For government, doing anything about the reform of London's jury lists was near impossible as ministers were unwilling to openly pervert the judicial process. As Sidmouth told Francis Holt, who had long urged action to curb jury independence, nothing was more likely to damage the government's reputation than reactionary measures tending to 'impugn' jurors' honour.[23] For all his repressive measures, the Home Secretary recognised the rights of jurors to be inviolable and was prepared, at least in the short term, to concede the power of jury packing. As Harling summarises, ministers never seriously 'entertained the possibility of limiting the powers of juries in libel cases … [for] they assumed that the rights of juries were politically untouchable'.[24]

III

It was Peterloo and the resulting radical activism discussed in the previous chapter which forced the authorities to reconsider their stance on London's special juries. Not since the treason trials of 1794 had the authorities faced such a united radical front and been so ill-equipped to put it down. After 1819 prosecuting vendors and hawkers in the counties was no longer adequate, although this was still a useful route for the authorities to pursue activists with

[21] Harling, 'Limits of Repression', p.115.
[22] The Act was never suspended again even post-Peterloo, the Six Acts of 1820 introduced instead to avoid having to justify further suspensions, D. Herzog, *Poisoning the Minds of the Lower Orders* (Princeton: Princeton University Press, 1998), p.116; Poole, *Peterloo: The English Uprising,* pp.156-157.
[23] DHC, Papers of Henry Addington, 152M/C1818/OH, ff.29-32.
[24] Harling, 'Limits of Repression', p.131.

effective guarantees of conviction. But it failed to check a metropolitan radical movement safeguarded by the city's sympathetic juries.

Regaining the ability to pack the capital's juries became imperative, particularly to loyalists whose support for jury trial was, as the parodies discussed in the previous chapter made plain, uncertain. 'Our glorious constitution', one anonymous Londoner warned Sidmouth on 4 November 1819, 'must be protected from the licentiousness of the press or it will perish', urging the government to reassert its legal authority.[25] Other loyalists echoed this call.[26] The *Anti-Jacobin* began a campaign against the capital's jurors in late August. It was the duty of government, urged an editorial, to curb the circulation of radical materials by ensuring greater care in juror selection and exclusion of those who had 'disgraced the court'.[27] Loyalists regarded the failure to convict Hone for his parodies as a cautionary tale of what would result from vacillation or half-measures. Without immediate and authoritative intervention to check the press they predicted constitutional ruin, as was threatened in 1817 by 'absurd and inexcusable' proceedings that enhanced public sympathy for the defendant and seriously weakened the state's ability to suppress sedition. This warning of how not to handle 'traitors' was repeated in the loyalist press, the *Anti-Jacobin* concluding 'that crimes have not been increased by the severity of the laws; but by the lenity of their execution'.[28] In August 1819, swift action to reassert control over London's courts was posited as the key to preventing a repeat of either 1817 or 1794, so 'time-serving' and 'pusillanimous' jurors who some loyalists saw as essentially crypto-radicals could not frustrate the law.[29] To the *Anti-Jacobin,* obedience to the written law was the heart of the habitual loyalist definition of English liberty, epitomised by

[25] DHC, Papers of Henry Addington, 152M/C1819/OH, ff.108-109.
[26] For examples see *Morning Post,* 18 August & 28 September 1819, *Morning Chronicle*, 11 November 1819.
[27] *Anti-Jacobin Review* LVI:251 (April 1819), p.121.
[28] *Anti-Jacobin Review* LVI:251 (April 1819), pp.104-105.
[29] *Anti-Jacobin Review* LVIII:265 (June 1820), pp.370-371.

continued 'references to law and loyalty'.[30] As a correspondent declared in March 1820, that radicals in the metropolis 'could be sure of an acquittal,' was a violation of constitution and justice.[31] If London's jurymen would not heed their oaths and uphold the law the anonymous correspondent asserted, at the very least they had to be punished, with measures to ensure the return of more satisfactory verdicts.

Whatever the feelings of loyalist writers, ministers could not directly intervene. Jurors' powers and rights remained politically sensitive and above legislative interference even in a period of extreme tension. Repressive legislation, most notably the Six Acts of 1820 strengthened magistrate's powers to deal with radical disturbances, introduced new restrictions on public meetings and toughened sentencing laws related to libel but did nothing to restrain juries. Instead the government fell back on the courts to circumvent the new and independent mode of special jury nomination in London. Without the political considerations that constrained Sidmouth, the judiciary devised a bold solution relying on an 1817 ruling by Justice Bayley. During a hearing related to Wooler's libel indictment, the judge opined that, as Wooler summarised it, 'if selection mean packing, [the Master of the Crown Office] has a *right* to pack the jury'.[32] This discretionary power, essentially invented in 1817 to justify the use of packed jury lists and overlooked by scholars and contemporaries alike, was revived and applied to the new unpacked lists. This time, rather than picking at random from a biased list, the Master would identify men favourable to the Crown, by name, before any special jury empanelment and simply ensure they were nominated, his actions protected by this questionable judicial opinion. When this practice commenced is unclear, although it likely began at some point in early 1820 as the capital's prosecution figures for that year make patent.

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[30] K. Linch, 'An Unpleasant Dilemma: The Portsmouth Volunteers and the Limits of Loyalism 1803-1805', *Eighteenth-Century Studies* 40:3, (2017), pp.327-344, p.340; Mori, 'Languages of Loyalism: Patriotism', pp.45-46.
[31] *Anti-Jacobin Review*, LVIII:262 (March 1820), pp.161-164.
[32] Wooler, *An Appeal to the Citizens of London,* p.1.

Forty-three indictments and informations for libel were filed at the King's Bench that year and thirty-two in 1821, the highest ever annual totals, compared to just seven in 1819.[33] The authorities had regained confidence in prosecution in London, almost certainly the result of their rediscovered powers.

IV

Radicals did not become aware of this new practise until perhaps twelve months later, notably with the conviction in February 1821 of *Examiner* proprietor John Hunt for libel at the King's Bench and his accusations of illegal activity against the Master. Over the following months, more defendants convicted in the capital during a wave of prosecutions spanning 1819–1821 claimed the same injustice in their cases.[34] As the *Examiner* would reflect in late 1823, special jury packing was 'displayed in its real odium' in most trials in this period.[35] Radicalism, already embroiled in a campaign against the packing of special juries in the counties led by Hunt's *Examiner,* Wooler's *Black Dwarf* and Carlile's *Republican*, reacted with consternation at the undoing of the efforts of four years earlier.[36] 'If the Master has a right to exercise an arbitrary discretion in selecting from the entire list of freeholders' warned the *Examiner* while discussing Hunt's trial, 'Englishmen have serious reason for alarm as to the due administration of justice'.[37] The instituting of this 'new' mode of selection was seen by radicals as the single greatest threat facing press freedom since Hone's acquittals.[38] It was a significant change in approach from the administration, the authorities prepared to take extreme measures rejected

[33] Harling, 'Limits of Repression', p.109.
[34] These included Wooler, Cartwright and Carlile along with booksellers and printers including Thomas Dolby, Thomas Clark, J.W. Trust and John Jones.
[35] *Examiner* (London), 23 November 1823.
[36] See especially Epstein, *Radical Expression*, pp.69-81.
[37] *Examiner*, 27 May 1821.
[38] Wooler, *Black Dwarf* VII:23 (December 1821), p.181.

by Sidmouth as injudicious just two years earlier, even if that meant treading on politically hallowed ground. As Carlile wrote several years later, radicals were foolish to believe London juries above the reach of corruption. '[The] packing of juries' he correctly adduced, 'is an abuse to which the Government will cling to the last'.[39]

As for the jurors who carried this system into operation, they were almost universally absolved of any blame during the reform campaign. The leading radicals involved ranged from constitutionalists like Wooler, Cartwright, Hunt and Pearson to Paineites such as Carlile, William Sherwin and Thomas Dolby.[40] Yet they all believed that trial by jury was the most pure of constitutional institutions threatened only by external interference. As Wooler explained, 'the trial by jury ought to be respected even in its errors', because it alone had the power to defend English liberties.[41] Equally, packed jurors themselves were not reprimanded since they had merely done their duty as their consciences dictated and no one could expect otherwise. 'We pity [them]', wrote Wooler, 'but we by no means blame them … they are only prejudiced instruments in the hands of others'.[42] Sherwin, despite his Paineite anti-constitutionalism, reiterated this view, underlining the existence of a broad radical consensus during the campaign:

> I respect the right of trial by jury too much to say one word against the juries which have convicted these unfortunate men and I do not deny that these juries have returned verdicts which they were bound to return in compliance with their oath. But though I reverence

[39] Carlile, *The Republican* VII: 12 (March 1823), p.353.
[40] On constitutionalism, Epstein, *Radical Expression,* pp.1-81; J. Fulcher, 'The English People and their Constitution After Waterloo: Parliamentary Reform 1815–1817', in Vernon, *Re-Reading the Constitution,* pp.52-82, pp.57-71, 80-82; on Paineite politics and republicanism see McCalman, *Radical Underworld,* pp.43-48, 156-158, 181-191.
[41] Wooler, *Black Dwarf* I: 40 (October 1817), p.655.
[42] Wooler, *Black Dwarf* IV:17 (October 1822), p.380.

> the institution, I'm clearly convinced that it may, by wicked and crafty men, be turned into an instrument of tyranny and injustice.[43]

For radicals, the jury trial remained a tribunal of conscience in the post-war world, with favourable verdicts continuing to be presented through this lens. To avoid a charge of hypocrisy, adverse decisions had to be understood likewise, as the responsibility of those who deliberately selected prejudiced if conscientious jurors.

There were exceptions, such as Carlile, not averse to criticising verdicts he deemed wrong or immoral. While he supported the campaign for reform of special juries and alongside Wooler was its leading advocate, he struggled to reconcile this with atheism and conviction (with his wife and sister) for blasphemous libel before a packed jury of Christians whom he argued had no right to judge him.[44] These he referred to as a 'mock jury' with preconceived biases, enemies of justice siding with the authorities against the people in an act of moral perjury. Carlile was even more scathing about the composition of special juries, much to the chagrin of his radical compatriots, alleging they comprised only 'the most ignorant and most corrupt men, or the most special bigots'.[45]

His attitude caused friction with other radicals, especially Wooler and Cartwright who recognised the threat from disunity on the jury trial question. Radicalism had dominated discourse on this subject for three decades because of its unified message, consistent support and willingness to genuflect before England's jurymen. Charging jurors, packed or otherwise, with incompetency, echoed the language of opponents and risked the integrity of the radical cause by implying conditional support for jury trial. Unsurprisingly, on more than one

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[43] *Sherwin's Weekly Political Register*, 1 November 1817; Epstein, *Radical Expression,* p.70.
[44] Carlile, *The Republican* I:2 (November 1819), pp.161-166; Wood, *Radical Satire,* pp.139-140, McCalman, *Radical Underworld*, pp.139-147.
[45] Carlile, *Republican* VII:12 (March 1823), pp.353-357.

occasion between 1817 and 1823 Cartwright and Wooler encouraged their colleague to stop attacking juries. Yet his public response to their repeated entreaties, published in *The Republican* on 11 July 1823 was emphatic. For Carlile the idea that the jury was so sacrosanct that even morally or politically questionable verdicts were acceptable or justifiable, even when delivered by obviously packed loyalist jurors, was unsupportable. Cartwright and Wooler were concerned, as they told him in late 1817, that when Carlile republished Paine's works which a jury had agreed were libellous, he went against a decision that ought to be respected despite the jury's error. Carlile rejected this.[46]

These differences were the result of a clash between philosophies, not uncommon among radicals especially with the increase in deism, atheism and revolutionary ideas in the 1810s, but new in relation to jury trial.[47] Most radicals maintained, as Sherwin and Wooler exemplified, an understanding that just as jury trial was politically untouchable to the authorities, so it was to them. Respectability, perhaps the most valuable legacy of the 1790s remained critical and had to be constantly earned whether by regular eulogiums on juries, defences of their integrity or displays of affinity in cartoon and parody. Carlile differed from many contemporaries. Wooler and Cartwright embodied the legacy of the LCS, Erskine and Fox's Libel Act. A political education rooted in 1790s radicalism ensured their continued faith in constitutional politics, with the jury a sacrosanct institution to be preserved at any cost. For Carlile, born in 1790, political education was almost entirely post-war, when he became disenchanted by Whiggism and the more liberal *Black Dwarf* and William Cobbett's *Political Register*, persuaded instead by the republicanism of *Sherwin's Register*.[48] The legal persecution of

[46] Carlile, *Republican* VIII:1 (July 1823), pp.1-6.
[47] Hole, *Politics and Public Order,* pp.200-213; I. Haywood, *The Revolution in Popular Literature: Print, Politics and the People 1790–1860* (Cambridge: Cambridge University Press, 2004), ch.4; McCalman, *Radical Underworld*, chs. 6, 8; Thompson, *English Working Class*, pp.671-675, 691.
[48] Thompson, *English Working Class*, pp.838-857.

his atheist and republican views led to cynicism about whether the constitution was protective of his right to profess either.[49] While he supported certain institutions including juries, he rejected the English constitution as a panacea.[50]

Their disagreements appeared to have had little impact on the campaign despite the obvious hypocrisy of Carlile's position and Wooler's concerns. The loyalist press does not appear to have picked up on these disagreements. After the spat in 1823 it appears Carlile took on board some of what Wooler and Cartwright had told him regarding juries, generally avoiding criticism of them during the remainder of the campaign. He would be the first to welcome the initial proposals in mid-1824 for a reform of jury laws, praising the potential 'return' of jury trial as a 'bulwark of liberty' and offering suggestions for its improvement.[51] Radicalism was not a monolith, even if almost three decades of united discourse on jury trial made it seem so. As chapter five explained, in the 1820s and 1830s this outward unity would become strained and Carlile's dissent while having little impact on this campaign was a symptom of this developing disunion.

V

The first radical move against the new London packing system occurred in summer 1821, with the instigation of several legal challenges. Radicals in the metropolis largely united around a common strategy to contest the legal and constitutional legitimacy of the new packing method and pin the blame for its inception on the legal establishment. They recognised that the new system in London was established by the King's Bench and sanctioned by judicial opinion, 'a

[49] E. Royle, *Victorian Infidels: The Origins of the British Secularist Movement 1791–1866* (Manchester: Manchester University Press, 1974), pp.30-43; E. Royle, J. Walvin, *English Radicals and Reformers 1760–1848* (Brighton, Harvester, 1982), pp.121-141; Hole, *Politics and Public Order,* pp.205-207.
[50] Carlile, *Republican* VIII:1 (July 1823), pp.1.
[51] Carlile, *Republican* XI:16 (April 1825), pp.511-512.

rank weed of legal, and not of parliamentary growth'.[52] Hunt echoed this in the *Examiner*, declaring the system of packing in the capital a tool of judicial despotism, a 'cunning scheme which makes the boasted liberty of publication, so fair on the surface, so foul at the core'.[53]

Wooler (convicted in August 1820 for conspiracy) and Hunt (convicted for libel in February 1821) brought separate motions in the King's Bench, appealing for new trials in their cases on the general grounds that their juries were nominated prejudicially.[54] Arguably, this was what the authorities would have wanted, deflecting blame from ministers and allowing prosecutions to continue without a full-scale political and constitutional crisis. However there was a strong element of radical strategy in this decision. Focusing on and forcing the King's Bench to defend their officer in open court proved a powerful move. The judges had no choice but to place their cards on the table and explain why the Master's actions were in their opinions, legitimate, making it easier for radicals to attack the new system. It obliged judges to commit to upholding the packed jury system in London regardless of how absurd or patently unconstitutional nomination was in any given case. It backed the courts into a corner they could never extricate themselves from without admitting radicals were correct, meaning that only legislative intervention from Parliament could rectify the situation.

The subsequent radical campaign exploited the predicament of the King's Bench and undermined the legality of the packing system with a view to legislative redress. A critical strand of argument employed by the King's Bench required refutation, 'customary powers'. Taking their lead from Bayley's 1817 ruling, the Bench of 1821 (headed by Chief Justice Abbott, a veteran of radical trials including those of Wooler and Hone) gave its opinion that the Act of Parliament which directed the Master to nominate juries, 'meant that he should exercise an

[52] Wooler, *Black Dwarf* VI:22 (May 1821), pp.761-763.
[53] *Examiner*, 23 November 1823.
[54] Wooler was tried at Warwick but the same officer had packed his jury.

absolute power of "selection"'.[55] These words were held to describe the same process in which, as Abbot made clear to Wooler, 'the *custom* was to *select* the special jurors by name'.[56] The court argued that a level of discretion was customary to the Master's office, that no person could 'nominate' a jury without making a 'selection'. The Juries Act of 1729, petitioners were informed, was intended to ensure that only jurors of 'superior qualification', defined by the Courts as merchants in London and esquires in the counties, served on special juries. While the Act did not stipulate a method of nomination, the King's Bench maintained that the mode of selection had to discriminate as a matter of law to fulfil this proclaimed requirement.[57]

'In this distinction between "nomination" and "selection"' wrote Hunt, 'lies the main difference between the liberty and subjugation of the press'.[58] The key to radical efforts at reform was establishing beyond a reasonable doubt that they *were* different, challenging the court's interpretation of the law and alleging they had essentially invented their own. Spearheaded by Wooler, radical writers did not deny that the law stipulated men of 'superior qualification' ought to serve on special juries but contested the phrase's meaning. Rather than specifying a particular group of people, they reasoned it referred more broadly to the fact that before 1729, many men with known biases or uneducated to their duty served as jurors, and that Parliament in establishing special juries sought not to create a distinct class of juror but to ensure competent men served in future.[59] The phrase was held to be declaratory only, with no practical bearing upon the qualification of special jurymen. Thus, as *The Black Dwarf* informed its readers, in the absence of any especial qualification all those qualified to serve on common

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[55] Abbott, when challenged on Hunt's trial over this opinion shouted down the defendant's counsel with the phrase 'some one *must select!!*' *Examiner*, 26 November 1820.
[56] Wooler, *Black Dwarf* VI:22 (May 1821), p.760.
[57] For several lengthy discussions of this subject see Wooler, *Black Dwarf* VI:22 (May 1821), pp.753-764 and VII:23 (December 1821), pp.781-796; Carlile, *Republican* VII:12 (March 1823), pp.353-357 and VII:25 (June 1823), pp.769-784; *Examiner*, 27 May 1821.
[58] *Examiner*, 26 November 1820.
[59] Wooler in particular favoured this interpretation, Wooler, *Black Dwarf* VII:23 (December 1821), pp.785-791.

juries were, in reality, eligible to serve on special juries. By asserting the existence of particular qualifications, radicals charged, the King's Bench had disqualified thousands of eligible jurors in defiance of a statute making no specific qualifications for nominations to special jury service. Abbott argued the nomination only of merchants and esquires was a matter of precedent but to Wooler this constituted a poor excuse for violating the law.[60]

In the same way, the method of nomination was assailed. The 1729 Act made no distinct provision for a unique method in special jury trials. Nevertheless, the courts argued that owing to their alleged requirement for 'superior men' only to serve, a system of 'selection' was a necessary custom and practice. As Abbott told one Edmunds, who petitioned against his packed jury, jurymen had 'always' been nominated at the discretion of someone, a practice 'recognised and confirmed' by the 1729 statute.[61] Abbott's opinion here was among the most obvious demonstrations of judicial duplicity, arguing 'that an act of parliament evidently passed for the purpose of obtaining jurymen of some superior qualification' could only be complied with through a system of discretionary selection, regardless of whether the Act established one. 'It is impossible to suppose', he continued, that such a law could otherwise be 'carried into effect by the adoption of a mode that would leave the qualification absolutely to chance'.[62]

To radicals this was a fallacy because in their conception the Act never stipulated any particular requirements for special jury service. As Wooler argued, Parliament had not defined a method of selection in 1729 because it never envisaged one would be needed:

> The statute does not confirm the practice of striking Special Juries in any mode. It assumes the mode adopted was fair … it is absurd to say it sanctions an unfair mode, adopted but

[60] Wooler, *Black Dwarf* VII:23 (December 1821), pp.786-787.
[61] R.V. Barnewall, E.H. Alderson, *Reports of Cases Argued and Determined in The Court of King's Bench … Michaelmas, Hilary, Easter and Trinity Terms, in the 1st and 2nd Year of Geo. IV. 1820–1821* (London: A. Strahan, 1821), p.484.
[62] For Wooler's comments upon this case see Wooler, *Black Dwarf* VI:22 (May 1821), pp.753-763.

> yesterday by the Master of the Crown Office, because it does not specify any peculiar mode by which nomination should be effected … an idiot would laugh at the proposition.[63]

The King's Bench had usurped the power of parliament, illegally supplying a selection method to fill an omission in the Act which to all intents and purposes did not exist. This was problematic for radicals because it subverted written statute, perpetuating the image of the law and courts as ill-defined and mysterious, a widely held belief especially concerning libel law.[64] For some, most notably Cartwright, it exposed the unjust disconnect between the common law – the opinions, rulings and caprices of judges – and statute, the definable law established by parliament. 'It is well known,' he argued, 'what absurd fantasies, what strained analogies, what far-fetched constructions and fictions of law go to the composition of a lawyers' opinion' in the course of corrupting statute.[65] For radicals, 'real law' as Epstein terms it, had to be 'accessible to the understanding of ordinary citizens'.[66] This was the only way of preventing the ingress of tyranny disguised as law and cloaked in judicial opinion. As Wooler had put it in 1817, 'you must eat, drink, sleep, walk, talk AND think as LAW prescribes. And though this LAW be as great a tyrant as Nero … it is still LAW and therefore must be obeyed'.[67]

With the Judges' rulings on the 1729 Act, radicals feared a precedent was in danger of being set, whereby the King's Bench could act in Wooler's words as a 'court paramount' with *de facto* powers to amend, ignore or abrogate statute altogether. Allowing the judiciary to continue unchecked it was feared, might give the King's Bench in practice a level of primacy over other elements of the polity. MPs, the *Black Dwarf* proclaimed, would be relegated to

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[63] Wooler, *Black Dwarf* VII:23 (December 1821), pp.785-786.
[64] Wood, *Radical Satire*, pp.126-130; S. Manly, *Language, Custom and Nation in the 1790s: Locke, Tooke, Wordsworth, Edgeworth* (London: Ashgate, 2007), p.15.
[65] From Cartwright's trial at Warwick in August 1820 published in 1831, see J. Cartwright, *A Defence Delivered at Warwick, Third of August 1820 by Major Cartwright &c.* (London: G. Woodfall, 1831), p.82.
[66] Epstein, *Radical Expression*, p.71.
[67] Wooler, *Black Dwarf* I:22 (June 1817), p.345.

'fabricat[ing] the rough material, out of which the courts can polish into law what seems right to its superior judgement!' Wooler's assertion that 'laws exist only in their [the judges'] interpretation' evidenced a concern that the constitution was threatened with imbalance which could, in theory, be extended to other areas of law.[68] In reality, what the King's Bench had done was a specific reaction to radical pressure unlikely to move beyond libel law. Nonetheless, the mere prospect of more widespread judicial despotism was a major fear, radicals depicting the judge's rulings as threats to the checks and balances of England's constitutional fabric. Cartwright, in his trial defence and the *Black Dwarf*, summarised his anxiety, describing in the exaggerated tones of good versus evil, the threat posed to liberty by 'the monstrous licence of construction, twin sister to the "fiend discretion" ... [as] crafty, bloody and inexorable, in the work of despotism'.[69] Reform was desperately needed it was urged, to protect the integrity of justice and 'restrain with some bonds the prolific twin fiends'.

For radicals, parliament had to step in and protect the polity. By inventing its own methods, the court threatened the separation of judicial and legislative powers central to the English constitutional settlement. Employing common radical imagery, this corruption was argued to be contrary to the Bill of Rights, a document quoted at length in the *Black Dwarf* to draw a parallel between the abuses of James II, Judge Jeffreys and current judicially sanctioned repression.[70] Interpreting written statute was one thing, but interposing between parliament and the people to provide a system of selection permeated with 'corruption and vice' was quite another.[71] And since, as Carlile told readers, the Master either would or could not alter his course voluntarily, the legislature was mandated to act or abandon its authority to the courts,

[68] Wooler, *Black Dwarf* VI:22 (May 1821), pp.753-754.
[69] Cartwright, *A Defence Delivered at Warwick*, pp.82-83; Wooler, *Black Dwarf* VII:4 (July 1821), pp.141-142.
[70] Wooler, *Black Dwarf,* IX:9 (August 1822), pp.298-299.
[71] Wooler, *Black Dwarf* X:23 (June 1823), pp.790-791.

and the people to 'The British Inquisition!'[72] Parliament may have been 'acquitted' in Wooler's words 'of any participation in [the London packing systems'] design', but its real test would be how justly it brought redress with, as radicals made clear, the nation awaiting reform.[73]

VI

To force this point home, radicals led by Wooler and the *Black Dwarf* began in late 1821 bringing a significant number of petitions from across the nation, complaining primarily of the 'customary' powers afforded the Master. They were intended to compel parliamentary debate and prompt action on '[a subject] which is only second in importance to the subject of Parliamentary Reform'.[74] Coordinated by Wooler, the petitions were printed as broadsides, published both in the *Black Dwarf* and other radical organs and presented by several MPs, notably Joseph Hume and John Hobhouse, to the House of Commons.[75] There was little in the way of the usual radical hyperbole, with petitioners focused on the same practical complaints, typified by those of printer William Jones. Convicted in 1822 for libel, his petition recounted a 'perfect specimen' of the London packing system, alleging a deliberate effort to pack a jury prejudicial against his cause. In this instance as elsewhere, the Master insisted on having legitimate reasons for not taking names at random, skipping 'by accident' over one page containing at least nine eligible merchants. Jones's plea to parliament spoke for all radicals and publishers more broadly:

> your petitioner … claims the interference of your Honourable House, to vindicate the integrity of the law against the usurpation of an officer of the court [and his illegal] …

[72] Carlile, *Republican* VII:25 (June 1823), pp.776.
[73] Wooler, *Black Dwarf* VI:22 (May 1821), p.763
[74] Wooler, *Black Dwarf* X:23 (June 1823), p.793.
[75] For nationwide reporting of petitions see *Morning Post*, 7 June 1821; *Bury and Norwich Post*, 13 June 1821; *Liverpool Mercury*, 15 June 1821; *Leeds Mercury*, 9 June 1821.

> means of continuing the corrupt nomination of special juries [in London] recently adopted under the immediate sanction of the Kings Bench.[76]

The court, Jones concluded, had refused to hear any complaints against this 'shameful corruption', demanding the Commons do its duty to the people.

Besides general complaints, petitions also helped exhibit some of the worst excesses of the packing system. Possibly the most outrageous activity carried on under the new method was exposed by the petitions of London publishers Thomas Dolby and William Clark in summer 1822. Besides alleging general misconduct against the Master, they also charged that he had 'double-packed' their juries by assembling groups of prejudiced bystanders from which talesmen – common jurors taken *tales de circumstantibus* when Special Jurors failed to attend – were drawn.[77] Letters, it was claimed, had been sent out requesting the presence of individuals with known loyalist sympathies, making it but another surreptitious attempt to bias juries.[78] Most seriously, the defendant had no right to challenge a talesman making the practice a virtual guarantee of conviction, 'the last blow to the Trial by Jury' as Wooler dubbed it.[79] Nevertheless, the courts had defended the Master. There was no law to underpin such blatant corruption, with yet another argument based purely on 'custom' found instead. If any case showed parliament the desperate need for reform it was this. When Dolby had attempted to argue before the King's Bench that this action was unlawful, he was met with laughter from the judges, Chief Justice Abbott remarking to the amusement of his colleagues 'the people seem to

[76] Wooler, *Black Dwarf* XI:1 (July 1823), pp.25-28.
[77] Translates as 'such of the bystanders', Wooler, *Black Dwarf* IX:17 (October 1822), pp.577-580.
[78] Wooler, *Black Dwarf* IX:17 (October 1822), p.578.
[79] Wooler, *Black Dwarf* IX:17 (October 1822), p.579

think they can do no right!'[80] Their contempt was palpable, Abbott telling Dolby the Master had made fair use of his powers and taken 'appropriate' steps to provide 'reliable' talesmen.[81]

The most significant part of this case was the justification the King's Bench attempted to offer. To rebuff Dolby's allegations, Justice Bayley attempted to dispute what packing actually meant, implying that it, in fact, meant the same as selection: 'it is true that in one sense the jury is packed, that is to say, the jury are selected by an indifferent officer'.[82] This was intended to obfuscate and confuse the issue by undermining the core strength of the 'language of corruption': its simplicity. Bayley likely hoped to make the discussion unintelligible by creating a situation in which only he could speak with authority upon the subject of corruption, because no one else could possibly understand what, in his comprehension, constituted illegality. His aim as Wooler correctly adduced at the time, was to contest the definition of a distinctly radical term by implying it had an indeterminate number of meanings applicable only at the court's discretion. For the judges to sustain their position explained the *Black Dwarf,* the meaning of packing had to be 'so infinite as to admit various constructions, inferentially, or otherwise in which the plain sense shall not merely be lost but entirely contradicted'.[83] Bayley's choice of words proved Wooler correct, the Justice telling Dolby his 'invidious' use of the term packing '[did] not seem to be justifiable <u>in this case</u>'.[84] The judges sought to claim the word, its meaning, the right to use it and to dictate its propriety for the court, absorbing it into the 'language of the law' to nullify its sting. Abbott too scoffed at Dolbys' suggestion that packing referred in his case to an illegal practice, the Bench essentially

[80] *Morning Chronicle*, 14 November 1822.
[81] *Examiner*, 17 November 1822.
[82] *Examiner*, 17 November 1822.
[83] Wooler, *Black Dwarf* VI:22 (May 1821), p.754.
[84] My emphasis, *Examiner*, 17 November 1822.

attempting to entice radicals into a moot legal debate, on their terms, over the meaning of packing.[85]

The argument offered here by the King's Bench signified a remarkable change in tone on the subject of renewed packing in London, almost certainly brought about by relentless radical pressure. Hitherto, the courts had actively tried to deny it occurred by justifying the Master's activities, inventing new laws and practices and arguing that selection and nomination were the same thing. From this point on however, the authorities no longer tried to deny that packing occurred, rather they tacitly admitted it but quibbled its meaning, arguing that since the Master was 'impartial', whatever he did could never be illegal. The King's Bench would repeat a variation of this argument multiple times, as would the Attorney General, whose only viable line of defence against accusations of corruption was to gesture towards the Master's claimed integrity.[86] Even the Master himself, undoubtedly emboldened by the support of his superiors told a court hearing he had the power to as radicals persistently alleged, pack a jury, but had never 'yielded to bias'.[87]

This was a new level of duplicity. 'Collusive practices were always secret' wrote Hunt, and if as the Court argued the only way to obtain redress was to prove the Master selected – or rather packed – a jury unfairly, none could retain faith in the trial by jury.[88] This development was, as Wooler summarised 'forbearance with a vengeance', against which radicals in parliament and beyond had to become more exercised.[89] Having in effect legitimised packing, the King's Bench went through the looking glass, with both Judges and Master using the word unironically to refer to the discretionary selection of special jurors which they declared was not

[85] *Morning Chronicle*, 14 November 1822; Wooler, *Black Dwarf* IV:17 (October 1822), p.580.
[86] Hansard, HC Deb, vol.9, cc.563-573, 28 May 1823, also see two petitions of Hunt and J.W. Trust, Wooler, *Black Dwarf* X:23 (June 1823), pp.793-798.
[87] *Bristol Mercury*, 7 June 1824.
[88] *Examiner*, 27 May 1821.
[89] Wooler, *Black Dwarf* X:23 (June 1823), p.792.

necessarily illegal. The cry of 'constitution threatened' went up even more fervently than five years previously, the authorities no longer even attempting to hide the corruption, 'the ulcer' continuing to taint the jury trial.

VII

In the wake of the judges' ruling in Dolby's case and the subsequent petition, the position of the King's Bench became untenable and the need for reform evident. To defend their officer, the Justices had invented their own laws, twisted practice, fashioned precedents and, by the continued justification of ever more obviously corrupt actions by the Master, raised both his office and the legal process itself above any effective challenge. No litigant could hope to succeed where the judiciary felt comfortable enough to laugh in the face of opposition.

Yet their amusement heralded the death throes of the system, marking a change in the radical campaign. Wooler, Carlile, Hunt and the wider radical press continued to petition, complain and address the subject of packing regularly. However, with the situation in the King's Bench becoming ever more farcical, there was an increased urgency to exploit it. To this end, the locus of radical campaigning shifted to the House of Commons, led by Hume and Hobhouse, along with Whigs Charles Western, Benjamin Lester, Ralph Leycester and Henry Brougham. Crucially, they could do something writers beyond parliament and even their petitions – which Hume continued to present – could not: they could force the government to engage with the issue and ultimately take a stance. Hitherto, the administration had largely kept its nose clean even when faced with petitions, either saying nothing at all or occasionally dispatching the Attorney General to make a general, token, statement affirming the Master's integrity. In summer 1823 however, opposition MPs moved to emulate Fox in 1792, tabling a motion for leave to bring in a Bill intended expressly to reform the qualification of jurors and

end packing. In doing so, the government was forced to acquiesce and implicitly admit the illegality of the existing practice, with the alternative being to defend the indefensible. Lord Sidmouth's replacement as Home Secretary Robert Peel, agreed not to oppose such a bill, even offering to work constructively towards solving this problem 'of such vital importance'.[90] For radicals, the timing could not have been better. The proposed bill caught the mood of government, with Peel at that time driving forward a raft of legislative reforms to the judicial system.[91]

Above all, it came at a moment when the importance of libel as a tool of social control and political repression had fallen away sharply. As Lobban and Navickas discuss, after 1821 focus shifted towards public order laws and prosecutions for unlawful assembly. The new system of packing was undeniably a short-term solution to an immediate problem, lacking a framework to support it. By 1823 however it had become redundant, the authorities unable to bring a libel prosecution without providing radicals with an opportunity to attack the courts. Only four were instituted nationwide in 1822 and 1823 and none in 1824 or 1825.[92] The packing system had done its job between 1819–1821, allowing the government to prosecute dozens of radicals and suppress post-Peterloo dissent. But in the long term it contributed to crippling the libel law as a feasible option for checking dissent. The conflict between the King's Bench and radicals, which had reduced the libel law to something between a joke and sanctioned judicial corruption played a role in both this shift and the government decision to permit reform.

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[90] Hansard, HC Deb, vol.9, cc.1103-1106, 19 June 1823.
[91] M. Lobban, 'Old Wine in New Bottles': The Concept and Practice of Law Reform c.1780–1830', in A. Burns, J. Innes eds, *Rethinking the Age of Reform: Britain 1780–1850* (London: Cambridge University Press, 2003), pp.155-135, pp.121-129.
[92] Harling, 'Limits of Repression', p.109.

It would be the government who took responsibility for reforming the jury system, adopting jury reform as policy and seeking to put an end to sustained radical petitioning and press attacks. Over the course of 1824 and early 1825, three separate bills were brough forward by Peel, the Juries Laws Consolidation and Juries Empanelling Bills of 1824 and Juries Regulation Bill 1825. Each was welcomed by radicals within parliament and without as important steps forward, as was their successor the Juries Bill in 1825, which combined the three into a single piece of legislation. This provided redress to both the main radical complaints of the preceding years. Besides a general reform to jury qualification, the Act specifically addressed the question of special jury qualification, defining for the first time in law those eligible to serve as merchants, esquires or bankers.[93] Most importantly, it bailed-out the King's Bench by removing the role of the Master from the nomination process, instituting a new system whereby the forty-eight special jurors required for a trial were chosen by ballot rather than the Master's discretion.[94] Such a reform, argued Peel had become 'imperative', recognising the years of campaigning and support for the Act from across the political spectrum, believing it of 'the utmost consequence that a feeling of perfect security and confidence in the trial by jury should be established in this country'.[95] By way of reply, radical MPs claimed it as a victory for the people and common sense over the mysteries of judge-made law, with the Home Secretary, as Whig Henry Bright put it, 'entitled to the thanks of the country' for rectifying obvious defects. 'Every man', Hobhouse told the commons, 'who valued the liberties of his country, must be delighted at the introduction of this bill. It would be the greatest and most salutary reform that could be found in our statute books'.[96]

[93] Hansard, HC Deb, vol.12, cc.966-972, 9 March 1825.
[94] *Juries Act 1825* (6 George IV. c.50). London: G. Eyre & A. Strahan.
[95] Hansard, HC Deb, vol.13, cc.798-801, 20 May 1825.
[96] Hansard, HC Deb, vol.12, cc.966-972, 9 March 1825.

VIII

The reform of juries in 1825 demonstrates decisively that the command radicals held over the language of jury trial gave them influence and authority beyond just the court of public opinion. While the Libel Act of 1792 demonstrated how Whig radical opponents of the Tory administration could, by using their public profile and positions in parliament, make both the case for change and introduce the necessary legislation, the Juries Act represented something far more significant. It was the product of radicals who, through a concerted campaign in various radical journals, the courts and eventually parliament were able to force reform. Radicals were able to use the courts to their advantage, bringing motions to have juries re-nominated or court officers censured and forcing the judiciary into increasingly absurd defences of the Master's corrupt practices. Their outmanoeuvring of the courts and through them the government was consummate and carefully managed. Each appeal, motion or journal article was designed to respond to the latest ruling in the King's Bench, the room for justification made increasingly smaller. The influence radicals were able to exert over the levers of power is remarkable, decades of campaigning on and support for the trial by jury and through it the political ambitions of the middling sorts allowing the movement to undercut the evermore untenable position of the courts, and force the government to step-in, bringing about a reform they broadly welcomed.

The significance of this must not be underestimated. As chapter two argued, the power of radical discourse on juries came from the significance of the trial by jury to the English people, those in power and, above all, the middling sorts. Radicals were thus able to overcome the public perceptions and slander of loyalists that otherwise limited their influence, when discussing this issue. The consequences of this in 1825 were significant, radicals undercutting a system of repression that had plagued opponents of the Tory state for thirty-five years.

Undoubtedly, the shift to the employment of public order legislation to quell radical dissent into late 1820s and 1830s was broadly a response to shifting radical tactics and the rise of the mass meeting as a primary tool of reformism. Yet even so, it is fair to conclude that, without the campaign against jury packing during the early 1820s, the authorities may not have abandoned the law of libel as quickly as they did.

Conclusion. The Bulwark of Liberty?

The Earl Stanhope's assessment of the trial by jury as the 'impregnable GIBRALTAR of the English Constitution' was apt.[1] This thesis demonstrates the critical importance of the jury trial to England's radical movement, the power relationship between the old order and middling sorts, and to the security of the nation's polity. Without this institution the history of the revolutionary era in Britain would have been much darker. The decisions of juries acted against the extremes of counter-revolutionary politics. Radicals were kept tethered to the constitution, the promise of independent justice embodied in the jury trial a far more appealing prospect than the French tribunals.[2] As the LCS and later post-war radicals asserted, preservation and support of jury trial was second only in importance to the question of parliamentary reform.

The jury trial held a central position in radical political culture, expressed almost entirely through constitutional language, ensuring reception with the middling sorts and avoiding censure by both the state and loyalists. They were unafraid to draw on other idioms, especially those of patriotism and religion. These were employed frequently following major political trials, as tools of justification, legitimation and, occasionally, mockery of the corrupt elites. Radicals expressed their own understandings and meanings of patriotism and duty, while using ideas about Englishness and English history to their own advantage. The discourse they constructed around the jury trial went beyond radicalism and its concepts of political culture, able to fit within much wider ideas of Englishness, national and social identity. At its heart was

[1] Stanhope, *Rights of Juries Defended*, p.163.
[2] French juries were selected from a panel, often carefully chosen to ensure its members had the 'correct' republican sympathies, J.M. Donovan, *Juries and the Transformation of Criminal Justice in France in the Nineteenth and Twentieth Centuries* (Chapel Hill: University of North Carolina Press, 2010), pp.33-48.

a persistent search for respectability. Radical domination of the debate on the jury was too important to risk with loose, unguarded remarks. The immediate and apparently successful response of Wooler and Cartwright to Carlile in the early 1820s, testified to the importance of public unanimity and underlying regard both parties held for juries in principle. It is fair to conclude that expressions of support for jury trial were a rite of passage for many radicals. Even Carlile, for all his disdain for jurors that convicted him, voiced his support for the institution and reforms associated with it.

Opponents of the state ranging from the Whig radicals in the early 1790s to the plebeian LCS and post-war popular radicals understood the power inherent in the jury. Their defence was motivated by principle and politics, their aim to level the playing field with the state. They knew, as was demonstrated repeatedly throughout the period 1792 to 1825, that independent juries of middling men would act in their own interests and that, in political trials, these did not always align with those of the authorities. Their campaigns 1793 – 1794, and following the trials of Hone in 1817, were about exploiting this. Radicals presented themselves as guardians and celebrants of jurors' rights, and those of middling England.

The result was a middling sort enthused and empowered, willing to engage with radical discussion of jurors, and appreciating trial by jury as a bastion of their interests, influence and political power. The Libel Act of 1792 marked a significant shift in their struggle for power with the old order, legitimising their ability to oppose the authorities when trying by far the most commonly occurring political offence. The retail success of *The Englishman's Right* and the crowds which gathered in 1794 illustrated a level of consciousness among the middling sorts in the years after the Libel Act, centred on the jury trial. This is not to say that the middling sorts as a whole supported radicalism; rather they supported its position on juries as a means to an end. It is important to review existing approaches to radicals, most importantly the LCS, as

being fundamentally unrespectable and incapable of wielding significant influence from outside the political nation. Davies and McCalman were partly correct in their assessments of the Society, and radicals more broadly. But the uniqueness of campaigning surrounding jury trial, its role in balancing the polity and its connection to middling England are evidence that under the correct conditions radicals who might otherwise have remained on the margins could be respectfully heard.[3] The message mattered much more than the messenger, and provided radicals maintained a respectable constitutionalist discourse, the middling sorts continued to legitimate it. The later lamentations of Chartists at the apparent betrayal of the middling sorts after reform in 1832, demonstrate the nature of this connection as one of convenience for both parties.

Jury trial created a relationship between the elite, middling sorts and radical movement. The institution of the jury was a check on elites, a site of power for the unenfranchised middling sorts (from which radicals often came) and a potential repressive tool against radicals. The system, regardless of their frustrations, maintained England's political elites in their position during the turbulence of revolution in France, securing the polity and providing the greatest reason not to overturn it. For this reason, my thesis highlights the necessity of revising approaches to England during the age of revolution, specifically interpretations about the stability of the nation's polity, and the question of why revolution did not occur. Thompson, Royle, Colley and others argue for a variety of reasons why revolution did not overwhelm the English but neglect the jury's stabilising role.[4] Thompson and Royle were correct to highlight the general restraint of the authorities and broad reliance on legal methods of social control.[5] At acute moments of crisis and repression, notably in 1794, 1817 and post-Peterloo, this

[3] Davis, 'The Mob Club?' pp.21-36; McCalman, *Radical Underworld,* Ch.2.
[4] Colley, *Britons,* pp.327-371; also see Hobsbawm, *Age of Revolution,* pp.140-142, 144, 148, 154-156; Thompson, *English Working Class,* pp.194-203; Scrivener, 'John Thelwall's Political Ambivalence', pp.69-71, 80-81.
[5] Thompson, *Whigs & Hunters,* pp.202-210; Royle, *Revolutionary Britannia?,* pp.183-192.

general rule was broken sharply in favour of arbitrary imprisonments, inflated charges and efforts to pull tighter on the reigns of oppression. In these instances, it was not the state, radicalism, constitution or national character that preserved the polity, but trial by jury. 1794 epitomised this. The Pittite state pressed for the execution of radical leaders including Hardy, Tooke and Thelwall even though this might have undermined public order. If the celebrations, crowds, gatherings and words of those who favoured the acquittals were instructive, convictions would have produced a strong reaction. This was a moment that England came close to revolution, pushed towards the precipice by elite paranoia. But three juries, as representatives of the middling sorts and wider political nation, refused to sanction acts detrimental to the constitution, polity and their political interests.

At these points of great peril for the English, all other reasons for political and social stability were secondary: the nation's fate rested with trial by jury. What this thesis demonstrates is that the preservation of a stable polity lay with an institution that could regulate the power balance in English society, politics and law. In no other European nation could the state and its excesses be curbed in such a manner, with the people or at least a part of it able to dictate the limits of repression. England possessed a system where coal merchants, cobblers, fishing-rod makers, grocers and biscuit-bakers participated in the governance of the country, judged the laws by which they were ruled, and exerted political power at the highest levels, regardless of having a right to the franchise.[6] This was a security against revolution, something contemporaries were well aware of. Ministers, radicals, the middling sorts and even judges in court, recognised that a threat to the integrity of jury trial was a threat to the polity, public peace and existing constitution. The integrity and independence of jury trial was viewed by all as a bellwether for the state of English liberty. Juries were at least by overt action

[6] The professions of several jurors from the 1794 treason trials.

invulnerable to attack, it being in the interests of all concerned to protect their outward integrity. Failure to do so, as Thelwall, Ashurst, Sidmouth, and all those who gathered to discuss, celebrate and eulogise the jury across the revolutionary decades knew, would perhaps fatally undermine the constitution by removing the people's only guarantee to life and liberty.[7] The road to revolution would be opened and in Ashurst's conception, justifiably so.[8] Covert undermining and corruption were possible but once exposed as in 1792 and the early 1820s, reform was the outcome to preserve the balance of the polity.

The field for further research to support these conclusions is expansive. More questions are raised by this work than are answered, including the problem of understanding more broadly, views on juries held among the nation's political elites. This would be beneficial, as would a study focused on how jurors themselves (and the middling sorts more broadly) viewed their duties. This thesis indicates that the jury was generally associated with the middling sorts, their political and social interests and at times their identity as independent Englishmen. Further study however would provide a fuller view of the relationship between the state, middling sorts and radicals than offered here. The earlier eighteenth century and the Victorian era require further study, to trace the development of the relationships I discuss, especially in the light of the changing attitudes to 1794 which chapter five explored.

There is also the question of other contexts, and whether the conclusions drawn in this thesis applied to the jury *beyond* England, that is, in Scotland and Ireland. While this thesis briefly touched upon Scotland, this was only in reference to activities by English radicals. But the relationship between the peoples of Scotland and Ireland and their juries differed from

[7] For Thelwall's 1794 remarks see TNA, TS 11/957, f.60. For those of Sidmouth, DHC, Papers of Henry Addington, 152M/C1818/OH, ff.29-32.
[8] Binns, *The Trial of John Binns*, p.82.

that of the English.[9] A deeper look into how the jury was understood at a more local level within England may also prove equally beneficial, and access to sources in regional archives would undoubtedly support such research in the future. Both would be important future avenues of research are the political, social and legal roles of jury trial beyond England in the revolutionary period, which alone would permit a more nuanced view of the institution's place in Britain and Ireland.

Away from these questions of scope, more research is required on several of the topics of this thesis. Foremost is language. This thesis established the central role played by constitutionalism, ideas of patriotism and religion in jury-related discourses in the revolutionary period. Other languages figure in discussion of jury trial, particularly that of gender. The jury and the wider law were innately gendered and an examination of how ideas about masculinity were employed to discuss male jurors would deepen the analysis of contemporary perception of the jury and jurors.

The usual constraints of doctoral research combined with the limitations imposed in a pandemic meant the period dominated by war with France (1794–1815) is overlooked in my work, in favour of the periods of domestic political tension either side of it. Access to certain archives, such as William Hone's papers at University College London and those of other radicals and members of the government at the British Library and National Archives was impossible. On questions such as the support among the middling sorts for Hone and his jurors, discussed in chapter six, or the disagreements between radicals noted in chapter seven, access to these resources may allow a more detailed analysis.

[9] Scotland possessed a different legal and jury system, see Macleod, 'The English and Scottish State Trials', pp.81-92. In Ireland, religion played a central role in jury duty, function and decision making, N. Howlin, 'Controlling Jury Composition in Nineteenth Century Ireland', *Journal of Legal History* 30:3 (2009), pp.227-261, pp.229-234; N. Howlin, *Juries in Ireland: Laypersons and the Law in the Long Nineteenth Century* (Dublin: Four Courts Press, 2017).

The English owed much to their system of jury trial and knew it. To contemporaries, it was popular democracy in action: balancing the demands and rights of the people against the paranoia, oppression and laws of the aristocratic state. It is important for scholars to recognise this, and liberate the jury from being studied as a lesser cog in the machinery of the law, or a minor part of the constitution. To the nation's radicals, its middling sorts and to an extent its elites eulogy sometimes placed the jury higher than the law and constitution as a crowning achievement of English history and liberty's palladium. England in the long eighteenth century, remained a stable polity, its society and economy grew and flourished in the nineteenth century and the risk of revolution was kept at bay. This was in no small part thanks to jury trial and its radical champions.

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1870, 0507.16231, 'Metal Alloy Token with Plain Edge. Bust of John Horne–Tooke facing to the right. A view of the Sessions House at the Old Baily', (1794)

1870, 0507.16232, 'Alloy Token with Inscribed edge', (1794)

1870, 0507.16233, 'Alloy Token. Bust of John Horne–Tooke in Profile facing to the right', (1794)

1872, 0802.117, 'Metal Alloy or Silver Token. Possibly a proof. Two male figures (Probably of Thomas Erskine and Vicary Gibbs) standing, holding a ribbon between them', (1794)

1915, 0507.348, 'Pewter Medal. Conjoined Busts of Vicary Gibbs and Thomas Erskine. (reverse) Conjoined draped busts of Thomas Hardy, Horne–Tooke and John Thelwall' (1794)

1938, 0213.8, 'Metal Alloy token with a Plain Edge. Bust of John Thelwall facing right. A View of the Sessions house at the Old Baily', (1794)

M.4843, 'Bronze medal. Draped bust of Lord Gordon bare head left', (1781)

M.5012, 'Bronze Medal. Conjoined Busts of Vicary Gibbs and Thomas Erskine. (reverse) Conjoined draped busts of Thomas Hardy, Horne–Tooke and John Thelwall' (1794)

M.5013, 'Copper Alloy Medal. Showing Thomas Hardy in Profile with an Inscription' (1794)

M.5014, 'Bronze medal. (reverse) A Cockerel Standing left', (1794)

M.5019, 'Copper Alloy Medal. Draped bust of Thomas Hardy facing, bare head turned to left' (1794)

M.5021, 'Pewter Medal. View of the Tower of London, hand holding scales of justice in splendour above', (1794)

SSB, 228.18, 'Tin Medal. Draped bust of Lord Stanhope, bare head left', (1795)

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SSB, 237.16.2, 'Metal Alloy Token. Full–Face bust of Thomas Hardy facing left' (1794)

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T.6541, 'Silver token. Two male figures (Probably of Thomas Erskine and Vicary Gibbs) standing, holding a ribbon between them', (1794)

T.6542, 'Metal Alloy Token. Two male figures (Probably of Thomas Erskine and Vicary Gibbs) standing, holding a ribbon between them', (1794)

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Appendix I: Libel Bills (1771 and 1792)

1771 Libel Bill

Whereas doubts and controversies have arisen at various times, concerning the right of jurors to try the whole matter laid in indictments and informations for seditious and other libels: And whereas trial by juries would be of none or imperfect effect, if the jurors were not held to be competent to try the whole matter aforesaid; for settling and clearing such doubts and controversies, and for securing to the subject the effectual and complete benefit of trial by juries in such indictments and informations;

Be it therefore declared and enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

That Jurors duly impanelled and sworn to try the indictment or information for a seditious libel, or a libel under any other denomination or description, shall be held and reputed competent to all intents and purposes, in law and in right, to try every part of the matter laid or charged in said indictment or information, comprehending the criminal intention of the defendant, and the evil tendency of the libel charged, as well as the mere fact of the publication thereof, and the application by innuendo of blanks, initial letters, pictures, and other devices; any opinion question, ambiguity or doubt to the contrary notwithstanding.

1792 Libel Act (Libel and Slander: 32 Geo. III., c.60.)

An Act to remove doubts respecting the Functions of Juries in Cases of Libel

Whereas doubts have arisen whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the King and the

defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury empanelled to try the same to give their verdict upon the whole matter in issue:

Be it therefore declared and enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

1. That on every such trial, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information; and shall not be required or directed, by the Court or Judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.
2. Provided always that on every such trial the Court or Judge before whom such indictment or information shall be tried shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the King and the defendant or defendants in like manner as in other criminal cases.
3. Provided also that nothing herein contained shall extend or be construed to extend, to prevent the jury from finding a special verdict in their discretion as in other criminal cases.
4. Provided also that, in case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgement, on such ground and in such manner as by law he or they might have done before the passing of this Act, anything herein contained to the contrary notwithstanding.

Appendix II: Example of Indictment for Seditious Libel

Standard "Template" for an indictment on charge of libel, Printed in A. Highmore, *Reflections on the Distinction usually adopted in Criminal Prosecutions &c.* (London: T. Farnworth, 1791)

The Jurors for our Lord the King upon their oath present, that ....., late of ....., not having God before his eyes, but moved by the instigation of the devil, and falsely and maliciously contriving and intending to bring our said Lord the King into hatred and infamy amongst his subjects, and to move sedition among the subjects of our said Lord the King did, on the ..... day of ....., with force and arms, at ..... aforesaid, in the country aforesaid, falsely, seditiously and maliciously write and publish and cause to be written and published, a certain false, seditious and scandalous Libel, entitled .....: in which said libel are contained, among other things, divers false, seditious, scandalous and malicious matters, according to the tenor following to wit: ..... . And in another part of the same Libel, are contained divers other false, seditious, scandalous and malicious matters according to the tenor following, ..., to the evil example of all others in the like case offending and against the peace of our said Lord the King, his crown and dignity.

Appendix III: Jurors' Oaths

Late Seventeenth Century version from *The Office of the Clerk of Assize... Together with the Office of the Clerk of the Peace* (London: Henry Twyford, 1682)

You shall well and truly try, and true deliverance make between our Soveraign *[sic]* Lord the King, and the Prisoner[s] at the Bar, whom you shall have in charge, and a true Verdict shall give according to your Evidence, so help you God.

A 1780 version from Irish statute in *Statutes Passed in the Parliaments Held in Ireland &c., Vol.6* (Dublin, G. Grierson, 1796)

I, *A.B.*, do swear, that I will well and truly try the maters, that shall be given me in charge, and true verdict give according to the Evidence.

An 1815 version from *The Statutes of the United Kingdom of Great Britain and Ireland, Vol.6* (London: G. Eyre, 1816)

You swear by God, and as you shall answer to God at the great Day of Judgement, that you shall well and truly try these issues, or this issue, and a true Verdict give according to the Evidence.

Example of the charge, read to the jury upon their being sworn, printed in C. Stanhope, *The Rights of Juries Defended... and the Objections to Mr Fox's Bill Refuted* (London: P. Elmsly, 1792)

You good Men that are sworn, you shall understand, that "*A.B*" now Prisoner at the Bar, stands indicted for that he [reciting the indictment]: to which Indictment he hath pleaded *Not*

Guilty, and for his Trial hath put himself upon *God and his Country*, which Country you are; so that *Your Charge* is, to inquire whether he be *Guilty* of the [Crime] whereof he stand indicated, or *not Guilty*.

Appendix IV: Witness Oaths

Standard Practice when Administering Oaths to Witnesses from J. Hanway, *Solitude in Imprisonment, with Proper Profitable Labour and a Spare Diet* &c. (London: F.Bew, 1776)

In England, an inferior officer stands up in court, with a book in his hand, and says to the witness who is to give his evidence, "The evidence you shall give for our sovereign Lord the King, shall be the truth, the whole truth, and nothing but the truth; so help you God". And then the witness kisses the book. In Scotland… the Judge stands up, and orders him to repeat the words of the oath in the following manner. Holding up his hand, he says, "I solemnly promise before the eternal God, who will judge all men at the last day, when every secret shall be disclosed, that I will tell the truth, the whole truth and nothing but the truth, so far as my memory will assist me; and this I swear, as I shall answer to God".

Several Examples of Witnesses taking a verbal oath in Court, from J.Gurney, *The Trial of Thomas Hardy for High Treason* &c. (London: M.Gurney, 1794)

John Bogue: This witness was sworn, holding up the right hand, repeating the following words: "I do swear, in the presence of Almighty God, and as I shall answer to God at the great day of judgement, that the evidence I shall give to the Court and Jury, between our Sovereign Lord the King, and the prisoner at the Bar, shall be the truth, the whole truth, and nothing but the truth".

James Stevens: This witness was sworn, holding up the right hand, repeating these following words, "I swear, in the name of God, as I shall answer to God, in the day of Judgement, that, in this case, I shall tell the truth, the whole truth, and nothing but the truth".

John Carr: This witness was sworn, according to the form used in the Church of Scotland, holding up the right hand, repeating these following words: “I, John Carr, do swear by God, and as I shall answer to God at the Day of Judgement, that I will speak the truth, the whole truth, and nothing but the truth; so help me God”.

Appendix V: List of Exemptions/Disqualifications from Jury Duty

As listed in the Juries Act 1825 (6 Geo. IV c.50)– ** Note the Juries Act 1825 codified the exemptions from jury service. These exemptions had long existed either as matters of custom or in other legislation **

All Peers; all Judges of the King's Courts of Record at *Westminster*, and of the Courts of Great Session in *Wales*; all Clergymen in Holy Orders; all Priests of the Roman Catholic Faith who shall have duly taken and subscribed the Oaths and Declarations required by Law; all Persons who shall teach or preach in any Congregation of Protestant Dissenters, whose Place of Meeting is duly registered; and who shall follow no secular Occupation except that of a Schoolmaster, producing a Certificate of some Justice of the Peace of their having taken the Oaths, and subscribed the Declaration required by Law; all Serjeants and Barristers at Law actually practicing; all Members of the Society of Doctors of Law, and Advocates of the Civil Law, actually practicing, all Attorneys, Solicitors, and Proctors duly admitted in any Court of Law or Equity, or of Ecclesiastical or Admiralty Jurisdiction, in which Attorneys, Solicitors and Proctors have usually been admitted, actually practicing, and having duly taken out their Annual Certificates; all Officers of any such Courts actually exercising the Duties of their respective offices; all Coroners, Gaolers, and Keepers of Houses of Correction; all Members and Licentiates of the Royal College of Physicians in London actually practicing; all Surgeons being Members of One of the Royal Colleges of Surgeons in London, Edinburgh or Dublin and actually practicing; all Apothecaries certificated by the Court of Examiners of the Apothecaries Company, and actually practicing; all Officers in His Majesty's Navy or Army on

Full Pay, all Pilots licenced by the Trinity House of Deptford Strond, Kingston-Upon-Hull, or Newcastle-upon-Tyne, and all Master of Vessels in the Buoy and Light Service employed by either of those Corporations, and all Pilots licenced by the Lord Warden of the Cinque Ports, or under any Act of Parliament or Charter for the Regulation of Pilots in any other Port; all the Household Servants of His Majesty, His Heirs and Successors; all Officers of Customs and Excise; all Sheriff's Officers, High Constables, and Parish Clerks, shall be and are hereby absolutely freed and exempted from being returned, and from serving upon any Juries or Inquests whatsoever … also, that all Persons exempt by virtue of any Prescription, Charter, Grant or Writ shall continue to have and enjoy such Exemption.

Printed in J. Chitty, *A Practical Treaties on the Criminal Law &c. 4.vols* (London: 1816), vol.I, pp.309-310

No man can be eligible to serve before he has attained the age of twenty-one years. In practice, as observed by Mr Justice Blackstone, the Jurors are usually gentlemen of the best figure in the country. Various exceptions are also allowed in favour of particular individuals or professions. Thus by one of our most ancient statures, old men above seventy, and persons labouring under sickness, are not to be summoned upon juries. So freemen of the company of surgeons, apothecaries in London and within seven miles thereof, and apothecaries in the country who have served seven years apprenticeship, registered seamen, Quakers, visitors of work houses, clergymen, coroners, ministers of the forest, officers of the army, and other officers of the king, Roman Catholic ministers, and dissenting preachers registered under the toleration act, are exempted from serving on Juries… members of either house of Parliament, and barristers and attorneys actually practising their professions are not to be called on for their service.

Appendix VI: LCS's System of Jury Trial

From *The Report of the Committee of Constitution, of The London Corresponding Society, Printed for the use of the Members* (London: T. Spence, 1794)

SECTION XI- *Of Accusation and Trial*

1- If any member shall think another unworthy of being a member of this society, or that he has acted in any degree improperly, he shall offer his accusation, in writing, signed by himself, in the Division of which the accused is a member.

2- Every accusation shall state the law on which it is grounded.

3- If the decision of the division shall be in favour of the accused, the trial shall go no farther; if not, the accuser shall give a statement of the case, in writing, to the Delegate of his own division, to be laid before the committee of Delegates.

4- No vote on resolution touching any matter of accusation shall pass in any division except that of the accused (as mentioned in the last Article) nor in any of the constituted bodies.

5- The delegates, having received the case, shall elect four persons, not of their own body, nor of the division, or divisions concerned, to act as President, Secretary, Vice-President and Assistance Secretary in the ensuing trial.

6- They shall also, issue notices to each division, except those of which the accuser or accused are members; mentioning the time and place of trial, and the four persons who they have appointed to superintend it, and requiring each of them, to return one Juryman.

7- Each division shall return of its own members, one Juryman, by lot; but none of the four persons appointed to superintend the trial, nor any member of any constituted body, shall be returned.

8- Every Juryman so drawn, and failing to attend at the appointed time, shall forfeit two shillings and sixpence, except in case of sickness: as shall also each superintendent.

9- The superintendents shall, by lot, take twelve names out of the whole number present, who shall be the jury for that trial unless the accused object, which he may do to four of them, but not more.

10- The accuser and accused shall each be allowed one Assistant, at their own choice.

11- The president shall read the accusation and call on the accuser to produce his evidence

12- The evidence on the part of the accuser being closed, the accused my call his evidence

13- During the time each witness is giving his evidence, he may be cross examined by the Jury, the President, the Accused, the Accuser or either of their Assistants.

14- The evidence being closed, the Accused and his assistant shall be allowed to comment on it, and make his defence; but the cross examination shall be deemed sufficient on the part of the accuser.

15- If the President shall think proper, he may recapitulate the principle points of the evidence, and comment on them.

16- The Jury shall give their verdict in writing, signed by all their names.

17- If the Jury shall not within two hours agree, that the Accused is guilty, he shall be acquitted.

18- The Issue of the trial shall be reported to the Committee of Delegates, and by them to the Divisions

Appendix VII: Summary of Overt Acts in Hardy's 1794 Indictment

From *Morning Chronicle,* 25th October 1794

1. *Overt Act.* – Meeting and Conspiring to cause and Procure a Convention, with intent that such Convention should, in defiance of the authority of Parliament, subvert and alter the Legislature and Government, and depose the King.
2. *Overt Act.* – Composing, and causing to be composed and distributed books, pamphlets, letters &c. inciting the People to chuse Delegates to such Convention, for the traitorous purposes aforesaid.
3. *Overt Act.* – Meeting and consulting how, when, and where, such Convention should be assembled and by what means the People might be induced to send Delegates to constitute the same.
4. *Overt Act.* – Consulting and agreeing to appoint a Committee to confer and co-operate towards calling an assembling such Convention for the traitorous purposes aforesaid.
5. *Overt Act.* – Causing and procuring to be made and provided, and consenting and agree to the making and providing arms and offensive weapons, for the purpose of arming divers subjects &c. to the intent that they might forcibly oppose the King in the lawful exercise of his authority, and forcibly subvert and alter the Legislature, Rule, and Government, and depose the King.
6. *Overt Act.* – Conspiring and agreeing to levy war against the King.
7. *Overt Act.* – Conspiring and agreeing to alter, and cause to be altered, the Legislature and Government &c. and to depose the King.

8. *Overt Act.* – Preparing and composing, and causing to be prepared and composed, divers books, letters &c. and publishing and dispersing, and causing to be published and dispersed, such books &c. inciting the People to aid and assist in effecting such traitorous subversions, alteration and deposition as last aforesaid, and instructing them how, when and upon what occasion these traitorous purposes might and should be carried into effect.
9. *Overt Act.* – Procuring and providing, and causing to be procured and provided, arms and offensive weapons, therewith to levy War against the King.